

GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/42/2021

(IN APPLICATION NO. Advance Ruling/SGST&CGST/2021/AR/17)

Date: 11-08-2021

Name and address of the applicant	:	M/s. Gujarat State Road Development Corporation, Ground Floor , Nirman Bhavan , Sector 10A, Gandhinagar, Gujarat.
GSTIN/ User Id of the applicant	:	24AAECG8707D1ZU
Date of application	:	22-05-2021
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a), (b), (e) and (g)
Date of Personal Hearing	:	27-07-2021
Present for the applicant	:	Shri Parth Dadawala, CA

BRIEF FACTS

The applicant has submitted that the Govt. of Gujarat in order to have a developed, efficient and high quality system of road transportation, had formulated a Road Policy on December 1996 (Policy), to be implemented by the Roads and Building Department, GOG. The policy enables private participation in the development, construction, repair, up gradation, management, operation and maintenance of roads within the State of Gujarat.

2. In furtherance of policy, the GOG enacted the Gujarat Infrastructure Department Act, 1999 (Gujarat Act No. 11 of 1999) (“GID Act”) to provide a regulatory framework for participation of the private sector in financing, construction, maintenance, development and operation of infrastructure project on build-operate-transfer (BOT) basis in the State of Gujarat. Vide Item 2 of Schedule I of the GID Act, roads, bridges, and bypass, are the eligible infrastructure projects that allow private sector participation. In this regard, GOG established and set up Gujarat Infrastructure Development Board (“GIDB”) and Gujarat State Road Development Corporation (GSRDC) in consonance with Gujarat Infrastructure Development Act, 1999 (“GID Act”), with the object to invite private sector participation for the development, construction, repair, management, operation and maintenance of the aforesaid infrastructure development projects within State of Gujarat.

3. The applicant GSRDC is wholly owned Government of Gujarat Company (i.e. 100% equity ownership and control held by Govt. of Gujarat) established under the Companies Act, 1956 represented by its Managing Director, hereinafter called as GSRDC. The main object of the GSRDC is to act as an independent and autonomous body for the construction

and development of the roads (state highways) and bridges as a part of the activities of the Roads and Buildings (hereinafter referred as “R&B”) Department of Government of Gujarat under the BT, BOTT or BOLT projects. GSRDC is also required to facilitate, regulate and control the use of roads, bridges and flyovers etc. and to advice the R&B Department of Govt. of Gujarat on all the issues relating to roads and assist in formulation of policies in this regard. GSRDC intends to develop 8 roads project under Public Private Partnership. GSRDC seeks participation from private operators for the said projects to provide superior quality roads infrastructure at competitive prices.

4. The applicant has submitted that Pure service provided to the Central Govt., State Govt. or Union territory or local authority or a Governmental authority or a Govt. Entity has been exempted vide Sr. No. 3 of Not. No. 12/2017-CT (Rate) dated 28-6-2017. Govt. Authority and Govt. Entity is defined in Notification No. 11/2017-CT (Rate) dated 28-6-2017 amended vide Not. No. 31/2017-CT (Rate) dated 13-10-2017 which is reads as under:

“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.

4.1 The applicant submitted that construction and development of state highways roads as entrusted by the State Govt. does not appears to fall in the list of services enumerated under Schedule 12th of Article 243W or Schedule 11th of Article 243 G of the Indian constitution . Hence does not qualify as Govt. authority and accordingly, not eligible for benefit of Entry No. 3 of Not. No. 12/2017-CT (Rate) dated 28-6-2017.

“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.”

4.2 GSRDC is a 100% Govt. of Gujarat Undertaking (i.e. 100% stake in equity held by Govt. of Gujarat) incorporated with main object of construction and development of State Highway roads, as entrusted by Govt. of Gujarat. Hence GSRDC is squarely covered under definition of Govt. Entity.

5. The applicant vide letter dated has submitted additional submission wherein they submitted the detail list of the completed and ongoing project under BOT. The same is reproduced hereunder:

(i) Widening & Strengthening of Himmatnagar By Pass (SH-9) on Build Operate Transfer (BOT) basis.

(ii) Construction of ROB in lieu of existing underpass near Chhayapuri

(iii) Improvement and strengthening of Kim-Mandavi Road (SH-65) on Build Operate Transfer (BOT) basis

(iv) Improvement and Strengthening of Deesa-Panthavada-Gundri on Built Operate Transfer (BOT) basis

5.1 The applicant submitted that GSRDC is developing state highways, ROB, under-pass on land which falls under the jurisdiction of either Municipality or Panchayat.

Question on which Advance Ruling sought

- (i) Whether the service of construction and development of state highway roads provided by GSRDC would qualify as an activity in relation to function entrusted to Panchayat or Municipality under Article 243G or 243 W respectively, of the constitution of India.
- (ii) Whether applicant would fall under the definition of Governmental authority or Government Entity.

Personal Hearing

6. Shri Parth Dadawala, C.A. appeared for the Personal hearing through Video conferencing on 27.07.2021 and reiterated the contents of the application.

We had enquired from the applicant whether GSRDC construct municipal/ village roads which are covered under Municipality and Panchayat jurisdiction, to which Shri Dadawala submitted that sometimes during the course of construction of State highways some part of roads are covered under Municipality or Panchayat area.

Findings:

7. At the outset we would like to make it clear that the provisions of CGST Act and GGST Act are in pari materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the GGST Act.

8. We have carefully considered all the submissions made by the applicant. During the Personal Hearing, the applicant was informed that Question No. 1 of their application is not covered under any clauses of Section 97 (2) of the CGST Act, therefore question No. 1

does not merit to be admitted and the Ruling will be pronounced with respect to Question No. 2. The applicant agreed with the same.

9. We have examined the Government of Gujarat Resolution dated 20-2-99, placed before us by the applicant, whereby GSRDC was established with objective to undertake the development of bridges and roads. We find that Government of Gujarat has established GSRDC as its wholly owned company and entrusted it with the development of roads and bridges. Thus, we find that GSRDC satisfies the definition of Government Entity.

10. Further, as submitted by GSRDC, We note that it constructs roads, sideways, paths on the land which falls under the jurisdiction of Municipality and Panchayat. We note that roads and bridges are activities entrusted to a municipality under Article 243W of our Constitution and to a Panchayat under Article 243G of our Constitution. Therefore in such specific cases where GSRDC constructs municipal roads/bridges or village roads/bridges, it satisfies the definition of Government Authority.

11. In conspectus thereof, we pass the Ruling -

RULING

1. GSRDC is a Government Entity.
2. In addition to being a Government Entity, GSRDC shall also be a Government Authority, in such cases when it constructs
 - i. Municipal Roads/ bridges;
 - ii. Village Roads/bridges.

(SANJAY SAXENA)
MEMBER(S)

(ARUN RICHARD)
MEMBER(C)