


<p>GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.</p>	
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ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2019/4
(IN APPLICATION NO. Appellate Advance Ruling/SGST & CGST/2019/AR/1)

Date: 29.6.2019

Name and address of the Appellant	:	M/s. National Dairy Development Board Near Jagnath Mahadev, Anand – 388 001.
GSTIN of the Appellant	:	24AABCN2029C1Z5
Advance Ruling No. and Date	:	GUJ/GAAR/RULING/2019/2 Dated 22.02.2019
Date of filing appeal	:	02.04.2019
Date of Personal Hearing	:	14.06.2019
Present for the applicant	:	Shri Hardik Shah, CA Shri Kumar Parekh, CA

The appellant, M/s. National Dairy Development Board (herein after referred to as ‘M/s. NDDB’) is a statutory body constituted by an Act of Parliament, namely, the National Dairy Development Board Act, 1987. M/s. NDDB has created a trust in the name of ‘Anandalaya Educational Society’ and allowed it to occupy the property within its campus. The property is allowed to be used or leased at very nominal amount.

2. The appellant filed an application for Advance Ruling before the Gujarat Authority for Advance Ruling (herein after referred to as the ‘GAAR’) and sought ruling on following questions-

- (i) Whether NDDB would be qualified as ‘governmental authority’ from GST perspective?
- (ii) Whether renting of immovable property service provided by NDDB to an educational institute would be exempted under Sr. 4 of Notification No. 12/2017-Central Tax (Rate) ?

3.1 M/s. NDDB referred to the definition of ‘Governmental authority’ given under Section 2(16) of the Integrated Goods and Services Tax Act, 2017 and submitted that since it is set up by an Act of Parliament, it would be ‘Governmental authority’ from GST perspective as per clause (i) of the said definition. It submitted that the condition of ‘ninety percent or more participation by way of equity or control, to carry out any function entrusted to municipality under Article 243W of the Constitution’ given below clause (ii) of the definition would not be applicable to clause (i) of the said definition. In support of this contention, it relied upon the decision of Hon’ble High Court of Patna in case of Shapoorji Paloonji & Company Ltd. Vs. CCE, Patna.

3.2 As regards the eligibility of exemption under Sr. 4 of Notification No. 12/2017-Central Tax (Rate), M/s. NDDDB submitted that one of the function entrusted to municipality is 'promotion of cultural, educational and aesthetic aspects', the scope of which is very wide. It was submitted that services of renting of immovable property for educational institute would be covered within provision of above article.

4. The GAAR, vide Advance Ruling No. GUJ/GAAR/RULING/2019/2 dated 22.02.2019, ruled as follows :-

- (i) National Dairy Development Board (24AADCN2029C1Z5) would be qualified as 'government authority' from Goods and Services Tax perspective, if it fulfils the condition namely 'with ninety 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'.
- (ii) Renting of immovable property service provided by National Dairy Development Board (24AADCN2029C1Z5) to an educational institute would be exempted under Sr. No. 4 of Notification No. 12/2017-Central Tax (Rate) and corresponding State Tax Notification, if it qualifies as 'governmental authority'.

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

6.1 The appellant has submitted that the Advance Ruling is issued with 'if' condition i.e. the appellant would qualify as 'Governmental Authority' if it fulfils the condition of ninety percent or more participation by way of equity or control', and such conditional ruling or ruling with 'if' condition is not proper and against legal provisions.

6.2 It has been submitted that the condition put forth in the ruling is limited to the fact whether the appellant fulfils the condition of ninety percent or more participation by way of equity or control. It has been submitted that the ruling has accepted the fact that the Appellant fulfils the criteria of carrying out any function as entrusted to a municipality under Article 243W of the Constitution. The appellant submitted that the appeal is preferred in order to determine requirement of fulfillment of condition of ninety percent or more participation by way of equity or control, in light of available facts.

7.1 The appellant has submitted that the GAAR has held that the decision in the case of Shapoorji Paloonji & Company Ltd. Vs. CCE, Patna is not binding only because the said judgement has been challenged before the Hon'ble Supreme Court and hence the same may not be considered as final. In this regard, the appellant relied upon the decision of Hon'ble Madras High Court in the case of Dr. T. Rajakumari and others vide W.P. No. 39022 and 36735 of 2015 wherein Hon'ble High Court stated that till the time decision of High Court is struck down by the Supreme Court or the Supreme Court stays the operation of the judgement, the decision of High Court would be applicable.

7.2 The appellant has submitted that the word used in the definition is 'or' between (i) & (ii) and both are separated by way of semi colons, which means the condition of 90% or more participation by way of equity or control, to carry out any function entrusted to municipality under Article 243W would be applicable to body which is established by the Government. Therefore, the board / body set up by an act of parliament is independent

and is not bound by above condition. The Judgement of Hon'ble High Court of Patna in the case of Shapoorji Paloonji & Company Ltd. Vs. CCE, Patna has been relied upon in this regard. The Advance Ruling issued by the Uttarakhand Advance Ruling Authority in the case of NHPC Limited [2018-VIL-284-AAR] has also been referred. The appellant also referred to judgement of Hon'ble High Court of Punjab & Haryana in the case of Rajinder Singh Vs. Kultar Singh [ILR (1979) 2 P&H 486 (FB)] and judgement of Hon'ble Supreme Court in the case of State of Gujarat Vs. Reliance Industries Limited [2017-VIL-34-SC].

8.1 The appellant has submitted that in the Advance Ruling, it is stated that the appellant has not provided the details / evidence as to whether they fulfill the condition or not and if the appellant fulfills the condition, they would be eligible for the exemption.

8.2 In this regard, the appellant has submitted that it is totally controlled by the Central Government. The appellant has cited following provisions of NDDB Act.

- (i) The Board of Directors of NDDB would be nominated by the Central Government. [Section 8],
- (ii) The appointment of auditors for NDDB would be subject to approval of Central Government. [Section 28],
- (iii) The Audit Report issued by the auditors would be laid before the Parliament by the Central Government. [Section 29],
- (iv) In case NDDB wishes to form new company or acquire any company then the previous approval of Central Government is mandatory. Central Government may make any scheme and liquidation can be done by order of the Central Government. [Section 37].

In view of the above, the appellant has submitted that it is fully governed / controlled by the Central Government and hence it fulfills the condition of ninety percent or more participation by way of control in order to qualify as Governmental Authority.

9. Personal Hearing in this case was held on 14.06.2019, wherein in addition to reiterating their submission in the appeal memorandum, they submitted notification S.O. 1869(E) dated 09.06.2017 and notification S.O. 1140 (E) dated 06.03.2019 to buttress the point that their organization has been set up under the Act of Parliament and is fully controlled by Central Government.

FINDINGS (AS PER AJAY JAIN) :-

10. We have considered the submissions made by the appellant in the appeal as well as at the time of personal hearing.

11. The main issue involved in this case is whether the exemption provided vide Sr. 4 of Notification No. 12/2017-Central Tax (Rate) is admissible to appellant for providing service of 'Renting of Immovable Property' to 'Anandalaya Educational Society'. The said Sr. 4 of Notification No. 12/2017-Central Tax (Rate) reads as follows :-

TABLE

<i>Sl. No.</i>	<i>Chapter, Section, Heading, Group or Service Code (Tariff)</i>	<i>Description of Services</i>	<i>Rate (per cent.)</i>	<i>Condition</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>
4	Chapter 99	Services by [* * *] governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.	Nil	Nil

12.1 As the aforesaid Sr. 4 of Notification No. 12/2017-Central Tax (Rate) provides exemption to specified services by ‘governmental authority’, the appellant has raised a question whether it would be qualified as ‘Governmental Authority’ from GST perspective. The term ‘Governmental Authority’ has been defined at clause (zf) of Para 2 of the said Notification as follows :-

“(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 243W of the Constitution or to a Panchayat under article 243G of the Constitution.”

12.2 The appellant has submitted that it is a statutory body constituted by an Act of Parliament, namely the ‘National Dairy Development Board Act, 1987’. It is the contention of the appellant that it is covered under clause (i) of the definition of ‘Governmental Authority’ and the condition below clause (ii) that such an authority / board / other body should have been set up or established ‘with 90 per cent, or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution’, is not applicable to them. The decision of Hon’ble High Court of Patna in the case of Shapoorji Paloonji & Company Pvt. Ltd. Vs. C.C., C.Ex. & S.T., Patna [2016 (42) S.T.R. 681 (Pat.)] has been relied upon by the appellant to buttress this contention.

12.3 It is pertinent to note that Special Leave to Appeal (C) No. CC 7472 of 2017 has been filed by the department in the Hon’ble Supreme Court against the aforesaid decision of Hon’ble High Court of Patna and Hon’ble Supreme Court has issued notice in this case on 13.04.2017. Therefore, the aforesaid judgement of the Hon’ble High Court of Patna in the case of Shapoorji Paloonji & Company Pvt. Ltd. is in jeopardy, in view of the judgement of Hon’ble Supreme Court in the case of Union of India Vs. West Coast Paper Mills Ltd. [2004 (164) E.L.T. 375 (S.C.)], wherein it has been held as under –

“14. Article 136 of the Constitution of India confers a special power upon this Court in terms whereof an appeal shall lie against any order passed by a Court or Tribunal. Once a Special Leave is granted and the appeal is admitted the correctness or otherwise of the judgment of the Tribunal becomes wide open. In such an appeal, the court is entitled to go into both questions of fact as well as law. In such an event the correctness of the judgment is in jeopardy.

.....

38. In the aforementioned cases, this Court failed to take into consideration that once an appeal is filed before this Court and the same is entertained, the judgment of the High Court or the Tribunal is in jeopardy. The subject matter of the lis unless determined by the last Court, cannot be said to have attained finality. Grant of stay of operation of the judgment may not be of much relevance once this Court grants special leave and decides to hear the matter on merit.

13.1 In the definition of “Governmental Authority” at clause (zf) of Para 2 of the Notification No. 12/2017-Central Tax (Rate), there is a long line after the words “Governmental Authority” means an authority or a board or any other body’, which is applicable to both sub clauses (i) and (ii). Further, had it been the intention of the legislature to make the conditions below clause (ii) applicable only to clause (ii) and not to clause (i), then such conditions could have been written alongwith clause (ii) and there was not need to write such conditions separately below clause (ii). It is therefore evident that the condition that an authority / board / other body, to be qualified as ‘Governmental Authority’ should have been set up or established ‘with 90 per cent, or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution’, is applicable to both sub clauses (i) and (ii).

13.2 Thus, to be qualified as ‘Governmental Authority’, an authority / board / other body must fulfill following conditions :-

- (i) it should have been set up by an Act of Parliament or a State Legislature or established by any Government,
- (ii) with 90 per cent, or more participation by way of equity or control,
- (iii) to carry out any function entrusted to a Municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution.

13.3 The appellant National Dairy Development Board has been set up by an Act of Parliament, namely the ‘National Dairy Development Board Act, 1987’, therefore it satisfies the first part of the definition.

13.4 The appellant has mentioned nothing about equity participation in the appeal memorandum. However, it has been submitted that the appellant is totally controlled by the Central Government. As the Chairman and Directors of NDDB are nominated by the Central Government, appointment of auditors for NDDB is subject to approval of the Central Government, Audit Report issued by the auditors is laid before the Parliament by the Central Government and approval of the Central Government is required for acquisition of new company etc., as per the provisions of NDDB Act, 1987, the appellant

also satisfies the condition of 90 per cent, or more participation by way of equity or control.

13.5 The last part of the condition provides that such authority / board / other body should have been set up or established to carry out any function entrusted to a Municipality under Article 243W of the Constitution or to a Panchayat under article 243G of the Constitution. The appellant has asserted that the Advance Ruling given by GAAR has accepted the fact that the Appellant fulfils the criteria of carrying out any function as entrusted to a municipality under Article 243W of the Constitution and the appeal is preferred in order to determine requirement of fulfillment of condition of ninety percent or more participation by way of equity or control. However, the fact remains that the GAAR has clearly observed at Para 7 of the Advance Ruling as well as at the operative part of the Advance Ruling (Para 8(i) of Advance Ruling) that the appellant would be qualified as ‘Governmental Authority’ and exemption under Sr. 4 of Notification No. 12/2017-Central Tax (Rate) would be available to it, if it fulfils both the limbs of the condition below sub-clause (ii) of definition of ‘Governmental Authority’. The said Para 7 and 8 of the Advance Ruling is reproduced below for ease of reference.

“7. We therefore observe that the exemption shall be available to the applicant if the applicant fulfils the common condition namely “with ninety per cent or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution”. As it is not submitted by the applicant as to whether it fulfils the said condition, if in the case of the applicant, this condition is fulfilled, then it attract the benefit of the exemption, otherwise not.

8. *In view of the foregoing, we rule as under :-*

R U L I N G

(i) *National Dairy Development Board (24AADCN2029C1Z5) would be qualified as ‘governmental authority’ from Goods and Services Tax perspective, if it fulfils the condition namely ‘with ninety 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’.*

(ii) *.....”*

13.6 As the appellant has not submitted anything evidencing whether it has been set up or established to carry out any function entrusted to a Municipality under Article 243W of the Constitution or to a Panchayat under article 243G of the Constitution, it is not possible to decide whether the appellant fulfills the said condition or otherwise.

13.7 As a result, in absence of sufficient information provided by the appellant, we are unable to determine whether M/s. NDDDB is “Governmental Authority” as per definition of “Governmental Authority” provided vide clause (zf) of Para 2 of Notification No. 12/2017-Central Tax (Rate), or otherwise.

14.1 The main question involved in this case is whether exemption under Sr. 4 of Notification No. 12/2017-Central Tax (Rate) is admissible to NDDDB for providing

service of renting of immovable property to 'Anandalaya Educational Society'. The said Sr. 4 of Notification No. 12/2017-Central Tax (Rate) provides exemption to services by governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution.

14.2 The appellant NDDDB has provided service of 'Renting of Immovable Property' to 'Anandalaya Educational Society'. The argument of the appellant is that the services of "Renting of Immovable Property" for educational institute would be covered by item 13 of Twelfth Schedule read with Article 243W of the Constitution, which covers "promotion of cultural, educational and aesthetic aspects". It has been submitted that the appellant established the school by way of trust in the name of 'Anandalaya Educational Society' wherein NDDDB Chairman would be the Chairman of the trust and has full power to select members of the Board. It is contended that incorporation of educational institute and providing of various related services for development is appellant's statutory function in line with Article 243W.

14.3 We find that the activity of 'Renting of Immovable Property' is not a function entrusted to a municipality under article 243W of the Constitution. Therefore, services by NDDDB by way of 'Renting of Immovable Property' cannot be said to be service in relation to any function entrusted to a municipality under article 243W of the Constitution. The phrase 'in relation to any function' refers not to what activities the recipient of the service is engaged in, but to what service the supplier is providing. In order to be covered under Sr. 4 of Notification No. 12/2017-Central Tax (Rate), the service by a 'governmental authority' itself should relate to an activity listed under Article 243W read with Twelfth Schedule of the Constitution. 'Renting of Immovable Property' is not covered under Article 243W read with Twelfth Schedule of Constitution.

14.4 In view thereof, we hold that the exemption provided vide Sr. 4 of Notification No. 12/2017-Central Tax (Rate) is not admissible to appellant for providing service of 'Renting of Immovable Property' to 'Anandalaya Educational Society'.

15. Therefore, we modify the Advance Ruling No. GUJ/GAAR/RULING/2019/2 dated 22.02.2019 of the Gujarat Authority for Advance Ruling by holding that -

- (i) In absence of sufficient information, it cannot be determined whether M/s. National Dairy Development Board is "Governmental Authority" as per definition of "Governmental Authority provided vide clause (zf) of Para 2 of Notification No. 12/2017-Central Tax (Rate) and corresponding State Notification No. 12/2017-State Tax(Rate), or otherwise; and
- (ii) Exemption provided vide Sr. 4 of Notification No. 12/2017-Central Tax (Rate) and corresponding State Notification No. 12/2017-State Tax(Rate) is not admissible to M/s. National Dairy Development Board for providing service of 'Renting of Immovable Property'.

FINDINGS (AS PER DR. P.D. VAGHELA) :-

16. The narration of facts as mentioned by the appellant is covered by the order of my colleague and therefore it is not repeated. I differ with the findings of my colleague and therefore also the order of my colleague. The differences are as follows:

1. I agree with the findings of the Advance Ruling authority that documents are not submitted by the appellant, substantiating the claim of appellant that it is a governmental authority as required by Notification No. 12 of 2017, Central Tax (Rate). The appellant is required to prove the claim by submission of documents. The advance ruling authority is therefore right in ruling that,-

“(i) National Dairy Development Board (24AADCN2029C1Z5) would be qualified as ‘governmental authority’ from goods and services tax perspective, if it fulfills the condition namely “with ninety 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”.”

Even in the appeal, authentic documents are not produced by the appellant. As already mentioned in the order of my colleague, the long line after the words “Governmental Authority” means an authority or Board or any other body which is applicable to both sub-clauses (i) and (ii). The similar issue is clarified vide Circular No. 76/50/2018-GST dated 31.12.2018. The appellant has not referred this circular and has not given any cogent reason as to why the reference cannot be made to apply the clarification to the present situation. However, the ruling of the advance ruling authority or this ruling doesn’t debar the appellant to prove his case before the concerned/ jurisdictional officer.

2. The appeal filed before us challenges the order of Authority for Advance Ruling only on single issue viz., whether Authority for Advance Ruling was right in passing the order as mentioned in Para 1 above. The appellant has not filed this appeal challenging the ruling of Authority for Advance Ruling on “renting of immovable property service provided by National Dairy Development Board (24AADCN2029C1Z5) to an educational institute would be exempted under Sr. No. 4 of Notification No. 12/2017-Central Tax (Rate) and corresponding State Tax Notification, if it qualifies as “Governmental Authority”.”. Therefore, it cannot be decided in this appeal on issue which is not subject matter of this appeal.

17. Also, as the members of appellate authority are differing, section 101 (3) of CGST Act, 2017 shall apply.

(Ajay Jain)
Member

(Dr. P. D. Vaghela)
Member

Place : Ahmedabad

Date : 29.6.2019.