

**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/94/2020  
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/08)  
Date: 17.09.2020

Name and address of the applicant	:	M/s. INI Design Studio Pvt. Ltd., 7 <sup>th</sup> floor, 71/72, Titanium Corporate Road, Satellite, Ahmedabad, Gujarat- 380015.
GSTIN of the applicant	:	24AADCB0953H1Z0
Date of application	:	14.02.2020.
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. (e) Determination of the liability to pay tax on any goods or services or both.
Date of Personal Hearing	:	18.08.2020 (through video conferencing)
Present for the applicant	:	Shri Priyam R Shah

### **BRIEF FACTS**

The applicant M/s. INI Design Studio pvt.ltd. located at 7<sup>th</sup> floor, 71/72, Titanium Corporate Road, Satellite, Ahmedabad-380015 are engaged in providing a wide range of professional consulting services including Architecture, Engineering (MEPF), Planning, Urban Design, Landscape, Sustainability, Research and Art, Building Design, Interior Design, Surveying, Environmental Sciences, Project Management and Project Economics. The applicant has stated that they support a diverse range of public and private sector projects at every stage, from the conceptualization and financial feasibility study to project completion and beyond and that they provide services for projects in India and internationally in Buildings, Industry, Infrastructure and Social Sectors such as Residential, Mixed-Use, Retail, Pharmaceuticals, Healthcare, Educational and Civic projects.

**2.** The applicant has submitted that their services are covered by SAC Code 99832-Architectural services, urban and land planning and landscape architectural services liable to tax at 18% (9% SGST + 9% CGST); that presently they have received work orders from various local authorities like the Surat Municipal Corporation, Ahmedabad Urban Development Authority, Pune Municipal Corporation, State Government of Maharashtra (through Executive Engineer, Public Works Division, Pune), for Government projects namely Rajkot Smart City Development Ltd. and from Government Entity namely Gujarat Technological University. The applicant has submitted the details of the project as follows:

- (i) Surat Municipal Corporation: Providing Design and Comprehensive Consultancy services from concept to completion for State-of-Art High

rise office building for Surat Municipal Corporation at T.P.S.No:6(Majura-Khatodara) FP No:235, Ring Road, Surat.

- (ii) Ahmedabad Urban Development Authority: Preparation of Design and Detailed Estimation of Town Hall at Dehgam.”
- (iii) Pune Municipal Corporation: Appointment of a Medical Consultant for Establishment of Medical College, Teaching Hospital and Nursing College for Pune Municipal Corporation at Pune.
- (iv) Rajkot Smart City Development limited:Work of Preparation of Master Plan of Green Field Areas for the Development of Green Field Area-Rajkot Smart City at Rajkot. Project Management Consultancy Work of Master Plan of Green Field Areas for the Development of Green Field Area-Rajkot Smart City at Rajkot.
- (v) Executive Engineer, Public Works(East)Division, Pune: Design and PMC Services for Baramati Hospital.
- (vi) Gujarat Technological University: Complete and comprehensive Consultancy Services for Architectural design/engineering design, working drawing. Structural analysis and drawings, electrical drawings and details of all services for phase wise construction of building for proposed project.

**3.** As regards the issue of taxability, the applicant has referred to Section 2(108) of the CGST Act, 2017 which reads as “*taxable supply*” means a supply of goods or services or both which is leviable to tax under this Act.”. The applicant has stated that on going through all the above contracts, it can be seen that the services provided by the applicant are in the nature of professional technical services as mentioned earlier covered by SAC code 9983, that all the contracts are with local authority or with state government and are pure services contracts, meaning thereby, it does not have any supply of any goods/material from the part of service provider. The applicant has defined the Pure services as any supply which is either deemed as services under Schedule II of the CGST Act or which is not covered under the definition of goods shall be categorized as pure services. The applicant has stated that the services provided by them fall under Entry No.21 of Notification No.11/2017-Central Tax(Rate) dated 28.06.2017 and is liable to GST at 18%, however when covered under Entry No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017, the said service is liable to tax at NIL rate. Entry No.21 of Notification No.11/2017-Central Tax(Rate) dated 28.06.2017 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 (and serial No.38 below).	9	---

Entry No.3 of Notification No.12/2017-Central Tax(Rate) appears as under:

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

<b>3.</b>	<b>Chapter 99</b>	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.	<b>NIL</b>	<b>NIL</b>
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**4.** The applicant has submitted that if pure services are rendered to private organization, rate of tax is 18% but when pure services are rendered to any of the authorities mentioned in Entry No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017, these services are covered under the said exemption notification wherein the following aspects are needed to be examined:

- (i) Whether the said consultancy services can be considered as ‘pure services’ or not.
- (ii) Whether the service receiver i.e. Surat Municipal Corporation, Ahmedabad Urban Development Authority, Pune Municipal Corporation, Executive Engineer, Public Works Division, Pune and Rajkot Smart City Development ltd. are covered under any of the categories i.e. ‘Central Government’ or ‘State Government’ or ‘Union Territory’ or ‘Local Authority’ or a ‘Governmental Authority’ or a ‘Government Entity’.
- (iii) Whether the said consultancy services is in relation to any function entrusted to a Municipality under Article 243W of the Constitution of India, read with twelfth schedule?

**5.** The applicant has submitted that as per Notification No.31/2017-Central Tax (Rate) dated 13.10.2017, which has been issued to modify Notification No.12/2017, defines as:

*(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 90per 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.”.*

Article 243W in the Constitution of India 1949

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

- (a) The Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to:
  - (i) The preparation of plans for economic development and social justice.

- (ii) The performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule.

(b) The Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

(c) The Twelfth Schedule reads as under:

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

**6.** The applicant has submitted that from the above Entry No.3 of Notification No.12/2017 and definitions read with Article 243W and twelfth schedule, we can say that:

- Pure Services.
- Rendered to Central Government or 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.
- Said activity should be covered within list prescribed in twelfth schedule.

The applicant has submitted that as per their understanding, if all these conditions are satisfied, then pure services can be covered by Entry No.3 of Notification No.12/2017, liable to tax at Nil rate.

**7.** From the above background and other facts, the applicant wants to know the rate of tax on different services provided to different authorities and submitted the details as under:

- (1) The applicant's services to Surat Municipal Corporation is stated to be design consultancy for "Providing Design and Comprehensive Consultancy Services (including but not limited to Conceptual design, Architectural services, Estimate, Specifications, Tender preparation, Civil Structural designs and all other engineering services like Electrical, HVAC etc., Sanitary system, Fire safety system, Communication system, LAN, Access control, Surveillance Security system, Power backup, Signage, Interiors and Landscaping of campus for all works) from concept to completion for State-of-Art High Rise Office Building for Surat Municipal Corporation at T.P.S.No.6 (Majura-Khatodara), F.P.No.235, Ring Road, Surat. The

applicant has stated that they seek a ruling on rate of tax of pure services, which are rendered to municipality for work which is in the nature of administrative building and according to their understanding, it is not covered under any activity in relation to any function entrusted to Municipality under Article 243W of the Constitution read with 12<sup>th</sup> Schedule of Entry 3 of Notification No.12/2017 dated 28.06.2017 and Gujarat State Notification No.12/2017-ST(Rate) dated 28.06.2017.

- (2) The applicant's services to Ahmedabad Urban Development Authority, stated to be design consultant(Pure services) for various projects like (a)Preparation of design and detailed estimation of Town hall at Dehgam.(b) Preparation of Local Area Plan for Transit Oriented Zone(TOZ), can be covered by Entry No.3 of Notification No.12/2017 dated 28.06.2017 and Gujarat State Notification No.12/2017-ST(Rate) dated 28.06.2017.
- (3) The applicant's services to Executive Engineer, Public Works(East) Division, Pune, State of Maharashtra and local municipality for "Planning & Designing of Medical college, Teaching hospital and Nursing college for providing services like feasibility study, master planning, Architectural, MEPF, Green Building, Interior, land scape etc., whether it can be covered by entry No.3 of Notification No.12/2017 dated 28.06.2017 and Gujarat State Notification No.12/2017-ST(Rate) dated 28.06.2017.
- (4) The applicant's services of design consultant (Pure services) for 'Preparation of MP and PMC of Green Field areas for the development of Rajkot Smart city at Rajkot under Smart City Mission (urban renewal and retrofitting program by GOI)" rendered to Rajkot Smart City Development Limited, whether it can be covered by entry No.3 of Notification No.12/2017 dated 28.06.2017 and Gujarat State Notification No.12/2017-ST(Rate) dated 28.06.2017.
- (5) The applicant's service to Executive Engineer, Public Works(East) Division, Pune for "Design and PMC Services for Baramati Hospital, whether it can be covered by entry No.3 of Notification No.12/2017 dated 28.06.2017 and Gujarat State Notification No.12/2017-ST(Rate) dated 28.06.2017.
- (6) The applicant's service to Gujarat Technological University for Architectural design/engineering design, working drawing, structural analysis and drawings, electrical drawings and details of all services for phase wise construction of building for proposed project, whether it can be covered by entry No.3 of Notification No.12/2017 dated 28.06.2017 and Gujarat State Notification No.12/2017-ST(Rate) dated 28.06.2017.

**7.1** The applicant has asked the following questions seeking Advance Ruling on the same:

- (1) *Whether Design and Comprehensive Consultancy Services from concept to completion for State-of-Art High rise office building provided to Surat Municipal Corporation covered under Entry No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017.*
- (2) *Whether Consultancy Services for preparation of design and detailed estimation of town hall at Dehgam, provided to Ahmedabad Urban Development Authority covered under Entry No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017.*
- (3) *Whether Medical and Design Consultancy Services for establishment of Medical College, Teaching Hospital and Nursing College at Pune, provided to Pune Municipal Corporation covered under Entry No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017.*

- (4) *Whether work of Preparation of Master Plan of Green Field Areas and Project Management Consultancy Work for Development of Green Field Areas provided to Rajkot Smart City Development Ltd. covered under Entry No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017.*
- (5) *Whether Consultancy Services for Architectural and Engineering design/working drawing of Baramati Hospital provided to Executive Engineer, Public Works(East) Division, Pune covered under Entry No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017.*
- (6) *Whether Consultancy service to Gujarat Technological University for Architectural design/engineering design, working drawing, Structural analysis and drawings, electrical drawings and details of all services for phase wise construction of building for proposed project can be covered under Entry No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 and Gujarat State Notification No.12/2017-ST(Rate) dated 28.06.2017.*

**8.** The applicant has given additional submission vide letter dated 05.08.2020 which is as under:

- (i) The word “Pure Services” referred in notification has nowhere been defined in the Act, Rules or notification. The Notification also does not specifically name the services which are eligible for exemption and which are excluded. However, CBEC vide FAQs on Government Services, has clarified:

Question 25: *What is the scope of ‘pure services’ mentioned in the exemption notification No.12/2017-Central Tax(Rate) dated 28.06.2017?*

Answer: *In the context of the language used in the notification, supply of services without involving any supply of goods would be treated as supply of ‘pure services’. For example, supply of manpower for cleanliness of roads, public places, architect services, consulting engineer services, advisory services, and like services provided by business entities not involving any supply of goods would be treated as supply of pure services. On the other hand, let us take the example of a governmental authority awarding the work of maintenance of street lights in a Municipal area to an agency which involves apart from maintenance, replacement of defunct lights and other spares. In this case, the scope of the services involves maintenance work and supply of goods which falls under the works contract services. The exemption is provided to services involving only supply of services and not for works contract services.*

- (ii) On careful reading of Sr.No.3 of Notification No.12/2017 dated 28.06.2017, three conditions need to be satisfied for a service to be covered under this entry of the notification so that the same can be exempted and they are:
1. It must be pure service not involving any supply of goods.
  2. It must be provided to the Central Government, State Government or Union Territory or Local Authority or a Governmental Authority or a Governmental 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.
- (iii) Please note that, out of 6 projects,
- Three projects/contracts are with Local Authority in form of Municipality – Surat Municipal Corporation, Ahmedabad Urban Development Authority and Pune Municipal Corporation.
  - One with State Government of Maharashtra, through Executive Engineer, Public Works Division, Pune.

- One for Government projects namely, Rajkot Smart City Development Ltd.
- One for Government projects namely, Gujarat Technological University.

(iv) All projects have been examined with basic conditions of notification for considering them as exempt which are detailed hereunder:

(a) Surat Municipal Corporation(Annexure B of Paper book-Pages17 to 97): Providing Design and Comprehensive Consultancy services from concept to completion for State of Art High rise office building for Surat Municipal Corporation at T.P.S.No.6(Majura-Khatodara) F.P.No:235, Ring Road, Surat."

Sr.No.	Conditions	Yes/No	Remarks
01.	Pure Service	Yes	Not covered under list of 243W of Constitution. In the case of Shri Jayesh Anilkumar Dalal, it is held that all conditions of 243W need to be satisfied for claiming pure service as exempt.
02.	Provided to the Local Authority.	Yes	
03.	Activity in relation to any function of the Municipality under Article 243W	No	

(b) Ahmedabad Urban Development Authority(Annexure C of Paper Book Page 98):Preparation of Design and Detailed Estimation of Town Hall at Dehgam.

Sr.No.	Conditions	Yes/No	Remarks
01.	Pure Service	Yes	Covered at Sr.No.13 of List. As per judgement of Consulting Engineers Group Ltd. Order dated 13.05.2020 of Andhra Pradesh Advance Ruling Authority.
02.	Provided to the Local Authority.	Yes	
03.	Activity in relation to any function of the Municipality under Article 243W	Yes	

(c) Pune Municipal Corporation: (Annexure D of Paper Book-Page 99 to 156): Appointment of a Medical Consultant for Establishment of Medical College, Teaching Hospital and Nursing College for Pune Municipal Corporation at Pune.

Sr.No.	Conditions	Yes/No	Remarks
01.	Pure Service	Yes	Covered at Sr.No.6 and 13 of List. As per judgement of Consulting Engineers Group Ltd. Order dated 13.05.2020 of Andhra Pradesh Advance Ruling Authority.
02.	Provided to the Local Authority.	Yes	
03.	Activity in relation to any function of the Municipality under Article 243W	Yes	

(d) Rajkot Smart City Development Ltd.(Annexure E of Paper Book-Page 157 to 303): Work of Preparation of Master Plan of Green Field Areas for the Development of Green Field Area-Rajkot Smart City at Rajkot; Project Management Consultancy Work of Master Plan of Green field Areas for the Development of Green Field Area-Rajkot Smart City at Rajkot."

Sr.No.	Conditions	Yes/No	Remarks
01.	Pure Service	Yes	Covered at Sr.No.1and 8 of List. As per judgement of Zigma Global Environ Solutions pvt.ltd. Order dated 05.05.2020 of Andhra Pradesh Advance Ruling Authority.
02.	Provided to the Government Entity.	Yes	
03.	Activity in relation to any function of the Municipality under Article 243W	Yes	

(e) Executive Engineer, Public Works(East)Division, Pune(Annexure F of Paper Book Page 304 to 341): Design and PMC Services for Baramati Hospital.

Sr.No.	Conditions	Yes/No	Remarks
01.	Pure Service	Yes	Covered at Sr.No.13 of List. As per judgement of Consulting Engineers Group Ltd. Order dated 13.05.2020 of Andhra Pradesh Advance Ruling Authority.
02.	Provided to the State Government.	Yes	
03.	Activity in relation to any function of the Municipality under Article 243W	Yes	

(f) Gujarat Technological University(Annexure G of Paper Book Page No.342 to 353): Complete and comprehensive Consultancy Services for Architectural design/Engineering design, Working drawing, Structural analysis and drawings, Electrical drawings and details of all services for phase wise construction of building for proposed project.

Sr.No.	Conditions	Yes/No	Remarks
01.	Pure Service	Yes	Covered by definition of Govt. Entity as per (zfa) of Notification. Covered by Sr.No.13 of List. As per judgement of Zigma Global Environ Solutions pvt.ltd. Order dated 05.05.2020 of Andhra Pradesh Advance Ruling Authority.
02.	Provided to the Government Entity.	Yes	
03.	Activity in relation to any function of the Municipality under Article 243W	Yes	

**9.** The applicant has given additional submission vide letter dated 01.09.2020(received by mail on 01.09.2020) for the following projects, as under:

1. Ahmedabad Urban Development Authority. (Annexure C of Paper Book) Page No 98

*“Preparation of Design and Detailed Estimation of Town Hall at Dehgam.”*

Sr.No.	Conditions	Yes/No	Remarks
1.	Pure Services	Yes	Covered at Sr.No.13 of list. As per judgement of Consulting Engineers Group Ltd. Order dated 13.05.2020 of Andhra Pradesh Advance Ruling Authority.
2.	Provided to Local Authority	Yes	
3.	Activity in relation to any function of Municipality under Article 243W	Yes	

**10.** The applicant has submitted that they have provided consultancy work order of AUDA, which is on page 98 of paper book, for **“Preparation of Design and Detailed Estimation of Town Hall at Dehgam.”**, as work order is one pager, hon’ble member has asked for further details to understand whether the same is covered as per list provided in twelfth schedule of constitution or not. The applicant have submitted that they have designed the project with below specifications:

1. Area Statement:

i. Plot Area – 4,526.4 Sqm

ii. Built Up Area -8,092 Sqm

iii. Parking Area: a) Basement – 2,221 Sqm; b)Surface-107 Sqm

2. Total Seating capacity = 1,295

i. Auditorium – 623

ii. Banquet – 500

iii. Library – 156

iv. Green Rooms – 16 (Change room for artists)

3. Parking area in Basement Floor can facilitate 46-4 wheelers (2221 sqm) and Surface parking can facilitate 8-4 wheelers(107 sqm)

4. Parking area is provided in basement and on ground floor

5. Auditorium seating is provided at FF & SF

6. Banquet & Dry Kitchen facility is provided at GF with toiletsand service areas



7. Food Court space is provided at FF with toilets and service areas

**11.** The applicant has further informed that the project is for 623 seater auditorium for which they are attaching permission in form D issued by AUDA dtd 09/12/2019 along with Fire safety application dtd: 08/04/2019 and permission dtd: 09/05/2019, issued by Fire and Emergency Service of Ahmedabad Municipal corporation; that as per attached plan approved by Senior Town Planner, Ahmedabad Urban Development Authority, Ahmedabad, when referred to first floorplan and second floor plan, it can be seen that stage and the chairs are drawn in both the plans, which prove that, this is town hall covered at Sr.no.13 of Twelfth Schedule under, “*promotion of cultural, educational and aesthetic aspects*”. The applicant has also referred to the Judgment of Hon’ble Bombay High court under Service Tax Act, in case of CCE & ST, Pune-III v/s B.J.Shirke Construction Technology P Ltd ., reported in 2019(25) GSTL 8(Bom)where question was whether construction of sports complex/stadium is taxable under “commercial or industrial construction services” or non-taxable services. Hon’ble high court, dismissing an appeal of department has observed that, stadium has been constructed is owned by Government and is meant for public welfare use and not for residential or commercial use - mere earmarking 1/3rd of entire area for using different sports facilities on specified rates would not make said complex/ stadium a commercial entity in its entirety. Dominant use of said complex/stadium or sports complex is not commercial and hence same is not covered under aforesaid services.

**12.** Regarding the services rendered to Rajkot Smart City Development limited, the applicant has submitted the following details:

**Rajkot Smart City Development Limited: (Annexure E of Paper Book) Page No 157 to 303:** “*Work of Preparation of Master Plan of Green Field Areas for the Development of Green Field Area – Rajkot Smart City at Rajkot;Project Management Consultancy Work Of Master Plan of Green Field Areas for the Development of Green Field Area – Rajkot Smart City at Rajkot*”

Sr.No.	Conditions	Yes/No	Remarks
1.	Pure Services	Yes	Covered at Sr.No.1 and 8 of list. As per judgement of Zigma Global Environ Solutions pvt.ltd. dated 05.05.2020 of Andhra Pradesh Advance Ruling Authority.
2.	Provided to Local Authority	Yes	
3.	Activity in relation to any function of Municipality under Article 243W	Yes	

The applicant has submitted that they have given reference of Zigma Global Environment Solutions P Ltd advance ruling judgment in their additional submission. It is in context to Tirupati Smart city corporation limited, a special purpose vehicle (SPV)created by the Government of Andhra Pradesh vide G.O.M.S. No. 258, Municipal Administration and Urban development (UBS) department dated 21.10.2016 (attached Government Order);they have referred to following website of Smart Cities Mission, of Ministry of Housing and Urban Affairs, Government of India.ref:<http://smartcities.gov.in/content/spvdatanew.php> at sr no 71, you will find name of Rajkot and details of Rajkot smart city Corporation limited., its resolutions and minutes of meeting with certificate of incorporation are available in this website, for ready reference it is attached herewith; that Rajkot Smart city corporation development limited is a Special Purpose Vehicle (SPV). which is a wholly owned company of the Rajkot Municipal Corporation. The SPV will be governed by board of directors and is answerable to Rajkot Municipal corporation; that this SPV is incorporated on 21/08/2017,copy of incorporation certificate is attached, it is mentioned that Mr. Banchhanidhi Pani, IAS Commissioner, Rajkot Municipal Corporation, was unanimously appointed as the Chairman of the Company which means that, it is working on direction and control of state government and directors are government employees, in this case equity and control both are with state government. Attached letter

dtd:01/07/2017, issued by Rajkot Municipal Corporation to the Registrar of Companies as list of subscriber to this company. The applicant also stated that from the above, it is very much clear that, condition of 90% or more participation by way of equity or control is with state government and therefore condition of both Government Authority and Government Entity are satisfied. The applicant have submitted that they have attached 1. Central Govt. Approval; 2. Main Object and RMC Letter; 3.Minutes of First Board meeting of RSCDL.

**13.** The applicant has further submitted that Judgment of Zigma Global Environ Solutions Private Limited and other cases relied upon, the findings and decisions taken by Hon'ble AAR is squarely applicable to the instant case of Rajkot Smart City Development Ltd.; that from the above it is understood that, Rajkot Smart City Development Ltd., squarely falls under the definitions of "government authority" as per explanation to clause (16) of Section 2 of the Integrated Goods and Services Tax Act, 2017; that with reference to deduction of TDS as per the provisions of Section 51 of CGST Act, and Gujarat SGST Act, for the services rendered as stated in the application, they would like to refer to Sec 51(1) of the Act read with Notification no 50/2018 Central tax dtd: 13/09/2018, which reads as under:

*(a) 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 fifty-one per cent. or more participation by way of equity or control, to carry out any function;  
(b) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);  
(c) public sector undertakings.  
Has to deduct tax at source on taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees.*

In the instant case, Rajkot Smart City Development Ltd., falls within the above notification as specified persons. As per the judgment, the Hon'ble Advance Ruling Authority of West Bengal in the following cases has taken a similar view.

1. Singh Transport
2. Mahendra Roy
3. Time Tech Waste Solutions Private Limited
4. Indrajit Singh, carrying on business under the trade name M/s Maruti Enterprise.

**14.** The applicant has further stated that they need to examine whether the service recipient is a Government authority?

(i) Whether the applicant is set up by an act of Parliament or State Legislature?  
The applicant does not fall under this category.

(ii) (a) whether it is established by any Government?  
Rajkot Smart City Development Ltd., is a Special Purpose Vehicle (SPV) created by the Government of Gujarat and the same is approved by government of India, Ministry of Corporate Affairs, approval of name is attached herewith.

(b) whether the applicant possesses 90% or more participation by the Government by way of equity or control.  
As far as the equity part is concerned, Rajkot Smart City Development Ltd., is a limited company incorporated under the companies Act, 2013, which is wholly owned company of the Rajkot Municipal Corporation, which substantiates more than 90% of participation of the Government.

With reference to 'control' wielded by the shareholders, all of the shareholders are Governmental Authorities nominated on the body of the Rajkot Smart City Development Ltd., mentioned in letter dtd:01/07/2017 issued by Rajkot Municipal Corporation.

The applicant has requested to issue speaking order against all their projects whether the same are:

- 1) taxable covered by entry 21 of Notification no 11/2017 liable for 18%tax **or**
- 2) Exempt covered by Sr no 3 of Notification No 12/2017.

**CONTENTION-AS PER THE CONCERNED OFFICER:**

**15.** The contentions of the concerned officer are reproduced hereunder in brief:

- (1) The applicant M/s. INI Design Studio pvt.ltd. is a service provider of consultancy services including Architecture, Engineering, Planning, Urban Design, Landscape etc.
- (2) As per the records available, the applicant files GSTR-3B on regular basis and so based on this, it can be decided that the activity/service is an ongoing activity.
- (3) As per Section 98(2) of the CGST Act, 2017, the applicant falls under the jurisdiction of Unit-9 of State GST and there are no questions/issues pending/decided from their office.
- (4) The applicant is providing services to Surat Municipal Corporation, Pune Municipal Corporation, Ahmedabad Urban Development Authority and Rajkot Municipal Corporation.
- (5) As per Article 243W service provided to local authority, State/Central Government or any Government entity may be called Pure Services. In 12<sup>th</sup> Schedule of Article 243W, nothing is specified about the mentioned services in application, so the confusion may have arisen whether service is pure service or not. So as per this view, the applicant may be granted for Advance Ruling.
- (6) As per the GST portal, the applicant is providing different services such as Architects services, Consulting Engineer services, Interior Decorators/Designers services and Works Contract Services.
- (7) The applicant is providing services to Surat Municipal Corporation, Pune Municipal Corporation, Ahmedabad Urban Development Authority and Rajkot Municipal Corporation and from the information available it cannot be decided whether the service provided is pure service or not.

**DISCUSSION & FINDINGS:**

**16.** We have considered the submissions made by the applicant in their application for advance ruling, additional submissions made by them dated 05.08.2020 and 01.09.2020 as well as the arguments/discussions made by their representative Shri Priyam Shah, C.A. at the time of personal hearing. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

**17.** 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.

**18.** 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 technical/consultancy services provided by the applicant to various entities such

as Surat Municipal Corporation, Ahmedabad Urban Development Authority, Pune Municipal Corporation, Rajkot Smart City Development Ltd., Executive Engineer, Public Works(East) Division, Pune, State of Maharashtra and Gujarat Technical University as per the various agreements is exempted under Entry No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 or otherwise. But before examining the same, we are required to find out the correct classification of the services provided by the applicant and the GST liability on the same for which we will be required to refer to the Notification No.11/2017-Central Tax(Rate) dated 28.06.2017 which contains the Chapter, Section and Heading of classification of services alongwith their GST rates. On going through the said notification, we find that the professional, technical and business services (other than (i) above (and Serial No.38 below) are classifiable under Heading 9983 of Notification No.11/2017-Central Tax(Rate) dated 28.06.2017 on which GST liability is 18%(9% SGST + 9% CGST) and reads as under:

Sr. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Service	Rate (percent)	Condition
(1)	(2)	(3)	(4)	(5)
21	Heading 9983 (Other Professional, technical and business services)	(i)Selling of space for advertisement in print media.	2.5	--
		<b>(ii)Other professional, technical and business services other than (i) above (and serial No.38 below).</b>	9	---

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

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

**19.1** As can be seen from the above, Entry No.3 of aforementioned Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 exempts Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental Authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution. Hence, three conditions are required to be satisfied for a service to be covered under subject entry of the notification which is as below:

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

Government Entity.

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

**19.2** So, the first condition to be discussed is as to what is meant by pure service? Since '**pure service**' has not been defined under GST, the same can be construed in general terms as any supply which is either deemed as services under Schedule II of CGST Act or which are not covered under the definition of goods shall be categorized as pure services. However, as per the notification, works contract services or other composite supplies involving supply of any goods are not covered in entry no.3 of aforementioned notification. In other words, if a person provides only service to any person without involvement of supply of goods along with supply of services, then the same would be termed as supply of pure service. Therefore, in view of the above, we are required to go through each of the work orders/agreements of the applicant with the various entities to whom they provided services in order to verify as to whether all the 3 conditions mentioned in para 18.1 above are being satisfied or otherwise. Let us take each one of them chronologically.

**20.** On going through the agreement dated 20.02.2019 entered into between Surat Municipal Corporation and the applicant, it is mentioned under the head 'Name of work' that it pertains to "Providing Design and Comprehensive Consultancy Services from concept to completion for State-of-Art High Rise Office Building for Surat Municipal Corporation at T.P.S.No.6 (Majura-Khatodara), F.P.No.235, Ring Road, Surat. However, there are certain clauses of the agreement which raise a question mark as to whether the above services supplied by the applicant are pure services or otherwise. The same are as under:

- (a) Para 1.5(Brief scope of work) in Tender Notice No: CE SP CELL/EO1/2016-17/01 (Request for Proposal) (Page-10)reads as under:

*"SMC desires to make its new Main Office Buildings as State of the Art High Rise Building. **The successful architect** to be selected from among the short listed architects after limited tender (RFP) which shall also include price part, **shall be responsible for providing Comprehensive Consultancy Services from Concept to Completion but not limited to Conceptual design, Architectural services, Estimate, Specifications, Tender preparation, Civil Structural designs and all other engineering services like Electrical, HVAC etc., Sanitary system, Fire safety system, Communication system, LAN, Access control, Surveillance Security system, Power backup, Signage, Interiors of High Rise office Building and design of Landscaping of campus for all works involved in the proposed new main Administrative High Rise Office Building.**"*

- (b) Para 2.5.4(Electrical System) of above referred Tender Notice (Page-33) reads as under:

*"Scheme includes preparation of DBRs for all high voltage and low voltage electrical systems as per SMC's requirement including energy sources planning, optimization and implementation. **This includes providing internal and external electrification system with necessary electrical rooms, cablings, power supply network including sub-station (building-specific), back up generators, external lighting, alternate electrical energy systems, telephone, computer cable, LAN TV and all other systems.** Detailed DBRs shall be submitted to SMC for review and approval."*

- (c) Para 3 in Page 2 of the agreement reads as under:

*"And whereas the competent authority of Surat Municipal Corporation having considered the Revised Financial offer made by the Consultant and having found the same reasonable and adequate, Surat Municipal Corporation has accepted*



Consultant's Revised **Financial offer of Rs.8,15,44,000/-(Rs.Eight Crores Fifteen Lacs Forty Four Thousand only) + GST as applicable** vide Standing Committee Resolution No.164/2019 dated 14.02.2019 for the 'Consultancy work'.

(d) Point 5 of Page 3 of the agreement reads as follows:

*"GST for this 'consultancy work' shall be applicable as per tender clause No.4.3."*

(e) Paras 4.3.5 and 4.3.6 in Tender Notice No: CE SP CELL/EO1/2016-17/01 (Request for Proposal) (Page-72) read as under:

*"4.3.5:GST(Goods and Service Tax) has come in existence from 1<sup>st</sup> July, 2017, Consultant/Successful Bidder is bound to pay as and when prevailing amount of GST prescribed by the Government of India as per the Terms of Contract agreed upon during the course of execution of this Contract and the same shall be intimated/submitted/claimed within 30(thirty) Days from the date of payment with proof of GST paid to Government for reimbursement from SMC.*

*4.3.6:During the execution of execution of Contract, if there is any change in Rate of GST(Goods and Service Tax) by the Government, the same shall be reimbursed/recovered separately by SMC, subject to the submission of Original Receipt/Proof for the amounts actually remitted by the Successful bidder/Consultant to the Competent Authority along with a Certificate from Chartered Accountant of Contractor/Successful Bidder certifying that the amount of GST paid to the Government and the same shall be intimated/submitted/claimed within 30(Thirty) Days from the date of payment. Remittance of GST within stipulated period shall be the sole responsibility of the Successful Bidder /Consultant, failing which SMC may recover the amount due from any other payable dues with SMC and decision of Municipal Commissioner shall be final and binding on the Contractor/Successful Bidder in this regard. Further, the non-payment of GST to the Government may lead to the termination of the contract and forfeiture of Security Deposit/Performance Guarantee Amount.*

**20.1** From a plain reading of the clauses (a) above, which states about "providing Comprehensive Consultancy Services and all other engineering services like Electrical, HVAC etc., Sanitary system, Fire safety system, Communication system, LAN, Access control, Surveillance Security system, Power backup, Signage, Interiors of High Rise office Building and design of Landscaping of campus for all works involved in the proposed new main Administrative High Rise Office Building" and clause(b) above which states that "the supply of service includes providing internal and external electrification system with necessary electrical rooms, cablings, power supply network including sub-station (building-specific), backup generators, external lighting, alternate electrical energy systems, telephone, computer cable, LAN TV and all other systems", and looking to the terminology and words used in the said clauses, it is very difficult to conclude that it pertains purely to services only. In fact, on going through the same, we get the impression that this does not appear to be a supply of pure service only but also includes supply of goods along with supply of services. Further, as reported by the concerned officer and as per the GST portal, the applicant supplies Works Contract Service also besides supplying design and consultancy services and few other services and looking to the aforementioned facts, it appears that Works Contract Service may also be involved in the said contract. Even during the course of personal hearing, the representative of the applicant had stated that the services provided by the applicant to Surat Municipal Corporation are not in relation to any of the functions entrusted to the municipality under Article 243W of the Constitution of India and therefore they don't appear to be eligible for the exemption as per Entry No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017. Further, from a plain reading of the clauses mentioned at (c) to (e) above, it can be derived that the Financial offer as per the contract/agreement includes the GST amount and that GST is to be paid to the Government as per the terms and conditions of the Contract/Agreement. This, itself, proves that the applicant is not eligible for the benefit of the provisions of Entry No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 under which the rate of GST is NIL. In view of the above facts, we conclude that the aforementioned services supplied by the

applicant to Surat Municipal Corporation are not Pure services. Since the applicant has failed to satisfy the very first condition in order to be eligible for the exemption, there is no need for us to discuss other conditions at all.

**20.2** The applicant has stated that the services provided by them to Ahmedabad Urban Development Authority, as a design consultant (Pure services) for various projects like (a)Preparation of design and detailed estimation of Town hall at Dehgam.(b) Preparation of Local Area Plan for Transit Oriented Zone(TOZ), can be covered by Entry No.3 of Notification No.12/2017 dated 28.06.2017 and Gujarat State Notification No.12/2017-ST(Rate) dated 28.06.2017. On going through the letter dated 18.08.2017 issued by the Ahmedabad Urban Development Authority, subject of the letter reads as *“Preparation of design and Detailed Estimation of Town Hall at Dehgam falling under Auda”* whereas the reference portion reads as *“Empanelment of Consultant Urban Design and Architecture and Landscaping Design Service for AUDA area (Category-1 Urban Design Project)(Job No.47/2011-12).* Further, the applicant has submitted that the Work Order of AUDA is a one pager. However, free English translation of second paragraph of the aforementioned letter(original letter is in Gujarati) reads as under:

*“with reference to the above subject, the work order related to consultancy for construction of Town hall at Dehgam T.P.Scheme No.2, FP No.338 such as Survey, Planning, Estimate, Draft tender papers etc. is being given. It is informed that the whole work is to be done as per the conditions of the agreement. Also an amount equivalent to 2% of the bills pertaining to your work will be deducted as Security deposit.”*

From the above, it is crystal clear that an agreement has materialised between the applicant and AUDA in respect to the above work which has not been submitted by the applicant even though this fact was brought to the notice of his representative during the course of personal hearing. In absence of the agreement/contract and without going through the terms and conditions of the contract, it would not be possible for us to analyse as to whether the services provided by the applicant are pure or otherwise since this involves the construction of a Town Hall and only after going through the agreement can it be confirmed whether the services supplied by the applicant are pure services or are services supplied along with supply of goods. It also appears that the applicant has deliberately not provided the copy of agreement for reasons best known to him. In view of the above, we are left with no option but to conclude that the services provided by the applicant to Ahmedabad Urban Development Authority are not Pure services. Since the applicant has failed to satisfy the very first condition in order to be eligible for the exemption, there is no need for us to discuss other conditions at all.

**20.3** The applicant has stated that the services supplied by them to Executive Engineer, Public Works(East) Division, Pune, State of Maharashtra and local municipality are for “Planning & Designing of Medical college, Teaching hospital and Nursing college for providing services like feasibility study, master planning, Architectural, MEPF, Green Building, Interior, land scape etc. On going through the agreement dated 26.08.2019 made between Pune Municipal Corporation(through it’s Medical Officer of Health, Pune Municipal Corporation) and the applicant, there are certain clauses of the agreement which raise a question mark as to whether the above services supplied by the applicant are pure services or otherwise. The same are as under:

(1) Second last of Page 3 of the above agreement reads as under:

*“The consultant who is experienced and has the required professional skills, personnel and technical resources for Planning and Designing of such Medical Establishment and has offered to provide Consultancy Services in accordance to the requirements, terms and conditions as mentioned hereunder. The Consultant has quoted a fee of (currently estimated Project cost as INR 622 Crores) + **GST amounting to 13,41,90,000/-**(In Words Rupees Thirteen Crore Forty one*

**Lakhs Ninety Thousand only) + GST in response to the tender no.52 Year 2017-18 dated 20.11.2017 issued by the PMC.”**

- (2) Point (f) in Para 1.1(Medical Planning) under the head ‘1.Scope of Work’ in Page 4 of the agreement reads as under:

*“Facilitate to prepare complete Architectural, Structural and services design and drawings, working details, schedules, specifications including Architectural design, Structural details, Electrical services, HVAC system, Sanitary and plumbing details, Medical gas system, BMS, CSSD, Kitchen and catering, Laundry System, CCTV Surveillance, Communication and networking plan, Fire detection, Fire-fighting systems, Solid waste water management(SWM) including Bio-medical waste management, Furniture layout for all units and its specification, Medical equipment layout plan and details.”*

- (3) Point (g) in Para 1.2(Architectural Design) under the head ‘1.Scope of Work’ in Page 5 of the agreement reads as under:

*“Prepare complete Architectural, Structural and services design and drawings, working details, schedules, specifications including Architectural design, Structural details, Electrical services, HVAC system, Sanitary and plumbing details, Medical gas system, BMS, CSSD, Kitchen and catering, Laundry System, CCTV Surveillance, Communication and networking plan, Fire detection, Fire-fighting systems, Solid waste water management(SWM) including Bio-medical waste management, Furniture layout for all units and its specification, Medical equipment layout plan and details.”*

From a plain reading of the clauses (b) and (c) above, which reads as *“Prepare complete Architectural, Structural and services design and drawings, working details, schedules, specifications including Architectural design, Structural details, Electrical services, HVAC system, Sanitary and plumbing details, Medical gas system, BMS, CSSD, Kitchen and catering, Laundry System, CCTV Surveillance, Communication and networking plan, Fire detection, Fire-fighting systems, Solid waste water management(SWM) including Bio-medical waste management, Furniture layout for all units and its specification, Medical equipment layout plan and details,”* and looking to the terminology and words used in the said clauses, it is very difficult to conclude that it pertains purely to services only. In fact, on going through the same, we get the impression that this does not appear to be a supply of pure service only but also includes supply of goods along with supply of services. Besides, as discussed earlier, the applicant supplies Works Contract Service also other than supplying design and consultancy services and few other services and looking to the facts mentioned hereinabove, there appears to be a distinct possibility of Works Contract Service being involved in the said contract. Also, from a plain reading of the clause mentioned at (a) above, which states that *“The Consultant has quoted a fee of (currently estimated Project cost as INR 622 Crores) + GST amounting to 13,41,90,000/- (In Words Rupees Thirteen Crore Forty one Lakhs Ninety Thousand only) + GST in response to the tender no.52 Year 2017-18 dated 20.11.2017 issued by the PMC,”* it can be seen that the contract/agreement includes the GST amount and that GST is to be paid to the Government as per the terms and conditions of the Contract/Agreement. This, itself, proves, that the applicant are not eligible for the benefit of exemption of GST by virtue of Entry No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 under which the rate of GST is NIL. In view of the above facts, we conclude that the aforementioned services supplied by the applicant to Pune Municipal Corporation are not Pure services. Since the applicant has failed to satisfy the very first condition in order to be eligible for the exemption, there is no need for us to discuss other conditions at all.

**20.4** The applicant has stated that he has provided the services of design consultant (Pure services) for ‘Preparation of MP and PMC of Green Field areas for the development of Rajkot Smart city at Rajkot under Smart City Mission (urban renewal and retrofitting program by GOI)’ rendered to Rajkot Smart City Development Limited. We have gone through the letter of acceptance dated



05.06.2018 issued by Rajkot Smart City Development limited to the applicant regarding acceptance of their offer of Rs.5,52,40,000/- for the work of Urban Planning and Infrastructural planning as well as the agreement made between Rajkot Smart City Development limited and the applicant. On going through the terms and conditions of the said agreement, we found that there are certain clauses of the agreement which raise a question mark as to whether the above services supplied by the applicant are eligible for exemption by virtue of entry No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 or otherwise. The same are as under:

- (1) Para 2.1 of the agreement coming under Article-2: Contract Price and Payment Terms, reads as under:

*“Contract Price(Reference GCC Clause 1.1(v) and GCC Clause “Price”). The Client hereby agrees to pay to the Consultant the Contract Price in consideration of the performance by the Consultant of its obligations under the Contract. The Contract Price shall be Rupees Five Crores Fifty Two Lakhs Forty Thousand only(Rs.5,52,40,000/-), as specified in the Price Schedule. The Contract Price shall be understood to reflect the terms and conditions used in the specification of prices in the detailed price schedules, including the taxes, duties and related levies if and as identified.”*

- (2) Para 4.4.3 of the agreement under the head “4.4 Taxes and Duties” reads as under:

*“For the purpose of the Contract, it is agreed that the Contract Price Specified in Article 2(Contract Price and Terms of Payment) of the Contract Agreement is based on the taxes, duties, levies and charges prevailing at the date thirty(30) days prior to the date of proposal submission (also called “Tax” in this GCC sub-clause). If any tax rates are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of the Contract, which was or will be assessed on the Consultant, its Subcontractors, or their employees in connection with performance of the Contract, an equitable adjustment to the Contract Price shall be made to fully take into account any such change by addition to or reduction from the Contract Price, as the case may be.”*

Clause(1) above, specifically mentions that the Contract Price shall be understood to reflect the terms and conditions used in the specification of prices in the detailed price schedules, including the taxes, duties and related levies which means that the contract amount will be including of all the taxes, duties and related levies which will also include GST. Clause(2) above, specifically states that the Contract Price Specified in Article 2(Contract Price and Terms of Payment) of the Contract Agreement is based on the taxes, duties, levies and charges prevailing at the date thirty(30) days prior to the date of proposal submission and if any tax rates are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of the Contract, an equitable adjustment to the Contract Price shall be made to fully take into account any such change by addition to or reduction from the Contract Price, as the case may be. From a plain reading of the above 2 clauses, it is crystal clear that the Contract Price in the above case is inclusive of all taxes which also includes GST and that as per the terms and conditions of the Contract/Agreement, GST is to be paid to the Government. This, in itself, proves that the applicant is ineligible for exemption by virtue of Entry No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017. In view of the above, we conclude that the applicant is not eligible for the benefit of exemption by virtue of Entry No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 on the aforementioned grounds itself.

**20.5** The applicant has stated that the service provided by them to Executive Engineer, Public Works(East) Division, Pune is for “Design and PMC Services for Baramati Hospital. On going through the agreement made between Executive Engineer, Public Works(East) Division, Pune and the applicant, it is seen that

the said agreement was signed on 10.02.2014 i.e. in the pre-GST era when services provided by the applicant was covered under the Finance Act, 1994. We also find that the said contract is for a duration of 66 months and commenced in the year 2014. We have gone through the provisions of the Finance Act, 1994 as well as the related notifications of Service tax and find that there was no such provision available for assesseees for availing exemption from Service tax in respect of pure services provided to Central Government, State Government, Union Territory, Local Authority, Governmental Authority or Government Entity during the pre-GST era. However, in order to find out whether the applicant is eligible for exemption as per Entry No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 in the GST era, we will need to go through the agreement. On going through the terms and conditions of the aforementioned agreement, we find that there are certain clauses of the agreement which raise a question mark as to whether the above services supplied by the applicant are pure services or otherwise. The same are as under:

- (1) Point No.(xii) under the Head ‘(b)Preliminary Drawings/Design Stage’ under “Scope of Services’ (in Annexure-1 of agreement-Page 16)reads as under:

*“Obtain the necessary Building permission from Competent Authority/ MIDC/ Local Authority, arrange water supply connection, Drainage connection, Electrical Connection and shifting of High Tension towers, utility shifting and other necessary approvals, NOCs and permissions required for the Project at any stage of the project. The fee for such clearances will borne by the Employer.”*

- (2) Point No.(iii) and (iv) under the Head ‘(d)Detailed Design Stage’ under “Scope of Services’ (in Annexure-1 of agreement-Page 17)reads as under:

- (a) *Prepare complete Building Design, Structural and Services design and drawings, working details, schedules, specifications including Architectural, Facade Design, Structural details, Electrical details, HVAC system, Acoustic designs, sanitary and plumbing details, Medical gas system, BMS, CSSD, Kitchen system and catering, Housekeeping, Laundry System, HIS, HIMSS, Communication and network plan, call system, fire detection, Fire protection and fighting systems, water supply and sewerage details, Environment sustainability, Rain water harvesting, EIA and clearance, Solid waste water management(SWM), including*
- (b) *Bio-medical waste management, Detailed Furniture layout for all units and its specifications, Medical equipment layout plan and details, Electrical layout and details, integration of all systems and services, Specialist services like audio-video, IT and Intelligent Management system, Operating workflows and systems, Pneumatic chute system, EPABX, Glazing, HR planning, Organization and Manpower plan, Traffic and packing system, Security system, Landscape Design(Site Planning Land form and grading, surface drainage, Irrigation, Hard and soft copy, garden furniture, illumination), schedule of finishes, bill of quantities as per PWD schedule of rates to describe the whole project adequately and get them approved from Competent Authorities and from all the local bodies etc. The PMC will provide 10 sets of drawings to the employer. Fee of the consultants engaged in scope of services will be the part of PMC fee and not the project cost.*

On a plain reading of the aforementioned clause (1),especially the portion “arrange water supply connection, Drainage connection, Electrical Connection and shifting of High Tension towers, utility shifting and other necessary approvals and clause(2), especially the portions “specifications including Architectural, Facade Design, Structural details, Electrical details, HVAC system, Acoustic designs, sanitary and plumbing details, Medical gas system, BMS, CSSD, Kitchen system and catering, Housekeeping, Laundry System, HIS, HIMSS, Communication and network plan, call system, fire detection, Fire protection and fighting systems, water supply and sewerage details, Environment sustainability, Rain water harvesting, EIA and clearance, Solid waste water management(SWM), including Bio-medical waste management, Detailed Furniture layout for all units and its specifications, Medical equipment layout plan and details, Electrical layout and details, integration of all systems and services, Specialist

services like audio-video, IT and Intelligent Management system, Operating workflows and systems, Pneumatic chute system, EPABX, Glazing, HR planning, Organization and Manpower plan, Traffic and packing system, Security system,---“ and looking to the terminology and words used in the said clauses, it is very difficult to conclude that the contract/agreement pertains purely to services only. In fact, on going through the same, we get the impression that this does not appear to be a supply of pure service only but also includes supply of goods along with supply of services. Besides, as discussed earlier, the applicant supplies Works Contract Service also other than supplying design and consultancy services and few other services and looking to the facts mentioned hereinabove, there appears to be a distinct possibility of Works Contract Service being involved in the said contract. In view of the above facts, we conclude that the aforementioned services supplied by the applicant to Executive Engineer, Public Works(East) Division, Pune are not Pure services. Since the applicant has failed to satisfy the very first condition in order to be eligible for the exemption, there is no need for us to discuss other conditions at all.

**20.6** The applicant has stated that the services supplied to Gujarat Technological University is for Architectural design/engineering design, working drawing, structural analysis and drawings, electrical drawings and details of all services for phase wise construction of building for proposed project. On going through the agreement dated 12.12.2019 made between Gujarat Technological University and the applicant, it is observed that the applicant is required to provide a complete and Comprehensive Consultancy service for Architectural design/engineering design, working drawing, structural analysis and drawings, electrical drawings and details for all services for phase wise construction of buildings for proposed project to Gujarat Technological University. On going through the terms and conditions of the aforementioned agreement, we find that there is a certain clause of the agreement which raises a question mark as to whether the above services supplied by the applicant are pure services or otherwise. The same are as under:

(1) Point (a) under the head ‘3.Scope of work’ in Page 2 of the aforesaid agreement reads as under:

“Preparation and submission of detailed “Master Plan” of entire area, Location of building in the Master Plan **and providing connectivity to neighbouring buildings in the campus at the designated location of all the phase wise buildings**, obtaining necessary approvals from client and statutory bodies wherever required including preparation, submission of models, photographs and other documents required in connection with approval from client and Statutory Bodies wherever required.

On a plain reading of the aforementioned clause and looking to the terminology and words used in the said clause, especially the part “*and providing connectivity to neighbouring buildings in the campus at the designated location of all the phase wise buildings*”, it is very difficult to conclude that the contract/agreement pertains purely to services only. In fact, on going through the same, we get the impression that this does not appear to be a supply of pure service only but also includes supply of goods along with supply of services. Besides, as discussed earlier, the applicant supplies Works Contract Service also other than supplying design and consultancy services and few other services and looking to the facts mentioned hereinabove, there appears to be a distinct possibility of Works Contract Service being involved in the said contract. In view of the above facts, we conclude that the aforementioned services supplied by the applicant to Gujarat Technical University are not Pure services. Since the applicant has failed to satisfy the very first condition in order to be eligible for the exemption, there is no need for us to discuss other conditions at all.

**21.** In view of the above and in light of the facts discussed in the earlier paras, we come to the conclusion that the exemption under Entry No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 is not available to the applicant in any of the aforementioned agreements/contracts entered into, by them.

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

### **R U L I N G**

Questions asked by the applicant M/s. INI Design Studio pvt.ltd., Ahmedabad.

**Question-1:** Whether Design and Comprehensive Consultancy Services from concept to completion for State-of-Art High rise office building provided to Surat Municipal Corporation covered under Entry No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017?

**Answer:** Answered in the negative for the reasons discussed hereinabove.

**Question-2:** Whether Consultancy Services for preparation of design and detailed estimation of town hall at Dehgam, provided to Ahmedabad Urban Development Authority covered under Entry No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017?

**Answer:** Answered in the negative for the reasons discussed hereinabove.

**Question-3:** Whether Medical and Design Consultancy Services for establishment of Medical College, Teaching Hospital and Nursing College at Pune, provided to Pune Municipal Corporation covered under Entry No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017?

**Answer:** Answered in the negative for the reasons discussed hereinabove.

**Question-4:** Whether work of Preparation of Master Plan of Green Field Areas and Project Management Consultancy Work for Development of Green Field Areas provided to Rajkot Smart City Development Ltd. covered under Entry No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017?

**Answer:** Answered in the negative for the reasons discussed hereinabove.

**Question-5:** Whether Consultancy Services for Architectural and Engineering design/working drawing of Baramati Hospital provided to Executive Engineer, Public Works(East) Division, Pune covered under Entry No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017?

**Answer:** Answered in the negative for the reasons discussed hereinabove.

**Question-6:** Whether Consultancy service to Gujarat Technological University for Architectural design/engineering design, working drawing, Structural analysis and drawings, electrical drawings and details of all services for phase wise construction of building for proposed project can be covered under Entry No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 and Gujarat State Notification No.12/2017-ST(Rate) dated 28.06.2017?

**Answer:** Answered in the negative for the reasons discussed hereinabove.

**(SANJAY SAXENA)**

**MEMBER**

**(MOHIT AGRAWAL)**

**MEMBER**

Place: Ahmedabad

Date: 17.09.2020.