

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/92/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/22)
Date: 17.09.2020

Name and address of the applicant	:	M/s. Anandjiwala Technical Consultancy, 9, Shivranjani Co-operative Housing Society, Shivranjani Cross road, Satellite, Ahmedabad-380015, Gujarat.
GSTIN of the applicant	:	24AALFA5796Q1ZL
Date of application	:	15.06.2020.
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.
Date of Personal Hearing	:	18.08.2020 (through video conferencing)
Present for the applicant	:	Shri Sanat C.Makhecha, C.A.

B R I E F F A C T S

The applicant M/s. Anandjiwala Technical Consultancy located at 9, Shivranjani Co-operative Housing Society, Shivranjani Cross road, Satellite, Ahmedabad-380015, Gujarat are engaged in providing Professional and Technical service. The applicant has stated that they have been allotted work of providing Project Management Consultancy Service(Heading 998339) in Relation to PM Awas Yojana by Rajkot Urban Development Authority and the service is Pure service; that Serial No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017, as amended from time to time exempts the Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union Territory or local authority or a Governmental Authority (or a Government Entity) by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution.

2. The applicant has submitted that the Governmental Authority as per Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 (as amended) is as under:

*“(zf) **“Governmental Authority”** means an authority or a board or any other body, -*

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

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

- (i) set up by an Act of Parliament or State Legislature; or*

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

3. The applicant has submitted that the Rajkot Urban Development Authority(RUDA) is constituted under Section 22 of the Gujarat Town Planning and Urban Development Act, 1976 on 30th January, 1978 with three mission slogans:

1. A better quality of life for all.
2. Integrated Development Planning Approach and
3. Current Reality.

3.1 The applicant has further stated that Section 22 of the Gujarat Town Planning and Urban Development Act, 1976 empowers the State Government to declare Urban Development Area and Authority for the work entrusted to it; that sub-clause (4) of Section 22 of the Gujarat Town Planning and Urban Development Act, 1976 specifically mentions the manner of appointment of members of the Development Authority; that Section 23 of the Gujarat Town Planning and Urban Development Act, 1976 defines the Powers and Functions of Urban Development Authority and Power and Control of RUDA is directly under the control of the State Government. The applicant has placed reliance on the following advance rulings given by different authorities which are directly applicable to the instant case and thus one may draw conclusive evidence and has submitted copies of the same:

- (a) Gujarat Authority for Advance Ruling vide order No.GUJ/GAAR/R/08/2019 dated 01.05.2019.
- (b) Rajasthan Authority for Advance Ruling vide Order No.RAJ/AAR/2018-19/13 dated 25.08.2018.
- (c) Madhya Pradesh Authority for Advance Ruling vide Order No.02/2018 dated 22.06.2018.

4. The applicant has put forward the following question seeking Advance Ruling on the same:

“Whether the Rajkot Urban Development Authority (Accredited Department of Gujarat State Government) falls under the definition of Government Authority or a Government entity as defined under para 2(zf) & 2(zfa) of the Notification No.12/2017-Central Tax(Rate) dated 28.06.2017?”

5. The applicant has provided additional submission vide letter dated 15.08.2020 which was received vide email on 20.08.2020. The applicant has stated that they are a firm engaged in providing Professional & Technical Consultancy Service particularly in relation to Civil Construction Service and they are providing only services without goods involved in it; that they have been hired by Rajkot Urban Development Authority (RUDA) for the work of Project Management consultant for preparing Estimates, Tenders, Evaluation of Tenders, consulting and supervision work of Affordable Housing (EWS-II Type) Project at Munjka RUDA Area and have submitted a copy of the Letter of Acceptance (LOA) issued by RUDA to them for the said work. They have submitted their point of view with regard to the aforementioned service supplied by them as under:

- (1) Contract for the service awarded involves supply of Service only; without involving supply of goods meaning thereby the service that they are providing to RUDA for the above work is Pure Service.
- Meaning & scope of Pure Service is duly explained in detail by CBEC vide Question no.25 of FAQ on Government Services under Sectoral Series released. Notification no. 12/2017-Central Tax (Rate) notified certain supply

exempt from Goods & Service Tax. This notification came into effect from inception i.e. 1st July 2017. Serial no. 3 of the said notification exempts **Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority [or a Government Entity] by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.**

(2) There is a Pure Service as explained in the notification & further vide FAQ released by CBEC. They have provided service to Rajkot Urban Development Authority (RUDA) and in their humble opinion & to the best of knowledge, RUDA is Governmental Authority & even Government Entity.

- Definition of Governmental Authority & Government Entity is provided at sr. no.(zf) & (zfa) of the same notification i.e. no.12/2017 respectively. Both the definitions are reproduced herein below for ready reference.

*(zf) "**Governmental Authority**" means an authority or a board or any other body, —*

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with 90 per cent or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution;

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

(i) set up by an Act of Parliament or State Legislature; or

(ii) established by any Government,

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

(3) Dissecting definition of Governmental Authority, following two main conditions emerges:

first is Authority or board or any other body

i) Must be set up by an Act of Parliament or a State Legislature; or

ii) Established by any Government

with 90 per cent or more participation by way of equity or control

second is

to carry out any function entrusted to a Municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution

Whether & how RUDA satisfies above conditions?

Yes, RUDA satisfies above conditions as under:

RUDA is an Authority, set up by an Act of State under The Gujarat Town Planning & Urban Development Act, 1976 with 100 per cent participation by government through appointed nominees. This fact can be verified from official website of RUDA under 'About Us'. Screenshots of the same are attached herewith. Appointment of the members of development authority is governed by section 22 of the Gujarat Town Planning & Urban Development Act.

- (4) As regards functions, definition refers to function entrusted to a Municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution.

Article 243W of the Constitution of India is reproduced herein below:

“243W. *Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow—*

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, Disqualifications for membership. Powers, authority and responsibilities of Municipalities, etc. THE CONSTITUTION OF INDIA (Part IXA.—The Municipalities.—Arts. 243U—243W.) 143 with respect to—

(i) the preparation of plans for economic development and social justice;
(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;
(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule”

- (5) As referred in (ii) above, functions divested are listed in Twelfth Schedule which is reproduced below for ready reference.

Appendix II

TWELFTH SCHEDULE

(Article 243W)

(Reference: Paragraph 1.1.1, Page 1)

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.

- (6) Power & Functions of RUDA are vested vide section 23(1) of The Gujarat Town Planning & Urban Development Act, 1976. The same are reproduced herein below:

(i) *To undertake the preparation of the Development Plan for the Urban Development Area.*

(ii) *To undertake the preparation of Town Planning Scheme.*

(iii) *To guide, direct and assist the local authorities and other statutory authorities functioning in Urban Development.*

(iv) *To guide, direct and assist the local authorities of authority and other statutory authorities function in Urban Development Area in the matter pertains to planning, development area in the matter pertaining to planning, development and use of Urban land.*

(v) *To control the development activities in accordance with the development plan in the Urban Development Area.*

(vi) *To execute works in connection with water supply, disposal of sewerage and provision of other services and amenities.*

(vii) *To acquire, hold manage and dispose of property movable or immovable as it may deem necessary.*

(viii) *To enter into contract, agreement or arrangement with any local Authority/Person or organization as the urban development authority may consider necessary for performing its functions.*

(ix) *To carry out any development work in the urban Development Area as may be assigned to it by the State Government from time to time.*

(x) *To exercise such other powers and performs such other function as are supplemental, incidental or consequential to any of the foregoing powers and functions or as may be directed by the State Government.*

(7) Above can be verified from Para 1.3 of Second Revised Draft Development Plan of RUDA 2031AD. Copy of the same is attached. Further, for Planning & Administration, RUDA is divided amongst two authorities; one is Rajkot Municipal Corporation (RMC) and other is Rajkot Urban Development Authority (RUDA). These authorities have their separate jurisdiction. They are responsible for their jurisdiction/territory only. In fact, RMC is responsible for the planning & development of Rajkot city whereas RUDA is responsible for the rest of designated area of Rajkot. For Planning purpose both the authorities derive powers & functions from The Gujarat Town Planning & Urban Development Act, 1976 which are same. They are divided for operation. Hence, both the authorities are same so far as Town Planning is concerned. Thus, one can easily understand that RUDA's functions are clearly aligned with Article 243W of the Constitution of India. All of its functions fall under Twelfth Schedule of Article 243W of The Constitution of India. From the foregoing discussion, it can be easily concluded that RUDA is Governmental Authority.

(8) Without prejudice to above, the definition of Government Entity is even wider than the definition of Governmental Authority. Apart from an authority or board, Government Entity covers other body also including but not limited to society, trust, corporation. Further if any of these entities' carry out function entrusted by the Central Government, State Government, Union Territory or a local authority then they are squarely eligible to be recognised as Government Entity. Thus, in their opinion, RUDA falls even in Government Entity also reason being it is set up by an Act of State Government and carry functions entrusted by State Government through The Gujarat Town Planning & Urban Development Act, 1976. Resultantly, RUDA can be recognised as Government Entity

equally. Summing up the above, RUDA is Governmental Authority & Government Entity as well.

- (9) It may please be noted that earlier Karnataka Authority for Advance Ruling in the case of M/s. V. K. Building Service Pvt. Ltd. held vide Ruling no. KAR ADRG 39/2019 that Bangalore Development Authority is Governmental Authority. Function of Bangalore Development Authority is nothing but Urban Development which are akin with those of Rajkot Urban Development Authority. Further Rajasthan Authority for Advance Ruling in the case of M/s. PDCOR Limited clearly held vide Ruling no. RAJ/AAR/2018-19/13 that Jaipur Development Authority as Governmental Authority. Tagline of Jaipur Development Authority is “JDA, where town planning is tradition”. Functions of Jaipur Development Authority are also akin with that of Rajkot Urban Development Authority. Thus, various judicial pronouncement also supports their contention. In view of the above, they requested to kindly deliver the verdict considering above brief & facts of the case. Though all the complete supporting documents were already submitted earlier, however relevant part of the same are attached for ready reference.

6. The applicant has made additional submission vide their letter dated 20.08.2020 (which was received by email on 27.08.2020) in which they have mentioned that in furtherance to their earlier submission, they wish to clarify that they have sought ruling under clause (b) of section 97(2) of the CGST Act; that to reiterate briefly what has been stated in their application & written submission is that they are engaged by Rajkot Urban Development Authority (herein after referred to as RUDA) for providing Project Management Consultancy in relation to some civil construction activity; that all the details with documentary evidence are already submitted vide their earlier submissions referred to above. They have stated that their contention is RUDA is Governmental Authority & Government Entity and that the service that they are providing to RUDA being Pure Service is exempt from tax by virtue of Notification no.12/2017; that Governmental Authority or Government Entity is not defined anywhere in the Act but Notification no.12/2017 clearly defines both these authorities. The applicant has concluded his submission by stating that the question before the Hon’ble AAR is whether RUDA is Governmental Authority or Government Entity consequently Pure Service that they are providing to them is Exempt from tax or not by virtue of Notification no.12/2017. In view of the above submissions of the applicant, the question asked by them seeking Advance Ruling reads as under:

“Whether the Rajkot Urban Development Authority (Accredited Department of Gujarat State Government) falls under the definition of Government Authority or a Government entity as defined under para 2(zf) & 2(zfa) of the Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 and consequently Pure Service which the applicant is providing to them is exempt from tax or not by virtue of Notification No.12/2017?”

DISCUSSION & FINDINGS:

7. We have considered the submissions made by the applicant in their application for advance ruling, their additional submissions dated 15.08.2020 and 20.08.2020 as well as the arguments/discussions made by their representative Shri Sanat C.Makhecha, C.A. at the time of personal hearing. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

8. 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.

9. Based on the submission of the applicant as well as the arguments/discussions made by the representative of the applicant during the course of personal hearing, we find that the issue to be decided is whether the Rajkot Urban Development Authority (Accredited Department of Gujarat State Government) falls under the definition of Government Authority or a Government entity as defined under para 2(zf) & 2(zfa) of the Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 and consequently Pure Service which the applicant is providing to them is exempt from tax or not by virtue of Notification No.12/2017. But before examining the above issue, we are required to find out the correct classification of the services provided by the applicant and the GST liability on the same for which we will be required to go through the Notification No.11/2017-Central Tax(Rate) dated 28.06.2017 which contains the Chapter, Section, Heading, Group or Service Code of classification of services along with their GST rates. On going through the said notification, we find that Professional and Technical service provided by the applicant are classifiable under Heading 9983 of Notification No.11/2017-Central Tax(Rate) dated 28.06.2017 (which appears at Entry No.21 of the said notification) on which GST liability is 18%(9% SGST + 9% CGST) and reads as under:

Sr. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Service	Rate (percent)	Condition
(1)	(2)	(3)	(4)	(5)
21	Heading 9983 (Other professional, technical and business services)	(i) Selling of space for advertisement in print media.	2.5	--
		(ii) Other professional, technical and business services other than (i) above.	9	--

10. Thereafter, we are required to refer to the relevant portion of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 (as amended by Notification No.02/2018-Central Tax(Rate) dated 25.01.2018) referred to by the applicant which reads as under:

Sr. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Service	Rate (percent)	Condition
(1)	(2)	(3)	(4)	(5)
3.	Chapter 99	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.	NIL	NIL

11. As can be seen from the above, Entry No.3 of aforementioned Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 exempts Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental Authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat

under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution. Hence, three conditions are required to be satisfied for a service to be covered under subject entry of the notification which is as below:

- (1) It must be pure service not involving any supply of goods.
- (2) It must be provided to the Central Government or State Government or Union Territory or Local Authority or a Governmental Authority or a Government Entity.
- (3) It must be an activity in relation to any function entrusted to a
 - (i) Panchayat under Article 243G of the Constitution; or
 - (ii) Municipality under Article 243W of the Constitution.

12. On going through the above, it can be seen that the first condition to be verified is as to whether the services supplied by the applicant are pure services or otherwise. We, therefore, are of the opinion that if and only if, the first condition is satisfied, only then we will be required to look into the applicability of the other two conditions i.e. whether the other two conditions are also satisfied as per the current contract/agreement made by the applicant with Rajkot Urban Development Authority. So, the first condition to be discussed is as to what is meant by pure service? Since **‘pure service’** has not been defined under GST, the same can be construed in general terms as any supply which is either deemed as services under Schedule II of CGST Act or which are not covered under the definition of goods shall be categorized as pure services. However, as per the notification, works contract services or other composite supplies involving supply of any goods are not covered in entry no.3 of aforementioned notification. In other words, if a person provides only service to any person without involvement of supply of goods along with supply of services, then the same would be termed as supply of pure service. Although the applicant has submitted that they are providing Professional and Technical service and have been allotted work of providing Project Management Consultancy Service(Heading 998339) in Relation to PM Awas Yojana by Rajkot Urban Development Authority and the service is Pure service and that Serial No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017, as amended from time to time exempts the Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union Territory or local authority or a Governmental Authority (or a Government Entity) by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution, they have only submitted the letter of acceptance dated 19.02.2019 issued to them by the Rajkot Urban Development Authority. The subject portion of the letter mentions that it pertains to the work of Project management consultant(PMC) for preparing Estimates, Tenders, Evaluation of Tenders, consulting and supervision work of Affordable Housing (EWS-II type) Project (Plot No.80 in TP-17) at Munjaka in RUDA area(Group-B). The letter also speaks about entering into an agreement for the said work within 10 days of receipt of the said letter which means that the applicant must have already entered into an agreement with the Rajkot Urban Development Authority for the said work. However, although the representative was asked to submit a copy of the aforementioned agreement, the same has not been submitted so far. We find that the applicant has devoted a major part of his submissions trying to prove or to establish that the Rajkot Urban Development Authority is covered under the definitions of Governmental Authority or Government Entity. We find that they have also referred to the Gujarat Town Planning & Urban Development Act, 1976, Question no.25 of FAQ on Government Services under Sectoral Series released by CBEC, list of the functions entrusted to a municipality under Article 243 W of the Constitution of India etc. However, they have hardly devoted any space

in their submission to prove the fact that the services supplied by them to the Rajkot Urban Development Authority are pure. They have not even submitted the copy of the agreement made by them with the Rajkot Urban Development Authority with respect to the aforementioned service supplied by them. Here, we would like to emphasise that the primary condition for an applicant to be eligible for the exemption by virtue of Entry No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 (as amended from time to time) is that the services supplied by them are **pure** i.e. services supplied/provided without any supply of goods and excluding Works Contract service or other composite supplies involving supply of any goods, and only if it is proved or established that the services provided by them are pure, will the applicability of the other conditions i.e. whether the recipient of the services is a Governmental Authority or Government Entity, whether the services supplied are in relation to functions entrusted to a municipality or a panchayat under Articles 243G or 243W of the Constitution etc. will be looked into. However, under the above circumstances, it would not be possible for us to decide whether the services supplied by the applicant are pure or otherwise merely on the basis of the letter of acceptance submitted by them. Further, in absence of the aforementioned agreement, and without going through the terms and conditions of the agreement, it would not be possible for us to decide whether the Services provided by the applicant are Pure or are a supply of services along with supply of goods since the work is connected to the project of Affordable Housing and could also involve Works Contract service. In view of the facts mentioned above, we are of the opinion that in absence of the relevant documents, we cannot take a decision in this regard.

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

R U L I N G

Question: “Whether the Rajkot Urban Development Authority (Accredited Department of Gujarat State Government) falls under the definition of Government Authority or a Government entity as defined under para 2(zf) & 2(zfa) of the Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 and consequently Pure Service which the applicant is providing to them is exempt from tax or not by virtue of Notification No.12/2017?”

Answer: . In absence of submission of proper documents with regard to the services provided by the applicant M/s. Anandjiwala Technical Consultancy, Ahmedabad to the Rajkot Urban Development Authority, it would not be possible for us to decide as to whether the services provided by the applicant are pure or otherwise or whether the aforementioned exemption from GST is available to them or otherwise for the reasons discussed hereinabove

(SANJAY SAXENA)

MEMBER

(MOHIT AGRAWAL)

MEMBER

Place: Ahmedabad

Date: 17.09.2020.