
 सत्यमेव जयते	RAJASTHAN AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX KAR BHAWAN, AMBEDKAR CIRCLE, NEAR RAJASTHAN HIGH COURT JAIPUR – 302005 (RAJASTHAN)	
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ADVANCE RULING NO. RAJ/AAR/2023-24/12

Umesh Kumar Garg Joint Commissioner	:	Member (Central Tax)
Mahesh Kumar Gowla Additional Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/S RAGHUBALA CONSTRUCTION CO., 797, Dadabadi, Kota, Rajasthan
GSTIN of the applicant	:	08AAMFR4564N1ZF
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	(b) applicability of a notification issued under the provisions of the Act; (e) determination of the liability to pay tax on any goods or services or both; (g) whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term;
Date of Personal Hearing	:	03.08.2023.
Present for the applicant	:	Adv. Mahi Yadav, Adv. Ayushi Thakur
Date of Ruling	:	01.09.2023

Note: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the SGST Act 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 the same provision under the SGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / SGST Act would be mentioned as being under the "GST Act".

The issue raised by M/S Raghubala Construction co., 797, Dadabadi, Kota, Rajasthan (hereinafter referred to as "applicant"). Applicant is registered and The applicant is engaged in the business of licensed contractor who bids for government and non-government tenders in the name of M/s Raghubala Construction co. The three issues raised by applicant is fit to pronounce advance ruling & it falls under the ambit of the Section 97(2) (b) given as under:

- (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;

(g) whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term;

A Submission of The Applicant: (in brief)

That the applicant is a partnership firm which is registered assessee under the provisions of Goods & Services Tax (GST) regime having GSTIN as 08AAMFR4564N1ZF. The applicant is engaged in the business of licensed contractor who bids for government and non-government tenders and thereafter, work as per the terms and conditions of the tender/contract.

B Interpretation and understanding of applicant on question rose (in Brief)

The applicant submitted his interpretation which is under-

1. That the applicant was a successful bidder for construction of a Community Hall at Bapu Nagar Residential Scheme (Beed ke Balaji), Kota. The tender was allotted to the applicant by the Urban Improvement Trust (UIT), Kota (hereinafter referred as **UIT**).
2. That as per the terms of the works contract dated 01.06.2022 issued by UIT, the period of work is from 11.06.2022 to 10.12.2022 for a consideration of Rs. 3,65,97,837/- at 12.69% increased rate. The copy of works order is annexed herewith and marked as **Annexure – 2**.
3. That during the aforesaid period of works order i.e. 11.06.2022 to 10.12.2022, the rate of tax liability under GST law i.e. Central GST Act, 2017 were amended, resultantly, the GST rate applicable on the applicant were significantly increased.
4. That due to sudden increase in the GST rate during a continuing works contract on a pre-fixed terms and conditions and absence of any effective clarification from the CGST Department or any other body of the Government, the applicant and similarly placed numerous assesseees are in jeopardy and seek resolution from your esteemed authority of the application of the new GST rate on the continuing works contract which were entered prior to the notification.

1. Whether Urban Improvement Trust (UIT) Kota is “Government Entity”

- 1.1. That in regard to the first question, the “Government Entity” is defined under Notification No. 32/2017 – Central Tax (Rate) dated 13.10.2017, which states that *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*
 - (ii) *Established by any government with 90% or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.*
- 1.2. That UIT Kota is a trust established by the Government of Rajasthan in the 1970 to achieve its objectives, under Rajasthan Urban Improvement Act 1959. It is responsible for overall development of Kota City. The trust has been headed by the Public Chairman as well as District Collector with a secretary as executive officer. It consists government officials & nominated public persons as trustees.
- 1.3. That this learned Authority (Rajasthan AAR) vide ruling dated 27.04.2018 in Advance Rule No. RAJ/AAR/2018-19/01 in Application No. Advance Ruling/CGST & SGST/2017-18/AR/01, has *inter alia* held that Jaipur Development Authority is a “government entity”.
- 1.4. That in light of the aforesaid reasoning, your esteemed authority is prayed to rule that UIT Kota is a “government entity”.

2. **Whether constructing a Community Hall by the applicant at Bapu Nagar Residential Scheme, Kota, in accordance of works contract allotted by UIT Kota, is a taxable service under GST law and if yes, then determination of the liability to pay tax after applicable exemption and deductions;**
 - 2.1. That UIT Kota vide works contract has entrusted the applicant to construct a community hall at Bapu Nagar Residential Scheme Kota. It is essential to state here that as per submissions with regard to Issue No. 1, UIT Kota is a "government entity". Thus, the work allotted by UIT Kota is government works contract.
 - 2.2. That it is necessary to state here that the purpose of community hall in a residential scheme is for the welfare and benefit of the public at large with specific focus upon the marginalized sections of the society. Therefore, the service provided by the applicant falls in the exception/rebate category under the aforesaid described special circumstances.
 - 2.3. That in regard of the above stated facts and circumstances, the liability of applicant under the GST law ought to be ascertained by your esteemed authority.
3. **If no, then whether the paid tax shall be refunded to the assessee along with appropriate interest**
 - 3.1. That if your esteemed authority decides the Issue No. 2, the work order dated 01.06.2022 allotted by UIT Kota shall be liable for exemption or deduction under the applicable law for GST, then the tax deposited by the applicant shall be refunded to the applicant at the reasonable time period by the government along with the appropriate interest rate.
4. **Applicability of change in tax rate during continuing of a works contract, where the works contract has pre-fixed terms and conditions including total tender rate.**
 - 4.1. That as per present facts, the UIT Kota allotted works contract to the applicant for construction of Community Hall vide works order dated 01.06.2022. The work was started by the applicant on 11.06.2022. It is essential to highlight here that works contract was allotted for a pre-fixed rate of Rs. 3,65,97,837/-. Therefore, the applicable rate of GST (as decided in Issue no. 2) as on 11.06.2022 shall be paid by the applicant.
 - 4.2. That during the continuation of tenure of works contract, the Government increased the GST rate, however, the applicant shall not be liable to pay such increased GST rate with regard to a pre-fixed works contract allotted on 01.06.2022.
 - 4.3. That retrospective application of such notification of increasing the GST rate on works contract allotted vide work order dated 01.06.2022 is excessive, arbitrary, unwarranted and untenable in law.
 - 4.4. That due to non-explicit clause in the works order and order, notification, circular, and any such specific corrigendum by the government (central or state government) of contemplating such scenario of increase of GST rate, UIT Kota shall not sanction more funds to cover the increased GST rate. Resultantly, the burden of the increased GST rate shall be saddled upon the applicant which would severely and adversely affect the business and also cause undue financial hardship to the applicant.
 - 4.5. Therefore, in light of the aforesaid facts and circumstances, your esteemed authority is prayed to rule that the notification pertaining

to the increased GST rate shall not be retrospectively applicable to the works contract entered prior to the date of notification.

- A. That any other submissions or grounds pertaining to the aforesaid issues shall be raised at the time of personal hearing of the present application.
- B. That the applicant reserves the right to alter or amend, the present application with the permission of your esteemed authority.

C. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT: -

1. Whether Urban Improvement Trust (UIT) Kota is "Government Entity";
2. Whether constructing a Community Hall by the applicant at Bapu Nagar Residential Scheme, Kota, in accordance of works contract allotted by UIT Kota, is a taxable service under GST law and if yes, then determination of the liability to pay tax after applicable exemption and deductions, or
3. If no, then whether the paid tax shall be refunded to the assessee along with appropriate interest.
4. Applicability of change in tax rate during continuing of a works contract, where the works contract has pre-fixed terms and conditions including total tender rate.

D. PERSONAL HEARING

In the matter personal hearing was granted to the applicant on 03.08.2023. Adv. Mahi Yadav, Adv. Ayushi Thakur Authorized Representatives appeared for personal hearing. He reiterated the submission already made in written submission. He also stated for additional written submission, along with Additional Documents on behalf of the Applicant

WRITTEN SUBMISSION ALONG WITH ADDITIONAL DOCUMENTS ON BEHALF OF THE APPLICANT

The humble applicant named hereinabove submits this written submission along with the additional documents as hereunder:

1. That the contents of present written submissions and application under *Rule 104(1) in Form GST ARA 01* may kindly be read as part and parcel and the same has not been repeated herein for the sake of brevity.
2. That the applicant being a licensed contractor, was a successful bidder for the tender of construction of a Community Hall and Sports Complex at Bapu Nagar Residential Scheme, Kota, allotted by the Urban Improvement Trust, Kota.
3. It is imperative to submit herein that the Urban Improvement Trust is a 'Government'/'local authority' being a 'trust' established by the State Government of Rajasthan under Section 8 of Rajasthan Urban Improvement Act, 1959.

8. Establishment and incorporation of Trusts. (1) The State Government may, by notification in the official Gazette, establish, for the purpose of carrying out improvement of any urban area in the State, whether a master plan in respect thereof has or has not been prepared, a Board of Trustees to be called the Improvement Trust of the place where its principal office is situated, hereinafter called 'the Trust'.

(2) Every such Trust shall be a body corporate by the aforesaid name having perpetual succession and a common seal with power to acquire, hold and dispose of property both movable and immovable and to contract and shall by the said name sue and be sued.

The 'Government entity'/'local authority' is defined as here in below for your kind perusal:

a. As per Notification No. 25/2012-Service Tax dated 20.06.2012, paragraph 2 clause (s) *"governmental authority" means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution;*

b. Further Notification No. 31/2017-Central Tax (Rate) dated 13.10.2017 defined **"Governmental Authority" and "Government Entity" as follows:**

(ix) *"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.*

(x) *"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."*

4. That on perusal of the above definitions it is transpicuous that the Urban Improvement Trust is a **government entity** further, the Hon'ble Rajasthan High Court, Jaipur Bench in **The Urban Improvement Trust, Jaipur vs. Shri Padmanand**¹ duly considered instrumentality and agency of Urban Improvement Trust with regard to 'State Government Department' in reference to the Rajasthan Urban Improvement Trust Act, 1959. The Hon'ble Court observed that the functions required to be discharged by the Improvement Trust are indeed public functions and provided that the provisions of the 1959 Act leave no doubt that the Improvement Trust, created under the aforesaid Act, works as an agent or instrumentality of the State Government and as such the Trust must be considered as a 'State Government department', the Hon'ble High Court further held that:

17. We have, from a consideration of the various provisions of the Act of 1959, come to the conclusion that there is an all pervading control of the State Government in the affairs of the Trust. Not only the funds of the Trust are provided partly by the State Government, the money of the Trust has to be kept in the Government treasury or sub-treasury or the bank to which government treasury business has been made over. Further the State Government exercises effective control in respect of the strength and service of the Trust. The nazul lands have been placed at the disposal of the Trust for improvement, control and supervision, but, however, if

¹D.B. Civil Misc. Appeal No. 65 of 1976

any nazul land is to be disposed of by the Trust in accordance with the terms and conditions of the notification dated July 17, 1961, then the **Trust has to act "for and on behalf of the State Government "in respect of disposal of such nazul land.** All these factors go to show that not only there is financial assistance but existence of extraordinary governmental control over the activities and functioning of the Trust. It cannot also be denied that the Trust has been created for performing public functions. It is a matter of common knowledge that the functions which are performed by the Improvement Trust were formerly performed by a department of State Government and when a department of the State Government is transferred to a corporation, it is a strong factor supporting the inference that such a corporation is an instrumentality or agency of the State. The duty to maintain public streets, street lighting, a sewage system are all which activities must be termed as public functions. By virtue of the nature of the functions performed by the Trust, along with the factors of government control and financial assistance, we have no doubt that the Trust is a State Government department within the meaning of Section 18 of the Act of 1959.

The Ld. Rajasthan Authority for Advance Ruling Goods and Services Tax, Jaipur in the matter of **Tata Projects Limited – SUCG Consortium**² provided the following finding and held that:

8.1 As per definitions given under **notification No. 12/2017-Central Excise (Rate) dated 28.06.2017 as amended vide notification No. 32/2017-Central tax (rate) dated 13.10.2017,**

(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.

8.2. Jaipur Development Authority is a body constituted under Jaipur Development Authority Act 1982(Act.25) as a statutory vehicle to implement the urban development of Jaipur as envisaged by the Department of Urban Development and Housing, Government of Rajasthan and to carry out function entrusted under Article 243G of the Constitution.

8.3 As per notification No. 11/2017-Central Excise (Rate) dated 28.06.2017 as amended vide notification No. 24/2017-Central tax (rate) dated 21.09.2017 and further amended vide notification no. 31/2017-Central Tax (Rate) dt 13.10.2017. Central tax at the rate of 6% is applicable on the following.

In the said notification, in the Table, as per serial number 3 for item (vi) in column (3) and the entries relating thereto,

²Advance Ruling No. RAJ/AAR/2018-19/01 DATED 27.04.2018

"(vi) Services provided to the Central Government, State Government, Union Territory, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of-

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or

(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.

8.4 JDA established vide JAIPUR DEVELOPMENT AUTHORITY ACT, 1982 as an Authority for the purpose of planning, coordinating and supervising the proper, orderly and rapid development of the Jaipur Region and of executing plans, projects and schemes for such development, enacted by the Rajasthan State Legislature in the Thirty-third Year of the Republic of India.

8.6 Therefore, as per the findings in above paras the Jaipur Development Authority is found to be covered under the Government Authority and Services provided by M/s TPL - SUCG Consortium found to be covered under services mentioned at Sl. no.3 (vi) (a) of the notification no. 11/2017 - Central Tax (Rate) dt.28th June 2017 amended with notification no.24/2017-Central Tax (Rate) dated 21.09.2017 and further amended vide notification no. 31/2017-Central Tax (Rate) dated 13.10.2017.

That in light of the foregoing submissions it is contended that since the Urban Improvement Trust is a government authority, hence services provided to such government authority is exempted from the whole of the service tax leviable in accordance with Mega Exemption Notification No. 25/2012-Service Tax dated 20.06.2012. Para 12 of is extracted and reproduced herein below:

12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

(d) canal, dam or other irrigation works;

(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or
(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act;

5. That on perusal of the aforesaid statutory provision, definitions, notifications and judgement it is unambiguous that the GST is not leviable on the service provided to the Government authority or local authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession and thereby exempted.
6. That it is established in the foregoing paras that the applicant is not liable to pay GST on the services provided to the Urban Improvement Trust, however in accordance with the work contract the applicant is liable to pay and has been duly paid the leviable taxes and duties in respect of the materials procured by the applicant for the use in work contract. It is humbly submitted that other than taxes on materials, no other tax liability is applicable on the applicants. The Ld. CESTAT, Ahmedabad in **Ample Construction Company vs. Commissioner of Central Excise & ST, Rajkot**³ considered and observed catena of decisions wherein it was decided that the services were in no way provided for commercial or industrial activities, therefore the same would fall under exclusion clause of the definition for commercial or Industrial Construction Services and held to be non-taxable. The reliance had been placed on various judgments significantly on **Anand Construction Co.**⁴ wherein the Ld. Tribunal held as follows:

"6. Considering the fact that building is constructed as hostel for the residence of students studying in medical institute and there is no allegation that the building is being used for any other purpose. In that set of facts, the Board Circular No. 80/10/2004-S.T., dated 10-9-2004 is applicable to the facts of this case which clarified as under:

"The leviability of Service Tax would depend primarily upon whether the building or civil structure is "used or to be used" for commerce or industry. The information about this has to be gathered from the approved plan of the building or civil construction. Such constructions which are for the use of organizations or institutions being established solely for educational, religious, charitable, health, sanitation or philanthropic purposes and not for the purposes of profit are not taxable being, non-commercial in nature. Generally, Government buildings or civil constructions are used for residential, office purposes or for providing civic amenities. Thus, normally Government constructions would not be taxable. However, if such constructions are for commercial purposes like local Government bodies getting shops constructed for letting them out, such activity would be commercial and builders would be subjected to Service Tax"

³Service Tax appeal no. 12006 of 2014-DB dated 24.07.2023

⁴Order No. S/1288/2012/CSTB/C-I dated 26.09.2012

From the above circular, we find that appellant are not liable to pay Service Tax. Accordingly, we set aside the impugned order and allow the appeal with consequential relief if any."

The copy of judgments referred in this particular para is enclosed herewith and marked as **Annexure-5**.

7. That in consideration of the above referred judgments, it is humbly contended that the applicant rendered its services for the Development of Sports Complex and Construction Of Players Rest House allotted by the Urban Improvement Trust are non-commercial in nature, for the purpose of providing civic amenities and not for the purpose of profit or commercial activities, hence the same is not liable for Service tax on such services. The sample copy of Agreement between the applicant and UIT is enclosed herewith and marked as **Annexure-6**.

Therefore, if the applicant has paid any tax (towards the GST or SGST) may be refunded as per the applicable rate of interest as the judgments. The copy of judgment dated 17.4.2023 M/s. Surana and Company Vs. UOI and M/s. D.A. Enterprises Vs. State of Chattishgarh are enclosed herewith and marked as **Annexure-7 and 8** respectively.

8. That the tender allotted to the applicant was on the basis of fixed amount of consideration, therefore, even though the services rendered by the applicant is exempted, the question before the Ld. Authority for Advance Ruling is raised for consideration, "whether the amended rate of tax on fixed/ pre-fixed agreement/tenders would be retrospectively applicable?"
9. That it is contended by the applicant that the retrospective application of amended GST rate or other taxes is unlawful, unconstitutional and severely violates Article 20 of the Constitution of India which bars the ex-post facto application of laws.

The Hon'ble High Court of Calcutta in **Larsen & Toubro Ltd. vs. Assistant Commissioner of Service Tax & Ors.**⁵ deduced that the amended rate would be applicable prospectively and shall not affect the pending work contracts, the Hon'ble Court further held that:

"18. It admits no ambiguity to say that the rate prevalent at the time of exercising an option would continue until the expiration of the work's contract and any variation and/or changes in the rate of tax by subsequent notification the department would not be within its authority to charge more as such changes would not be applicable to the existing work's contract." Copy of judgment Larsen and Toubro Ltd. Vs. Assistant Commissioner of Service Tax and ors. dated 1.7.2016 is enclosed herewith and marked as **Annexure-9**.

That recently the judgment delivered by the Hon'ble Kerala High court in S.B. Civil Writ Petition No.12471/2021 on dated 26.7.2023 titled as EKK Infrastructure Ltd. Vs. Kerala State Transport Project and ors., while taking into consideration the similar aspect as referred by the applicant

⁵2016 SCC OnLine Cal 3865

has been considered and the judgment held in favour of applicant. Copy of judgment Larsen and Toubro Ltd. Vs. Assistant Commissioner of Service Tax and ors. dated 1.7.2016 is enclosed herewith and marked as **Annexure-10**.

10. That in the present case the **work contract was executed at fixed rate and amount of consideration before the amended change in rate of GST**, therefore such amended rate of GST can only be applied prospectively from the date of notification and the same is not applicable in a retrospective manner on an existing and pending work contract. The same copy of Invoices for the work which applicable and the UIT were doing since adequate is enclosed and marked as **Annexure-11**.
11. That any other submissions and/or grounds shall be raised at the time of personal hearing.
12. That the applicant reserves the right to alter or amend or add in the present application, if need so arises, with the permission of your esteemed authority.
13. That the applicant is also request to grant another opportunity to hear the matter for clarification the further with regard to the documents or judgment is enclosed herewith with the written submission.

E. COMMENTS OF THE JURISDICTIONAL OFFICER

The Jurisdictional office of the Joint Commissioner, State Tax, Commercial Taxes Department, Circle-E, KOTA, Rajasthan, has given his comments vide his letter S.No. :- JC/KOTA/E/CTD/GST/06 Dated- 01.05.2023 which is as under-

1. Whether Urban Improvement Trust (UIT) Kota is "Government Entity";

Ans-As per GST law/Notification No. 11/2017 Dated 28.06.2017-Central Tax(Rate), UIT falls under the Category "Government Entity" as per definition given in the Notification "Government Entity" 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% 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.

As UIT is established by Govt. of Rajasthan (State Legislature) in 1970 under The Rajasthan Urban Improvement Act 1959 and it is established by Govt. of Rajasthan with 90% or more participation by way of equity or control to carry out a function entrusted by the State Government. Hence falls under the category of "Government Entity" and it doesn't fall under the category of "Governmental Authority" or "Local Authority" or "Government".

2. Whether constructing a Community Hall by the applicant at Bapu Nagar Residential Scheme, Kota, in accordance of works contract allotted by UIT Kota, is a taxable service under GST law and if yes, then determination of the liability to pay tax after applicable exemption and deductions,

Ans:- The construction of a Community Hall falls under the definition of Civil Work and it is clearly a taxable service under GST Law under HSN Code 9954. Hence there no exemption and deduction is available for this service.

3. If No, then whether the paid tax shall be refunded to the assessee along with appropriate interest.

Ans:- As The construction of a Community Hall is a taxable service hence there No question of the refund arises along with appropriate interest.

4. Applicability of change in tax rate during continuing of a works contract, where the works contract has pre-fixed terms and conditions including total tender rate.

Ans:- GST is applicable on the supply of Goods and Services and the rate of tax of GST on such supplies are decided by the Government through Act/Rules and notifications. The rate of tax is applicable as notified by the Government through notification which is in effect at the time of such supply. The Government has the power to increase or decrease the rate of tax through Notifications.

F. FINDINGS, ANALYSIS & CONCLUSION:

At the outset we would like to make it clear that the provisions of CGST Act and RGST Act are in parimateria 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 RGST Act.

1) We have carefully examined the statement of facts, supporting documents filed by the Applicant along with application, oral and written submissions made at the time of hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts. We would like to discuss the submission made by applicant and will take up the above question for discussion one by one.

2) The applicant M/S Raghubala Construction co., 797, Dadabadi, Kota, Rajasthan (hereinafter referred to as "applicant"). Applicant is registered and The applicant is engaged in the business of licensed contractor who bids for government and non-government tenders. The applicant has sought ruling on the following question:

(i) Whether Urban Improvement Trust (UIT) Kota is "Government Entity";

(ii) Whether constructing a Community Hall by the applicant at Bapu Nagar Residential Scheme, Kota, in accordance of works contract allotted by UIT Kota, is a taxable service under GST law and if yes, then determination of the liability to pay tax after applicable exemption and deductions, or

(iii) If no, then whether the paid tax shall be refunded to the assessee along with appropriate interest.

(iv) Applicability of change in tax rate during continuing of a works contract, where the works contract has pre-fixed terms and conditions including total tender rate.

We observe that applicant has not specified that under which Notification or its entry applicant is seeking ruling. However, being in common nature we would like to evaluate ruling under Mega Notification No. – 11/2017 – CT (Rate) dated 28.06.2017 as amended.

3) We also observe that applicant have not submitted the constitution and other details of UIT Kota, but UIT Kota is a body corporate Trust which is established by the Government in the year 1970 to achieve its objectives, under Rajasthan Urban Improvement Act 1959. It is responsible for overall development of Kota City, so we would like to attend questions for ruling.

3.1) As per Rajasthan Urban Improvement Act 1959 –

8. Establishment and incorporation of Trusts. - (1) The State Government may, by notification in the official Gazette, establish, for the purpose of carrying out improvement of any urban area in the State, whether a master plan in respect thereof has or has not been prepared, a Board of Trustees to be called the Improvement Trust of the place where its principal office is situated, hereinafter called 'the Trust'.

(2) Every such Trust shall be a body corporate by the aforesaid name having perpetual succession and a common seal with power to acquire, hold and dispose of property

both movable and immovable and to contract and shall by the said name sue and be sued.

9. Constitution of Trust. - (1) The Trust shall consist of-

- (a) a Chairman,
- (b) two members of the Municipal Board, if any, having authority in the urban area,
- [(c) such number of other persons, as may be determined by the State Government for each Trust, of whom one shall be a person belonging to scheduled tribe or scheduled caste, if no person of such caste or tribe is represented in the Trust by virtue of clause (a) or clause (b).]
- (2) The Chairman and the persons referred to in clause (c) of sub-section (1) shall be appointed by the State Government by notification.
- (3) The members of the Municipal Board referred in clause (b) of sub-section (1) shall be elected by the said Board.
- (4) If the said Board does not, by such date as may be fixed by the State Government, elect two of its members to be Trustees, the State Government shall appoint two members of the said Board to be Trustees and every person so appointed shall be deemed to be a Trustee as if he had been duly elected by the Municipal Board.
- (5) If the said Board shall have been superseded or dissolved in accordance with the provisions of the Municipal law for the time being in force, it shall be represented on the Trust by persons appointed or elected, as the case may be, by the officer or authority appointed under the said law to discharge the functions and exercise the powers of the Board during the period of its supersession or dissolution.
- (6) of the person referred to in clause (c) of sub-section (1) at least one shall be a person in the service of the State Government.
- (7) The names of all persons appointed or elected to the Trust shall be notified by the State Government in the official Gazette.

The Kota UIT, has been headed by the Public Chairman as well as District Collector with a secretary as executive officer. It consists govt. officials & nominated public persons as trustees. Its motto to design Urban Pattern* Plan the Future of the City* Improve the existing situation in planned manner* Utilize the urban land in the best manner* Acquire the land for urban development * Plan residential and commercial schemes etc.

4) Now we would like to refer various provisions under the Act.

4.1) The Section 2(53) of the Central Goods and service Tax Act 2017 had defined the government

"Government" means the Central Government;

And sub-section 2(53) of the Rajasthan Goods and service Tax Act, 2017 provided that "Government" means the Government of Rajasthan;

As per clause (23) of section 3 of the General Clauses Act, 1897 the 'Government' includes both the Central Government and any State Government. As per clause (8) of section 3 of the said Act, the 'Central Government', in relation to anything done or to be done after the commencement of the Constitution, means the President. As per Article 53 of the Constitution, the executive power of the Union shall be vested in the President and shall be exercised by him either directly or indirectly through officers' subordinate to him in accordance with the Constitution. Further, in terms of Article 77 of the Constitution, all executive actions of the Government of India shall be expressed to be taken in the name of the President. Therefore, the Central Government means the President and the officers subordinate to him while exercising the executive powers of the Union vested in the President and in the name of the President. Similarly, as per clause (60) of section 3 of the General Clauses Act, 1897, the 'State Government', as respects anything done after the commencement of the Constitution, shall be in a State the Governor, and in a Union Territory the Central Government. As per Article 154 of the Constitution, the executive power of the State shall be vested in the Governor and shall be exercised

by him either directly or indirectly through officers' subordinate to him in accordance with the Constitution. Further, as per article 166 of the Constitution, all executive actions of the Government of State shall be expressed to be taken in the name of Governor. Therefore, State Government means the Governor or the officers subordinate to him who exercise the executive powers of the State vested in the Governor and in the name of the Governor.

4.2) Further, Section 2(69) of the GST Act defines a local authority as below. "Local authority" means – (a) Panchayat as defined in clause (d) of article 243 of the Constitution; (b) a Municipality as defined in clause (e) of article 243P of the Constitution; (c) **a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;** (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006 (41 of 2006); (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution; (f) a Development Board constituted under article 371 [and article 371J] of the Constitution; or (g) a Regional Council constituted under article 371A of the Constitution;".

Here, Section 2(69)(c) of the GST Act is like section 3(31) of the General Clauses Act, 1897, which defines a local authority to mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with the control or management of **a municipal or local fund**.

4.3) Government Entity and Governmental Authority are defined by the Notification No. – 11/2017 – CT (Rate) dated 28.06.2017 as amended vide notification No. 31/2017 – Central Tax (Rate) dated 13.10.2017 as under- "Governmental Authority" means an authority or a board or any other body, –are as under-(ix) "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. (x) "**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.

5. We held that UIT Kota is established by Govt. of Rajasthan (State Legislature) in 1970 under The Rajasthan Urban Improvement Act 1959 and it is established by Govt. of Rajasthan with 90% or more participation by way of equity or control to carry out a function entrusted by the State Government. **Thus UIT Kota falls under the category of "Government Entity".**

5.1 Now we come on second question i.e "Whether constructing a Community Hall by the applicant at Bapu Nagar Residential Scheme, Kota, in accordance of works contract allotted by UIT Kota, is a taxable service under GST law and if yes, then determination of the liability to pay tax after applicable exemption and deductions.

We held that construction of a Community Hall falls under the definition of Civil Work under HSN Code 9954 and taxable in light of Notification No. 22/2021- Central Tax (Rate) New Delhi, 31st December, 2021. G.S.R.....(E).- which is hereby reproduced as under-In exercise of the powers conferred by sub-section (1), sub-section (3) and sub-section (4) of section 9, sub-section (1) of section 11, sub-section (5) of section 15, sub-section (1) of section 16 and section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied

that it is necessary in the public interest so to do, on the recommendations of the Council, and in supersession of notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2021 – Central Tax(Rate), dated the 18th November, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 807(E), dated the 18th November, 2021, hereby makes the following amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No.11/2017- Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 690(E), dated the 28th June, 2017, namely:- In the said notification, in the TABLE, against serial number 3,- 1) in column (3), in the heading “Description of Service”, in items (iii),(vi),(ix) and (x), ***for the words “Union territory, a local authority, a Governmental Authority or a Government Entity” the words “Union territory or a local authority” shall be substituted;*** 2) in column (3), in the heading “Description of Service”, in item (vii), for the words “Union territory, local authority, a Governmental Authority or a Government Entity” the words “Union territory or a local authority” shall be substituted; 3) in column (5), in the heading “Condition”, the entries against items (iii),(vi),(vii),(ix) and (x), shall be omitted. 2. This notification shall come into force with effect from the 1st day of January, 2022.

Hence it light of above, we held that applicant is liable to pay GST on supply of this services and there no exemption and deduction is available to applicant in respect of aforesaid service provided to UIT Kota.

5.1 We don't think any refund arise against tax paid on taxable service. Applicability of change in tax rate during continuing of a works contract, where the works contract has pre-fixed terms and conditions including total tender rate.

5.3 The applicant next question is about the applicability of change in tax rate during continuing of a works contract, where the works contract has pre-fixed terms and conditions including total tender rate.

We find from the contract letter under which conditions mentioned by UIT Kota in respect of supply of subject service that the work was to be started on 11.06.2022 and to be completed prior to 10.12.2022.

We observe that The amendment came into force on 01.01.2022. The benefit of the reduced tax rate, i.e., 12% instead of 18% on works contract supplied to a Governmental Authority or a Government Entity regarding the works contract services mentioned in the corresponding entry, stands discontinued with effect from 01.01.2022.

Further, we would like to mention here the relevant section of Act for clarification of applicant

- (i) *As per Section 2(33) of CGST Act, “Continuous supply of services” means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding 3 months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify.*
- (ii) *As per sec 13(2) of CGST Act the time of supply of service for continuous supply of service shall be the earliest of the following dates: - If the invoice is issued within the prescribed period under section 31(5), the date of issue of invoice by the supplier or the date of receipt of payment whichever is earlier. or If the invoice is not issued within the prescribed period under section 31(5), then the date of provision of service or the date of receipt of payment whichever is earlier.*

- (iii) **As per Section 14 of Act .Change in rate of tax in respect of supply of goods or services.**— Notwithstanding anything contained in section 12 or section 13, the time of supply, where there is a change in the rate of tax in respect of goods or services or both, shall be determined in the following manner, namely:— (a) in case the goods or services or both have been supplied before the change in rate of tax,— (i) where the invoice for the same has been issued and the payment is also received after the change in rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or (ii) where the invoice has been issued prior to the change in rate of tax but payment is received after the change in rate of tax, the time of supply shall be the date of issue of invoice; or (iii) where the payment has been received before the change in rate of tax, but the invoice for the same is issued after the change in rate of tax, the time of supply shall be the date of receipt of payment; (b) in case the goods or services or both have been supplied after the change in rate of tax,— (i) where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment; or (ii) where the invoice has been issued and payment is received before the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or (iii) where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax, the time of supply shall be the date of issue of invoice: Provided that the date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax. Explanation. —For the purposes of this section, —the date of receipt of payment|| shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

In light of above provisions of Act and Notification we held that the amendment came into force on 01.01.2022. The benefit of the reduced tax rate, i.e., 12% instead of 18% on works contract supplied to a Governmental Authority or a Government Entity regarding the works contract services mentioned in the corresponding entry, stands discontinued with effect from 01.01.2022. The revised rate applicable for the said supply is 18%. The revised rate is applicable from the 01st day of January, 2022. In case, where the time of supply of the work completed is on or before 31st December, 2021, GST at pre-revised rate is applicable and in case where the time of supply of the work completed is on or after, 01st day of January, 2022, GST at the revised rate is applicable.

6) We have gone through the judicial pronouncements of various judicial authority and also gone through the decisions of various courts referred by applicant. We found that none of pronouncement submitted by applicant in his favors squarely covers the present question of law in respect of present case. Further we find that some of reference and case laws, which are relating to erstwhile service tax Act and provisions of Service Tax Act, cannot be equated to GST Act and entirely different, so not applicable in the instant case.

In view of the foregoing, we rule as follows: -RULING
(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the
Rajasthan Goods and Services Tax Act, 2017)

Q.1. Whether Urban Improvement Trust (UIT) Kota is "Government Entity";

Ans-UIT Kota falls under the category of "Government Entity".

Q.2. Whether constructing a Community Hall by the applicant at Bapu Nagar Residential Scheme, Kota, in accordance of works contract allotted by UIT Kota, is a taxable service under GST law and if yes, then determination of the liability to pay tax after applicable exemption and deductions. or

Ans- Yes, the applicant is liable to pay GST on supply of this services and there no exemption and deduction is available to applicant in respect of aforesaid service provided to UIT Kota.

Q.3. If no, then whether the paid tax shall be refunded to the assessee along with appropriate interest.

Ans- not required to be answered in reference of answer of question no.2.

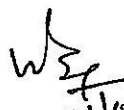
Q.4. Applicability of change in tax rate during continuing of a works contract, where the works contract has pre-fixed terms and conditions including total tender rate.

Ans-The revised rate applicable for the said supply is 18% from the 01st day of January, 2022. where the time of supply of the work completed is on or before 31st December, 2021, GST at pre-revised rate is applicable and in case where the time of supply of the work completed is on or after, 01st day of January, 2022, GST at the revised rate is applicable.

This Ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.


01.9.23
(Umesh Kumar Garg)
MEMBER
CENTRAL TAX




01/09/2023
(Mahesh Kumar Gowla)
MEMBER
STATE TAX

SPEED POST

M/S RAGHUBALA CONSTRUCTION CO. 797, Dadabadi, Kota, Rajasthan,

F. No. AAR/SF/2023-24/104-108

Date: 01/09/23

Copy to: -

1. The Chief Commissioner, CGST and central Excise, (Jaipur Zone), NCRB, Statue Circle, Jaipur, Rajasthan 302005
2. The Chief Commissioner, State Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005.
3. The Pr.Commissioner, CGST and Central Excise Commissionerate UDAIPUR, Rajasthan.
4. The Joint Commissioner, State Tax , Circle-E, KOTA, Commercial Taxes Department, KOTA, Rajasthan

01/09/23