

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



ADVANCE RULING(APPEAL) NO. GUJ/GAAAR/APPEAL/2025/12  
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2024/AR/03)

Date : 24.02.2025

Name and address of the appellant	:	M/s Devendra Kantibhai Patel, 60, Krushna Dham Society, Near Pragati Nagar, Piplod, Surat, Gujarat- 395 007.
GSTIN of the appellant	:	24AZFPP1155R1ZX
Jurisdiction Office	:	Office of the Assistant Commissioner of State Tax, Unit-64, Division-7, Surat.
Advance Ruling No. and Date	:	GUJ/GAAR/R/2024/10 dated 30.05.2024
Date of appeal	:	06.07.2024
Date of Personal Hearing	:	21.01.2025
Present for the appellant	:	Shri Anish Goyal (CA) and Shri Dinesh Gabani

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 *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 is filed under section 100 of the CGST Act, 2017 and the GGST Act, 2017 by M/s. Devendra Kantibhai Patel (for short – 'Appellant') against the Advance Ruling No. GUJ/GAAR/R/2024/10 dated 30.05.2024.

3. Briefly, the facts are that the appellant is engaged in the providing WCS<sup>1</sup> in addition to engineering consultancy services to various Government agencies like R&B department, etc.. The nature of the work awarded to the appellant is preparing & providing plans and estimate & <sup>2</sup>DTP for the building work. The appellant claims that this would qualify as pure services. The appellant is further

<sup>1</sup> Works Contract Service

<sup>2</sup> draft tender paper



of the view that they are in relation to the functions entrusted to Municipalities under article 243W & to Panchayat under Article 243G and is exempt under Sr. No. 3 of notification No. 12/2017-CT (R) dated 28.6.2017, as amended.

4. In view of the foregoing facts, the appellant sought Advance Ruling on the following questions, viz:

*"(i) Whether providing services of preparing and providing plans and estimate and preparing and providing DTP [Draft Tender Plan] for the building work provided by the assessee to the R&B department, Government of Gujarat under the contract would qualify as an activity in relation to Panchayat or Municipality under Article 243 G or Article 243 W respectively, of the Constitution of India ?*

*(ii) If answer to the first question is in affirmative then, whether such service provided by the applicant would qualify as pure service [excluding works contract service or composite supplies involving supply of any goods] provided to the Central Government, State Government or Union Territory or local authority by way of any activity in relation to any function entrusted to a Panchayat under article 243 G of the constitution or in relation to any function entrusted to a Municipality under article 243 W of the Constitution as provided in serial number 3 of notification No. 12/2017-CT (R), dt 28.6.2017, and, thus be eligible for exemption from levy of CGST and SGST respectively ?"*

5. Consequent to hearing the applicant, the Gujarat Authority for Advance Ruling [GAAR], recorded the following findings viz:

- that the first claim of the service having been provided to State Government, is correct;
- the second claim of the service being a 'pure service' appears to be correct;
- regarding the third claim, that the activity is in relation to function entrusted to a Municipality and a Panchayat, i.e. Articles 243 G & W, GAAR held as under:
  - that the applicant has not provided any details of the buildings for which they have provided plans and estimates and DTP;
  - the question that arises is whether a building say staff quarters built for State Government employees for which the applicant was engaged in preparing and providing plans and estimates and DTP [draft tender plan], can be said to be a work in relation to function entrusted to Municipalities and panchayat;
  - that it is difficult to comprehend as to how constructing a building, which probably has nothing to do with any of the functions enumerated in schedules XI or XII can be said to be in relation to functions entrusted to Municipality under Article 243W in terms of Sr. No. and 2 of Schedule XI;
  - that the averment of applicant, if accepted would lead to a situation wherein all the buildings constructed by the State Government, being an activity in relation to the function entrusted to a Panchayat or Municipality, would merit exemption;
  - the applicant has nowhere stated as to for what purpose the buildings were constructed by the State Government;
  - that circular No. 51/25/2018-GST dated 31.7.2018, clarifies that service provided by PSPs [private service providers] to State Government by way of transportation of patients [ambulance services] against consideration in the form of fee was exempt was on the ground that functions of 'health and sanitation' is entrusted to Panchayat under article 243G read with XI<sup>th</sup> schedule & Municipalities under article 243W read with XII<sup>th</sup> schedule.

6. The GAAR, thereafter, vide the impugned ruling dated 30.5.2024, held as follows:

*"(i) Providing services of preparing and providing plans and estimate and preparing and providing DTP [Draft Tender Plan] for the building work by the applicant to the R&B department, Government of Gujarat under the contract would not qualify as an activity in relation to Panchayat or Municipality under Article 243G or Article 243W respectively, of the Constitution of India.*

*(ii) Since the answer to the first question is in negative, the second question becomes infructuous."*

7. Aggrieved, the appellant is before us, raising the following contentions, viz

- that R&B department falls under the Government of Gujarat and is headed by a Cabinet Minister;
- that the website of R&B department itself states that the department is in charge of all activities pertaining to planning, construction and maintenance of all categories of roads, and all Government owned buildings;
- that their above services would fall within the ambit of an activity in relation to function entrusted to a Panchayat under article 243G [eleventh schedule] and Municipality under article 243W [twelfth schedule] of the Constitution of India;
- The projects in which consultancy service is being provided are undertaken by R&B department, would fall under clauses 1,2,6,9,12,13,15 of the 12<sup>th</sup> schedule of Article 243W and clauses 1,3,4,16,17,20,23,25,26,27,29 of 11<sup>th</sup> schedule of Article 243G; that a complete list is annexed at Annexure D;
- that they have satisfied all the three conditions of entry no. 3 of notification No. 12/2017-CT (R) dated 28.6.2017, as amended and hence are eligible for the exemption;
- that the phrase 'activity in relation to any function' used in the notification, is to be interpreted as similar/such/relatable activity carried out by the Central Government, State Government or Union Territory; that any other interpretation would render the exemption redundant;
- that TRU circular<sup>3</sup>, leaves no doubt that the phrase 'in relation to any function' as applied to serial numbers 3 & 3A of the exemption notification, makes no substantial difference between 25(a) of erstwhile ST notification and the aforementioned serial numbers 3 & 3A; that even if the said services are provided by PSPs (Private Service Providers) to State Government, then also it is exempted in terms of the said circular;
- the applicant would further like to rely on the below mentioned rulings viz
  - <sup>4</sup>Dredging and Desiltation Company P Ltd
  - <sup>5</sup>Neo Built Corporation
  - <sup>6</sup>Arihant Dredging Developers P Ltd
  - <sup>7</sup>Dredging and Desiltation Company P Ltd
  - <sup>8</sup>Jayesh Anilkumar Dalal
  - <sup>9</sup>Manpar Icon Technologies
  - <sup>10</sup>Ajit Babubhai Jariwala

<sup>3</sup> Circular No. 51/25/2018-GST dated 31.7.2018

<sup>4</sup> Order No. 3/WBAAR/2019-20 dated 10.6.2019.

<sup>5</sup> Order No. 5/WBAAR/2019-20 dated 10.6.2019.

<sup>6</sup> Order No. 11/WBAAR/2019-20 dated 27.6.2019.

<sup>7</sup> Order No. 12/WBAAR/2019-20 dated 27.6.2019.

<sup>8</sup> 2021 (12) TMI 414

<sup>9</sup> 2021 (3) TMI 708-AAR UP

<sup>10</sup> 2023 (5) TMI 285-AAR Gujarat

o <sup>11</sup>Sir J J School of Architecture Consultancy Cell

8. Personal hearing in the matter was held on 21.01.2025 wherein Shri Anish Goyal, CA, and Shri Dinesh Gabani appeared and reiterated the submissions made in the appeal.

### **FINDINGS :-**

9. We have carefully gone through and considered the appeal papers, written submissions filed by the appellant, submissions made at the time of personal hearing, the impugned Advance Ruling and other materials available on record.

10. The appellant's primary contention is that consultancy services provided by way of preparing and providing plans and estimates and DTP for building works to R&B department of the Government of Gujarat in terms of the scope of the tender are in relation to the functions entrusted to Municipalities under Article 243W & to Panchayat under Article 243G of the Constitution of India and is therefore exempt in terms of Sr. No. 3 of notification No. 12/2017-CT (R) dated 28.6.2017, as amended.

11. The Gujarat Advance Ruling Authority (GAAR), vide their impugned ruling, in paragraph 17 has observed that applicant failed to provide any details of the buildings for which they have provided plans and estimates and DTP. On account of lack of adequate details, the GAAR vide its impugned ruling held that the appellant is not eligible for a blanket exemption in terms of Sr. No. 3 of notification No. 12/2017-CT (R) dated 28.6.2017, as amended.

12. The appellant in their application made before the GAAR had not submitted the list of building in relation to which consultancy services was provided to R&B Department. However, in the appeal papers they have submitted the list of projects. We therefore find that the appellant, has presented new facts before the appellate authority, which were never placed before the GAAR. In-fact, the GAAR while passing their ruling, did not have the benefit of going through these materials and therefore, the ruling given by the GAAR is based on absence of

<sup>11</sup> 2022 (2) TMI 240-AAR Maharashtra





material facts. Even otherwise, the material produced for the first time needs to be verified for its factual accuracy.

13. Before going into the merits of the case, we find it prudent to reproduce the subsection (1) of the Section 101 of the CGST Act, 2017, viz

**Section 101: Order of the Appellate Authority**

*(1) The Appellate Authority may, [after giving the parties] to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, **confirming or modifying** the ruling appealed against or referred to.*

*[emphasis supplied]*

14. A plain reading of the subsection (1) of the section 101, *ibid*, depicts that the appellate authority may pass such order as it thinks fit, by either confirming or modifying the ruling pronounced by the advance ruling authority.

15. The GAAR however, as is already mentioned, delivered its ruling without the benefit of examining the data, since it was provided for the first time before the Appellate Authority for Advance Ruling. In light of such a peculiar situation, in the interest of justice, we deem it appropriate to remand back the matter to the GAAR. We are mindful of the fact that section 101 of the CGST Act, nowhere restrains the Appellate Authority from referring a case back to the GAAR.

16. The wordings in section 101 of the CGST Act, 2017, reproduced *supra*, is almost similar to sections 35A of the Central Excise Act, 1944 and 85(5) of the Finance Act, 1994. To substantiate the aforementioned finding, we rely on the judgement of the Hon'ble Gujarat High Court in the case of Commissioner of Central Excise vs Medico Labs and Anr.<sup>12</sup>. This is more so because the jurisprudence developed over the years may be referred as *pari materia* while ascertaining the ambit and scope of the powers of the Appellate Authority for Advance Ruling.

17. We also rely on the below mentioned rulings issued by various Appellate Authority for Advance Ruling wherein matters have been remanded to the Authority for Advance Ruling viz

<sup>12</sup> 2004(173)ELT 117 (Guj)



- Myntra Designs Pvt Ltd<sup>13</sup>
- D.M Net Technologies<sup>14</sup>
- Portescap India Pvt Ltd<sup>15</sup>
- D K V Enterprises Pvt Ltd<sup>16</sup>

18. In view of the above discussion, the impugned ruling dated 30.5.2024 is set aside and the matter is remanded back to the Authority for Advance Ruling (i.e. the GAAR) for fresh decision. The GAAR will take into consideration all aspects of the matter and decide the case afresh after affording adequate opportunity of hearing to the appellant.

  
( Rajeev Topno )  
Member (SGST)

  
(B V Siva Naga Kumari)  
Member (CGST)

Place: Ahmedabad  
Date: 26.02.2025



<sup>13</sup> Karnataka AAAR Order No. KAR/AAAR/06/2022 dated 21.11.2022

<sup>14</sup> Gujarat AAAR order dated 22-08-2022 [2022-VII-73-AAAR]

<sup>15</sup> Maharashtra AAAR order dated 3-11-2020

<sup>16</sup> Andhra Pradesh AAAR order dated 31-08-2020

