

**GUJARAT AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADMISSION ORDER NO. GUJ/GAAR/ADM/2020/120
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/17)

Date: 30.12.2020

Name and address of the applicant	:	M/s. Surat Municipal Corporation (SMC), Muglisara, Surat-395003.
GSTIN/ User Id of the applicant	:	24AAALS0678Q1ZE
Date of application	:	05.03.2020
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a) classification of any goods or services or both; (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	:	23.12.2020 (through online hearing)
Present for the applicant	:	Not appeared in Personal hearing through video conference.

M/s. Surat Municipal Corporation (SMC), Muglisara, Surat-395003 is a Municipal Corporation and having a GSTIN: 24AADCS3108B1Z2, has filed an application for Advance Ruling under Section 97 of CGST Act, 2017 and Section 97 of the GGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs. 5,000/- each under the CGST Act and the GGST Act.

2. M/s. The SMC is a Local Self Government governed by the Gujarat Province Municipal Act, 1949 (GPMC Act). The GPMC Act has laid down the Statutory / Obligatory and Discretionary Duties to be undertaken by the SMC under Sec 63 (1) and 66 of the GPMC Act. As a part of their Obligatory Duty, they had entrusted the work of “Design and Comprehensive Consultancy Service from Concept to Completion of a State of Art Office Building at T. P. 6 (Majura-Khatodara), F. P. No. 235, Ring Road, Surat to M/s. INI Design Studio Pvt. Ltd. Now, there had been a dispute between said Contractor and the SMC about applicability of GST on the said Contract. SMC is of the opinion that it is exempted by virtue of Entry No. 3 of the Notification No. 12 / 2017 – CT. Hence, the SMC had preferred this Advance Ruling Application.

3. Accordingly, the applicant sought the Advance Ruling on the following question :

“Whether the Supply made by M/s. INI Studio Pvt. Ltd. would qualify for Exemption under Entry No. 3 of the Notification No. 12 / 2017 – CT as a “Service” in relation to any functions entrusted to a municipality under article 243W of the Constitution as a “Pure Service” having no element of goods so as to construe it as “Works Contract’ as defined under Section 2 (119) of the Central Goods and Services Act, 2017 (CGST Act, 2017)”?

APPLICANT’S INTERPRETATION OF LAW AND/OR FACTS

4. The applicant submitted that basically, the issue involved here is of applicability of Exemption of Notification No. 12 / 2017 – CT. There is no dispute that this is the “Supply”. Now, the question arises as to whether this will be termed as “in relation to Article 243W of the Constitution.”

5. The applicant submitted that SMC is a Local Self Government governed by the Gujarat Province Municipal Act, 1949 (GPMC Act). The GPMC Act has laid down the Statutory / Obligatory and Discretionary Duties to be undertaken by the SMC under Sec 63 (1) and 66 of the GPMC Act.

6. The applicant submitted that more specific duties had been laid down by GPMC Act, 1949. Article 243W, is the empowering Section to the State to pass any State Law or Legislation for formation of “Municipal Corporations” and assigning any Functions, Powers, Authorities, Responsibilities and Implementation of any Schemes etc. For ease of reference, the Article 243W of the Constitution is reproduced hereunder.

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”.

From above text of the Article, it is quite evident that the State Law, subject to the provisions of this article, may endow any authority or responsibility to the Corporations. Thus, the Gujarat Province Municipal Act, 1949 (GPMC Act) came into existence. Now, detailed duties of Corporations have been given under Sec 63 (1) & 66 which are Obligatory in nature.

7. The applicant submitted that careful reading of the Article 243W (a) (ii) as mentioned hereinabove, it is noticed that the word “Including” has been used. Combined reading of above provisions gives an impression that the Corporations are bound to perform functions as mentioned in the State Law including those in relation to matters listed in the Twelfth Schedule.

8. The applicant further submitted that the thrust is given to both, the State Law Obligation and Matters listed in the Twelfth Schedule. Thus, it is not like that the Corporations are duty bound only to perform the functions which are mentioned in Twelfth Schedule only. The Corporations are equally duty bound to perform the functions as mentioned under the State Legislature i.e. GPMC Act (Section 63 (1) & 66). Thus, the duties mentioned Section 63 (1) & 66 of the GPMC Act is also indirectly mentioned under the Article 243W of the Constitution of India. Thus, the duties as mentioned in Article 243W are wide enough to include the duties of GPMC Act.

9. The applicant submitted that for ease of reference relevant entry No. 3 of Not. No. 12/2017-CT (Rate) dated 28.06.2017 is reproduced hereunder:

3	Chapter 99	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.	Nil	Nil
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10. The applicant submitted that from above Entry, it is quite clear that if any Service, which is “Pure Service” in nature and having no element of “Work Contract or Composite Supply involving Supply of Goods” for any activity in relation to any function entrusted to Municipality under Article 243W of the Constitution, will be exempted.

11. The applicant further submitted that it is undisputed that this is pure service only. Further, the above Entry of the Notification speaks about exempting the “Input Service” received by SMC which is in relation to the Article 243W. It is nowhere mentioned that the activities in relation to the duties which are listed in Sr. 1 to 18 of the Twelfth Schedule only will be exempted. Further, now we would like to discuss the term “In Relation to” keeping in mind the structure of the SMC and its duties.

12. The applicant submitted that they are agreed to the fact that the word “In Relation To” has to be construed keeping in mind the nature of business and structure of the organization; that while filing the application for advance ruling, they kept Section 63 (1) & 66 of the GPMC Act along with Article 243W, to decide whether particular activity is “In Relation To” main object of the

Corporation or not. Further submitted that the activity of “Design & Comprehensive Consultancy” for “State of Art Office Building” is for use of general people / citizen of the city and will be used for public and civic activities. This activity is specifically mentioned under Section 66 (42) of the GPMC Act which is reproduced hereunder for kind perusal.

“any measure not hereinabove specifically named, likely to promote public safety, health, convenience or instruction.”

The applicant submitted that even, Clause 8 of the Section 63 (1) of the Gujarat Provincial Municipal Corporations Act, 1949 which is enumerated as below:-

“the maintenance of a municipal office and of all public monuments and open spaces and other property vesting in the corporation;”

Further, the Serial No. 2 of the Twelfth Schedule of Article 243W clearly says **“Regulation of land-use and construction of buildings”**.

From above, it is quite clear that any activity which promote or increase the public convenience will fall under Section 66 (42) of the GPMC Act. Even, SMC will need this building to cater their duties as mentioned hereinabove. The New Office Building will increase the public convenience hence, “Design & Comprehensive Consultancy” for “State of Art Office Building” will certainly in relation to the duties which are given under either Section 63 (1), 66 or the Article 243W.

13. The applicant submitted that for implementation of schemes as may be entrusted to SMC including those in relation to the matters listed in the twelfth schedule etc., it is imperative that SMC must have an office/s for their staff who are employed to perform the services of SMC. The jurisdiction of all Municipalities in India including SMC consists of Wards and Administrative Buildings. Further it was submitted that Ward Offices/Administrative Blocks are necessary to enable the execution or performance of all of their functions including those mentioned under Article 243W of the Constitution. In the absence of the establishment by way of a Ward Office, SMC would find it impossible to function.

14. The applicant submitted that even at the cost of repetition, they would like to discuss the word “In Relation To” hereunder which was discussed in their earlier opinion also. The word used in the said Notification “In relation to” is having vast and broader meaning. Any activity which is in relation to the functions entrusted under Article 243W, Section 63 (1) or Section 66 of the GPMC Act will qualify for this exemption.

As held in case of Dy. General Manager, Tata Motors Vs. CCE, Pune – I, as reported in 2015 (40) STR 269 (Tri. Mumbai) the phrase ‘in relation to’ has been construed by Apex Court to be of the widest amplitude. In M/s. Doypack

Systems Pvt. Ltd. v. Union of India and Others - (1988) 2 SCC 299 at 302 = 1988 (36) E.L.T. 201 (S.C.), Hon'ble Court observed as under:

"The expressions 'pertaining to', 'in relation to' and 'arising out of', used in the deeming provision, are used in the expansive sense. The expression 'arising out of' has been used in the sense that it comprises purchase of shares and lands from income arising out of the Kanpur Undertaking. The words 'pertaining to' and 'in relation to' have the same wide meaning and have been used interchangeably for among other reasons, which may include avoidance of repetition of the same phrase in the same clause or sentence, a method followed in good drafting. The word 'pertain' is synonymous with the word 'relate'. The term 'relate' is also defined as meaning to bring into association or connection with. The expression 'in relation to' (so also 'pertaining to'), is a very broad expression which presupposes another subject matter. These are words of comprehensiveness which might have both a direct significance as well as an indirect significance depending on the context.' [Emphasis supplied].

In Renusagar Power Co. Ltd. v. General Electric Company and Another - (1984) 4 SCC 679, Hon'ble Court observed as under:

"Expressions such as 'arising out of' or 'in respect of' or 'in connection with or 'in relation to' or 'in consequence of' or 'concerning' or 'relating to' the contract are of the widest amplitude and content and include even questions as to the existence validity and effect (scope) of the arbitration agreement."

From above, it is quite clear that the service of "Design & Comprehensive Consultancy" for "State of Art Office Building" is in relation to the main work. Hence, in the light of above discussion, it can reasonably be concluded that this contracts will qualify for exemption under Sr. No. 3 of the said Notification being "Pure Service" in nature and for an activity in relation to any function entrusted to Municipality under Article 243W of the Constitution.

15. The applicant submitted that they would like to place reliance on the judgment of AAR of the Maharashtra State in the case of M/s. CIDCO, Maharashtra Dt. 13.04.2019 where in AAR had given the ruling in favour of the Applicant in the similar matter.

Personal Hearing

16. Personal hearing was accorded to the applicant through Virtual Platform (Video conferencing) on 23.12.2020. However neither applicant nor Authorised Representative of the applicant appeared in the Personal hearing.

DISCUSSION & FINDINGS

17. We have considered the submissions made by the applicant in their application for advance ruling as well as the arguments/discussions made by their representative. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

18. 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 the GGST Act.

19. The Applicant application was examined in detail. We find that the Advance Ruling sought by the applicant is the determination of the liability to pay tax on services. After examining the kind of activities and services the applicant is engaged in, it is made clear that the applicant do not make any of the supplies in question, but is in fact the recipient of the various supplies made to him by the contractors as stated in his application. Thus the questions raised are on the liability to pay tax on the services supplied to them and not on the supplies made by them.

Legal provisions :

Section 95(a) of CGST and GGST Act defines 'advance ruling' as

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

From the above it is evident that an applicant can seek an advance ruling in relation to supply of goods or services or both undertaken or proposed to be undertaken by the applicant. Further, as per Section 103(1) of the CGST Act such an Advance Ruling is binding only on the applicant and on the Officer Concerned or the jurisdictional Officer in respect of the applicant.

20. In the present case the applicant is recipient of the services and not supplier of such services. Accordingly, the application is not liable for admission and therefore rejected without going in to the merits of the case.

R U L I N G

Instant application filed by M/s. Surat Municipal Corporation (SMC), Muglisara, Surat is hereby rejected under Section 98(2) of the CGST/GGST Act, 2017 being non-maintainable in view of the above discussion.

(SANJAY SAXENA)

(MOHIT AGRAWAL)

MEMBER

MEMBER

Place: Ahmedabad

Date: 30.12.2020.