

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/85/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2019/AR/42)
Date: 17.09.2020

Name and address of the applicant	:	M/s. Nepra Resources Management pvt.ltd., 206, Kalasagar Mall, Nr.Sattadhar cross road, Ghatlodiya, Ahmedabad-380061.
GSTIN of the applicant	:	24AACCN3818L1ZE
Date of application	:	08.07.2019.
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 this 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 Kuntal Parikh, Advocate.

BRIEF FACTS

The applicant M/s. Nepra Resources Management pvt.ltd. located at 206, Kalasagar Mall, Nr.Sattadhar cross road, Ghatlodiya, Ahmedabad-380061 are engaged in providing the services of Solid Waste Management and Recycling services. The applicant has stated that Notified Area Authority, Vapi floated a tender no.8 of 2018-19 and invited applications for a Request for Proposal (RFP) for providing service of collection, sorting and recovery of waste, and set up Material Recovery Facility (MRF) in accordance with the Rules, Norms and Regulations of Standards of Weights & Measures Rules, 2016, Plastics Waste Management Rules, 2016, The Ministry of Environment, Forest and Climate Change (MoEFCC), Central Pollution Control Board, Gujarat Pollution Control Board etc. at Notified Area, GIDC, Vapi. The applicant has submitted a copy of the said tender.

2. The applicant has submitted that they participated in the bidding process for the said tender for providing the said services to Notified Area Authority, Vapi for 05 years. The Applicant was granted this tender vide letter dated 22.01.2019 for providing the said services to Notified Area Authority, Vapi for an amount of Rs.1,71,10,000/- for a period of 05 years(copy submitted); that consequently an agreement was entered into between the applicant and Notified Area Authority, Vapi on 04.02.2019 and under this agreement, the applicant has to provide services for collection, sorting, recovery of solid waste and establish/set up Material Recovery facility for sustainable waste management in Vapi Notified Area on DBFOOM (Design, Build, Finance, Own, Operate & Maintain) model for five years; that the applicant has to provide door to door collection of waste in Notified Area Authority, Vapi area, segregation and transportation thereof to Material Recovery Facility and thereafter the applicant has to convert such waste into compost at Material

Recovery Facility established by it; that not only the waste collected by the applicant but also the recycled compost also belongs to Notified Area Authority and the solid waste recycled into compost shall be taken back by Notified Area Authority, Vapi for sale; that during the process of converting waste into compost, the waste generated as by product can either be disposed of or be recycled by the applicant; that, thus in the entire process, the applicant provides services only to Notified Area Authority, Vapi and there is no supply of goods whatsoever during providing such solid waste management and recycling service to Notified Area Authority, Vapi and the consideration is being paid by Notified Area Authority, Vapi on R.A. Bill basis. The applicant has enclosed a copy of the said agreement.

3. The applicant has further submitted that the waste management services provided by the applicant to Notified Area Authority, Vapi under the said agreement is covered under Service Accounting Code(SAC) 9994 as “Sewage and waste collection, treatment and disposal and other environmental protection services” under Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 and the applicable rate of GST on such services is 18%; that Sr.No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017, pure services(excluding works contract service or other composite supplies involving supply of any goods), covered under Chapter 99, while 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 are exempted from GST; that waste management services provided by the applicant to Notified Area Authority, Vapi under the said agreement is nothing but a pure service because there is no supply of goods by the applicant to Notified Area Authority, Vapi. The applicant has stated that as per their view, the waste management services provided by it to Notified Area Authority, Vapi is exempted under Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 on the following grounds:

- (i) The applicant is eligible for the exemption provided under Sr.No.3 of the Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 which 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.”*
- (ii) The applicant have submitted that they satisfy all the 3 conditions of the said exemption notification as under:
 - 1. The waste management services include door to door collection of garbage/waste, sorting and recovery of waste which is pure service as there is no supply of goods involved in this activity, that setting up of material recovery facility and Food Compost Facility operation and maintenance does not involve any transfer in goods and these are not the activities for which consideration is given by Notified Area Authority, Vapi to the applicant and therefore, as per the agreement, the activities undertaken by the applicant are pure services.
 - 2. The applicant submits that the services provided by them are in the nature of services which are required to be provided by the municipality under Article 243W of the Constitution. Article 243W of the Constitution reads as under:

“243W:Powers, authority and responsibilities of Municipalities etc:
Subject to the provisions of this Constitution, the Legislature of a State may, by law endow:

- (a) The municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon municipalities, subject to such conditions as may be specified therein, with respect to: (i) the preparation of plans for economic development and social justice. (ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule.
- (b) The Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule wherein the matter “*Public health, sanitation conservancy and solid waste management*” appears at Sr.No.6 of the list. In view of Sr.No.6 in the Twelfth Schedule of the Constitution, the applicant submits that the services of waste management provided by it is nothing but solid waste management entrusted to municipality under Article 243W of the Constitution of India.
- (c) The applicant has submitted that it provides pure services to Local Authority. The State of Gujarat by virtue of Notification dated 06.05.1975 issued under Section 16 of the Gujarat Industrial Development Act, 1962 declared that the provisions related to the notified area contained in Chapter III of the said Act shall extend to and brought into force in the Notified Area Authority, Vapi and hence, by the said notification, Notified Area Authority, Vapi came into existence. Thereafter, Notified Area Authority, Vapi constituted a Board of Management and the Chief Officer was appointed in accordance with the provisions of Gujarat Industrial Development Act, 1962. They have stated that Notified Area Authority, Vapi is a wing of municipal corporation which is basically a local body established by the State Government to function as a Self-Government under Part-IX of the Constitution of India and that Notified Area Authority, Vapi like any other local body provides municipal service in the industrial area of GIDC, Vapi like infrastructure development, improvement of roads, Fire safety services, water supply, street lighting, night patrolling, cleaning services, door to door garbage collection, public health measures, Birth and Death registration and such other services. Therefore it is a Local Authority in terms of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017. The applicant further states that even if Notified Area Authority, Vapi is not considered as Local Authority, it is Governmental Authority as defined vide Notification No.32/2017-Central Tax(Rate) dated 13.10.2017 which reads as:

An authority or a board or any other body, -

- (i) set up by an Act of Parliament or a State Legislature; or*
- (ii) established by any Government,*
with 90 per cent. or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243 W of the Constitution or to a Panchayat under article 243 G of the Constitution.

They have stated the Notified Area Authority, Vapi is constituted under Section 16 of the Gujarat Industrial Development Act, 1962 and is therefore a Governmental Authority set up by an Act of State Legislature. Hence they have provided waste management services to Governmental Authority in view of Serial No.3 of Notification No.12/2017(supra).

4. The applicant has further submitted that in view of the foregoing submissions, the waste management services provided by it is exempted from GST under Notification No.12/2017(supra) because the applicant makes supply of pure service, that such service/function/activity is covered under Article 243W of the Constitution and that such supply is made to Local Authority/Governmental Authority i.e. Notified Area Authority, Vapi; that in view of the afore-stated interpretation of law and facts of the matter, no GST is required to be paid on the said services. The applicant has concluded his submission by stating that they crave leave to add or amend any of the grounds or statement of interpretation of this application either before or at the time of hearing of the application and has asked the following question seeking Advance Ruling on the same:

“Whether the solid waste management service provided by the applicant to Notified Area Authority, Vapi under the above referred agreement is exempted under Notification No.12/2017-Central Tax(Rate) dated 28.06.2017?”

5. The applicant vide letter dated 19.08.2020(received vide email on 25.08.2020) has made an additional submission wherein they have submitted that in pursuance of the hearing, they rely upon the following authorities in their submissions and have submitted copies of the same:

- (i) Dhananjay Kumar Singh, 2019 (21) GSTL 219 (AAR- CHHATISGARH).
- (ii) Indrajit Singh (2019) 106 taxmann.com 109 (AAR-WB).
- (iii) Time Tech Waste Solutions (P.) ltd., (2019) 106 taxmann.com382 (AAR-WB).
- (iv) NHPC limited, 2018(19) GSTL 349 (AAR-GST).

6. The applicant have also annexed a copy of Government Notification of Industries, Mines and Power Department No.GHU/72/66/IND/1672/2471-G dated 6th July, 1972 as Annexure-B, under which Notified Area Authority, Vapi was formed by virtue of Section 16 of Gujarat Industrial Development Act, 1962. They have stated that NAA, Vapi to whom the applicant has provided services is a body constituted under the State Legislature and therefore, it is Local Authority and/or Government Authority as defined under Notification No.12/2017-CT(Rate) dated 28.06.2017. The applicant has relied upon the following judgements and forwarded copies of the same:

- i. The Income tax Officer, Surat v/s. Sachin Notified Area, ITA No.1315/ahd/2007, Income Tax Appellate Tribunal, Ahmedabad.

In this case, the assessee is a notified area in Surat for the Industrial development. The assessee claimed that it is a local authority notified by the State Government under the Gujarat Industrial Development Act, 1962,(GIDA). Therefore, it filed its income tax return NIL claiming exemption under section 10(20) of the Income Tax. However, the assessing officer was of the view that the assessee is not a local authority and it is not a Municipality as defined under section 10(20) of the Act.

The Honorable Tribunal has held that the State Government can create by Notification in official gazette, a notified area and provisions of Gujarat Municipalities Act would be applicable to such notified areas under Section 246B of Municipalities Act and notified areas declared under Section 16 of GIDA would be treated at par as there is no conflict between the two provisions. It is further held that the Municipalities Act is applicable to all classes of urban area either Nagar Panchayat, Municipal Council or Municipal Corporation. The jurisdiction of Nagar Panchayat, Municipal Council or

Municipal Corporation and Notified area are different and defined and they do not overlap. It is also applicable with equal force upon the assessee functioning under demarcated and separate areas called Notified areas which are independent of any Nagar Panchayat, Municipal Council Corporation.

- ii. Saij Gram Panchayat v/s. State of Gujarat & others.,(1999) 2 SCC 366. The Hon'ble SC has held that:

"6. Section 16 gives power to the State Government to issue a notification under which it can declare that an industrial area as defined in the Gujarat Industries Development Act, 1962 would also be deemed notified area under the Gujarat Municipalities Act, 1963. This can be done simply by a notification issued by the State Government and it does not require the formalities prescribed under the Gujarat Municipalities Act, 1963 for creating a notified area, because the section begins with the words "notwithstanding anything contained in the provisions for the time being in force relating to notified areas in the Gujarat Municipalities Act, 1963". Therefore, there are two important aspects of Section 16 of the Gujarat Industrial Development Act, 1962. First it enables the State Government to equate an industrial area under the Gujarat Industrial Development Act, 1962 with a notified area under the Gujarat Municipalities Act, 1963 by a fiction. This fiction can be brought into existence by a notification. Therefore, the provisions of the Gujarat Municipalities Act, 1963, for the creating of a notified area will not apply to a notified area created under Section 16. Also, a notified area, so created, would be governed by all the provisions of the Gujarat Municipalities Act, 1963, applicable to notified areas under that Act."

7. The applicant has stated that in view of the foregoing two judgements, it is submitted that the areas notified under Section 16 of the GIDA are being treated as local authorities; that in the present case on perusal of Notification dated 06.07.1972 issued by the State of Gujarat under Section 16 of the Gujarat Industrial Development Act, 1962, it is clear that the Notified Area Authority, Vapi (NAA, Vapi) to whom services are provided is a local authority. The applicant has submitted copies of: (i) Extract of Section 16 of the Gujarat Industrial Development Act, 1962 (ii) Extract of the Gujarat Industrial Development (Notified Area) Rules, 2007 notified under GHU-8/2008-GID: 102004: 1496: G: issued in exercise of powers conferred by Section 53 read with Sections 16 and 16A of the Gujarat Industrial Development Act, 1962.

8. The applicant has further submitted that without prejudice to the above submissions, if it is not considered a local authority, it has to be considered as Governmental Authority because NAA, Vapi is set up by an Act of State Legislature i.e. Gujarat Industrial Development Act; that in case NAA, Vapi is considered as a Governmental Authority, the condition of 90% or more participation by way of equity or control to carry out any function entrusted to a Panchayat under Article 243G of the Constitution, as prescribed in Notification No.12/2017-CT(Rate)(supra), shall be applicable only to sub-clause(ii) of the said definition; that in other words, NAA, Vapi if considered as Governmental Authority, it shall be covered under sub-clause (i) of the definition 2(zf) and therefore, the said condition shall not be applicable to it; that they rely upon ruling given in case of NHPC limited, 2018(19) GSTL 349 (AAR-GST) wherein it is ruled that condition of 90% 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 is relatable to only sub-clause(ii) of the definition of Government Entity; that the applicant has provided service to NAA, Vapi which is a Local authority and so far as other submissions are concerned, they reiterate upon submissions made in the application and hence the services provided by the applicant are exempted from tax under Notification No.12/2017-CT(Rate).

DISCUSSION & FINDINGS:

9. We have considered the submissions made by the applicant in their application for advance ruling, additional submissions made by them dated

19.08.2020 as well as the arguments/discussions made by their representative Shri Kuntal Parikh, Advocate at the time of personal hearing. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

10. 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.

11. 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 the issue to be decided is whether the solid waste management service provided by the applicant to Notified Area Authority, Vapi under the agreement referred to in their submission, is exempted under Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 or otherwise. But before examining the same, we are required to find out the correct classification of the services provided by the applicant and the GST liability on the same for which we will be required to refer to the Notification No.11/2017-Central Tax(Rate) dated 28.06.2017 which contains the Chapter, Section and Heading of classification of services alongwith their GST rates. On going through the said notification, we find that the solid waste management services provided by the applicant are classifiable under Heading 9994 of Notification No.11/2017-Central Tax(Rate) dated 28.06.2017 on which GST liability is 18%(9% SGST + 9% CGST) and reads as under:

Sr. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Service	Rate (percent)	Condition
(1)	(2)	(3)	(4)	(5)
32.	Heading 9994	Sewage and waste collection, treatment and disposal and other environmental protection services.	9	--

12. Thereafter, we are required to refer to Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 (as amended by Notification No.02/2018-Central Tax(Rate) dated 25.01.2018) referred to by the applicant which contains a list of exempted services. Entry No.3 of the said notification reads as under:

Sr. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Service	Rate (percent)	Condition
(1)	(2)	(3)	(4)	(5)
3.	Chapter 99	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.	NIL	NIL

12.1 As can be seen from the above, Entry No.3 of aforementioned Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 exempts 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. Hence, three conditions are required to be satisfied for a service to be covered under subject entry of the notification which is 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.

12.2 So, the first condition to be discussed is as to what is meant by pure service? Since **‘pure service’** has not been defined under GST, the same can be construed in general terms as any supply which is either deemed as services under Schedule II of CGST Act or which are not covered under the definition of goods shall be categorized as pure services. However, as per the notification, works contract services or other composite supplies involving supply of any goods are not covered in entry no.3 of aforementioned notification. In other words, if a person provides only service to any person without involvement of supply of goods along with supply of services, then the same would be termed as supply of pure service. On going through the work order/agreement of the applicant with Notified Area Authority, Vapi, we find that it is for the purpose of collection, sorting and recovery of waste and setting up of Material Recovery Facility under DBFOOM model as per Rules, Norms and Regulations of SWM Rules-2016, PWM Rules-2016, MoEFCC, CPCB, GPCB etc. at Notified Area, GIDC, Vapi. However, while going through the Scope of Work of the agreement, we find that there are certain clauses under the portion **“Detailed Specification and terms and conditions”** of the agreement which raise a question mark over the contention of the applicant that they are supplying/providing pure services. The same are as under:

- (a) Clause in Para-1 of Item 1 falling under the head ‘Nature of Work’ of the agreement reads as under:

“Collection of garbage(dry and wet) from Point to Point and disposed off at MSW site and cleaning of dustbins in area every day. This work is inclusive of supply of workers and Collection Vehicles(over all notified area inclusive all Industrial Zone) per day with all tools and plants like brooms, masks, aprons, hand gloves, gumboots, rain coats in monsoon period etc. to all workers. All garbage are to be collected thoroughly day to day as directed by SW engineer in charge from all residential area, bungalows, all societies, all commercial complexes and industrial area day to day. **This work includes all cost of collection vehicle, fuel, oil, workers, licensed driver etc. including spreading of pesticides in Housing and commercial area as and when required/directed.** The work also includes Removal and Disposed of dead animals/creatures/insects from respected area including whole GIDC area etc. complete as directed.”

- (b) Another clause in Item-I falling under the head ‘Nature of Work’ of the agreement reads as under:

“The rate should be inclusive of the cost of the Collection vehicle with licensed holder driver, workers, pick axes, tools, plants, machinery, gumboots, hand gloves, raincoat in the monsoon period etc.”

- (c) Clause 14 in Item-2 under the head 'Road Side Litter Collection' reads as **"Rate should be filled inclusive of all taxes"**.
- (d) Clause 22 in Item-2 under the head 'Road Side Litter Collection' reads as under:

"The rate should be inclusive of the cost of vehicle with licensed holder driver, workers, tools, suction machine, raincoat in the monsoon period etc".

It can be seen from the above that, as per the agreement, the rate of supply of services includes the cost of the Collection vehicle with licensed holder driver, fuel, oil, pick axes, tools, plants, suction machine, machinery, gumboots, hand gloves, raincoat in the monsoon period etc. Thus, from a plain reading of the aforementioned clause, it appears that the services provided by the applicant includes supply of goods also, **hence it cannot be considered as Pure Services**. Further, one of the clauses specifically mentions that the rate should be filled inclusive of all taxes which means that as per the agreement, rate should be inclusive of all taxes which would also include GST. This clause itself nullifies the contention of the applicant that they are providing pure services to Notified Area Authority, Vapi which they claim, are exempt from GST by virtue of Sr.No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017. In view of the above, we conclude that the services provided by the applicant to Notified Area Authority, Vapi **are not Pure Services**.

13. Since the applicant have failed to satisfy the very first condition in order to be eligible for the exemption, there is no need for us to discuss other conditions at all.

14. In view of the above and in light of the facts discussed in the earlier paras, we come to the conclusion that the exemption under Entry No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 is not available to the applicant.

15. In light of the foregoing, we rule, as under –

R U L I N G

Question: Whether the solid waste management service provided by the applicant to Notified Area Authority, Vapi under the above referred agreement is exempted under Notification No.12/2017-Central Tax(Rate) dated 28.06.2017?"

Answer: The solid waste management service provided by the applicant M/s. Nepra Resources Management pvt.ltd., Ahmedabad to Notified Area Authority, Vapi under the above referred agreement is not exempted under the Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 for the reasons discussed hereinabove.

(SANJAY SAXENA)

MEMBER

(MOHIT AGRAWAL)

MEMBER

Place: Ahmedabad

Date: 17.09.2020.