


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

ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2022/07
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/45)

Date: 09.05.2022

Name and address of the appellant	:	M/s. Gujarat Industrial Development Corporation, Block No.4, Udyog Bhavan, 1 st Floor, GH-4 Circle, Sector-11, Gandhinagar – 382011, Gujarat
GSTIN of the appellant	:	24AABCG8033D1Z2
Advance Ruling No. and Date	:	GUJ/GAAR/R/88/2020 dated 17.09.2020
Date of appeal	:	04.12.2020
Date of Personal Hearing	:	22.03.2022
Present for the appellant	:	Shri Jigar 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. Gujarat Industrial Development Corporation (hereinafter referred to as Appellant) against the Advance Ruling No. GUJ/GAAR/R/88/2020 dated 17.09.2020.

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

“Whether various activities carried out by the appellant to the plot holders in terms of provisions of GIDC Act, 1962 and charges collected for the same as may be notified from time to time amounts to supply under Section 7 of the CGST Act, 2017?”

4. The appellant has submitted that they were established under the provisions of Gujarat Industrial Development Act, 1962 (hereinafter referred as GID Act) by the

Gujarat Government for the purpose of orderly establishment and organization of industries in industrial areas and estates as well as establishing commercial centers in connection with the establishment and organization of such industries in the State of Gujarat. Referring to various provisions and sections of CGST Act, 2017, GID Act, the appellant submitted that their activity in question is not to be considered as supply under Section 7 of CGST Act as the same does not fall under the definition of business under Section 2(17) of CGST Act, 2017. The appellant also submitted that as per their interpretation of law, their activities are exempted by the virtue of Sr.No. 04 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (as amended) which exempts the services by government authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution. In support of their claim, appellant refers to various case laws viz. CIT Vs GIDC-2017-TIOL-HC-AHM-IT, CCE Vs Maharashtra Industrial Development Corporation – 2017-TIOL-2629-HC-MUM-ST, Karnataka Industrial Area Development Board [2020(6) TMI 227-CESTAT Bangalore] etc.

5. The Gujarat Authority for Advance Ruling (herein after referred to as ‘the GAAR’), vide Advance Ruling No. GUJ/GAAR/R/88/2020 dated 17.09.2020, *inter-alia* observed that appellant is a ‘wing’ of Gujarat Government (which has come into existence by virtue of GID Act, 1962), like any other department of Gujarat Government and will fall under the category of ‘State Government’ and not in of Governmental Authority as stated by appellant. The GAAR observed that the activity of appellant are covered under clause (i) of Section 2(17) which reads as “any activity or transaction undertaken by Central Government, a State Government or any local authority in which they are engaged as public authorities”, read with sub-sections (1) and 1(A) of Section 7 of CGST Act, 2017 would amount to supply. The GAAR also observed that the appellant is not eligible for exemption mentioned at Entry no.04 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (as amended) as the activities carried out by the appellant are not in relation to function entrusted to the municipalities under Article 243W of the Constitution of India. In view of the foregoing, the GAAR ruled as follows:-

Question: Whether various activities carried out by the appellant to the plot holders in terms of provisions of GIDC Act, 1962 and charges collected for the same as may be notified from time to time amounts to supply under Section 7 of the CGST Act, 2017?

Answer: The various activities carried out by the Applicant M/s Gujarat Industrial Development Corporation, Gandhinagar to the plot holders in terms of provisions of GIDC Act, 1962 and charges collected for the same as may be notified from time to time amounts to supply under Section 7 of Central Goods and Service Tax Act, 2017 (CGST Act) and is liable to GST for the reasons discussed hereinabove.

6. Aggrieved by the aforesaid advance ruling, the appellant has filed the present appeal.

7. The appellant in the ground of appeal has submitted that GAAR rejected all the arguments of appellant without giving any reasons and also failed to understand that both the nature of activity and identity of provider plays equal role in determination of supply. The appellant referring to case laws of Cyril Lasardo (Dead) Vs Juliana Maria Lasardo-2004 (7) SCC 431 and Asst. Commissioner, Commercial Tax Department Vs Shukla & Brothers [2010 (254) ELT 6 (SC)], submitted that ruling of GAAR being non-speaking, is liable to set aside.

8. The appellant has submitted that as per Section 7(1)(a) of CGST Act, 2017, all forms of supply of goods or services or both should be in course of furtherance of business. The phrase ‘furtherance of business’ is not defined under CGST Act, 2017 but the term ‘business’ is defined under Section 2(17) of CGST Act. To determine whether the facilities provided by the appellant to the plot holders amounts to business in terms of Section 2(17) of the CGST Act, it is essential to understand the object and purpose for which appellant is established by the State of Gujarat. The appellant submitted that they have been established under Section 3 of the GID Act for the purpose of orderly establishment and organization of industrial areas and estates in Gujarat. Section 13 of GID Act prescribes various functions to be performed by the appellant. Section 14 of GID Act states powers entrusted to the appellant viz. provision of amenities and common facilities in industrial estates, construction and maintenance of building including road, supply of water, electricity, street lighting, drainage, sewerage etc. Section 37 of GID Act, empowers the appellant to lay down maintain, alter, remove or repair any pipes, pipelines, conduits, supply or service lines, post or other appliances across any land in the industrial area or estate for carrying gas, water, electricity and construction of sewers or drains carrying off waste liquids qualify as ‘water supply for domestic industrial and commercial purposes’, ‘public health, sanitation conservancy and solid waste management and public amenities. Further, Section 8 of GID Act empowers State Government to dissolve the appellant if the State Government is satisfied that the purpose of the appellant is successfully achieved. The appellant also referred to various sections of GID Act.

9. The appellant submitted that Hon’ble Supreme Court in Appellant’s own case reported at 227 ITR 414 has categorically held that the appellant is not a trading corporation. The appellant referred to case law of Shri Ramtanu Cooperative Housing Society Ltd and another Vs State of Maharashtra and Others 1970 (3) SCC wherein Supreme Court held that the corporation is not trading one. The appellant earns income from premium price on lease of plots, sale of tender forms, recovery of fines, hire charges of tools and plants, annual rent of leased land, forfeiture of deposits, scrutiny fees, service charges, rent of buildings, sale of grass, water charges, development charges, drainage cess, penal interest, profit on sale of assets, transfer fee, dividend profit etc. The appellant submitted that the income collected by them is not towards activity of business as the activity is statutory duty as viewed by Supreme Court in case of MIDC. In appellant own case CIT Vs GIDC-2017-TIOL-HC-AHM-IT, Gujarat High Court held that activities of appellant is for advancement of any other object of general public utility, the same can be for “charitable purpose”. The appellant relying on the above case laws submitted that their activity is not in furtherance of business and the same is not supply under section 7 of CGST Act, 2017.

10. The appellant referred to case of CCE Vs Maharashtra Industrial Development Corporation reported at 2017-TIOL-2629-HC-MUM-ST, the Bombay High Court relying upon the circular No. 89/7/2006 dated 18.12.2006 and on the case of Shri Ramtanu Cooperative Housing Society Ltd held that no service tax is payable on service charges recovered by MIDC as MIDC is a statutory corporation discharging its sovereign function. The appellant also referred to CESTAT's order in case of Karnataka Industrial Area Development Board Vs CCT [2020 (6) TMI 227-CESTAT, Bangalore] wherein it was held that Karnataka Industrial Area Development Board is not liable to pay service tax on their statutory activities performed under the act. The appellant submitted that GAAR has wrongly based its reasoning on only one interpretation that appellant falls under the category of state government, the activities carried out by them amounts to supply under Section 7 of CGST Act, 2017 and liable to GST without considering the nature of activities carried out by them.

11. The appellant submitted that their activity does not fall under sub-clause (a) of sub-section 17 of section 2 of CGST Act, 2017, hence, sub-clause (b) cannot be invoked as the activity is not in connection with or incidental or ancillary to sub-clause (a) of section 2(17) and once the activity does not fall under the category of business under sub-clause (a), the test of 'in connection with' and 'or incidental or ancillary to clause (a)' does not hold any relevance. The appellant referred to judgement of Supreme Court in case of CST Vs Sai Publication Fund [2002] 258 ITR 70/122 Taxman 437 wherein it was held that, where main activity is not business, the connected incidental or ancillary activities of sales carried out in furtherance of and to accomplish their main object would not, normally amount to business, unless an independent intention to conduct business in these connected, incidental or ancillary activities is established by revenue. The appellant also referred to case law of State of T.N. & Anr. Vs Board of Trustees of the Port of Madras [(1999) 4 SCC 630]. The appellant submitted that their activity, being discharge of sovereign function in terms of their statutory obligation, does not fall under the definition of business and cannot be considered as supply under CGST Act, 2017.

12. The appellant submitted that the GAAR's observation, that the appellant is wing/agency of the State Government and falls under the category of State Government on the face that entire top management of the appellant is appointed by the state Government, is incorrect. The appellant submitted that definition of government authority is contained in the Notification No. 02/2014-ST date 30.01.2014 as:

“governmental authority” means and authority or a board or any other body;

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by Government,

With 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution.

The appellant submitted that they have been established by the Legislature of State of Gujarat under the act and performs their functions in accordance with the provisions contained in the Act.

The appellant submitted that Section 4 of GID Act involves constitution of the appellant as the appellant consists of 12 directors nominated by State Government and

State Government shall appoint one of the Directors to be Chairman and one of other Directors as Vice-Chairman; Under Section 12(1) of GID Act, State Government shall appoint a Managing Director (signing authority) and a Chief Accounts Officer of the appellant. The appellant further submitted that powers like demarcation/withdrawal of notified area, issuance of specific direction of policy, control over reserve and other specially denominated funds, approval of program of work, conduction of audit of the account of appellant, dissolution of the appellant etc vested with State Government under various provisions/sections of GID Act and hence State Government controls the function of the appellant either directly or indirectly.

13. The appellant submitted that as per section 3 and 13 of GID Act, they have been established for securing and assisting in the rapid and orderly establishment and organization of industries in industrial areas/estates in order to increase number of industries and upon conjoint reading with Article 243W of constitution of India, it is clear that appellant has to prepare and execute plans for economic development as it is directly proportional to growth in number of industries. The appellant referred to their own GIDC Vs CIT AIR 1997 SC 3275, wherein it was held that industrial development is enveloped within the expression “planning, development or improvement of cities, towns and village or for both” in section 10(20A) of Income Tax Act, 1961. The appellant is also entrusted to provisions of common amenities as road, supply of water or electricity, street lighting, drainage, sewerage, conservancy etc and to lay down, maintain, alter, remove or repair any pipes, pipelines, conduits, posts etc across any land in the industrial area/estate for carrying gas, water, electricity or construction of sewer or drains which qualifies as ‘water supply for domestic, industrial and commercial purposes’, ‘public health, sanitation conservancy and solid waste management’ and ‘public amenities including street lighting, parking lots, bus stops and public conveniences.’ The Appellant submitted that it is also their function ‘to make available building on hire or sale to industrialist, construction of buildings for housing of employees of industries or commercial establishment and allot factory sheds or buildings and shops in the industrial estates’ qualifies as ‘regulation of land use and construction of buildings.’

14. The appellant further submitted that under section 16 of GID Act, State Government is empowered to notify any area as industrial area the provisions of Gujarat Municipalities Act, 1963 shall not be in force and such area notified qualifies as ‘Industrial Township’ under Article 243Q as held by Supreme Court in case of Saij Gram Panchayat Vs the State of Gujarat and Ors. AIR 1999 SC 826. The appellant submitted that they are entrusted to carry out functions of the municipality as contained under Article 243W and Schedule XII and therefore satisfies all the conditions to be classified as ‘Governmental Authority’ in view of notification no. 02/2014-ST dated 30.01.2014.

15. The appellant submitted that if it is observed that finding of GAAR is right, then in terms of Sr.No. 5 of Notification 13/2017-Central Tax (Rate) dated 28.06.2017, GST would be payable by the recipient under Reverse Charge Mechanism.

16. The appellant vide their additional submission dated on 17.03.2022 submitted that as per section 16 of GID Act, they are empowered to declare a specified area as notified area and for that notified area, State Government can appoint the local authority who

have all the powers for collection of tax and to provide other civil amenities. The appellant further submitted that from the combined reading of Notification No. 14/2017 – Central Tax (Rate) and Section 7(2) of CGST Act, 2017, it is clear that if the activity of a local authority is any function entrusted to it under Article 243W (which also refers to Schedule XII) then exemption can be claimed by such local authority. The appellant submitted that their activity can be covered under Sr.No. 2, 3 and 17 of Schedule XII which reads as “2. Regulation of land-use and construction of buildings, 3. Planning for economic and social development and 17. Public amenities including street lighting parking lots, bus stops and public conveniences.” and hence they are eligible for exemption from payment of GST.

17. During the course of personal hearing held on 22.03.2022, the appellant reiterated the submissions made in the appeal dated 04.12.2020.

18. Time limit for filing appeal

18.1 The impugned Ruling has been passed by the GAAR on 17.09.2020. In the Form GST ARA-02 regarding Appeal to the Appellate Authority for Advance Ruling, at Sr.No.2, the appellant has shown the date of communication of the Advance Ruling as ‘05.10.2020’. We observe that the present appeal filed on 04.12.2020 has been filed after the prescribed time limit of 30 days from the date of communication of Ruling, which expired on 04/11/2020, as prescribed under Section 100(2) of the CGST Act, 2017. There has been a delay of 30 days. In the application for condonation of delay filed by the appellant alongwith the appeal, the appellant submitted that the delay has occurred on account of several bona fide reasons viz. Cov-d-19 pandemic and Diwali holidays and the resultant unavailability of staff, the process of finalizing the appeal and filing the appeal could not be completed on time. The appellant has requested to condone the delay in terms of proviso to Section 100(2) of CGST Act, 2017, wherein the appellate authority has been vested with power to condone delay upto 30 days if the appellant was prevented by a sufficient cause from presenting the appeal within thirty days of receipt of order. We find sufficient cause to condone the delay of 30 days in filing the appeal after expiry of appeal period on 04/11/2020.

18.2 Even otherwise, the last date for filing appeal stands extended w.e.f. 15.03.2020 in view of the Orders dated 23.03.2020 and 27.04.2021 of Hon’ble Supreme Court in *Suo Motu Writ Petition (Civil) No. 3/2020* read with CBIC Circular No. 157/13/2021-GST dated 20.07.2021.

19. There has been change in one of the two Members of this authority consequent upon the transfer and posting of the Chief Commissioner, Gujarat Goods and Services Tax, after Personal Hearing has been held in this case. The appellant was therefore given fresh hearing on 22.03.2022 wherein the representative/advocate for the appellant appeared and reiterated the contents of their appeal and additional submissions filed and requested to allow their appeal.

FINDINGS :-

20. 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.

21. The main issue before us is whether the activity of the appellant would amount to Supply under the provisions of Section 7 of the CGST Act, 2017.

22. To decide whether the activities carried out by the appellant to the plot holders in terms of GID Act, and charges collected for the same amounts to supply under CGST Act, 2017, we need to refer to definition of supply as per CGST Act, 2017:

“7(1) For the purposes of this Act, the expression “supply” includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business; and

(c) the activities specified in Schedule I, made or agreed to be made without a consideration

(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1),—

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1), (1A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.”

23. We find that second part of provision (a) of sub-section (1) specifically states that the supply of goods and services should be made or agreed to be made for consideration by a person in the course of furtherance of business. The phrase ‘in the course of furtherance of business’ is not defined in the Act, however the term ‘business’ has been defined under section 2(17) of CGST Act, 2017 as:

2(17) “business” includes—

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);*
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;*
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;*
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;*
- (f) admission, for a consideration, of persons to any premises;*
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;*
- (h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and*
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;***

From above, it is seen that as per provision (a), activities mentioned therein would fall in category of business even if they are not for a pecuniary benefit. A transaction which is incidental or ancillary to sub-clause (a) falls under the scope of sub-clause (b) of Section 2(17) of CGST Act, 2017. Further, provision (i) which states any activity or transaction undertaken by Central Government, State Government or local authorities in which they are engaged as public authorities.

The appellant while referring to various provisions and sections of GID Act submitted that for determination whether their activities amounts to business as per CGST Act, 2017, understanding the object and purpose for which the appellant is established by State of Gujarat is essential and that Gujarat Government is in control the function of the appellant directly or indirectly. We are of view that the words ‘object’ and ‘purpose’ are neither directly nor indirectly related to the definition of business provided in CGST Act, 2017. Further, provision (i) of Section 2(17) defines the activity or transaction related to Central/State Government or public authority as business. The activities in which the appellant is engaged are undertaken as public authority, therefore clause (i) of section 2(17) of CGST Act, 2017 covers the activities of the appellant. The provisions of sections 7(1) and 7(1A) of CGST Act, 2017 read with clause (i) of section 2(17) of CGST Act, 2017 indicates that the activities of the appellant would fall under the definition of supply.

24. The appellant has relied upon the Judgment of Supreme Court in their own case reported at 227 ITR 414 wherein it was held that the appellant is not trading corporation and also in the case of Shri Ramtanu Cooperative Housing Society Ltd and another Vs State of Maharashtra and other 1970(3) SCC 323 wherein it was held that corporation is not a trading one. Both the above judgments pertain to Pre-GST era when the terms like business was not defined in the Act prevalent at that time. Further, the appellant relied upon it own case CIT Vs GIDC-2017-TIOL-HC-AHM-IT wherein it was held that the activities of appellant is for advancement of any other object of general public utility and the same can be for “charitable purpose”. We observe that the case pertains to Income-

Tax Act however, charitable institutions and trusts are not wholly exempted from GST and hence the case law cited by applicant has no relevance to the present case.

25. The appellant has cited the case law of CCE Vs Maharashtra Industrial Development Corporation reported at 2017-TIOL-2629-HC-MUM-ST wherein Bombay High Court, while placing reliance upon Board Circular No. 89/7/2006 dated 18.12.2006 and also upon the case law of Ramtanu Cooperative Housing Society Ltd, held that no service tax is payable as MIDC is statutory corporation discharging its sovereign function. We reiterate that the above judgement pertains to Pre-GST era and cannot be made applicable in GST era. Further definition of business as per CGST Act, 2017 includes any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.

26. The appellant submitted that when their activity does not fall under sub-clause (a) of section 2(17) of CGST Act, 2017, then automatically, sub-clause (b) is not invocable as the activity is not in connection with or incidental or ancillary to sub-clause (a). Decisions of Supreme Court in the case of CST Vs Sai Publication Fund [2002] 258 ITR 70/122 Taxman 437 and in case of State of T.N. & Anr. Vs Board of Trustees of the Port of Madras [(1999) 4 SCC 630] have been relied upon by the appellant in support of their contention. The facts of the case relied upon are different to facts of the present case therefore the same does not support the appellant's contention. Further we are of view that when it is established beyond doubt that the activity of the appellant amounts to business, the question of invocation of clause (b) of section 2(17) of CGST Act, 2017 loses its relevance.

27. Whether the appellant is eligible to claim exemption under Sr.No.4 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (as amended), we need to refer to the abovementioned entry of said notification:

<i>Sr. No</i>	<i>Type of activities</i>	<i>Classification</i>	<i>Rate of GST</i>	<i>Condition</i>
4.	<i>Services by Central Government, State Government, Union territory, local authorities or governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the constitution</i>	<i>Chapter 99</i>	<i>Nil</i>	<i>Nil</i>

The above notification was amended vide Notification No. 14/2018-Central Tax (Rate) dated 26.07.2018 (effective from 27.07.2018) which reads as under:

<i>Sr. No</i>	<i>Type of activities</i>	<i>Classification</i>	<i>Rate of GST</i>	<i>Condition</i>
4.	<i>Services by governmental authority</i>	<i>Chapter 99</i>	<i>Nil</i>	<i>Nil</i>

	<i>by way of any activity in relation to any function entrusted to a municipality under article 243W of the constitution</i>			
--	--	--	--	--

It is clear that above mentioned exemptions are available only to Central Government, State Government, Union territory, local authority or governmental authority (upto 26.07.2018) and to governmental authority only (effective from 27.07.2018) in respect to service provided by them by way of any function entrusted to a municipality under article 243W of constitution.

The appellant submitted that GAAR erred in holding that appellant falls under the category of ‘State Government’ and not a Governmental Authority. The term ‘Government Authority’ is defined at clause (zf) of Para 2 of said Notification referring to explanation to clause (16) of Section 2, IGST Act, 2017 which reads as:

“Governmental authority” means an authority or a board or any other body;
(i) set up by Act of Parliament or a State Legislature; or
(ii) established by any Government,
With 90 percent or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution.

From reading of above explanation, it can be stated that to ascertain if the appellant can be termed as governmental authority, following conditions are required to be fulfilled:

- (a) set up by Act of Parliament or State Legislature; or established by any Government,
- (b) with 90% or more participation of Government, by way of equity or control,
- (c) to carry out function entrusted to a municipality under Article 243W of the Constitution.

28. The appellant has been established by the Legislature of Gujarat under the act and performs its functions in accordance with provisions contained in the Act. We are of view that the appellant fulfills the first condition mentioned above. Further, Section 4 of GID Act defines the constitution of the appellant wherein it has been stated that the appellant consists of 12(twelve) directors out of which 3(three) shall be nominated by the State Government. Further, 6(six) directors would be nominated by State Government from amongst persons appearing to it. As per Section 4(2) of GID Act, the State Government shall appoint one director as Chairman and one as Vice-Chairman. Section 12(1) of GID Act states that the State Government shall appoint a Managing Director (who is signing authority for permissions, orders, decisions and notices etc) and a Chief Accounts Officer. Section 16 and 46 of GID Act empowers the State Government to notify any area as ‘notified area’ and to withdraw the same respectively. Section 25 of GID Act states that the appellant has to prepare and submit annual financial statement (budget) and program of work for the succeeding financial year to the State Government for approval. Section 27 of GID Act empowers State Government to conduct concurrent and specific audit of the accounts of the appellant. Section 48 of GID Act empowers State Government to dissolve the appellant if the State Government is satisfied that the purpose

of the appellant is substantially achieved. From the foregoing, it is amply clear that the appellant is wholly owned corporation of the State Government and the State Government controls the function of appellant directly or indirectly. Thus, we are of the view that the second condition which is “90% or more participation of Government, by way of equity or control” is fulfilled by the appellant.

29. To examine whether the appellant fulfills third condition, to carry out function entrusted to a municipality under Article 243W of the Constitution, we refer to Article 243W of the Constitution of India:

“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.”

Schedule XII of the Constitution of India contains the list of functions to be performed by the municipalities:

TWELFTH SCHEDULE

(Article 243W)

- 1. Urban planning including town planning.*
- 2. Regulation of land-use and construction of buildings.*
- 2. 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, play-grounds.*
- 13. Promotion of cultural, educational and aesthetic aspects.*

14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.

15. Cattle ponds; 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.

30. To substantiate their claim that they fulfill third condition for being governmental authority, the appellant submitted that they have been established for securing and assisting in the rapid and orderly establishment and organization of industries in industrial area and estates in order to increase the number of industries established in the state of Gujarat. The appellant submitted that their activity falls under the entry at Sr.No. 3 of XII Schedule which reads as “planning for economic and social development” as growth in the number of industries is directly proportional to economic development. Economic development is different from economic growth; whereas economic development is policy intervention aiming to improve the well-being of people, economic growth is a phenomenon of market productivity and increased GDP. Economic development is broadly based and sustainable increase in the overall standard of living for individuals within a community. Further, in view and furtherance of above, it can be stated that activities viz. upliftment of oppressed people by providing them proper shelters, easy loans for business, encouraging their children for study by providing them scholarships etc are covered in “planning for economic and social development”. We are of view that the activity of appellant i.e. establishment, organization and development of industries and industrial areas and estates is not at all related to entry at Sr.No.3 of XII schedule of the Constitution of India. The appellant place reliance in its own case GIDC Vs CIT AIR 1997 SC 3275 wherein it was held that the industrial development is enveloped within the expression “planning, development or improvement of cities, towns and village or for both” in section 10(20A) of Income Tax Act, 1961. We are of view that the said expression in the above judgement doesn’t find merits in the XII Schedule and hence doesn’t help the claim of appellant.

31. The appellant submitted that they provide amenities like road, supply of water or electricity, street lighting, drainage, sewerage, conservancy etc and these qualify as ‘water supply for domestic, industrial and commercial purposes’, ‘public health, sanitation conservancy and solid waste management’ and ‘public amenities including street lighting, parking lots, bus stops and public conveniences’. Further, the appellant submitted that their activity to make available buildings on hire or sale to industrialist or persons intending to start industrial undertakings or commercial establishments qualifies as ‘regulation of land use and construction of buildings’. It is amply clear from submission of appellant the activities carried out by them specifically pertain to Industries/commercial centers established in notified area and not for general public. In this regard, unless there is specific entry pertaining to the establishment and development of industries in XII Schedule, the above mentioned activities cannot be said to pertaining to entries (as mentioned above) of XII Schedule and appellant does not fulfill the third condition of it being governmental authority.

32. From the above discussion we find that the appellant falls under the category of 'Government Entity'. The term 'Government Entity' is defined at clause (zfa) of Para 2 of Notification 12/2017-Central Tax (Rate) dated 28.06.2017 (as amended) as under:

*((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 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."*

The appellant fulfills the conditions of being a 'Government Entity'. To the above extent we disagree with the findings of GAAR which concluded that GIDC falls under the category of 'State Government'.

33. In view of forgoing discussion, we hold that the appellant is not eligible to claim exemption under Sr.No.4 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (as amended) as they are not a governmental authority carrying out function entrusted to a municipality under article 243 W of the Constitution.

34. The appellant in their additional submissions have submitted that they are eligible for exemption under the provisions of Notification No. 14/2017-Central Tax (Rate) dated 28.06.2017 as amended. The said notification is reproduced below:

Government of India
Ministry of Finance
(Department of Revenue)
Notification No. 14/2017-Central Tax (Rate)

New Delhi, the 28th June, 2017

G.S.R.....(E).- In exercise of the powers conferred by sub-section (2) of section 7 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council hereby notifies that the following activities or transactions undertaken by the Central Government State Government [or Union territory] or any local authority in which they are engaged as public authority, shall be treated neither as a supply of goods nor a supply of service, namely:-

"Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution ¹[or to a Municipality under article 243W of the Constitution]

2. This notification shall come into force with effect from the 1st day of July, 2017.

[F. No.334/1/2017 -TRU]

(Ruchi Bisht)
Under Secretary to the Government of India

35. In view of the discussions in the foregoing paras, we find that the appellant does not fall under the category of 'State Government' and also their functions are not covered

under Twelfth Schedule of Article 243W of the Constitution. They are therefore not eligible for exemption benefit under Notification No.14/2017-Central Tax (Rate) dated 28.06.2017.

36. The appellant in their appeal submitted that if the ruling pronounced by GAAR is upheld, then in terms of Sr.No. 5 of Notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017, the applicable GST would be payable by the recipient under RCM, we are of the view that when the appeal is filed against ruling pronounced by GAAR, the appellate authority cannot go beyond the issue of the appellant on which the ruling is pronounced by Advance Ruling Authority and therefore cannot consider the merits of the point raised by the appellant.

37. In view of the foregoing, we reject the appeal filed by the appellant M/s. Gujarat Industrial Development Corporation. We uphold the Advance Ruling No. GUJ/GAAR/R/88/2020 dated 17.09.2020 of the Gujarat Authority for Advance Ruling, with modification in their findings to the effect that the appellant does not fall under the category of ‘State Government’ but is covered under the category ‘Government Entity’, in the case of M/s. Gujarat Industrial Development Corporation.

(Milind Torwane)
Member (SGST)

(Seema Arora)
Member (CGST)

Place : Ahmedabad
Date : 09.05.2022