

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



ADVANCE RULING NO. GUJ/GAAR/R/83/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2019/AR/60)
Date: 17.09.2020

Name and address of the applicant	:	M/s. Posiedon Hydro Infratech, C-804, Titanium Square, Thaltej cross road, Ahmedabad, Gujarat.
GSTIN of the applicant	:	24AARFP6152H1ZZ
Date of application	:	29.11.2019.
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(b) applicability of a notification issued under the provisions of the Act. (e) Determination of the liability to pay tax on any goods or services or both.
Date of Personal Hearing	:	17.08.2020 (through video conferencing)
Present for the applicant	:	Shri Rajesh Bhatt, Director

BRIEF FACTS

The applicant M/s. Posiedon Hydro Infratech located at C-804, Titanium Square, Thaltej cross road, Ahmedabad, Gujarat are engaged in providing Consultancy services. The applicant has submitted that the Government of Gujarat established the Sardar Sarovar Narmada Nigam limited(SSNNL) as a wholly owned Government Company to take up the execution of Sardar Sarovar Project – an inter-state multi-purpose project of four States viz. Madhya Pradesh, Maharashtra, Gujarat and Rajasthan with a terminal major dam on the river Narmada in Gujarat. The applicant has stated that Sardar Sarovar Narmada Nigam Limited (SSNNL) is executing Sardar Sarovar Narmada Project and SSNNL is availing the services of various consultancy agencies to facilitate the execution of the project.

2. The applicant has submitted that SSNNL has assigned the following consultancy work to the consultant, namely WAPCOS ltd. which is detailed hereunder:

- (i) Work of Physical Inspection of Saurashtra Branch Canal (0 to 104.47 km.) including walk through survey, taking cross sections at 30 m interval with DGPS, Geotechnical analysis of soil used in embankment, Slope Stability Analysis, suggesting remedial measures, preparation of estimates, plans, DTPs, including technical specification of remedial measures item suggested, preparation of draft report, integrating the result of Under Water survey in the final report based on details supplied by SSNNL, final compliance of the remarks raised by SSNNL etc.,
- (ii) The Contract price is Rs.1,43,85,300/- and there is a provision in the agreement between SSNNL and WAPCOS on 03.11.2017 that “GST at prevailing rates shall be paid extra by the Client.”

- (iii) WAPCOS ltd. (the main consultant) has in turn, assigned this work to Poseidon Hydro Infratech (i.e. sub-consultant and the present applicant). In the agreement between WAPCOS ltd.(the main consultant) and Poseidon Hydro Infratech(i.e. sub-consultant and the present applicant), the provision of GST is as under: - “GST at prevailing rates shall be paid extra subject to the same is paid by SSNNL.”(copy submitted).
- (iv) Despite of the clear provision (GST to be paid extra) in the agreement between SSNNL and WAPCOS ltd., SSNNL is not paying the GST amount to the main consultant i.e. WAPCOS and WAPCOS, in turn is also not paying the GST to the applicant. However, the applicant is paying the GST to the Government for this assignment. Reason given by WAPCOS for not reimbursing the payment of GST to the applicant is that SSNNL is not paying GST to WAPCOS and consultancy services provided by WAPCOS ltd. to SSNNL does not attract any GST.
- (v) The applicant had also requested to the appropriate authority to clarify the issue through an RTI application dated 27.05.2019. In reply to this application, the Assistant Commissioner, Ahmedabad vide RTI order No.07/2019-20, No.CCE-II/Dn-VI/RTI/Report/4/16-7 dated 14.06.2019 advised to file an application of Advance Ruling, as such clarification is not permissible under RTI Act and hence this application for Advance Ruling is filed. Copy of the RTI application and reply by the GST Division is enclosed.

3. The applicant has submitted that with this background, the relevant facts are as under:

- (1) The Government of Gujarat established the Sardar Sarovar Narmada Nigam Limited(SSNNL) as a wholly-owned Government Company under the provisions of the Companies Act, 1956 to take the execution of Sardar Sarovar Project – an inter-state multi-purpose project of four states i.e. Madhya Pradesh, Maharashtra, Gujarat and Rajasthan with a terminal major dam on the river Narmada in Gujarat.
- (2) Sardar Sarovar NarmadaNigam ltd.(SSNNL) is executing Sardar Sarovar Narmada Project which is a major irrigation, multipurpose project as per the Central Water Commission(CWC)/Ministry of Water Resources(MoWR)classification. As per the classification of Ministry of Water Resources (MoWR) and Central Water Commission(CWC), this project cannot be classified as MINOR Project and even SSNNL considers this as a ‘Major Irrigation Project.’
- (3) SSNNL is availing the services of various consultancy agencies to facilitate the execution of the project and is already keeping provisions for additional payment of GST, in various latest tenders for consultancy services and in most of the cases, SSNNL is paying GST separately to the consultancy service providing agencies. Applicant have submitted copies of some of the tender documents, wherein SSNNL has made it clear that GST shall be applicable.
- (4) However, in the present case, SSNNL is not making any payment of GST to the main consultant i.e. WAPCOS and in turn, WAPCOS is not making any payment to Poseidon Hydro Infratech (i.e. sub-consultant and the present applicant). Copy of communication from SSNNL to WAPCOS in this regard has been attached. Applicant has stated that this is just an opinion as no official circular in this regard has been issued by SSNNL. WAPCOS is providing technical consultancy services to SSNNL for different assignments. Thus, all the consultancy services provided by

WAPCOS to SSNNL for this project is attracting the payment of GST, and no exemption in this case can be granted.

(5) SSNNL vide their letter No.SSNN/CGM(A/cs)/Acct/18-19/148 dated 25.03.2019(copy submitted) has sent a copy of their GST consultant, M/s. Mukesh M.Shah & Co's opinion, saying that SSNNL is not required to reimburse any GST on the referred services. SSNNL has not issued any circular or orders in this regard and has simply relied on the opinion of their consultant. If SSNNL believes that GST is not applicable on the consultancy services availed by SSNNL, they should not have kept the provision for extra payment of GST in various consultancy services. In fact, SSNNL is paying the GST to other consultants in most of the similar type of services/cases.

(6) Considering the reasons/explanations given by SSNNL's GST consultant M/s. Mukesh Shah & Co., the following points need to be considered:

(a) Sr.No.3 reads as "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 or a Government entity 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." It is also important to note that entry no.3 of Article 243G is related to functions entrusted to a Panchayat which is specifically related to Minor Irrigation Scheme and Article 243W is in relation to any function entrusted to a Municipality. Roles of SSNNL is neither of a Panchayat nor of a Municipality.

(b) Article 243W relates to 'Power, Authority and Responsibility of Municipality etc. One of the functions of SSNNL is providing bulk water through it's canal network. This is only bulk water supply from its canal network and not the distribution for domestic, industrial and commercial purposes. Even conveyance of raw water from the canal, treatment and distribution is made by the respective bodies and not by SSNNL. The role of SSNNL cannot fall under the ambit of the Article 243W of the Constitution.

4. The applicant has concluded his submission by stating that they understand that GST is applicable for all the consultancy services rendered by various consultancy agencies to Sardar Sarovar Narmada Nigam limited(SSNNL). Keeping these facts in view, the applicant has put forward the following question seeking Advance Ruling on the same:

- (1) *The confirmation requested is whether GST is applicable for the consultancy services rendered by various consultancy agencies to Sardar Sarovar Narmada Nigam Limited(SSNNL)?*
- (2) *If such consultancy services is exempted from GST, whether the sub-consultant is also exempted from the payment of GST? If not, what is the rate of GST applicable to the sub-consultant?*

DISCUSSION & FINDINGS:

5. We have considered the submissions made by the applicant in their application for advance ruling as well as the arguments/discussions made by their representative Shri Rajesh Bhatt, Director at the time of personal hearing. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

6. At the outset, we would like to state that the provisions of both the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017 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 similar provisions of the GGST Act.

7. Based on the submission of the applicant as well as the arguments/discussions made by the representative of the applicant during the course of personal hearing, we find that as per agreement of M/s. SSNNL with M/s. WAPCOS, M/s. WAPCOS is to provide various type of technical consultancy services to SSNNL to execute the Physical Inspection of Saurashtra Branch Canal (which is having a length of 104.46 kms.). M/s. WAPCOS has in turn, made an agreement with the applicant for the same vide which the applicant will provide these services to M/s. SSNNL through M/s. WAPCOS i.e. the applicant is a sub-consultant in the instant case. The applicant has stated that M/s. SSNNL is receiving such type of services from various consultants and is paying GST is most of the similar cases. Now, the applicant wants to know whether GST is applicable for the consultancy services rendered by various consultancy agencies to Sardar Sarovar Narmada Nigam Limited(SSNNL) and if such consultancy services is exempted from GST, whether the sub-consultant is also exempted from the payment of GST under Notification No.12/2017-Central Tax(Rate) dated 28.06.2017. Looking to the queries raised by the applicant, we feel the need to thoroughly go through the provisions of Section 97 of the CGST Act, 2017 which reads as under:

“97. (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought under this Act, shall be in respect of,—

(a) classification of any goods or services or both;
(b) applicability of a notification issued under the provisions of this Act;
(c) determination of time and value of supply of goods or services or both;
(d) admissibility of input tax credit of tax paid or deemed to have been paid;
(e) determination of the liability to pay tax on any goods or services or both;
(f) whether applicant is required to be registered;
(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.”

8. From the above we find that the provisions for seeking Advance Ruling made under the Act is limited to the activities conducted of the applicant only and is for the purpose of clarifying issues such as classification of the supply of goods/services provided by them, their GST liability if any, applicability of a notification issued under the provisions of the Act, determination of time and value of supply of goods or services or both, admissibility of input tax credit, determination of the liability to pay tax on any goods or services or both, whether applicant is required to be registered or whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term. We find that there is no provision for seeking Advance Ruling in respect of third parties or parties who are not directly connected to the applicant by way of supply of services or goods. The very purpose of the Board for making the provision of Advance Ruling in the CGST Act, 2017 is to help the applicant in planning his activities which are liable for payment of GST, well in advance. It also brings certainty in determining the tax liability, as the ruling given by the Authority for Advance Ruling is binding on the applicant as well as Government authorities. Further, it helps in avoiding long drawn and expensive litigation at a later date. Seeking an advance ruling is inexpensive and the procedure is simple and expeditious. It thus provides certainty and transparency to a taxpayer with respect to an issue which may potentially cause a dispute with the tax administration.

9. On going through the application filed by the applicant and as per their submission, the question on which Advance ruling is sought is in respect of the provisions of Section 97(2)(b) and Section 97(2)(e) of the CGST Act, 2017. The question on which advance ruling is sought by the applicant reads as under:

(1) The confirmation requested is whether GST is applicable for the consultancy services rendered by various consultancy agencies to Sardar Sarovar Narmada Nigam Limited(SSNNL)?

(2) If such consultancy services is exempted from GST, whether the sub-consultant is also exempted from the payment of GST? If not, what is the rate of GST applicable to the sub-consultant?

10. On going through the question on advance ruling sought by the applicant at (1) above, we find that the same is not related to the agreement made by them with M/S. WAPCOS or the agreement made between M/s. WAPCOS and M/s. SSNNL but is related to the liability of GST on the consultancy services rendered by various consultancy agencies to SSNNL. We find the said question to be absolutely irrelevant, hypothetical and speculative which does not in anyway pertain to the services supplied/rendered by the applicant. Although the applicant has narrated the facts of his agreement made with M/s. WAPCOS and agreement of M/s. WAPCOS with SSNNL and has also submitted the copies of the same, there is no question raised by them seeking Advance Ruling with regard to these agreements, their GST liability etc. which seems perplexing to us. We fail to understand how the applicant expects the Advance Ruling Authorities to answer or to decide on such a hypothetical question with regard to the GST liability on the consultancy services rendered by some third parties to SSNNL. Further, we find the second question also irrelevant to the instant issue since it is connected to the first question. In view of the above facts, we don't find it necessary to go into the details of the issue in hand as well as the questions raised by them for seeking Advance Ruling as it does not pertain to the services provided by the applicant through M/s. WAPCOS to SSNNL.

11. In light of the above, we rule as under:

R U L I N G

Question-1: The confirmation requested is whether GST is applicable for the consultancy services rendered by various consultancy agencies to Sardar Sarovar Narmada Nigam Limited(SSNNL)?

Answer: No decision can be given in view of the foregoing discussions.

Question-2: If such consultancy services is exempted from GST, whether the sub-consultant is also exempted from the payment of GST? If not, what is the rate of GST applicable to the sub-consultant?

Answer: No decision can be given in view of the foregoing discussions.

(SANJAY SAXENA)

MEMBER

(MOHIT AGRAWAL)

MEMBER

Place: Ahmedabad

Date: 17.09.2020.