

<p style="text-align: center;"><b>GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING</b>  <b>GOODS AND SERVICES TAX</b>  <b>A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,</b>  <b>AHMEDABAD – 380 009.</b></p>	
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ADVANCE RULING(APPEAL) NO. GUJ/GAAAR/APPEAL/2022/05  
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2021/AR/04)

Date : 24.02.2022

Name and address of the appellant	:	M/s. Surat Municipal Corporation (SMC), Muglisara, Surat- 395 003
GSTIN of the appellant	:	24AAALS0678Q1ZE
Advance Ruling No. and Date	:	GUJ/GAAR/ADM/2020/120 dated 30.12.2020
Date of appeal	:	09.02.2021
Date of Personal Hearing	:	13.01.2022
Present for the appellant	:	Shri Hardik Shah

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as the ‘CGST Act, 2017’ and the ‘GGST Act, 2017’) 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, 2017 would also mean reference to the corresponding similar provisions in the GGST Act, 2017.

2. The present appeal has been filed under Section 100 of the CGST Act, 2017 and the GGST Act, 2017) by M/s. Surat Municipal Corporation (SMC) (hereinafter referred to as Appellant) against the Advance Ruling No. GUJ/GAAR/ADM/2020/120 dated 30.12.2020.

3. The appellant has raised the following question for advance ruling in the application for Advance Ruling filed by it.

*“Whether the Supply made by M/s INI Studio would qualify for exemption under Entry No. 3 of the Notification No. 12/2017-CT as “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?”*

4. The appellant has submitted that It 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 appellant under Section 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 Services” 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. There had been a dispute between said Contractor and the appellant about applicability of GST on the said Contract. The appellant is of the opinion that it is exempted by virtue of Entry No. 3 of the Notification No. 12/2017 – CT under “Pure Services”.

5. The Gujarat Authority for Advance Ruling (herein after referred to as ‘the GAAR’), vide Advance Ruling Admission Order No. GUJ/GAAR/ADM/2020/120 dated 30.12.2020, *inter-alia* observed that advance ruling sought by the appellant is the determination of the liability to pay tax on services and applicant do not make any of supplies in question and the questions raised are on the liability to pay tax on the services supplied to them and not on the supplies made by them. Further, GAAR observed that from section 95(a) of CGST Act, 2017 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 appellant, and as per Section 103(1) of CGST Act, Advance Ruling is binding on the appellant and on the Officer Concerned or jurisdictional Officer in respect of appellant.. In view of the foregoing, the GAAR ruled as follows:-

*Question: Whether the Supply made by M/s INI Studio would qualify for exemption under Entry No. 3 of the Notification No. 12/2017-CT as “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??*

*Answer: 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.*

6. Aggrieved by the aforesaid advance ruling, the appellant has filed the present appeal wherein they have submitted that GAAR completely overlooked the definition of the “applicant” given under Section 95(c) of the CGST Act which defines the “Applicant” as any person registered or desirous of obtaining registration under this Act. It is nowhere mentioned under any Section of CGST Act that the recipient of supply cannot apply for the AAR, the appellant is registered under the Act and also applied for the services being undertaken or proposed to be undertaken by them. The appellant further submitted that they sought the Advance Ruling, in relation to the supply of services being undertaken or proposed to be undertaken by them but it was for “inward supply”. It is nowhere mentioned that it should be “Outward Supply” only, the supply can be either inward or outward. The appellant has placed reliance in the judgment of AAR of

Maharashtra in case of M/s CIDCO, Maharashtra dated 13.04.2019 and AAR of Kerala in case of M/s Kerala State Construction Corporation Ltd dated 12.04.2019 where in both cases AAR admitted the application for “inward supply” but also delivered the judgement on the same.

7. The appellant in the ground of appeal, with regard to the merit of the case, has submitted that the appellant is Local Self Government governed by the Gujarat Province Municipal Act, 1949 (GPMC Act) wherein the statutory/obligatory and discretionary duties of appellant is mentioned under Section 63(1) and 66 of GPMC Act. Article 243W of Constitution of India is the empowering Section to the State to pass any state law or legislation for formation of Municipal Corporation and assigning duties to them. From Article 243W (a) (ii), corporations are bound to perform functions as mentioned in the State Law including those in relation to matter listed in the Twelfth Schedule. Thus, the duties as mentioned in Section 63(1) & 66 of the GPMC Act are covered in Article 243W(a)(ii).

8. The appellant has submitted that from the entry No. 3 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, if any services which is pure services and having no element of “Works Contracts or composite supply involving supply of goods” in relation to any function entrusted to municipality under Article 243W of Constitution is exempted. From the above, Input Service received by the appellant which is in relation to Article 243W is exempted. The appellant submitted that the activity of “Design & Comprehensive Consultancy” for “State of Art Office Building” is for use general people/citizen of the city and will be used for public and civic activities and same is mentioned under Section 66(42) of the GPMC Act as “any measure not hereinabove specifically named, likely to promote public safety, health, convenience or instruction” and under Section 63(1) of GPMC Act as “the maintenance of a municipal office and of all public monuments and open spaces and other property vesting in the corporation”. Sr No. 2 of the Twelfth Schedule of Article 243W says “Regulation of land-use and construction of building”. From above provisions of different laws, It is clear that “Design and Comprehensive Consultancy” for State of Art Office Building will certainly in relation to duties given under either Section 63(1), 66 of GPMC Act or Article 243W as the appellant requires office/s for its staff who are employed to perform the services of appellant.

9. The appellant has further submitted that the word used in 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. The appellant placed reliance in the following case laws:

- (i) Dy.General Manager, Tata Motors Vs. CCE, Pune-1 [2015(40) STR 269 (Tri.Mumbai)]
- (ii) M/s Doypack Systems Pvt.Ltd. Vs Union of India and Others- (1988) 2 SCC 299 at 302 = 1988(36) E.L.T.201 (Apex Court)
- (iii) Renusagar Power Co.Ltd Vs General Electric Company and Another- (1984) 4 SCC 679.

10. The personal hearing in the matter was held on 13.01.2022, the appellant through its authorized representative appeared for the personal hearing, which was conducted through video conferencing due to the prevalent covid-19 pandemic situation, he reiterated the submissions made in the appeal dated 05.02.2021. He further submitted that SMC has GST registration and in instant case they were asking for ruling on inward supply. That their inward supply of services viz. Design & Comprehensive Consultancy for State of Art Office Building will qualify for exemption under Sr. No. 3 of Notification No. 12/2017-CT dated 28.06.2017 being “Pure Service” in nature and for an activity in relation to any function entrusted to Municipality under Article 243W of the Constitution. He therefore requested to set aside the order of GAAR and to allow the appeal.

### **FINDINGS :-**

11. We have carefully gone through and considered the appeal and written submissions filed by the appellant, submissions made at the time of personal hearing, Advance Ruling given by the GAAR and other material available on record.

12. The main issue before going into merits of the case is to decide whether the GAAR was right in rejecting appellant’s application under the provisions of Section 98 (2) of the CGST/GGST Act, 2017 as being non-maintainable.

13. We observe that as per Section 95 of the CGST Act, 2017, the term “Advance Ruling” means a decision provided by the authority or appellate authority to an applicant on matters or questions specified in subsection 2 of Section 97 or subsection 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 submission of appellant it is amply clear that the service i.e. “Design and Comprehensive Consultancy” is to be provided by M/s INI Design Studio Pvt Ltd to the Appellant. In view of above, we find that appellant is the recipient of service in the subject case.

14. The appellant in its submission to Gujarat Appellate Authority of Advance Ruling has submitted that it has sought the ruling in relation to the supply of services being undertaken or proposed to be undertaken by them but it was for “inward supply”. It is nowhere mentioned that it should be for Outward supply only. We find that the appellant has mainly stressed on the definition of “applicant” given under Section 95(c) of the CGST Act, 2017, according to which “applicant” means any person registered or desirous of obtaining registration under this Act”. The appellant has failed to understand that the person who makes an application before the advance ruling authority or the appellate authority should be a person who is registered or desirous of obtaining registration under the CGST Act, 2017.

15. The impugned transaction are not in relation to the supply of goods or services or both undertaken or proposed to be undertaken by the appellant and therefore, we are of the view, that it is outside the purview of mandate given to the Advance Ruling Authority/ Appellate Authority on Advance Ruling. The provisions of Section 103 states that the ruling pronounced is binding only on the applicant. It is amply clear that if a

recipient of supply obtains a ruling on the taxability of his inward supply of goods or services or both, the supplier of such goods or services or both is not bound by that ruling and he is free to assess the supply according to his own determination/understanding of law and hence ruling loses its relevance and applicability. Any provision of law has to be interpreted in a constructive and harmonious way keeping in mind the object of the purpose of the provision. Any interpretation, if it defeats the very purpose of the provision of law is not only incorrect but also improper and bad in law.

16. Therefore we find that the present appeal is non-maintainable as per the provisions of CGST Act. In view of the foregoing, we confirm the Advance Ruling Admission Order No. GUJ/GAAR/ADN/2020/120 dated 30.12.2020 of the Gujarat Authority for Advance Ruling in the case of M/s. Surat Municipal Corporation.

**(Milind Torawane)**

Member

**( Seema Arora )**

Member

Place : Ahmedabad

Date : 24.02.2022.