

GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
---	---

ADVANCE RULING NO. GUJ/GAAR/R/31/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2019/AR/04)

Date: 02.07.2020

Name and address of the applicant	:	M/s Dhirubhai Shah & Co. LLP, 401&408 Aditya, Nr. Sardar Patel Seva Samaj, Mithakali Six Road, Ellisbridge, Ahmedabad
GSTIN/ User Id of the applicant	:	24AABFD1936H1ZT
Date of application	:	22.01.2019
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	a) Classification of goods and/or services or both. c) Determination of the liability to pay tax on any goods or services or both: e) Determination of the liability to pay tax on any gods or services or both.
Date of Personal Hearing	:	11.06.2020 (through Video Conferencing)
Present for the applicant	:	Shri Sameer Siddhpuriya

1. M/s. Dhirubhai Shah & Co. LLP, 401&408 Aditya, Nr. Sardar Patel Seva Samaj, Mithakali Six Road, Ellisbridge, Ahmedabad having a GSTIN : 24AABFD1936H1ZT, is a LLP filed an application for Advance Ruling under Section 97 of CGST Act, 2017 and Section 97 of the GGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs. 5,000/- each under the CGST Act and the SGST Act.

2. M/s. Dhirubhai Shah & Co. LLP of Chartered Accountant an applicant herein after called as DBS is engaged in providing services in auditing, accounting, taxation etc. The applicant has been appointed for its professional

service in respect of maintenance of Accounts and allied items of work in Segment III of M/s. Sardar Sarovar Narmada Nigam Ltd. (herein after called as “SSNNL”). The applicant further submitted that SSNNL is incorporated under the Companies Act 1956 wherein 100% equity is owned by the Govt. of Gujarat. As per the provisions of Companies Act, 1956, company requires to maintain books of account as per double entry system on accrual basis. For the same, Company has appointed the applicant to provide maintenance of accounts service in the computerized manner in Segment III of the Company.

3. The applicant submitted that Segment III of SSNNL consist of 31 Divisions which carries out activity of water supply for domestic, industrial and commercial purpose which is entrusted to Municipality under Twelfth Schedule of Article 243W of the constitution as one of the major activities. For the purpose of maintenance of accounts service applicant is required to attend division office as and when required and accounts are required to maintain at division office only. The applicant has provided the agreed service to SSNNL for the F.Y. 2017-18 and issued its Tax Invoice No. 230/2018-19 dated 04.07.2018 amounting to Rs. 1,38,680/- by charging CGST and SGST u/s. 9(1) of the CGST Act, 2017 and SGST Act, 2017.

4. The applicant submitted that they understand that the service provided to SSNNL by Invoice No. 230/2018-19 dated 04.07.2018 is not covered by the entry prescribed at Sr. No. 3 of Not. No.12/2017- CT (Rate) dated 28.06.2017. Description of service as provided in Sr. No. 3 of said Not. Is produced as under :

*“Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority **by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution.**”*

5. The applicant submitted that they understands that pure service as prescribe in the said Notification is available in relation to an activity/ function entrusted to a Panchyat or a Municipality under Article 243 G and 243W of the Constitution respectively. To maintain the books of account is statutory requirement for the Company as per Companies Act, 2013. The applicant is not providing any technical services/any related services for constructing of Dam , Canal or any other irrigation network of the company.

6. The applicant further submitted that Service of maintenance of Accounts provided by applicant is not related to main function of the Company like water providing activity and to prepare the structure of Dam, Canal and other irrigation network of the Company. They do not provide any services which are in relation to the functions prescribed in clause 243G and 243W of the Constitution of India. Further submits that Maintenance of Accounts service has no anywhere concern with functions prescribed under clause 243G and 243W of the Constitution of India.

7. The applicant submitted that the intention to give exemption to pure service vide entry mentioned at Sr. No. 3 of Not. No. 12/2017-CT (Rate) dated 28.06.2017 is to pure service which are mentioned under clause 243G and 243W of the Constitution of India. Further submits that SSNNL is neither a Panchyat nor a Municipality, hence the provision of the said Notification is not applicable to the pure services provided by applicant to SSNNL.

8. The applicant further submitted that service provided by the applicant to SSNNL is covered under entry No. 3 of the Not. No. 12/2017-CT (Rate) dated 28.06.2017 and accordingly, the applicant is not required to levy CGST and SGST on its professional Fees.

9. The applicant submitted that they have not availed any input service to provide accounting services to SSNNL. As applicant has not availed any input service to provide service to SSNNLK, if it is held that the service provided by them to SSNNL covered under entry No. 3 of Not No. 12/2017-CT (rate) then also the applicant is not required to reverse any input tax credit under Rule 42 of CGST Act, 2017.

10. The applicant sought the advance Ruling on the following question

The professional service for maintenance of accounts and allied items of work provided to Sardar Sarovar Narmada Nagar Limited (SSNNL) { A Government of Gujarat undertaking) by the applicant is a taxable service under Section 9 (1) of The CGST Act, 2017 or exempted vide Sr. No.3 of Not. No. 12/2017-CT (Rate) dated 28.06.2017.

Personal Hearing

11. Personal hearing in the matter was held on 11-06-2020. Shri Sameer Siddhpuriya, Advocate appeared on behalf of the applicant and re-iterated the submission made in the Application.

Discussion and Finding

12. We have considered the submissions made by the Applicant in their application for advance ruling. We have also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

13. The applicant is engaged in providing services of auditing, accounting, taxation etc. They have been appointed for its professional service in respect of maintenance of Accounts and allied items of work in Segment III of M/s. Sardar Sarovar Narmada Nigam Ltd.(SSNNL). Further, it is submitted that SSNNL is incorporated under the Companies Act 1956 wherein 100% equity is owned by the Govt. of Gujarat. As per the provisions of Companies Act, 1956, company requires to maintain books of account as per double entry system on accrual basis. For the same, SSNNL has appointed the applicant to provide maintenance of accounts service in the computerized manner in Segment III of the Company.

13.1 Accordingly, applicant is of the view that service of maintenance of account provided to SSNNL, a Govt, of Gujarat undertaking is covered under Sr. No.3 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

13.2 The Entry No. 3 of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017, as amended by Notification No. 2/2018-Central Tax (Rate), dated 25-1-2018 is verified, the same reads as under :

“Pure Services (excluding works contract service or other composite supplies involving supply of goods) provided to the Central Government, State Government or Union Territory or local authority or a Governmental Authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution.”

13.3 Three conditions required to be satisfied for a service to be covered under subject entry of the notification are as below:

- (1) It must be pure service not involving any supply of goods
- (2) It must be provided to the Central Government or State Government or Union Territory or Local Authority or a Governmental Authority or a Government Entity

- (3) It must be an activity in relation to any function entrusted to a
- (i) Panchayat under Article 243G of the Constitution; or
 - (ii) Municipality under Article 243W of the Constitution

13.4 Regarding the first condition, we are to examine what is 'Pure Service'. In GST Act, "Pure Service" has not been defined. Accordingly, in general terms we can conclude that any activity/ supply which do not involve goods can be termed as Pure Service. It is clear from the applicant's nature of work that the activity of maintenance of accounts does not involve any supply of goods but only services. Hence, the first condition is satisfied

13.5 The second condition to be examined is whether the recipient is a Government or local authority or a Governmental Authority. Admittedly, the recipient of services i.e. Sardar Sarovar Narmada Nigam Limited is neither Central Government nor State Government nor Union Territory nor Local Authority. It remains to be examined whether the recipient of supply of services from the applicant i.e. SSNNL is a Governmental Authority or Government entity or not?

13.6 The clause 2(zf) of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 defines the Governmental Authority as under:

"governmental authority" has the same meaning as assigned to it in the Explanation to clause (16) of section 2 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017);"

13.7 Explanation to Section 2(16) of the Integrated Goods and Services Tax Act, 2017 defines "governmental authority" as under:

"governmental authority" means an authority or board or any other body, -

- (i) set up by an Act of Parliament or a State Legislature; or*
- (ii) established by any Government,*

with ninety per cent, or more participation by way of equity or control, to carry out any function entrusted to a Panchayat under article 243G or to a municipality under article 243W of the Constitution.

Further, the term "Government Entity" is defined in clause (zfa) of paragraph 2 of Notification No. 12/2017-Central Tax (Rate) as amended by Notification No. 32/2017-Central Tax (Rate), dated 13-10-2017 as under:

*"(zfa) "Government Entity" means an authority or a board or any other body including a society, trust, **corporation**,*

- (i) set up by an Act of Parliament or State Legislature; or*
- (ii) Established by any Government,*

with 90 per cent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority".

13.8 M/s. SSNNL is established by the Government of Gujarat as a company. On going through the Share holding pattern of Audit Report for the year 2016-17 it is noticed that 100% share holding of SSNNL is with State Govt. SSNNL is a multi-purpose joint project of four States viz. Gujarat, Madhya Pradesh, Maharashtra and Rajasthan, inter alia, involving the construction of 1210 metre long concrete gravity dam in Gujarat. It envisages the construction of a concrete canal and also other distribution canals. Power generating facilities are located on the river bed and on the reservoir outlet to the main canal. The Narmada Project would encompass 18,00,000 hectares land of the State of Gujarat and these would be irrigated on the completion of the Narmada Project. Further, common areas which have been classified as drought prone are expected to get the benefits of irrigation from the distribution system. The Narmada Project is providing drinking water facilities to villages and urban centers and assisted in the supply of potable water in villages in North Gujarat and increases the agricultural production and domestic power generation. Accordingly, SSNNL is a Government Authority. Hence the second condition is also satisfied.

13.9 The third condition is to be examined whether the service provided by the applicant to SSNNL is in relation to work entrusted to a Panchayat under Article 243G of the Constitution; or Municipality under Article 243W of the Constitution.

The list of functions entrusted to a Panchayat under Article 243G of the Constitution are as under:

1. Agriculture, including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi, village and cottage industries.
10. Rural housing.
11. Drinking water.
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centres and dispensaries.

24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
28. Public distribution system.
29. Maintenance of community assets.

The list of functions entrusted to the municipalities under Article 243W of the Constitution of India is as under:

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
15. Cattle pounds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries.

14. The Narmada Project implemented through a Company whose entire share capital is owned by Govt. of Gujarat viz. SSNNL is being implemented as part of the development and commercial activities of Govt. of Gujarat and to make available various benefits of development, irrigation, power generation and other attendant benefits to the people of Gujarat and other neighboring states. From the above it is clear that SSNNL, a company is engaged in the work of providing drinking water, generation of electricity and irrigation facility which is a function entrusted to a Panchayat under Article 243G and Municipalities under Article 243W of the Constitution.

15. The words “in relation to” is defined in the Oxford Dictionary as to mean “in the context of” or “in connection with”. When two activities are directly linked to each other, then they are said to be in connection with or in the context of. The terms have been interpreted by the Supreme Court in the case of CCE V/s Rajasthan State Chemical Works 1999(55) ELT 444 (SC) and Union of India V/s Ahmedabad Electricity Co. Ltd. 2003(158) ELT 3(SC) wherein it has been held that such words widen and expand the scope, meaning and content of expressions. Further submitted that Hon’ble Supreme Court in case of M/s. Doypack Systems (P) Ltd. Vs UOI 1988 (36) ELT 201 SC

held that, “The expression “in relation to” (so also “pertaining to”), is a very broad expression, which pre-supposes another subject matter. These are words of comprehensiveness which might both have a direct significance as well as an indirect significance depending on the context”.

16. The applicant has provided no evidence to establish that the activity of providing service of auditing, accounting, taxation to the SSNNL are provided in relation to the any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to the function entrusted to a Municipality under Article 243W of the Constitution.

17. The applicant, himself, in his submission, has stated that they understand that pure service as prescribe in the said Notification is available in relation to an activity/ function entrusted to a Panchayat or a Municipality under Article 243 G and 243W of the Constitution respectively. They are not providing any technical services/any related services for constructing of Dam, Canal or any other irrigation network of the company; that Service of maintenance of Accounts provided by them is not related to main function of the Company like water providing activity and to prepare the structure of Dam, Canal and other irrigation network of the Company; they do not provide any services which are in relation to the functions prescribed in clause 243G and 243W of the Constitution of India; that Maintenance of Accounts service has no anywhere concern with functions prescribed under clause 243G and 243W of the Constitution of India.

18. The applicant has submitted the copy of Tax Invoice No. 230/2018-19 dated 04.07.2018 issued to M/s. Sardar Sarovar Nigam Limited for charging the fees of “Maintenance Of Account”, wherein they have charged CGST @9% and SGST @ 9% i.e. total GST was charged at the rate of 18%.

19. In view of the above, we rule that service of auditing, accounting, taxation to the SSNNL is not covered under the Entry No. 3 of the Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017.

20. In view of the foregoing, we rule as follows

RULING

Question The professional service for maintenance of accounts and allied items of work provided to Sardar Sarovar Narmada Nagar Limited (SSNNL) { A Government of Gujarat undertaking) by the applicant is a taxable service under Section 9 (1) of The CGST Act, 2017 or exempted vide Sr. No.3 of Not. No. 12/2017-CT (Rate) dated 28.06.2017.

Answer : The activity of providing auditing, accounting, taxation to the Sardar Sarovar Narmada Nigam Ltd. is not covered under Entry No. 3 of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017, hence liable to GST.

(SANJAY SAXENA)

MEMBER

(MOHIT AGRAWAL)

MEMBER

Place: Ahmedabad

Date: 02.07.2020.