

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/88/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2019/AR/57)
Date: 17.09.2020

Name and address of the applicant	:	M/s. Gujarat Industrial Development Corporation, 1 st floor, Block No.4, Udyog Bhavan, GH-4 Circle, Sector-11, Gandhinagar, Gujarat-382011.
GSTIN of the applicant	:	24AABCG8033D1Z2
Date of application	:	26.12.2019.
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. (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.
Date of Personal Hearing	:	17.08.2020.(through video conferencing)
Present for the applicant	:	Shri Jigar Shah, Advocate.

BRIEF FACTS

The applicant M/s. Gujarat Industrial Development Corporation located at 1st floor, Block No.4, Udyog Bhavan, GH-4 Circle, Sector-11, Gandhinagar, Gujarat-382011(hereinafter referred to as the “Applicant”) was established under the provisions of Gujarat Industrial Development Act, 1962 (hereinafter referred as ‘the Act’) by the State Government of Gujarat for the purpose of securing orderly establishment and organisation of industries in industrial areas and industrial estates in the State of Gujarat and establishing commercial centers in connection with the establishment and organisation of such industries. The preamble of the Act reads as under:-

“An act to make special provision securing the orderly establishment and organization of industries in industrial areas and industrial estates in the State of Gujarat and for the purpose of establishing commercial centers in connection with the establishment and organization of such industries and for that purpose to establish an Industrial Development Corporation, and for purposes connected with the matters aforesaid”

2. The applicant has stated that the GID Act and Gujarat Industrial Development Rules, 1962 (hereinafter referred as the ‘said Rules’) govern the functioning of the Applicant; that after the establishment of the Applicant, various areas in Gujarat where industries were clustered were declared as GIDC zones and new industrial zones were also created and plots of land were allotted to willing industries (hereinafter referred to as “plot holders” or “allottees”) on very economical terms so that overall industrial development could take place in a structured and planned manner; that Section 13 of the Act stipulates various functions to be performed by the applicant which includes promotion and assistance in the rapid and orderly establishment;

growth and development of Industries in the State of Gujarat; development of land on its own account or for the State Government for the purpose of facilitating the location of industries and commercial centres; financial assistance by loans to industries to move their factories into industrial estates or areas and undertaking schemes for providing units and commercial establishments with such structures as may be necessary for their orderly establishment, growth and development; that the Applicant also develops and provides infrastructure facilities like roads, sustained water supply, drainage etc. within the industrial areas or estates. Further, the maintenance and upgradation of the existing infrastructure is also a primary responsibility of the Applicant, in view of section 37(1) of the Act.

3. The applicant has submitted that Section 14(a) of the Act, empowers the applicant to acquire and hold such property, both movable and immovable as the applicant may deem necessary for the performance of any of its activities, and to lease, sell, exchange or otherwise transfer any property held by it on such conditions as may be deemed proper by the applicant. Further, section 14(d) of the Act, empowers the applicant to make available buildings on hire or sale to industrialists or persons intending to start industrial undertakings or commercial establishments or both the industrial undertakings and commercial establishments; that the applicant and plot holder have lessor - lessee relationship and annual rent is collected by the applicant from the plot holders; that the lease agreement between the applicant and allottees is generally for 99 years (long term lease); that various financial institutions provide finance on the plots considering the allottees as deemed owners on account of long term lease; that the common road, street lights and other amenities are the property of applicant and are maintained by the Applicant for the allottees; that every year the applicant incurs expenditure to maintain the common facilities such as road, streetlights, water supply etc. and collects maintenance charges from plot holders on annual basis depending upon the size of plot and levy for the maintenance charges is collected in next year on the basis of actual expenditure incurred by the applicant during the preceding year; that the applicant earns income on the following activities: -

- Premium price on lease of plots,
- Sale of tender forms,
- Recovery of fines from contractors and others,
- Non Utilisation Penalty
- Hire charges of tools and plants,
- Annual rent of the land leased out by the Applicant,
- Forfeiture of Deposits,
- Scrutiny Fees,
- Service charges,
- Rent of buildings,
- Sale of grass,
- Water charges,
- NAA Charges,
- Sundries - Administrative charges, Agency Charges, Development charges, Drainage cess, Water and Drainage Connection Fees, Sub-Letting Fees, Sub-Division Fees, Amalgamation Fees, Collateral Charges, Penal interest, Interest on delayed payment of revenue charges, Plan Approval Fees, Right of Usage Charges, Grants and Subsidies from Government, Profit on sale of assets etc.
- Transfer fee,
- Dividend Profit,
- Interest received/accrued – On Bank Fixed Deposits, Interest on deposit with Companies, Interest on plot/shed/housing quarters, Interest on investment and other deposits, Interest sundries

- Income Related Expenditure – Service Charges (Maintenance and Repair Expenditure for Roads, Buildings, Street Lights etc), Water charges (maintenance expenditure on water supply), NA Charges Income

4. The applicant has further submitted that at this juncture, it is vital to mention that they have also been recognized as a Charitable Institution under Section 12AA of the Income Tax Act, 1962 and this Advance Ruling application seeks determination of the issue that whether facilities provided by the applicant to the plot holders in terms of provisions of GIDC Act, 1962 amounts to supply under Section 7 of the Central Goods and Services Act, 2017. The applicant has the following question seeking Advance Ruling on the same:

“Whether various activities carried out by the Applicant to the plot holders in terms of provisions of GIDC Act, 1962 and charges collected for the same as may be notified from time to time amounts to supply under Section 7 of the Central Goods and Services Act, 2017 (‘CGST Act’)?”

5. The applicant’s statement containing their interpretation of law and/or facts, as the case may be, in respect of the Question on which Advance Ruling is sought is as under:

In order to file an application in relation to supply of goods or services before the Authority of Advance Ruling, the applicant must satisfy the conditions prescribed under the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as **‘IGST Act’**), Central Goods and Services Tax Act, 2017 (hereinafter referred to as **‘CGST Act’**) and Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as **‘GGST Act’**).

- (i)** Section 95 to 106 of the CGST Act, 2017 enunciated under Chapter XVII cover Advance Ruling and its appeals. The definitions and questions on which advance ruling is sought is provided under section 95 and 97 respectively. The relevant sections are extracted below:

Section 95. Definitions: *In this Chapter, unless the context otherwise requires,–*

(a)“advance ruling” means a decision *provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;*

(c) “applicant” means any person registered or desirous of obtaining registration under this Act;

Section 97. Application for advance ruling: *(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.

- (ii) Further, Sections 95 to 106 of the GGST Act vide Chapter XVII provide for advance ruling and appeals against the same. Similar to CGST Act, the definitions and questions on which advance ruling is sought is provided under Section 95 and 97 of the GGST Act respectively. The relevant paragraphs are extracted below:

Section 95. Definitions: *In this Chapter, unless the context otherwise requires,–*

(a) “advance ruling” means a decision *provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;*

(c) “applicant” means any person registered or desirous of obtaining *registration under this Act;*

Section 97. Application for advance ruling: *(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;

- (iii) From the afore-mentioned provisions of the CGST Act and GGST Act relating to Advance Ruling, it can be concluded that in respect of determination of whether 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 is eligible to seek an advance ruling. The Applicant, as stated earlier, whether the facilities provided by the Applicant to the plot holders in terms of provisions of GID Act, 1962 amounts to supply under Section 7 of CGST, 2017, forms the subject matter of the present application. It is therefore the submission of the Applicant that in the present case the Applicant satisfies the criterion required for filing the application for advance ruling.
- (iv) The facilities provided by the Applicant to the plot holders in terms of provisions of GID Act, 1962 does not amount to supply under GST regime, hence CGST and GGST are not payable. The Applicant *inter alia* provides plots of land on lease to plot holders on very economical terms for overall industrial development in a structured and planned manner. It is pertinent to discuss the legal provisions under the GST law relevant for the purpose of resolving the present issue in hand, i.e, whether the aforesaid activity mentioned in para supra is supply in terms of Section 7(1) of CGST Act, 2017. Section

7(1) of the CGST Act, 2017 defines the term 'supply' for the purpose of GST. The relevant extract of section 7 of CGST Act is as under-

SECTION 7. Scope of supply. — (1) *For the purposes of this Act, the expression “supply” includes —*

(a) *all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*

(b) *import of services for a consideration whether or not in the course or furtherance of business; [and]*

(c) *the activities specified in Schedule I, made or agreed to be made without a consideration;*

[(1A) where certain activities or transactions, constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.]

(2) *Notwithstanding anything contained in sub-section (1), —*

(a) *activities or transactions specified in Schedule III; or*

(b) *such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.*

[Emphasis Supplied]

- (v) Thus, supply would include supply of goods or services or both in all the forms, made by a person in course or furtherance of business for consideration; activities mentioned under Schedule - I without consideration; and activities mentioned under Schedule – II. A supply of goods or service can be intra-state supply (i.e. supply within a state) or inter-state supply (supply between two or more states). The prime requisite under Section 7(1)(a) is that all forms of supply of goods or services or both mentioned in the section should be in the course or furtherance of business. To qualify any act as supply under Section 7(1)(a) of CGST Act, 2017, the phrase 'in the course or furtherance of business' needs to be satisfied. In other words, if the activity is not in course or furtherance of business then the said activity would not be supply under the Act and therefore it would not be subject to levy of CGST and/or GGST. The phrase in the course of furtherance of business is not defined in the Act, however, term 'business' is defined under Section 2(17) of the CGST Act, 2017 which reads as under:-

“(17) “business” includes—

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

(f) admission, for a consideration, of persons to any premises;

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

(h) services provided by a race club by way of totalisator or a licence to book maker in such club ; and

(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;”

Emphasis Supplied

The term "business" as defined under sub-clause (a) of Section 2(17) of the Act includes trade, commerce, manufacture, vocation, profession as well as any other similar activity. A transaction which is incidental or ancillary to sub-clause (a) falls under the scope of sub-clause (b) of Section 2(17) of the CGST Act. Similarly, an isolated transaction which is in nature of trade, commerce, manufacture, profession, vocation or any other similar activity is covered under sub-clause (c) of Section 2(17). Sub-clauses (d) to (h) deal with special situations which otherwise may not have been considered as business.

- (vi)** In the present context, to determine whether the facilities provided by the Applicant to the plot holders amounts to business in terms of Section 2(17) of the CGST Act, it is essential to understand the object and purpose for which the Applicant is established by the State of Gujarat. The reading of the preamble of the GID Act makes it clear that the Act is enacted to make special provision securing the orderly establishment and organization of industries in industrial areas and industrial estates in the State of Gujarat(*refer to Para 2.1 supra*). The Applicant has been established under Section 3 of the GID Act for the purpose of securing and assisting rapid and orderly establishment and organization of industrial areas and industrial estates in the State of Gujarat, and for the purpose of establishing commercial centers in connection with establishment and organization of such industries. Section 13 of the GIDC Act prescribes the various functions to be performed by the Applicant which includes promotion and assistance in the rapid and orderly establishment; growth and development of Industries in the State of Gujarat; development of land on its own account or for the State Government for the purpose of facilitating the location of industries and commercial centers; financial assistance by loans to industries to move their factories into industrial estates or areas and undertaking schemes for providing units and commercial establishments with such structures as may be necessary for their orderly establishment, growth and development. Thus, the GIDC has been established for managing and developing the industrial areas and estates, in order to increase the number of industries established in State of Gujarat.
- (vii)** Section 14 of the GID Act, lists out the general powers entrusted to the Applicant, which includes provision of amenities and common facilities in industrial estates, commercial centres and industrial areas and construction and maintenance of buildings, amenities and common facilities. The amenities include road, supply of water or electricity, street lighting, drainage, sewerage, conservancy and such other convenience as the State Government may specify. Thus, there is an obligation casted upon the Applicant to provide facilities in accordance with the provisions of the GID Act.
- (viii)** As per sub-section (3) of Section 23 of the GIDC Act, the Applicant shall not utilize the funds as mentioned in sub-section (1) of Section 23 for any purpose other than that for which it was constituted, without previous approval of the State Government.
- (ix)** As per Section 24 of the GIDC Act, the Applicant shall have authority to spend such sums as it thinks fit for the purposes authorized under the Act. As per Section 26 of the GIDC Act, the accounts of the

Applicant shall be audited by an auditor appointed by the State Government, in consultation with the Comptroller & Auditor General of India.

- (x)** Further, as per sub-section (4) of Section 26, the State Government shall cause the accounts of the Corporation together with the audit report thereon forwarded to it under sub-section (3) to be laid annually before the State Legislature. Under Section 30 of the GIDC Act, whenever any land is required by the Applicant for any purpose in furtherance of the objects of the Act, but the Applicant is unable to acquire it by agreement, the State Government may, upon an application of the Applicant in that behalf, order proceedings to be taken under the relevant land acquisition law for acquiring the same on behalf of the Applicant as if such lands were needed for a public purpose within the meaning of the relevant land acquisition law.
- (xi)** Also, section 37 of the Act, empowers the Applicant to lay down, maintain, alter, remove, or repair any pipes, pipelines, conduits, supply or service lines, posts, or other appliances or apparatus in, on, under over, along or across any land in the industrial area or estate for carrying gas, water electricity or construction of sewers or drains necessary for carrying off workings and waste liquids of an industrial process. The aforesaid functions qualify as 'water supply for domestic, industrial and commercial purposes'; 'public health, sanitation conservancy and solid waste management'; and 'public amenities including street lighting, parking lots, bus stops and public conveniences'.
- (xii)** Section 45(1) of the Act states that the Applicant shall furnish to the State Government such returns, statistics, reports, accounts and other information with respect to its conduct of affairs, properties or activities or in regard to any proposed work or scheme as the State Government may from time to time require. Further, section 45(2) of the Act requires the Applicant to furnish an annual report on its working as soon as may be after the end of financial year in the form and manner prescribed by the State Government.
- (xiii)** Moreover, section 46 of the Act empowers the State Government to withdraw any particular industrial area, estate or part thereof from the jurisdiction of the Applicant. If, the State Government is satisfied that in respect of any particular industrial estate or area, the purpose for which the Applicant was established has been substantially achieved, so as to render the continued existence of such industrial estate or area under the Applicant unnecessary.
- (xiv)** Section 48 of the Act empowers the State Government to dissolve the Applicant, if the State Government is satisfied that the purposes for which the Applicant was established under the Act, has been substantially achieved. The provisions contained in the Act, makes it clear that the State Government of Gujarat controls the function of the Applicant either directly or indirectly. The establishment of the Applicant is for the public purpose under vigilance and control of State of Gujarat. Under the aforesaid context, it is required to determine whether the facilities provided to plot holders fall under scope of business under clause (a) and (b) of sub-section 17 of Section 2 of CGST Act, 2017. Various limbs of clause (a) of sub-section 17 of Section 2 are as follows:-

- any trade,
- commerce,
- manufacture,
- profession,
- vocation,
- adventure,
- wager or
- any other similar activity,
- whether or not it is for a pecuniary benefit

(xv) The Hon'ble Supreme Court in Applicant's own case reported in 227 ITR 414 has categorically held that the Applicant is not a trading corporation. The Gujarat Industrial Development Act, 1962 is in parimateria to Maharashtra Industrial Development Act, 1962. In the case of **Shri Ramtanu Cooperative Housing Society Ltd. and another vs. State of Maharashtra and Others 1970(3) Supreme Court Cases 323**, the constitutional validity of the Maharashtra Act was challenged before the Hon'ble Supreme Court on the ground that the Corporation is a trading one. The Hon'ble Supreme Court dismissed the writ petition. The relevant observations of the Hon'ble Supreme Court reads as under:-

"...16. The petitioners contended that the Corporation was a trading one. The reasons given were that the Corporation could sell property, namely, transfer land that the Corporation had borrowing powers ; and that the Corporation was entitled to moneys by way of rents and profits. Reliance was placed on the report of the Corporation and in particular on the income and expenditure of the Corporation to show that it was making profits. These features of transfer of land or borrowing of moneys or receipt of rents and profits will by themselves neither be the indicia nor the decisive attributes of the trading character of the Corporation. Ordinarily, a Corporation is established by shareholders with their capital. The shareholders have their Directors for the regulation and management of the Corporation. Such a Corporation set up by the shareholders carries on business and is intended for making profits. When profits are earned by such a Corporation they are distributed to shareholders by way of dividends or kept in reserve funds. In the present case, these attributes of a trading corporation are absent. The Corporation is established by the Act for carrying out the purposes" of the Act. The purposes of the Act are development of industries in the State. The Corporation consists of nominees of the State Government, State Electricity Board and the Housing Board. The functions and powers of the Corporation indicate that the Corporation is acting as a wing of the State Government in establishing industrial estates and developing industrial areas, acquiring property for those purposes, constructing buildings, allotting buildings, factory sheds to industrialists or industrial undertakings. It is obvious that the Corporation will receive moneys for disposal of land, buildings and other properties and also that the Corporation would receive rents and profits in appropriate cases. Receipts of these moneys arise not out of any business or trade but out of sole purpose of establishment, growth and development of industries.

18. The Corporation has to provide amenities and facilities in industrial estates and industrial areas. Amenities of road, electricity, sewerage and other facilities in industrial estates and industrial areas are within the programme of work of the Corporation. The fund of the Corporation consists of moneys received from the State Government, all fees, costs and charges received by the Corporation, all moneys received by the Corporation from the disposal of lands, buildings and other properties and all moneys received by the Corporation by way of rents and profits or in any other manner. The Corporation shall have the authority to spend such sums out of the general funds of the Corporation or from reserve and other funds. The Corporation is to make provision for reserve and other specially denominated funds as the State Government may direct. The Corporation accepts deposits from persons, authorities or institutions to whom allotment or sale of land, buildings, or sheds is made or is likely to be made in furtherance of the object

of the Act. A budget is prepared showing the estimated receipts and expenditure. The accounts of the Corporation are audited by an auditor appointed by the State Government. These provisions in regard to the finance of the Corporation indicate the real role of the Corporation, viz., the agency of the Government in carrying out the purpose and object of the Act which is the development of industries. If in the ultimate analysis there is excess of income over expenditure that will not establish the trading character of the Corporation. There are various departments of the Government which may have excess of income over expenditure.

19. There are two provisions of the Act which are not to be found in any trading Corporation. In the first place, the sums payable by any person to the Corporation are recoverable by it under this Act as an arrear of land revenue on the application of the Corporation. 'Secondly on dissolution of the Corporation the assets vest in and the liabilities become enforceable against the State Government.

20. The underlying concept of a trading Corporation is buying and selling. There is no aspect of buying or selling by the Corporation in the present case. The Corporation carries out the purposes of the Act, namely, development of industries in the State. The construction of buildings, the establishment of industries by letting buildings on hire or sale, the acquisition and transfer of land in relation to establishment of industrial estate or development of industrial areas and of setting up of industries cannot be said to be dealing in land or buildings for the obvious reason that the State is carrying out the objects of the Act with the Corporation as an agent in setting up industries in the State. The Act aims at building an industrial town and the Corporation carries out the objects of the Act. The hard core of a trading Corporation is its commercial character. Commerce connotes transactions of purchase and sale of commodities, dealing in goods. The forms of business transactions may be varied but the real character is buying and selling. The true character of the Corporation in the present case is to act as an architectural agent of the development and growth of industrial towns by establishing and developing industrial estates and industrial areas. We are of opinion that the Corporation is not a trading one."

- (xvi) The function performed by Applicant under GIDC Act is similar to role performed by MIDC under MIDC Act. It is submitted that the Applicant also develops the infrastructure like roads, sustained water supply, drainage etc. within the industrial areas or estates. Further, the maintenance and upgradation of the existing infrastructure is also a primary responsibility of the Applicant, in view of section 37(1) of the Act.
- (xvii) The Applicant earns income from premium on lease of plots, sale of tender forms, Recovery of fines from contractors and others, Non Utilization Penalty, Water and Drainage Connection Fees, Sub-Letting Fees, Sub-Division Fees, Amalgamation Fees, Collateral Charges, Interest on delayed payment of revenue charges, Plan Approval Fees, Right of Usage Charges, Grants and Subsidies from Government, Agency Charges, Hire charges of tools and plants, Annual rent of the land leased out by the Applicant, Forfeiture of Deposits, Scrutiny Fees, Service charges, Rent of buildings, Sale of grass, Water charges, NA Charges, Sundries - Administrative charges, Development charges, Drainage cess, Penal interest, Profit on sale of assets etc., Transfer fee, Dividend Profit, Interest received/accrued and Income Related Expenditure – Service Charges (Maintenance and Repair Expenditure for Roads, Buildings, Street Lights etc), Water charges (maintenance expenditure on water supply), NA Charges Income.
- (xviii) The Applicant submits that the income collected by the Applicant from plot holders is not towards activity of business as the activity performed by the Applicant is a statutory duty and not towards trade

or commerce or manufacturing activity or similar activity as viewed by Hon'ble Supreme Court in the case of MIDC.

- (xix) Recently, in the Applicant's own case reported as **CIT Vs GIDC-2017-TIOL-HC-AHM-IT**, the Hon'ble High Court of Gujarat while considering the object and purpose for which the applicant Corporation was established and constituted under the provisions of Gujarat Industrial Development Act, 1962 held that collection of fees or cess is incidental to the object and purpose. The Hon'ble court held that the activities of assessee is for advancement of any other object of general public utility, the same can be for "charitable purpose". The contention of the revenue was that considering the amended provisions, "advancement of any other object of general public utility" shall not be a charitable purpose; if, [a] it involves carrying on of any activity in the nature of trade, commerce or business; or [b] rendering any services in relation to any trade, commerce, or business for a Cess, or fee or any other consideration irrespective of the nature of use or application or retention of the income from such activities. The Hon'ble HC negated the said contention and held as under:

"...A short question which is posed for consideration of this Court is whether the activities carried out by the assessee can be said to be in the nature of trade, commerce or business for a Cess or fee, or for any other consideration and/or carrying on any activities in the nature of trade, commerce or business so as to attract proviso to Section 2 [15] of the Act and to deny the exemption claimed under Section 11 of the I.T Act ?

14.As per the statement and object of GID Act, 1962, it has been enacted for securing the orderly establishment and organization of industries in industrial areas and industrial estates in the State of Gujarat and for the purpose of establishing commercial centres in connection with the establishment and organization of such industries and for that purpose, to establish an Industrial Development Corporation, and for purposes connected with the aforesaid matters.

15.It cannot be said that the activities carried out by the assessee can be said to be for "advancement of any other object of general public utility". Considering the object and purpose for which the assessee has been established under the provisions of the Act and the activities carried out by the assessee, it cannot be said that the activities carried out by the assessee can be said to be either in the nature of trade, commerce or business, or rendering any services in relation to any trade, commerce or business for a Cess or Fee or any other consideration so as to attract proviso to Section 2 [15] of the IT Act.

16.Identical question came to be considered by Division Bench of this Court in the case of Ahmedabad Urban Development Authority vs. Assistant Commissioner of Income Tax [Exemption] rendered in Tax Appeal No. 423 of 2016 and other allied Tax Appeals, by which with respect to the Urban Development Authority established and constituted under the provisions of the Gujarat Town Planning & Urban Development Act, 1976, it is held that the activities carried out by the Ahmedabad Urban Development Authority can not be said to be for commercial purpose and proviso to Section 2 [15] of the IT Act shall not be applicable and that the said Ahmedabad Urban Development Authority shall be entitled to exemption under Section 11 of the Act. Division Bench of this Court also observed and held that merely because AUDA is charging fees and/or cess, the activities cannot be said to be in the nature of trade, commerce or business and consequently held that the proviso to Section 2 [15] of the Act shall not be applicable, and therefore, the assessee is entitled to exemption under Section 11 of the Act.

Emphasis supplied.

(xx) The Applicant submits that the facilities provided by the Applicant does not fall under the realm of term trade, commerce or manufacture and similar activities as categorically held by the Hon'ble High Court in the Applicant's own case. Henceforth, the activities of providing services to plot holders is not in furtherance of course of business, meaning thereby, the same is not supply under Section 7 of the CGST Act, 2017. The Applicant submits that the principle laid down in the case of income tax rulings is applicable to the indirect taxes. In the case of **Shabina Abraham v. CCE** reported at **2015 (322) E.L.T. 372 (SC)**, the Hon'ble Supreme Court held that principles applied in case of Income Tax Act, 1961 can be applied to Central Excise Act, 1944 immaterial of the fact that latter Act was on manufacture of goods and not on persons. In the case of **CCE v. Jawahar Mills Ltd., 2001 (132) E.L.T. 3 (S.C.)**, the Hon'ble Supreme Court held that Stand of the Revenue that Tribunal should not have relied on those decisions is without any substance. Principle laid down by a decision of the Sales tax & income tax decisions applicable to Central Excise cases.

(xxi) On this ground, the ratio laid down by the Hon'ble Supreme Court in case of MIDC and Hon'ble High Court in Applicant's own case under Income Tax rulings is applicable in the Applicant's case to decide whether the amount collected from the plot holders is towards trade, commerce or similar activities.

(xxii) Furthermore, in the case of **CCE v. Maharashtra Industrial Development Corporation** reported at **2017-TIOL-2629-HC-MUM-ST**, the Hon'ble High Court of Bombay decided on the issue whether service charges recovered by the MIDC from plot holders for providing various services to them and the activity of providing service attracts service tax liability under the category of management, maintenance or repair service as defined under clause 64 of Section 65 of the said Act. The Hon'ble High Court placed reliance upon circular dated 18th December 2006 bearing No.89/7/2006. Clauses 2 and 3 of the said circular read thus:

"2. The issue has been examined. The Board is of the view that the activities performed by the sovereign/ public authorities under the provision of law are in the nature of statutory obligations which are to be fulfilled in accordance with law. The fee collected by them for performing such activities is in the nature of compulsory levy as per the provisions of the relevant statute, and it is deposited into the Government Treasury. Such activity is purely in public interest and it is undertaken as mandatory and statutory function. These are not in the nature of service to any particular individual for any consideration. Therefore, such an activity performed by a sovereign/ public authority under the provisions of law does not constitute provision of taxable service to a person and, therefore, no service tax is leviable on such activities.

3. However, if such authority performs a service, which is not in the nature of statutory activity and the same is undertaken for a consideration not in the nature of statutory fee/levy, then in such cases, service tax would be leviable, if the activity undertaken falls within the ambit of a taxable service."

Emphasis supplied

(xxiii) Further, the Hon'ble High Court placed reliance on the case of **Ramtanu Cooperative Housing Limited and another** (cited supra), and held as under:-

"11. The Apex Court categorically held that functions and powers of MIDC indicate that the said Corporation is acting as a wing of the Government. In the case of Managing Director, Haryana State Industrial Development Corporation, the Apex Court was considering the role played by Haryana State Industrial Development Corporation. The Apex Court held that the said Corporation discharges sovereign functions. The Apex Court also held that considering the

objects and purpose for which the said Corporation of Haryana has been constituted, the function discharged by the Corporation must be held as Governmental function.

12. We have already referred to Section 14 of the MID Act which provides that the function of the MIDC is not only to develop industrial areas but to establish and manage industrial estates. The role of MIDC is not limited only to establishing industrial estates and allotting the plots or buildings or factory sheds to industrial undertakings. The function and obligation of the MIDC is also to manage and maintain the said industrial estates as provided in Section 14. Therefore, it is the statutory obligation of the MIDC to provide amenities as defined in clause (a) of Section 2 of the MID Act to the industrial estates established by it. Thus, it is the statutory obligation of MIDC to provide and maintain amenities in its Industrial estates such as roads, water supply, street lighting, drainage, etc. **Thus, we find that the activities for which the demand was made are part of the statutory functions of the MIDC under MID Act. As stated earlier, the demand is in respect of service charges collected from plot holders for providing them various facilities including maintenance, management and repairs. As provided in the circular dated 18th December, 2006, for providing amenities to the plot holders, the service fees or service charges collected by MIDC are obviously in the nature of compulsory levy which is used by MIDC in discharging statutory obligations under Section 14.** We find that even in the Order-in-Original, there is no finding of fact recorded that the service rendered for which service tax was sought to be levied was not in the nature of statutory obligation.

13. Therefore, we find no error in the view taken by the Appellate Tribunal. No substantial question of law arises.

14. MIDC is a statutory Corporation which is virtually a wing of the State Government. It discharges several sovereign functions. In our view, the Revenue ought not to have compelled MIDC to prefer Appeals before Appellate Tribunal. Not only that MIDC was driven to prefer Appeals before the Appellate Tribunal, this group of Appeals were preferred by the Revenue. Needless to add that MIDC was required to incur huge expenditure on litigation. All this could have been avoided by the Appellant.”

Emphasis Supplied

(xxiv) The Hon'ble High Court of Bombay clearly held that no service tax is payable under the aforesaid category as MIDC is a statutory corporation discharging its sovereign function. Also, in the identical issue of MIDC, recently, the Hon'ble Tribunal in case of **MIDC v. CCE** reported at **2018-TIOL-1021-CESTAT-MUM**, the Hon'ble Tribunal following the judicial discipline set aside the demand against MIDC under the category of management, maintenance or repair service. Thus there is no supply in course or furtherance of business by the Applicant. Thus, CGST cannot be levied on the consideration charged by the Applicant to the plot holders. If the activity of GIDC is not business as per statutory provisions, then there cannot be incidental or ancillary activity to such business.

(xxv) The Applicant has submitted that the activity of applicant does not fall under sub-clause (a) of Sub-section 17 of Section 2, then automatically, sub-clause (b) is not invocable as the activity is not in connection with or incidental or ancillary to sub-clause (a). Sub-clause (b) of the sub-section (17) of Section 2 which reads as under:-

‘(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a)’.

(xxvi) The Applicant has submitted that once the activity of applicants does not fall under the category of business as mentioned under clause (a),

the test of 'in connection with' and 'or incidental or ancillary to clause (a)' does not hold of any relevance as such. For the purpose of analysis, the primitive point, i.e., dictionary meaning as defined by Webster's New World College Dictionary, 4th Edition is provided as under:-

In connection with

1. together with; in conjunction with
2. with reference to

Incidental

1. happening as a result of or in connection with something more important; casual: incidental benefits
2. likely to happen as a result or concomitant

Ancillary

1. Of secondary importance; subordinate
2. Auxiliary or accessory: an ancillary pump.

(xxvii) The Hon'ble Supreme Court of India in the case of **CST v Sai Publication Fund** [2002] 258 ITR 70/122 Taxman 437 in which the Supreme Court interpreting the word "business" under section 2(5A) of the Bombay Sales Tax Act, 1959 had clearly laid out that where main activity is not 'business', the connected incidental or ancillary activities of sales carried out in furtherance of and to accomplish their main objects would not, normally, amount to business, unless an independent intention to conduct 'business' in these connected, incidental or ancillary activities is established by the revenue. Hon'ble Supreme Court held as under:-

"... No doubt, the definition of "business": given in Section 2(5-A) of the Act even without profit motive is wide enough to include any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture and any transaction in connection with or incidental or ancillary to the commencement or closure of such trade, commerce, manufacture, adventure or concern.

If the main activity is not business, then any transaction incidental or ancillary would not normally amount to "business" unless an independent intention to carry on "business" in the incidental or ancillary activity is established. In such cases, the onus of proof of an independent intention to carry on "business" connected with or incidental or ancillary sales will rest on the Department. Thus, if the main activity of a person is not trade, commerce etc., ordinarily incidental or ancillary activity may not come within the meaning of "business"

Emphasis Supplied

(xxviii) Further, is the case of **State of T.N. &Anr. Vs. Board of Trustees of the Port of Madras ((1999) 4 SCC 630)**, the Hon'ble Supreme Court held as under:-

"30. In our view, if the main activity was not "business", then the connected, incidental or ancillary activities of sales would not normally amount to "business" unless an independent intention to conduct "business" in these connected, incidental or ancillary activities is established by the Revenue. It will then be necessary to find out whether the transactions which are connected, incidental or ancillary are only an infinitesimal or small part of the main activities. In other words, the presumption will be that these connected, incidental or ancillary activities of sale are not "business" and the onus of proof of an independent intention to do "business" in these connected, incidental and ancillary sales will rest on the Department. If, for example, these connected, incidental or ancillary transactions are so large as to render the main activity infinitesimal or very small, then of course the case would fall under the first category referred to earlier."

Emphasis supplied

(xxix) It is clear that the activity in question does not fall under the definition of business under Section 2(17) of the CGST Act,2017, therefore, for activity to be considered as supply under Section 7 of CGST Act, the same needs to be in furtherance of business, which is absent in the present case. On this ground alone, it is concluded that no CGST is payable on various activities of applicant. For the reasons mentioned hereinabove, sub-clause (c) of Section 2(17) is not invokable in the facts of present case. Sub-clauses (d) to (h) deal with special situations which otherwise may not have been considered as business.

To carry out any function entrusted to a municipality under Article 243W of the Constitution. Hence, clause (i) of Section 2(17) is also not applicable in the facts of present case. The said activities are exempted by virtue of Entry No. 4 of the Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017

The Applicant submit that its activities are otherwise exempted by virtue of Sr. No. 4 of the Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 (as amended from time to time.) For ease of reference, the said entry is extracted below:

**Government of India
Ministry of Finance
(Department of Revenue)
Notification No. 12/2017- Central Tax (Rate)**

New Delhi, the 28th June,2017.

G.S.R. 691(E) .- In exercise of the powers conferred by ⁴⁹[sub-section (3) and sub-section (4) of section 9, sub-section (1) of section 11,sub-section (5) of section 15 and section 148,] of the [Central Goods and Services Tax Act, 2017 \(12 of 2017\)](#), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under [sub-section \(1\) of section 9](#) of the said [Act](#), as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-

Table				
Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
4	Chapter 99	Services by governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.	Nil	Nil

(xxx) The Applicant further submits that once the area is notified as industrial estate as per Section 16 of the GIDC act then the Applicant becomes the local authority so far as administration of that estate is concerned. Therefore, without prejudice to the submissions made above, even if it is treated as business activity for the Applicant, then also it is specifically exempted under the exemption notification. The Applicant submit that activities undertaken by the Applicant in the present case is under the capacity of governmental authority and not as Central Government, State Government or any local authority.

(xxxi) Article 243W of the Constitution of India reads as follow:

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 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 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

(underlining supplied)

(xxxii) Further, Schedule XII of the Constitution of India, lists out the following functions to be performed by the municipalities:

TWELFTH SCHEDULE

(Article 243W)

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.*

(underlining supplied)

(xxxiii) Section 3 of the Act, as discussed hereinabove, lays down that the Applicant has been established for securing and assisting in the rapid and orderly establishment and organisation of industries in industrial areas and industrial estates in the State of Gujarat. Further, section 13 of the Act states the functions to be performed by the Applicant includes establishment, development and management of industrial estates in the State of Gujarat. Thus, the Applicant has been established for managing and developing the industrial areas and estates, in order to increase the number of industries established in State of Gujarat. In our view, the conjoint reading of Article 243W of the Constitution of India and section 3 and 13 of the Act, makes it clear that the Applicant has to prepare

and execute plans for economic development. Since, the growth in the number of industries is directly proportional to the economic development of any State. Moreover, the establishment of the Applicant has resulted in exponential growth in the number of industries in the State of Gujarat.

(xxxiv) Our view is also supported by the decision of the Hon'ble Apex Court in the Applicant's own case, **GIDC vs. CIT AIR 1997 SC 3275**, wherein it was held that the industrial development is enveloped within the expression "planning, development or improvement of cities, towns and villages or for both" in section 10(20A) of the Income-Tax Act, 1961. The relevant part of the said judgment is reproduced hereinbelow:

9. *The Gujarat Act was enacted "to make special provision for securing the orderly establishment of industries in industrial areas and industrial estates in the State of Gujarat, and to assist generally in the organisation thereof, and for that purpose to establish an Industrial Development Corporation, and for purposes connected with the matters aforesaid" as can be discerned from the preamble thereof.*

10. *Section 2(g) of the Act defines "industrial area" as any area declared to be an industrial area by the State Government by notification in the Official Gazette which is to be developed and where industries are to be accommodated. Section 2(n) defines "industrial estate" as any site selected by the State Government where the Corporation builds factories and other buildings and makes them available for any industries or class of industries. Section 13 of the Gujarat Act enumerates the function of the Corporation and they contain, inter alia, "to promote and assist in the rapid and orderly establishment, growth and development of industries in the State of Gujarat".*

11. *We have no doubt that a proper planning is absolutely necessary for creation of an industrial area. Inside roads, Sub-roads, buildings, sanitation, parks and other amenities have also to be provided in a planned industrial area as per the modern concept of any industrial complex. Even educational institutions may have to be provided in such complex. Therefore, development of industrial area would have its direct impact on the development or improvement of that part of the city or town or village where such area is located. Delinking industrial area from the scope of development of any area is, thus, without any practical sense.*

12. *In this context a reference to Maharashtra Industrial Development Act, 1962, which is almost analogous to the Gujarat Act, is of some use. While examining issues relating to the validity of the Maharashtra Act a Division Bench of this Court has said in Shri Ramtanu Cooperative Housing Society Ltd. v. State of Maharashtra [1971] 1 SCR 719 . The functions and powers of the Corporation indicates that the Corporation is acting as a wing of the State Government in establishing industrial estates and developing industrial areas, acquiring property for those purposes, constructing building, allotting buildings, factory sheds to industrialists or industrial undertakings. It is obvious that the Corporation will receive moneys for disposal of land, buildings and other properties and also that the Corporation would receive rents and profits in appropriate cases. Receipts of these moneys arise not out of any business or trade but out of sole purpose of establishment, growth and development of industries. The Corporation has to provide amenities and facilities in industrial estates and industrial areas. Amenities of road, electricity, sewerage and other facilities in industrial estates and industrial areas are within the programme of work of the Corporation.*

13. *The scheme of the Gujarat Act, as is seen from a survey of the relevant provisions referred to above, would indicate that the Corporation set up thereunder is to chalk out plans for development of industrial area and industrial estate in different places which may locate in cities or towns or villages. Such schemes would normally involve planning the development of such areas.*

14. The word “development” in Section 10(20A) of the I. T. Act should be understood in its wide sense. There is no warrant to exclude all development programmes relating to any industry from the purview of the word “development” in the said Sub-section. There is no indication in the Act that development envisaged therein should confine to non-industrial activities. Development of a place can be accelerated through varieties of schemes and establishment of industries is one of the modes of developing an area.

15. One of the reasons for incorporating a specific provision of exemption from income-tax such as Section 10(20A) is to protect public bodies created under law for achieving the purpose of developing urban or rural areas for public good. When the object is such, an interpretation which would preserve it should be accepted even if the provision is capable of more than one interpretation. The principle of interpretation is very much applicable to fiscal statutes also, (vide *State of Tamil Nadu v. M.K. Kandaswami* [1976] 1 SCR 38. This Court has reiterated the said principle in *Calcutta Jute Manufacturing Co: 1997 (93) ELT 657 (SC)*).

16. The position is, therefore, clear that authorities constituted by law for facilitating all kinds of development of cities, towns and villages for public purposes shall not be subjected to the liability to pay income-tax. The Division Bench of the High Court seems to have interpreted the exemption clause too rigidly and narrowly which resulted in the anomaly of bringing authorities like appellant Corporation within the tentacles of income-tax liability while the authorities dealing with housing schemes which provide houses to private individuals would stand outside the taxing sphere.

17. In the result, we allow these appeals, set aside the judgment under challenge. The answer to the question will, therefore, be in favour of the assessee and against the Revenue.

(underlining supplied)

(xxxv) Section 14 of the Act, lists out the general powers entrusted to the Applicant, which includes provision of amenities and common facilities in industrial estates, commercial centres and industrial areas and construction and maintenance of buildings, amenities and common facilities. The amenities include road, supply of water or electricity, street lighting, drainage, sewerage, conservancy and such other convenience as the State Government may specify. Further, section 37 of the Act, empowers the Applicant to lay down, maintain, alter, remove, or repair any pipes, pipelines, conduits, supply or service lines, posts, or other appliances or apparatus in, on, under over, along or across any land in the industrial area or estate for carrying gas, water electricity or construction of sewers or drains necessary for carrying off workings and waste liquids of an industrial process. The aforesaid functions qualify as ‘water supply for domestic, industrial and commercial purposes’; ‘public health, sanitation conservancy and solid waste management’; and ‘public amenities including street lighting, parking lots, bus stops and public conveniences’.

(xxxvi) The Applicant is also empowered to make available buildings on hire or sale to industrialists or persons intending to start industrial undertakings or commercial establishments. Moreover, the Applicant can also construct buildings for housing of the employees of such industries or commercial establishments and allot factory sheds or buildings and shops etc. to suitable persons in the industrial estates or commercial centres established by the Applicant. The aforesaid functions qualify as ‘regulation of land use and construction of buildings’.

(xxxvii) Section 16 of the Act, empowers the State Government of Gujarat to notify any area as industrial area and the provisions of Gujarat Municipalities Act, 1963 shall not be in force, in such industrial area.

(xxxviii) Further, the Hon'ble Supreme Court in the case of **Saij Gram Panchayat vs. The State of Gujarat & Ors. AIR 1999 SC 826**, has held that the area notified under section 16 of the Act qualifies as 'Industrial Township' under Article 243Q. The relevant portion of the judgment is reproduced here in below:

10. The Gujarat Municipalities Act, 1962 was amended on 20.8.1993 in view of the insertion of Part IXA in the Constitution. Section 264A was substantially amended. It now provided that "for the purpose of this chapter notified area means an urban area or part thereof specified to be an industrial township area under the proviso to Clause (1) to Article 243Q of the Constitution of India". Thus, as a result of this amendment in the Gujarat Municipalities Act, an industrial area under the Gujarat Industrial Development Act, which is notified under Section 16 of the Gujarat Industrial Development Act would become a notified area under the new section 264A of the Gujarat Municipalities Act and would mean an industrial township area under the proviso to Clause (1) of Article 243Q of the Constitution of India.

16. The contention is based on a misconception about the relationship of the provisions of Parts IX and IXA of the Constitution with any legislation pertaining to industrial development. The Gujarat Industrial Development Act operates in a totally different sphere from Parts IX and IXA of the Constitution as well as the Gujarat Panchayats Act, 1961 and the Gujarat Municipalities Act, 1962 - the latter being provisions dealing with local self Government while the former being an Act for industrial development, and orderly establishment and organisation of industries in a State. The industrial areas which have been notified under Section 16 of the Gujarat Industrial Development Act on 7.9.1993 were notified as industrial areas under the Gujarat Industrial Development Act long back in the year 1972. These industrial areas have been developed by the Gujarat Industrial Development Corporation and they can hardly be looked upon as rural areas covered by Part IX of the Constitution. It is only such industrial areas which can be notified under Section 16 of the Gujarat Industrial Development Act, 1963. If by a notification issued under Section 16, these industrial areas are deemed to be notified areas under the Gujarat Municipalities Act and are equated with industrial townships under the proviso to Clause (1) of Article 243Q, the constitutional scheme is not violated. In fact, under Chapter 3 of the Gujarat Industrial Development Act, 1962, the Gujarat Industrial Development Corporation, has been given power, inter alia, to develop land for the purpose of facilitating the location of industries and commercial centers. It has also been given the power to provide amenities and common facilities in such areas including provision of roads, lighting, water supply, drainage facilities and so on. It may do this either jointly with Government or local authorities or on an agency basis in furtherance of the purposes for which the corporation is established. The industrial area thus has separate provision for municipal services being provided by the Industrial Development Corporation. Once such an area is a deemed notified area under the Gujarat Municipalities Act, 1964, it is equated with an industrial township under Part IXA of the Constitution, where municipal services may be provided by industries. We do not see any violation of a constitutional provision in this scheme.

17. As held by this Court in *Solapur MIDC Industries Association Etc. v. State of Maharashtra and Ors. AIR 1997SC 8*, a Municipal Corporation Act and an Industrial Development Act have distinct fields of operation and there is no inter se conflict between the two. By reason of the notifications of 7.9.1993, the industrial area developed under the Gujarat Industrial Development Act is also deemed to be an industrial township for the purposes of local self Government. Any possible conflict is also removed by the second notification of 7.9.1993 removing this area from the ambit of the Gujarat Panchayats Act, 1961. The contention, therefore, that an area forming a part of a panchayat under the Gujarat Panchayats Act, 1961 cannot be a notified area under the Gujarat Municipalities Act loses all force.

18. It is next contended that the proviso to Clause (1) of Article 243Q applies only to urban areas. It does not apply to a transitional area. Since the industrial areas in question have been subsequently notified as transitional areas they cannot be

equated with industrial townships. This contention also cannot be accepted. Article 243Q deals with constitution of municipalities. Municipality is defined under Article 243P(e) to mean "an institution of self-government constituted under Article 243Q. Article 243Q constitutes three types of municipalities - (a) a Nagar Panchayat (b) a Municipal Council and (c) a Municipal Corporation. The proviso to Article 243Q deals with all three types of municipalities constituted under Clause (1). It provides that a municipality under Clause (1) may not be constituted in certain circumstances. This would refer to any of the three types of municipalities. Although the proviso refers to such urban area or part thereof, this "urban" area also covers a transitional area, in transition from rural to urban. It is because this area is also in the process of turning into an urban area that it is put under Part IXA which deals with municipalities in urban areas. Therefore, in respect of any of these three types of areas set out in Clause (1) of Article 243Q, having regard to the size of the area, the municipal services being provided or proposed to be provided by an industrial establishment in that area, and such other factors as the Governor will deem fit to consider, he may, by public notification specify such area to be an industrial township. All these relevant factors would be in operation in an industrial area already notified many years back under an Industrial Development Corporation Act as in the present case. Therefore, there is no breach of Article 243Q if such an area is, under the provisions of an Industrial Development Act, equated with an industrial township under Article 243Q.

(underlining supplied)

(xxxix) The above judgement of the Supreme Court holds that the GIDC acts as the municipal authority for the areas notified under section 16 of the Act. Thus, in light of the above, the applicant is of the view that they have been entrusted to carry out functions of the municipality as contained under Article 243W of the Constitution of India and Schedule XII of the Constitution of India.

(xl) The applicant states that therefore, in the light of the above referred statutory provisions and the judicial precedents, they satisfy all the prescribed conditions and is to be treated as "Governmental Authority", in view of the Notification no. 12/2017- Central tax (rate) dated 28.06.2017. The Applicant submits that the Applicant does not fall under any of the clauses of Section 2(17) of the CGST Act, 2017 which defines the term 'business'. Henceforth, the sub-clause (a) of Section 7(1) which includes activities performed in course of furtherance of business is not satisfied in the facts of present case. Sub-clause (b), (c) and (d) of Section 7(1) has no application to the facts of present case. For sake of brevity, the provisions of SGST Act, 2017 are not referred in the content of above-mentioned application.

6. The applicant has made some additional submissions which were received by email on 24.08.2020. The applicant has stated that during the course of hearing, the authorities have referred to the definition of "business" as defined in Section 2(17) of the CGST Act, 2017. The Applicant has submitted that the activities carried out by the Applicants is not falling within the definition of business as explained under.

For ease of reference Section 2(17) of CGST Act, 2017 is reproduced below:

(17) "business" includes —

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- [(h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and]
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;**

7. The applicant further stated that the authorities have referred to clause (i) of definition of Business as defined in Section 2(17) of the CGST Act, 2017 it is highlighted above; that the activity of central government, a state government or any local authority would be covered in the definition of business if they are engaged as public authorities; that the above clause is not applicable to the facts of the present case for the reason that the Applicants are not state government or central government; that, the Applicants are not even local authority as envisaged under the act; that therefore, the Applicants submit that the above clause itself is not applicable considering the constitution of the applicant; that the applicants reiterate that they are constituted under the act of legislative assembly of State of Gujarat and are therefore not covered in the clause (i) of definition of Business as defined in Section 2(17) of CGST Act, 2017.

8. The applicant further submitted that the said clause (i) of Section 2(17) of CGST Act, 2017 is applicable when the said authority acts as a public authority; that they are not acting as a public authority in any way therefore, the said clause is inapplicable to the facts of the present case; that they reiterate that the definition of Business as defined in Section 2(17) of the CGST Act, 2017 is not applicable to them and in similar circumstances it is held that the activities of Applicant is not taxable; that during the course of hearing, the Applicants referred to the decision in their own case wherein Hon'ble Gujarat High Court has held that the Applicants are not a business entity or the activities of the Applicants are not commercial in nature in the context of Income Tax Act, 1961; that the decision in Applicants' own case is reported at 2017 (7) TMI 811 – Gujarat High Court; that the Applicants referred to the recent decision of CESTAT Bangalore (in context of service tax) wherein in case of **Karnataka Industrial Area Development Board** reported in **2020 (6) TMI 227 – CESTAT Bangalore** has held that the activities of the assessee is not taxable; that the facts of the case before CESTAT Bangalore and before the Advance Ruling Authorities is identical and therefore, the ratio of the decision referred supra is having great persuasive value in the present case. Further, in number of cases, the authorities have held that so far as taxation of services under GST is concerned there is no change in law. Therefore, the principles laid down in service tax cases are applicable to case of services under GST as well.

9. The applicant has submitted that in the case of **Karnataka Industrial Area Development Board** reported in **2020 (6) TMI 227 – CESTAT Bangalore** it is observed as under:

7.2. The true character / scope and intent of the Act is to be ascertained with reference to the purposes and the provisions of the Act. The Act is one to make a special provision for securing orderly establishment of industrial areas and industrial estates in the State of Karnataka and for that purpose, to establish the board. A careful reading of the aforesaid provisions of KIAD Act and KIADB Regulations would clearly go to show that the appellant is a State undertaking and creature of a statute to exercise the power of 'eminent domain'. The appellant is engaged in discharging statutory functions under an act of Legislature viz. KIAD Act, 1966. It is a statutory body performing statutory functions and exercising statutory powers. Once carrying out the objectives of the Act, then it cannot be treated as a service provider under the Finance Act, 1994. Further we find that there is no service provider-client relationship so as to warrant the levy of service tax under the provisions of Finance Act, 1994. Appellant has undertaken various

activities and functions in the State of Karnataka as per the directions of the State Government given from time to time under the provisions of the Act and hence their activities cannot be considered as taxable service and no service tax can be levied for these activities.

7.3. The issue whether the statutory authority performing statutory functions as provided under a statute is liable to service tax or not has been considered and decided by catena of judgments rendered by various courts. In the case of Maharashtra Industrial Development Corporation (MIDC) cited supra, the Hon'ble Bombay High Court has categorically held that no service tax could be demanded on the charges collected by the MIDC, in terms of MID Act, 1961 towards maintenance of industrial areas as the same is in the nature of statutory function performed in terms of the statute. It is pertinent to quote the relevant findings of the Bombay High court, in paras 5, 6, 7: -

7.7. The learned counsel for the appellant relied upon the decision in the case of **Employee Provident Fund Organisation vs. CST [2017 (4) GSTL 294 (Tri. Del.)]** to submit that the statutory authorities performing statutory functions as per the statute are not liable to pay service tax. He also submitted that the Revenue's appeal against the above decision was dismissed by the Hon'ble Supreme Court on grounds of delay as well as on merits. We have gone through the judgment of the Tribunal. The Tribunal in that case, after considering the judgment of the Supreme Court as well as Kerala High Court, has held that appellants are not liable to pay service tax on their statutory activities performed under the act. In this case, the Tribunal has also considered the argument of the Revenue that the appellant is providing taxable services as a corporate body / trust by managing funds and the activities carried out are not in the statutory functions but are in the nature of services of social nature as per the directive principles of the State Government policy. Here it is pertinent to reproduce the observation of the Tribunal in paras 7, 11, 12, 13, 15, 16, 17, 20: -

Further it is seen that the above said case has been upheld by the **Apex Court as reported in 2018(18) GSTL J215 (SC)**.

8. In view of our discussion above, we are of the considered opinion that the appellant is a statutory body discharging the statutory function as per the statute KIAD Act, 1966 and hence are not liable to pay service tax in view of the ratios of the various decisions cited supra. Since we have held that appellant is not liable to pay the service tax at all, we do not consider it appropriate to discuss the demand of service tax on individual services allegedly rendered by the appellant on which the learned Commissioner has confirmed the demand. In the result, by following the ratios of the Hon'ble Apex Court in the case of Shri Ramtanu Housing Co-operative Society Ltd., Hon'ble Bombay High Court in the case of MIDC and the Tribunal's decision in the case of Employee Provident Fund Organisation (upheld by Apex Court) cited supra, we set aside the impugned order by allowing the appeal of the appellant.

10. The applicant has further submitted that the facts of the above case and in the present case are identical and therefore applying the ratio above the activities of the Applicants is not taxable under the GST laws. The transaction which is accepted by the Income Tax department as non commercial not in relation to business under the income tax act is not commercial for the purposes of GST laws as well; that the applicant submits that in their own case, Hon'ble Gujarat High Court has held that the Applicants are not in business/ commercial activities; that once it is held that the activities of the Applicants is not commercial/ business in nature under the Income Tax Act, 1962, the same will prevail under the GST laws as well. The applicant places reliance on the decision of Hon'ble Supreme Court in case of **Shabina Abraham 2015 (322) ELT 372 (SC)** wherein it is held as under:

20. Learned counsel for the revenue, however, contended that the principles applied in the case of the Income Tax Act should not be applied to the Central Excises and Salt Act as the latter Act is a tax on manufacture of goods and not on persons. We are afraid this argument cannot be countenanced in view of this Court's judgment in State of Punjab v. M/s. Jullunder Vegetables Syndicate, (1966) 2 S.C.R. 457. In that judgment, the question before this Court was whether a dissolved firm could be assessed to sales tax under the East Punjab General Sales Tax Act, 1948, with respect to its pre-dissolution turnover. After analyzing the East Punjab General Sales Tax Act, this Court held :-

“The scheme of the Act is a simple one. A firm is a dealer; the said dealer is assessable to tax on its turnover, if its turnover exceeds the prescribed limit. It cannot do business while being liable to pay tax under the Act without getting itself registered and possessing a registration certificate. It is assessed to tax under Section 11 of the Act in the manner prescribed thereunder. If it discontinues its business, it shall within the specified time inform the prescribed authority accordingly. A dealer and its partners are jointly and severally responsible to pay the tax assessed on the dealer. But there is no provision expressly empowering the assessing authority to assess a dissolved firm in respect of its turnover before its dissolution. The question is whether such a power can be gathered by necessary implication from the other provisions of the Act.” (at page 461)

The Court went on to say :

“Though under the partnership law a firm is not a legal entity but only consists of individual partners for the time being, for tax law, income-tax as well as sales-tax, it is a legal entity. If that be so, on dissolution, the firm ceases to be a legal entity. Thereafter, on principle, unless there is a statutory provision permitting the assessment of a dissolved firm, there is no longer any scope for assessing the firm which ceased to have a legal existence. As in the present case, admittedly, the firm was dissolved before the order of assessment was made, the said order was bad.” (at page 462)

The Court went on to consider various High Court decisions and ultimately concluded as follows :-

“Strong reliance was placed upon two judgments of this Court. This Court in C.A. Abraham v. Income-tax Officer, Kottayam, speaking through Shah, J., held that S. 44 of the Income-tax Act set up a machinery for assessing the tax liability of firms which have discontinued their business. This was followed by this Court again in Commissioner of Income-tax, Madras v. S.V. AngidiChettiar. These two decisions are of no help to the Revenue in the present case. Indeed, in a sense they are against it. The Income-tax Act contains an express provision for assessing a dissolved firm. Indeed, but for that provision no assessment could be made under that Act on dissolved firms.

For the foregoing reasons we hold that the High Court was right in holding that the assessment order on the dissolved firm could not be supported under the provisions of the Act. The High Court has given a correct answer to the question propounded for its decision.” (at page 464)

21. This judgment is a complete answer to the contention of learned counsel for the revenue inasmuch as on a parity of reasoning, sales tax is not a personal tax but a tax on the sale of goods. Nevertheless, this Court held that in the absence of any machinery provisions to assess and collect sales tax from a deceased person - in that case it was a dissolved partnership firm - all proceedings against such deceased person/dissolved firm abate. The aforesaid judgment has been followed by this Court in *Khushi Ram Behari Lal & Co. v. Assessing Authority, Sangrur*, (1967) 19 STC 381 and in *Additional Tahsildar, Raipur v. Gendalal*, (1968) 21 STC 263.

11. On the basis of above, the applicant has submitted that their activities are not in relation to any business or commercial activities and therefore, the Applicant will not fall within the definition of term “supply” as defined in Section 7 of CGST Act, 2017 and that therefore on the basis of the above, they are entitled to succeed in the application filed before Authorities of Advance Ruling.

DISCUSSION & FINDINGS:

12. We have considered the submissions made by the applicant in their application for advance ruling, additional submissions (received by email on 24.08.2020) as well as the arguments/discussions made by their representative Shri Jigar Shah, Advocate at the time of personal hearing. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

13. 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.

14. As per the submission of the applicant, they were established under the provisions of Gujarat Industrial Development Act, 1962 (hereinafter referred as 'the Act') by the State Government of Gujarat for the purpose of securing orderly establishment and organisation of industries in industrial areas and industrial estates in the State of Gujarat and establishing commercial centers in connection with the establishment and organisation of such industries and the GID Act and Gujarat Industrial Development Rules, 1962 (hereinafter referred as the 'said Rules') govern the functioning of the Applicant; that after the establishment of the Applicant, various areas in Gujarat where industries were clustered were declared as GIDC zones and new industrial zones were also created and plots of land were allotted to willing industries (hereinafter referred to as "plot holders" or "allottees") on very economical terms so that overall industrial development could take place in a structured and planned manner and the Applicant also develops and provides infrastructure facilities like roads, sustained water supply, drainage etc. within the industrial areas or estates and the maintenance and upgradation of the existing infrastructure is also a primary responsibility of the Applicant, in view of section 37(1) of the Act. The applicant has also stated that Section 14(d) of the Act, empowers the applicant to make available buildings on hire or sale to industrialists or persons intending to start industrial undertakings or commercial establishments or both the industrial undertakings and commercial establishments; that the applicant and plot holder have lessor - lessee relationship and annual rent is collected by the applicant from the plot holders; that the lease agreement between the applicant and allottees is generally for 99 years (long term lease); that various financial institutions provide finance on the plots considering the allottees as deemed owners on account of long term lease; that the common road, street lights and other amenities are the property of applicant and are maintained by the Applicant for the allottees; that every year the applicant incurs expenditure to maintain the common facilities such as road, streetlights, water supply etc. and collects maintenance charges from plot holders on annual basis depending upon the size of plot and levy for the maintenance charges is collected in next year on the basis of actual expenditure incurred by the applicant during the preceding year. The applicant has stated that they earn income on the following activities: -

- Premium price on lease of plots,
- Sale of tender forms,
- Recovery of fines from contractors and others,
- Non Utilisation Penalty
- Hire charges of tools and plants,
- Annual rent of the land leased out by the Applicant,
- Forfeiture of Deposits,
- Scrutiny Fees,
- Service charges,
- Rent of buildings,
- Sale of grass,
- Water charges,
- NAA Charges,
- Sundries - Administrative charges, Agency Charges, Development charges, Drainage cess, Water and Drainage Connection Fees, Sub-Letting Fees, Sub-Division Fees, Amalgamation Fees, Collateral Charges, Penal interest, Interest on delayed payment of revenue charges, Plan Approval Fees, Right of Usage Charges, Grants and Subsidies from Government, Profit on sale of assets etc.
- Transfer fee,
- Dividend Profit,

- Interest received/accrued – On Bank Fixed Deposits, Interest on deposit with Companies, Interest on plot/shed/housing quarters, Interest on investment and other deposits, Interest sundries
- Income Related Expenditure – Service Charges (Maintenance and Repair Expenditure for Roads, Buildings, Street Lights etc), Water charges (maintenance expenditure on water supply), NA Charges Income

The applicant has also stated that they have been recognized as a Charitable Institution under Section 12AA of the Income Tax Act, 1962 and this Advance Ruling application seeks determination of the issue that whether facilities provided by the applicant to the plot holders in terms of provisions of GIDC Act, 1962 amounts to supply under Section 7 of the Central Goods and Services Act, 2017. The applicant has the following question seeking Advance Ruling on the same:

“Whether various activities carried out by the Applicant to the plot holders in terms of provisions of GIDC Act, 1962 and charges collected for the same as may be notified from time to time amounts to supply under Section 7 of the Central Goods and Services Act, 2017 (‘CGST Act’)?”

15. We also find that the applicant has referred to Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 which grants conditional/unconditional exemption to various types of services falling under various sub-headings and have stated that they are exempted from payment of GST by virtue of Entry No.4 of the aforesaid notification as they are a Governmental Authority. However, they have not clarified on what grounds they would be covered under ‘Governmental Authority. Therefore, we feel it necessary to go into the provisions of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, especially Entry No.4 of the said notification and find out whether or not it is applicable to the applicant. The same reads as under:

Sr. No.	Type of services	Classification	Rate of GST	Conditions
04.	Services by Central Government, State Government, Union territory, local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.	Chapter 99	NIL	NIL

We also find that the said Notification was amended vide Notification No.14/2018-Central Tax(Rate) dated 26.07.2018 (effective from 27.07.2018) vide which certain amendments were made in Entry No.4 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 which reads as under:

(a) against serial number 4, in the entry in column (3), the words “Central Government, State Government, Union territory, local authority or” shall be omitted;

After the said amendment, Entry No.4 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 (effective from 27.07.2018) reads as under:

Sr. No.	Type of services	Classification	Rate of GST	Conditions
04.	Services by governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.	Chapter 99	NIL	NIL

15.1. On going through the above provisions, we find that the aforementioned exemptions are available only to Central Government, State Government, Union Territory, Local authority or Governmental Authority (upto 26.07.2018) and Governmental Authority only(effective from 27.07.2018) in respect of the services provided by them by way of any function entrusted to a municipality under Article 243W of the Constitution. Therefore, we are required to find out as to whether Gujarat Industrial Development Corporation is covered under the definitions of Central Government, State Government, Union Territory, Local authority or Governmental Authority.

15.2 We find that the Gujarat Industrial Development Corporation has come into existence by virtue of Gujarat Industrial Development Act, 1962 of the Government of Gujarat (Gujarat Act No.XXIII of 1962). Some of the important Sections of the said Act read as under:

Section-1:

- (1) This Act shall be called the Gujarat Industrial Development Act, 1962.*
- (2) It extends to the whole of the State of Gujarat.*
- (3) It shall come into force at once.*

Section-3: *(1)For the purpose of securing and assisting in the rapid and orderly establishment and organization of industries in industrial areas and industrial estates in the State of Gujarat (and for the purpose of establishing commercial centres in connection with the establishment and organization of such industries), there shall be established by the State Government by notification in the Official Gazette, a corporation by the name of Gujarat Industrial Development Corporation.*

Section-4: *(1) The Corporation shall consist of the following (twelve) (Directors), that is to say-*

- (a) (Three) official (Directors) nominated by the State Government of whom one shall be the Financial Adviser to the Corporation;*
- (b) One(Director) nominated by the State Electricity Board constituted under the Electricity(Supply) Act, 1948;*
- (c) One(Director) nominated by the Gujarat Housing Board constituted under the Gujarat Housing Board Act, 1961;*
- (d) 6(six), 3(Directors)nominated by the State Government from amongst persons appearing to it either to be qualified by reason of experience of, and capability in, industry or trade or finance or to be suitable to represent the interest of persons engaged or employed therein; and”*
- (e) The (Managing Director)of the Corporation, ex-officio, who shall also be the Secretary of the Corporation.*

(2) The State Government shall appoint one of the (Directors) of the Corporation to be chairman of the Corporation and may appoint one of the other (Directors) as Vice-Chairman.

Section-12: *The Corporation shall appoint (Managing Director), and a Chief Accounts officer of the Corporation.*

Section 14 lists out the general powers entrusted to the Applicant, which includes provision of amenities and common facilities in industrial estates, commercial centres and industrial areas and construction and maintenance of buildings, amenities and common facilities. The amenities include road, supply of water or electricity, street lighting, drainage, sewerage, conservancy and such other convenience as the State Government may specify.

Sub-section (3) of Section 23 states that the Applicant shall not utilize the funds as mentioned in sub-section (1) of Section 23 for any purpose other than that for which it was constituted, without previous approval of the State Government.

Section 26 states that the accounts of the Applicant shall be audited by an auditor appointed by the State Government, in consultation with the Comptroller & Auditor General of India.

Sub-section (4) of Section 26 states that the State Government shall cause the accounts of the Corporation together with the audit report thereon forwarded to it under sub-section (3) to be laid annually before the State Legislature.

15.3 Thus, it can be seen from the above, that the entire top Management of the Corporation including the Chairman, vice-Chairman, Managing Director, Chief Accounts Officer as well as the Directors of the Corporation are directly appointed by the State Government i.e. the Government of Gujarat. It can also be seen from the website of the applicant that the Managing Director as well as the Joint Managing Director are officers from the cadre of Indian Administrative Service(IAS) whereas the Executive Director is an officer belonging to the cadre of Gujarat Administrative Service (GAS). Also, on going through the various sections of the GID Act mentioned hereinabove, it appears that the said Corporation is totally governed by the State Government and functions just like any other Department of the State Government i.e. State of Gujarat. Further, on perusal of the Audit Report and Annual Accounts of Gujarat Industrial Development Corporation for the financial year 2013-14(available online), it is specifically mentioned therein at Point No.4(Related Party Disclosure) that “Gujarat Industrial Development Corporation is a wholly owned corporation of Government of Gujarat. Hence it is a state controlled enterprise as defined in ‘Para-9’ of Accounting Standard AS 18 “Related Party Disclosure” issued by the Institute of Chartered Accountants of India. Thus no disclosure is required, keeping the spirit of the accounting standard in mind.” It can therefore, be seen from the above, that Gujarat Industrial Development Corporation is nothing but a wing of the State Government i.e. the Government of Gujarat which has come into existence by virtue of the Gujarat Industrial Development Act and Rules, 1962 of the Government of Gujarat.

15.4 Here we would like to refer the following judgements which the applicant themselves have referred to in support in their submission. The same is as under:

- (i) The Hon’ble Supreme Court of India in the Applicant’s own case, **GIDC vs. CIT AIR 1997 SC 3275**, held as follows:

“9. The Gujarat Act was enacted “to make special provision for securing the orderly establishment of industries in industrial areas and industrial estates in the State of Gujarat, and to assist generally in the organisation thereof, and for that purpose to establish an Industrial Development Corporation, and for purposes connected with the matters aforesaid” as can be discerned from the preamble thereof.

*12. In this context a reference to Maharashtra Industrial Development Act, 1962, which is almost analogous to the Gujarat Act, is of some use. While examining issues relating to the validity of the Maharashtra Act a Division Bench of this Court has said in Shri Ramtanu Cooperative Housing Society Ltd. v. State of Maharashtra [1971] 1 SCR 719 . **The functions and powers of the Corporation indicates that the Corporation is acting as a wing of the State Government** in establishing industrial estates and developing industrial areas, acquiring property for those purposes, constructing building, allotting buildings, factory sheds to industrialists or industrial undertakings.....”*

- (ii) In the case of **Shri Ramtanu Cooperative Housing Society Ltd. and another vs. State of Maharashtra and Others 1970(3) Supreme Court Cases 323**, the constitutional validity of the Maharashtra Act was challenged before the Hon’ble Supreme Court on the ground that the Corporation is a trading one. Some important portions of the judgement of the Hon’ble Supreme Court stated with regard to Maharashtra Industrial Development Corporation(which is akin to the applicant) which are relevant to the issue in hand, are reproduced below:-

“....16. The petitioners contended that the Corporation was a trading one. The reasons given were..... The Corporation is established by the Act for carrying out the purposes” of the Act. The purposes of the Act are development of industries in the State. **The Corporation consists of nominees of the State Government, State Electricity Board and the Housing Board. The functions and powers of the Corporation indicate that the Corporation is acting as a wing of the State Government in establishing industrial estates and developing industrial areas, acquiring property industries.**

18.The Corporation has to provide amenities and facilities in industrial estates and industrial areas. Amenities of road, electricity, sewerage and other facilities in industrial estates and industrial areas are within the programme of work of the Corporation. The fund A budget is prepared showing the estimated receipts and expenditure. **The accounts of the Corporation are audited by an auditor appointed by the State Government. These provisions in regard to the finance of the Corporation indicate the real role of the Corporation, viz., the agency of the Government in carrying out the purpose and object of the Act which is the development of industries. If in the ultimate analysis there is excess of income over expenditure that will not establish the trading character of the Corporation. There are various departments of the Government which may have excess of income over expenditure.**

15.5. As can be seen from the facts of the aforementioned judgements, a reference has been made therein to *Maharashtra Industrial Development Act, 1962*, (which is almost analogous to the *Gujarat Act*) in a judgement of the Apex Court in the case of the *Gujarat Industrial Development Corporation in the case of Shri Ramtanu Cooperative Housing Society Ltd. v. State of Maharashtra* [1971] 1 SCR 719, while referring to the *Maharashtra Industrial Development Corporation* stated that ‘*the functions and powers of the Corporation indicates that the Corporation is acting as a wing of the State Government in establishing industrial estates and developing industrial areas, acquiring property for those purposes, constructing building, allotting buildings, factory sheds to industrialists or industrial undertakings.....*’. Thus, it specifically states that the Corporation is acting as a wing of the State Government. Similarly, *Gujarat Industrial Development Corporation* which is similar to the *Maharashtra Industrial Development Corporation* and has been created by virtue of the *Gujarat Industrial Development Act* is also a wing of the Government of Gujarat. We, therefore, need to refer to the meaning of ‘wing’ as per the dictionary. As per dictionary, the meaning of ‘wing’ is as under:

- (a) In Architectural terms, ‘wing’ is a part of a large building, especially one that projects from the main part.
- (b) In political terms, ‘wing’ is a group within a political party or other organization having particular views or a particular function.
- (c) In military terms, ‘wing’ is the right or left flank of the main body of a battle formation.

On going through the above, we find that in each and every aspect, the meaning of ‘wing’ means a ‘part’. While referring to the meaning of ‘part’ we find that it means ‘*an amount or section which, when combined with others, makes up the whole of something*’. Thus a part is something essential to make up the whole of something. In the instant case, we can say that *Gujarat Industrial Development Corporation* is a part of the Government of Gujarat. Further, while referring to the aforementioned judgements, we find that in reference to the *Maharashtra Industrial Development Corporation*, the Hon’ble Apex Court has mentioned thus, “**the accounts of the Corporation are audited by an auditor appointed by the State Government. These provisions in regard to the finance of the Corporation indicate the real role of the Corporation, viz., the agency of the Government in carrying out the purpose and object of the Act**

which is the development of industries. If in the ultimate analysis there is excess of income over expenditure that will not establish the trading character of the Corporation. There are various departments of the Government which may have excess of income over expenditure. In this portion of the judgement, it is specifically mentioned that the corporation is the agency of the Government in carrying out the purpose and object of the Act which is the development of industries. The Corporation has also been compared to just another department of the Government. Since, the function performed by Gujarat Industrial Development Corporation under Gujarat Industrial Development Act is similar to the role performed by Maharashtra Industrial Development Corporation under Maharashtra Industrial Development Act, the ratio laid down in the aforementioned judgements is squarely applicable to the applicant in the instant case. In view of the above, It can be construed that the said Corporation being a wing of the Government of Gujarat and an agency of the Government in carrying out the purpose and object of development of industries is just like any other Department of the Government of Gujarat and will fall under the definition of State Government i.e. Government of Gujarat. Therefore, in view of the facts mentioned above, we conclude that Gujarat Industrial Development Corporation falls under the category of 'State Government' and not a Governmental Authority as stated by the applicant.

16. Further, based on the submission of the applicant, we are required to decide as to whether the various activities carried out by the Applicant to the plot holders in terms of provisions of GID Act, 1962 and charges collected for the same amounts to supply under Section 7 of the Central Goods and Services Act, 2017 ('CGST Act'). So, to begin with, we need to go through the definition of 'Supply' as appearing in the CGST Act, 2017.

"7. Scope of supply:(1) For the purposes of this Act, the expression "supply" includes—
(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
(b) import of services for consideration whether or not in the course or furtherance of business; and
(c) the activities specified in Schedule I, made or agreed to be made without a consideration;

(1A) " where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II "

(2) Notwithstanding anything contained in sub-section (1),—
(a) activities or transactions specified in Schedule III; or
(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1), 1(A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—
(a) a supply of goods and not as a supply of services; or
(b) a supply of services and not as a supply of goods."

16.1 On going through the above provisions, we find that the supply of goods/services provided by the applicant are covered in sub-sections 1 and 1(A) above, since as per their submission itself, they are involved in sale, transfer, rental, lease, etc. and are earning income from provision/supply of various services/goods as listed in para-14 above. However, the second part of the said provision specifically states that the aforementioned supply of goods and services should be made or agreed to be made for a consideration by a person **in the course or furtherance of business**. It can therefore be seen

from the above that supply would include supply of goods or services or both in all the forms, made by a person in course or furtherance of business for consideration. Thus, the primary requirement under Section 7(1)(a) is that all forms of supply of goods or services or both mentioned in the section should be **in the course or furtherance of business** and to qualify to be supply under Section 7(1)(a) of CGST Act, 2017, the said phrase 'in the course or furtherance of business' will have to be satisfied. Although the phrase 'in the course of furtherance of business' is not defined in the Act, the term 'business' has been defined under Section 2(17) of the CGST Act, 2017 which reads as under:-

“(17) “business” includes—

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;*
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);*
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;*
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;*
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;*
- (f) admission, for a consideration, of persons to any premises;*
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;*
- (h) activities of a race club including by way of totalisator or a license to bookmaker or activities of a licensed bookmaker in such club; and*
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;”*

16.2 The term "business" as defined under sub-clause (a) of Section 2(17) of the Act includes trade, commerce, manufacture, vocation, profession **as well as any other similar activity whether or not it is for a pecuniary benefit** which means to state that the aforementioned activities would be covered under the term 'business' irrespective of the fact as to whether it is for a pecuniary benefit or otherwise. A transaction which is incidental or ancillary to sub-clause (a) falls under the scope of sub-clause (b) of Section 2(17) of the CGST Act. Similarly, an isolated transaction which is in nature of trade, commerce, manufacture, profession, vocation or any other similar activity is covered under sub-clause (c) of Section 2(17). Sub-clauses (d) to (h) deal with special situations which otherwise may not have been considered as business. However, there is a provision at (i) above which states “any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities” which means that 'business includes any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities'. As discussed earlier, Gujarat Industrial Development Corporation falls under the category of State Government and is hence a public authority. Hence the functions that they are engaged in are undoubtedly undertaken as public authorities only. Therefore, the clause (i) of Section 2(17) covers the activities of the applicant and the said clause read with sub-sections(1) and 1(A) of Section 7 of the CGST Act, 2017 would indicate that the activities of the applicant would definitely amount to supply. However, at the same time, there is another provision under Sub-section(2) of Section 7 under the 'Scope of Supply' which states as under:

(2) Notwithstanding anything contained in sub-section (1),—

- (a) activities or transactions specified in Schedule III; or**
 - (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,**
- shall be treated neither as a supply of goods nor a supply of services.**

16.3 It can therefore, be seen from the above, that activities or transactions undertaken by the entities in 2(b) above shall be treated as neither a supply of goods nor a supply of services subject to the fact that they are notified by the Government on the recommendations of the Council. In this regard, and also as discussed earlier, there is a provision i.e. Entry No.4 of Notification No.12/2017-Central Tax(Rate) which exempts supply of services by Central Government, State Government, Union territory, Local authority or Governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution(upto 26.07.2018) and exempts Governmental Authority only effective from 27.07.2018. Since, the applicant falls under the category of State Government as discussed earlier, the said exemption would be available to the applicant if the services supplied by them is by way of any activity in relation to any function entrusted to a municipality under Article 243W of the Constitution of India. We are therefore required to verify whether the services provided by the applicant are by way of any activity in relation to any function entrusted to a municipality under Article 243W of the Constitution of India. Schedule XII of the Constitution of India, lists out the following functions to be performed by the municipalities:

TWELFTH SCHEDULE

(Article 243W)

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.*

16.4 As per the submission of the applicant, Gujarat Industrial Development Corporation was established under the provisions of Gujarat Industrial Development Act, 1962 by the State Government of Gujarat for the purpose of securing orderly establishment and organisation of industries in industrial areas and industrial estates in the State of Gujarat and establishing commercial centres in connection with the establishment and organisation of such industries and the GID Act and Gujarat Industrial Development Rules, 1962 govern the functioning of the Applicant. However, on going through the aforementioned list of functions entrusted to the municipality, we find that none of the entries pertain to the establishment or development of industries. As per the submission of the applicant, the activity carried out by them pertains to planning for economic development. It is observed that Sr.No.3 of the list states 'Planning for economic and social development'. However, on going through the said entry, we find that it cannot be construed to pertain to establishment, development or organisation of industries since, establishment,

organisation and development of industries, cannot, by any stretch of imagination, be a function entrusted to a municipality or cannot be covered under the list of functions to be carried out by a municipality. However, at the same time, upliftment of oppressed people or backward classes such as Scheduled Castes, Schedule Tribes, Adivasis etc. (falling under the jurisdiction of the municipality) by providing them proper shelters, easy loans for business, encourage their children to study by giving them scholarships etc. could certainly be one of the functions of a municipality and would be covered under the head 'planning for economic and social development'. We do not find the said entry to pertain, in anyway, to the establishment of industries or industrial development and the applicant appears to have interpreted the said entry as per his whims and fancies to suit his contention. Further, there are many means to achieve economic development of a state/country i.e. construction of shopping malls, hospitals, schools, roads, highways, tunnels, construction of residential and commercial buildings, expansion of railways, construction of new Railway stations and new airports, etc. which would create a lot of jobs, thus, increasing employment opportunities, reducing unemployment and usher in economic development in the long run. Similarly, effective and long term policies of the Government such as good monetary and fiscal policies, regulation of financial institutions, trade and tax policies, programs that provide infrastructure and services such as highways, parks, crime prevention, good and quality educational institutions etc. would also result in economic development and can also be covered under the head 'planning for economic and social development'. Does this mean to say that all these activities would be covered under Entry of Sr.No.3 of the above list thereby meaning that all these activities are in relation to economic development and hence are covered under the functions entrusted to a municipality under Article 243 of the Constitution of India and therefore liable to exemption from GST under the provisions of Entry No.4 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017? We, therefore, are of the opinion that unless and until there is a specific entry pertaining to the establishment or development of industries in the aforementioned list, it cannot, by any stretch of imagination, be construed that the applicant is a Corporation that has been established to carry out activities in relation to functions entrusted to the municipalities under Article 243W of the Constitution of India merely on the grounds that establishment, organisation and development of industries would lead to economic development and would thus be covered under the aforementioned Entry No.3 of the list. In view of the above facts, we conclude that the applicant namely Gujarat Industrial Development Corporation is not eligible for the exemption mentioned at Entry No.4 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017(as amended from time to time).

16.5 Although, it has been concluded that the applicant is not eligible for the exemption mentioned at Entry No.4 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017(as amended from time to time), we would like to once again refer to Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 which grants conditional/unconditional exemption to various types of services falling under various sub-headings in order to find out whether exemption under any other entry is available to the applicant or otherwise. On going through the provisions of the said notification, we find that there is another provision at Entry No.6 of the said notification which provides exemption to the services provided by a Central Government, State Government, Union Territory and Local Authority and reads as under:

Sr. No.	Type of services	Classification	Rate of GST	Conditions
06.	Services by the Central Government, State Government, Union territory or local authority excluding	Chapter 99	NIL	NIL

	<p>the following services—</p> <p>(a) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;</p> <p>(b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(c) transport of goods or passengers; or</p> <p>(d) any service, other than services covered under entries (a) to (c) above, provided to business entities.</p>			
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17. It can be seen from the above entry i.e. Entry No.6 that the services supplied by the applicant who is providing or supplying the services as a public authority and falling under the category of ‘State Government’ as discussed earlier, would be covered under item(d) above which provides that “any service, other than services covered under entries (a) to (c) above, provided to business entities” would be exempted from GST. It is seen that the services supplied/provided by the applicant is to the various industries located in the Industrial area. All the industries as we know, are undoubtedly business entities i.e. entities built or created for the purpose of carrying on business only with the motive of earning profit and are covered under the definition of business as defined in Section 2(17) of the CGST Act, 2017. We find that as per item(d) above, exemption is not available to the services provided by the Central Government, **State Government**, Union territory or local authority to business entities. Therefore, in view of the item(d) of Entry No.6 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 (as amended from time to time) no exemption will be available to the applicant. Hence, in view of the above, it can be concluded that the various activities carried out by the Applicant to the plot holders in terms of provisions of GIDC Act, 1962 and charges collected for the same as may be notified from time to time amounts to supply under Section 7 of the Central Goods and Services Act, 2017 (‘CGST Act’) and are liable to tax under GST.

18. We also find that the applicant has given a lengthy submission highlighting the various functions carried out by them under various sections of the Gujarat Industrial Development Act, 1962 which has given us an in depth view of the functioning of the corporation. However, the reference to various sections of the aforesaid Act does not appear to have helped their cause. We also find that they have relied upon various judgements in support of their contention wherein the main aspect appears to be that entities like Maharashtra Industrial Development Corporation or Gujarat Industrial Development Corporation etc. or similar Government entities are statutory corporations discharging their sovereign function and are therefore not involved in Business, trade, commerce etc. and hence their activities are not taxable. However, these judgements are all pertaining to the pre-GST era and cannot be made applicable in the GST era simply because of the fact that terms such as ‘business’ or ‘supply’ which were not defined or covered in the Acts or Rules of the pre-GST era have found specific mention and are clearly defined under the GST Act and rules made thereunder. Moreover, it is also found that supply of goods/services by various Government entities also are liable to GST in the present era, the only exceptions being the conditional exemption given to

certain types of supply of services, some of which have been referred to in the instant case.

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

R U L I N G

Question-1: Whether various activities carried out by the Applicant to the plot holders in terms of provisions of GIDC Act, 1962 and charges collected for the same as may be notified from time to time amounts to supply under Section 7 of the Central Goods and Services Act, 2017 ('CGST Act')?"

Answer: The various activities carried out by the Applicant M/s. Gujarat Industrial Development Corporation, Gandhinagar to the plot holders in terms of provisions of GIDC Act, 1962 and charges collected for the same as may be notified from time to time amounts to supply under Section 7 of the Central Goods and Services Act, 2017 ('CGST Act') and is liable to GST for the reasons discussed hereinabove.

(SANJAY SAXENA)

MEMBER

(MOHIT AGRAWAL)

MEMBER

Place: Ahmedabad

Date: 17.09.2020.