

 सत्यमेव जयते	RAJASTHAN APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX NCR BUILDING, STATUE CIRCLE, C-SCHEME JAIPUR – 302005 (RAJASTHAN) Email : aaarjpr@gmail.com	
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Proceedings under Section 101 of the Central GST Act, 2017 read with Rajasthan GST Act, 2017

Before the Bench of

1. Sh. Satish Kumar Agrawal, Member (Central Tax)
2. Sh. Ravi Jain, Member (State Tax)

ORDER NO. RAJ/AAAR/03/2021-22 DATED ..2021

Name and address of the Appellant	:	M/s Consulting Engineers Groups, B-11G, 7 th Floor, CEG Tower, Malviya Industrial Area, Jaipur
GSTIN/ UID of the appellant	:	08AAACC7519B1Z0
Issues under Appeal	:	Whether the 'Project Management Consultancy' services provided to Rajasthan Urban Drinking Water Sewerage and Infrastructure Corporation (RUDSICO) under Rajasthan Secondary Towns Development Sector Project, where invoice is raised by the Applicant to the Lead Member, who further raise invoice to RUDSICO of consolidated amount, can be termed as 'Pure services' as referred in Sl No. 3 – (Chapter 99) of Table mentioned in Notification No. 12/2017- Central Tax (Rate) dated 28/06/2017 and accordingly eligible for exemption from Central Goods & Service Tax and State Goods & Service Tax.
Date of Personal Hearing	:	17.11.2021.
Present for the appellant	:	Mrs. Ritika Rajvanshi, CA and Authorised Representative.
Details of Appeal	:	Appeal No. RAJ/AAAR/APP/03/2021-22 against Advance Ruling No. RAJ/AAR/2021-22/11 dated 06.09.2021

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(Proceedings under section 101 of the Central GST Act, 2017 read with section 101 of the Rajasthan GST Act, 2017)

At the outset, we would like to make it clear that the provisions of both the Central GST Act, 2017 and the Rajasthan GST Act, 2017 are same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central GST Act, 2017 would also mean a reference to the same provisions under Rajasthan GST Act, 2017.

2. The present appeal has been filed under Section 100 of the Central GST Act, 2017 (**hereinafter also referred to as 'the CGST Act'**) read with Section 100 of the Rajasthan GST Act, 2017 (**hereinafter also referred to as 'the RGST Act'**) by M/s Consulting Engineers Groups, B-11G, 7th Floor, CEG Tower, Malviya Industrial Area, Jaipur (**hereinafter also referred to as 'the appellant'**) against the Advance Ruling No.RAJ/AAR/2021-22/11 dated 06.09.2021

3. *Appellant is a Company registered under the Companies Act, 1956 and registered with Registrar of Companies as "Consulting Engineering Group Limited" vide CIN: U74140RJ1991PLC006329 with its Registered Office at 7th Floor, B-11(G), Industrial Area, Malviya Nagar, Jaipur-302017 vide GSTIN 08AAACC7519B1Z0, having its Principal place of Business at 7th Floor, B-11(G), Industrial Area, Malviya Nagar, Jaipur-302017. A contract under Rajasthan Secondary Towns Development Sector Project (RSTDSP), (herein after called "project") has been awarded by Rajasthan Urban Drinking Water Sewerage & Infrastructure Corporation Limited (hereinafter referred to as RUDSICO) to a Joint venture consisting of the following entities, each member of which will be jointly and severally liable to the client (i.e. RUDSICO) for all the consultant's obligation under this contract namely Haskoning DHV consulting Pvt.Ltd., Haskoning DHV Nederland B.V. and Consulting Engineers group Ltd. Rajasthan Secondary Towns Development Sector Project (RSTDSP) will invest in the rehabilitation and expansion of water supply network for reduction of non-revenue water under (NRW), 24x7*



water supply, rehabilitation and expansion of sewerage network, modernization and new construction of water supply and wastewater treatment plants and wastewater pumping stations, faecal sludge management and decentralized wastewater management systems in the projected towns. The project will include O&M embedded construction contracts combining design, construction and O&M for water supply and wastewater contracts for a period of 10 years. This will support the municipalities O&M responsibility and improve the quality of service delivery by providing continuity in system operation as well as O&M. Special contract conditions for monitoring NRW reduction will be developed and incorporated in the bidding documents to provide incentives for NRW reduction. The Applicant has agreed to provide Project Management Consultancy Services to RUDSICO for Rajasthan Secondary Towns Development Sector Project in Joint Venture with Haskoning DHV Consulting Pvt. Ltd. And Haskoning DHV Nederland B.V. The objective of the Contract Management & Supervision Consultants (CMSC) i.e. the Applicant is to provide assistance to the Project Implementation Unit (PIU) for day to day contract management and construction supervision of the project towns of the respective package. The Applicant shall be responsible for effectively leading and taking initiative to manage, execute and implement the project by effective contract management and construction supervision. Haskoning DHV is the Lead Member in the Joint Venture and is authorized with the responsibility of all the Financial Administration work of the contract. Thus, the Applicant raise Invoice for its Project Management Consultancy Services to the Lead Member Haskoning DHV, who further raise Invoice for consolidated amount to RUDSICO. The payment when received by the Lead member, is further disbursed to the appellant and other members of the Joint Venture. The appellant further states that its client, RUDSICO is of the view that the Project Management Consultancy services provided by them are exempt



from CGST and Rajasthan GST as per Entry no. 3 of Notification No. 12/2017 Central Tax (Rate) dated 28/06/2017.

4. Appellant has filed an application before the Rajasthan Authority of Advance Ruling to determine the eligibility of the Project Management Consultancy services provided to Rajasthan Urban Drinking Water Sewerage and Infrastructure Corporation for Rajasthan Secondary Towns Development Sector Project can be termed as 'Pure Services' as referred in Entry No. 3 Notification No. 12/2017 - Central Tax (Rate) Dated 28/06/2017 and accordingly eligible for exemption from Central Goods and Service Tax and Rajasthan Goods and Service Tax, irrespective of the invoice being raised by the appellant to the Lead Member and not to the Service receiver i.e. RUDSICO.

Question on which the Advance Ruling was sought, is as under:

Whether the 'Project Management Consultancy' services provided to Rajasthan Urban Drinking Water Sewerage and Infrastructure Corporation (RUDSICO) under Rajasthan Secondary Towns Development Sector Project, where Invoice is raised by the Applicant to the Lead Member, who further raise invoice to RUDSICO of consolidated amount, can be termed as 'Pure Services' as referred in Sl. No. 3 - (Chapter 99) of Table mentioned in Notification No. 12/2017 - Central Tax (Rate) Dated 28/06/2017 and accordingly eligible for exemption from Central Goods and Service Tax and State Goods & Service Tax.



5. *Authority for Advance Ruling, Rajasthan issued Advance Ruling holding that:*

- a) Ongoing through the Contract Agreement submitted by the Applicant with regard to the Services provided to the RUDSICO, it is seen that the services provided are of only Consultancy services. The Applicant has also declared that PMC services provided by them have no component of supply of goods. Since there is no involvement of supply of goods in the services, the services would be termed as 'Pure Services'.*
- b) In view of the objective of the Project mentioned in the Contract, we conclude that the supply of Consultancy Services by the Applicant are in relation to function of Town Planning and Water Supply, hence, it is in relation to function entrusted to a Municipality under Article 243W of the Constitution.*
- c) The third condition, whether recipient of Service, i.e., RUDSICO qualifies as 'Governmental Authority'. In the instant case, as per the master data, the total authorized capital is Rs. 50 crore and the paid up capital is Rs. 48.67 crore. The paid up capital of only Rs. 41 crore is held by the Government of Rajasthan through H.E. Governor of Rajasthan, which is less than 90%, as per the definition given under Notification no. 11/2017- Central Tax (rate) and Notification no. 12/2017- Central Tax (rate) dated 28.06.2017, hence, the recipient of the service is not a Governmental Authority.*

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Therefore, they are not eligible for exemption under Notification no. 12/2017- Central Tax (rate) dated 28.06.2017

6. Aggrieved by the Ruling, the Appellant has preferred the present appeal before this forum on following ground.

6.1 In RUDSICO, more than 90% shareholding or equity Control is held by the Government of Rajasthan.

6.1.1 The definition of "Governmental Authority" as per the definitions given under Notification no. 11/2017-Central tax (rate) and Notification no. 12/2017- Central tax (rate) dated 28th June 2017:

"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.

6.1.2 Appellant submitted that the Government of Rajasthan holds more than 90% of the Equity Control in RUDSICO, through:



S. No.	Name of Shareholder	No. of Shares	Amt per share	Share capital in Rupee	Percentage Holding
1.	Government of Rajasthan through H.E. the Governor of Rajasthan	40991693	10	409916930	99.99%
2.	Rajasthan Housing Board (RHB)	3916403	10	39164030	
3.	Jaipur Development Authority	3760800	10	37608000	
4.	Others	1099	10	10990	0.01%
	TOTAL	48669995	10	486699950	

6.1.3 Appellant further submitted that Rajasthan Housing Board (RHB) and Jaipur Development Authority are also Government entities having more than 90% holding of Government of Rajasthan, as under:

Rajasthan Housing Board (RHB)

The Rajasthan Housing Board was established on 24th Feb, 1970 by promulgation of an RHB Act No. 4, of 1970 (received the assent of The Governor on the 18th day of April, 1970) by the Government of Rajasthan as an autonomous body to provide for measures to be taken to deal with & satisfy the need of Housing accommodation in State of Rajasthan. The Board consist of a chairman, appointed by The State Government and of six non official members, nominated by The Government and official Members-Principal Secretary to

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Government (UDH), Secretary to Government (Finance), Chief Town Planner, Rajasthan and the Housing Commissioner of the Board.

Jaipur Development Authority (JDA)

Jaipur Development Authority is a body constituted under Jaipur Development Authority Act 1982 (Act. 25) as a statutory vehicle to implement the urban development of Jaipur as envisaged by the Department of Urban Development and Housing, Government of Rajasthan. JDA is charged and empowered to create basic infrastructure to meet the needs of the ever-increasing population and also for the required expansion of the city ensuring sustainable and orderly growth supported with effective monitoring and regulation through innovative and citizen participatory approach.

Hence, both the entities are created by an Act of Parliament/ State Legislature by the Government of Rajasthan and qualify to be a Government Authority as per the Definition.

6.2. RUDSICO is entrusted with the developmental projects of the state of Rajasthan

6.2.1 RUDSICO is a Govt. of Rajasthan undertaking, is the State Level Nodal Agency (SLNA) for Govt. of India financed projects like AMRUT, smart city, UIDSSMT, UIG, Eleven City Sewerage and the state Govt. financed projects like ROB-RUB, Seven Cities Sewerage and Affordable Housing. Earlier it was known by the name of Rajasthan Urban Infrastructure Finance and Development Corporation Limited (RUIFDCO) but after 19th November 2015 its name got changed to RUDSICO.



6.2.2 *RUDSICO, being a Government authority and headed by the Honorable Minister UDH & LSG (Government of Rajasthan) is mainly responsible:*

- *To give financial assistance to ULBs/Government Agencies/Non Government organization.*
- *To give subsidy, aid, assistance of any financial nature to ULBs/Govt. Agencies/Non Govt. Agencies.*
- *To arrange or provide consultancy services, technical, financial and other consultancy to Urban Local Bodies (hereinafter referred to as ULBs).*
- *To carry out survey for schemes and programme relating to Infrastructure Development.*
- *To receive amount as revenue from ULBs.*
- *To distribute on behalf of Govt. grant-in-aid and financial assistance to ULBs.*
- *To arrange or raise funds from public, institutional investor, Banks or Financial Institutions.*
- *To plan and financial monitor all type of project related to development of Urban Areas in Rajasthan.*
- *To set up a Central Urban Data Center for collecting and updating of all information relating to urban development and urban Infrastructure for the urban areas of the state.*
- *To act as nodal agency for implementation of affordable housing policy/scheme 2009 and as amended from time to time by the Government of Rajasthan.*
- *To Plan, design, develop, construct, maintain, and manage the finance and to make or arrange all the works/Jobs/Services including incidental and ancillary for infrastructure development, housing, public utility services and all other works related to the construction.*



6.2.3 Appellant submitted that RUDSICO is a State Level Nodal Agency, entrusted with the development objectives of the state of Rajasthan and is held by the Government of Rajasthan.

1. All the Official Authorized Documents as well as its official website, mentions RUDSICO as 'a Government of Rajasthan Undertaking'.
2. The introductory para on the official website of RUDSICO reads as under:

Rajasthan Urban Drinking Water Sewerage and Infrastructure Corporation Limited (erstwhile Rajasthan Urban Infrastructure Finance and Development Corporation Limited) is a Government Company registered under The Companies Act, 1956 incorporated in Dec. 2004 and got its name changed from RUIFDCO to RUDSICO on 19th November, 2015.

In compliance of Cabinet order 160/2014 dated 12th Dec. 2014 Rajasthan Avas Vikas Infrastructure Limited (RAVIL) was merged into RUDSICO vide MCA order dated 29th January, 2016 and accordingly notification no. F. 3(K)/Esta./PD/DLB/14/4169 dated 12th April, 2016 has been issued in this regard. Rajasthan Urban Infrastructure Development Project (RUIDP) was merged into RUDSICO vide Administrative order no. F. 3(K)/Esta./PD/DLB/14/4752 dated 13/04/2016.

3. The official records of the company such as Director's Report, List of Stakeholders published on the Ministry of Corporate Affairs (MCA) Portal mentions it as 'A Government of Rajasthan Undertaking'. The



Annual Return Forms (MGT-7) submitted by the Undertaking on the Ministry of Corporate Affairs (MCA) portal also states it as a 'State Government Company'. A copy of the same has been attached for your reference in Annexure- 2.

4. RUDSICO is a State Government Company where more than 90 percent of the equity or control to carry out any function is owned by the Government of Rajasthan. It functions directly under the Minister of UDH & LSG, Government of Rajasthan as its Chairman.

Appellant further submitted that they shall be eligible for exemption under Entry 3 of the notification no. 12/2017- Central Tax (Rate) dated 28.06.2017, as all the three conditions of the entry has been fulfilled, i.e.

- The Project Management & Consultancy service provided by the Applicant is a 'Pure Service', as ruled in the Advance Ruling Order.
- The objective of the Project mentioned in the Contract are in relation to function of Town Planning and Water Supply, hence, it is in relation to function entrusted to a Municipality under Article 243W of the Constitution, as ruled in the Advance Ruling.
- As per the Grounds of Appeal submitted above, the Recipient of service, i.e. RUDSICO, having more than 90% Equity Control of Government of Rajasthan qualifies to be a 'Governmental Authority'.

Concluding the above, the Project Management and Consultancy service, being a 'Pure Service', provided by the Applicant to RUDSICO, should be eligible for exemption under Entry 3 of the notification no. 12/2017- Central Tax (Rate) dated 28.06.2017.



PERSONAL HEARING

7. A virtual hearing in the matter was held on 17.11.2021. Mrs. Ritika Rajvanshi, CA and Authorized Representative of the appellant attended the hearing on 17.11.2021. She reiterated the submissions already made under grounds of appeal.

DISCUSSION AND FINDINGS:

8.1 We have carefully gone through the Appeal papers filed by the Appellant, the Ruling of the AAR, Rajasthan, written as well as oral submissions made by the authorized representative(s) of the appellant, at the time of personal hearing held on 17.11.2021.

8.2 Appellant observed that they are entitled to the notification No. 12/2017 Central Tax rate. The relevant portion of the Notification No. 12/2017 –Central Tax (Rate) dated 28/06/2017 is reproduced as under:

.....

"In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-



Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (Per cent .)	Condition
(1)	(2)	(3)	(4)	(5)
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

8.2.1 We observe that the following three conditions are to be fulfilled to be eligible for taking the benefit of the exemption from GST under the above notification:

- (i) Pure services are to be provided.



(ii) Such services provided should be *by way of any activity in relation to any function entrusted* to a Panchayat under Article 243G of the Constitution of India or in relation to any function entrusted to a Municipality under Article 243W of the Constitution of India; and

(iii) Service recipient should either be Central Government or State Government or Union territory or Local authority or Governmental authority.

8.2.2 We observe that AAR Rajasthan held that both the conditions (i) and (ii) as mentioned above are satisfied here, therefore, main dispute to be decided by this forum is whether recipient of the service viz. Rajasthan Urban Drinking Water Sewerage & Infrastructure Corporation Limited (RUDSICO) qualifies as "Governmental authority" or not. The definition of "Governmental Authority" given under Notification no. 12/2017-Central tax (rate) dated 28th June 2017 is as under: -

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.

8.2.3 As submitted by the appellant, total authorized capital of RUDSICO is Rs. 50 crores and the paid-up capital is Rs. 48.67 crore. Appellant has further submitted the bifurcation of paid-up capital which is reproduced as under:-



S.No.	Name of Shareholder	No. of Shares	Amt per share	Share capital in Rupee	Percentage Holding
1.	Government of Rajasthan through H.E. the Governor of Rajasthan	40991693	10	409916930	99.99%
2.	Rajasthan Housing Board (RHB)	3916403	10	39164030	
3.	Jaipur Development Authority	3760800	10	37608000	
4.	Others	1099	10	10990	0.01%
	TOTAL	48669995	10	486699950	

8.2.4 We find that out of total paid up capital of Rs. 48.67 Crore, only Rs. 40.99 Crore holding is with Government of Rajasthan through H.E. governor of Rajasthan, which is less than 90%. The appellant main contention is that the Rajasthan Housing board and Jaipur Development Authority are also Government entities as both have 90% holding of Rajasthan government. In this regard, our opinion is that to satisfy as Government authority more than 90% holding of equity should be with only "Government" not with any other entity established by the Government. As per section 2(53) of Central Goods and Service Tax Act, 2017 "Government" means the Central government. In Rajasthan Goods and Service Tax Act, 2017 "Government" means the government of Rajasthan. Further, as per clause (23) of section 3 of the General Clauses Act, 1897 the 'Government' includes both the Central Government and any State Government.

8.3 Further, as per clause (8) of section 3 of the General Clauses Act, 1897, the 'Central Government', in relation to anything done or to be done after the commencement of the Constitution, means the President.



As per Article 53 of the Constitution, the executive power of the Union shall be vested in the President and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution. Further, in terms of Article 77 of the Constitution, all executive actions of the Government of India shall be expressed to be taken in the name of the President. Therefore, the Central Government means the President and the officers subordinate to him while exercising the executive powers of the Union vested in the President and in the name of the President. Similarly, as per clause (60) of section 3 of the General Clauses Act, 1897, the 'State Government', as respects anything done after the commencement of the Constitution, shall be in a State the Governor, and in an Union Territory the Central Government. As per Article 154 of the Constitution, the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution. Further, as per article 166 of the Constitution, all executive actions of the Government of State shall be expressed to be taken in the name of Governor. Therefore, State Government means the Governor or the officers subordinate to him who exercise the executive powers of the State vested in the Governor and in the name of the Governor.

8.4 We observe that a statutory body, corporation or an authority created by the Parliament or a State Legislature is neither 'Government' nor a 'local authority'. Such statutory bodies, corporations or authorities are normally created by the Parliament or a State Legislature in exercise of the powers conferred under article 53(3)(b) and article 154(2)(b) of the Constitution respectively. Hon'ble supreme court in the case *Agarwal Vs. Hindustan Steel AIR 1970 Supreme Court 1150* has held that, "the corporation which is Hindustan Steel Limited in this case is not a department of the Government nor are the servants of it holding posts under the State. It has its independent existence and by law relating to Corporations, it is distinct even from its members."

8.4.1 We observe that such a statutory body, corporation or an authority as a judicial entity is separate from the State and cannot be regarded as the Central or a State Government and also does not fall in the definition of 'local authority'. Thus, regulatory bodies and other autonomous entities would not be regarded as the "government" for the purposes of the GST Acts.



8.5 In view of above discussion, we find that holding of equity control of RUDSICO by Jaipur Development Authority and Rajasthan Housing Board cannot be treated as holding of equity control by government. Accordingly, we hold that RUDSICO is not a Governmental Authority. Therefore, appellant is not eligible for exemption under notification no. 12/2017 central tax (Rate) dated 28.06.2017.

9. Accordingly, appeal filed by the appellant is disposed off.

(Satish Kumar Agrawal)
Member (Central Tax)

(Ravi Jain)
Member (State Tax)

SPEED POST

To
M/s Consulting Engineers Groups,
B-11G, 7th Floor, CEG Tower,
Malviya Industrial Area, Jaipur-302017

F. No. IV (16)03/AAAR/RAJ//2021-22/3488-93 Date. 14.12.2021

Copy to:-

1. The Chief Commissioner of CGST (Jaipur Zone), NCR Building, Statue Circle, Jaipur.
2. The Chief Commissioner of SGST, Rajasthan, KarBhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.
3. The Principal Commissioner, CGST Commissionerate, Jaipur.
4. The Member, Rajasthan Authority for Advance Ruling, Goods and Service Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, Jaipur-302005.
5. Guard File.

(Shiv Kumar Gupta)

Superintendent