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GOA AUTHORITY FOR ADVANCE RULING.

(Constituted under section 96 of the Goa Goods and Services Tax Act,  
2017 (Goa Act 4 of 2017) read with Rule 103 of the Goa Goods and  
Services Tax Rules, 2017)

BEFORE THE BENCH OF

- (1) Shri. J. K. Meena, Addl Commissioner of Central Tax
- (2) Smt. Sarita S. Gadgil, Addl Commissioner of State Tax

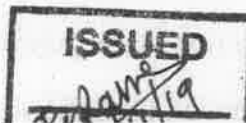
Advance Ruling No. GOA/GAAR/3 of 2019-20/ **2223**

Name of the Applicant	Bicholim Municipal Council
Address	Bicholim Municipal Council, Bicholim, Goa
GSTIN	30AAALB0075A1Z8
Date of Application	22/08/2019
Under Section 97(2) of the CGST/GGST Act, 2017 under which question raised	Whether GST payable on collection of Sopo or not.
Date of Hearing	23/10/2019
Persons Present for Hearing	Shri Vivek Naik, Chief Officer

PROCEEDING

(Under Section 98 of the Goa Goods and Services Tax, Act 2017)

The present application has been filed under section 97 of the Goa Goods and Services Tax Act, 2017 and the Central Goods and Services Tax, Act 2017 (hereinafter referred to as the SGST Act and CGST Act) by Bicholim Municipal Council, Bicholim, Goa seeking an Advance Ruling in respect of the following question "Whether GST payable on collection of Sopo or not".



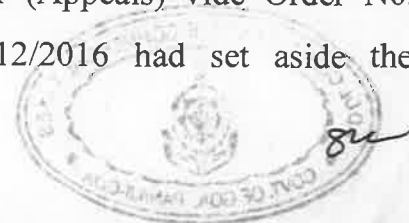
## BRIEF FACTS

The Bicholim Municipal Council charges “Sopo” from vendors for occupation of space (both open and covered) in the Municipal Market area. “Sopo” is kind of nominal fees collected from floating hawkers and small merchant on a daily basis for use of vacant land/space. The practice of collection of “Sopo” is an age-old going on even before liberation of Goa. The collection of “Sopo” doesn’t amount to “Renting of immovable property”.

It is further informed by the applicant that –

1. The said tax is collected on a daily basis from only those vendors who come to sell their goods in the Municipal Market area.
2. The vendors are not allotted or rented out any fixed space/structure for occupation. They sit in the open space or temporarily erected sheds.
3. The vendors are not provided with any amenities or any additional services.
4. The proceeds of the “Sopo” collected are primarily utilized for upkeep and maintenance of the market area.
5. The Bicholim Municipal Council is an institute of self Government constituted under article 243(O) of the Indian constitution. Maintenance and upkeep of the market area is an obligatory duty of the council under the Section 51 of the Goa Municipalities Act.

The assessee had filed an appeal before the Office of the Commissioner (Appeals), Pune Appellate-II, Central Excise (at Goa) against the Order in Original No. GOA-EXCUS-000-JC-009-2015-16, dated 25 June, 2015 passed by Joint Commissioner of Central Excise and Service Tax, Panaji – Goa to seek clarification whether service tax was applicable on the “Sopo” collected by the Bicholim Municipal Council. The Commissioner (Appeals) vide Order No. GOA-EXCUS-000-APP-293-2016-17, dated 07/12/2016 had set aside the liability of service tax on Sopo.



## FINDINGS

c/677

Section 9(1) of CGST Act, 2017 levies GST on all intra-state supplies of goods or services or both. The expression supply is defined under Section 7(1) as follows –

- (a) *all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, 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;*
- (c) *the activities specified in Schedule I, made or agreed to be made without a consideration; and*
- (d) *the activities to be treated as supply of goods or supply of services as referred to in Schedule II.*

Section 7(1)(d) specifies the activities mentioned in Schedule II to the Act to be treated as supply of goods or supply of services

### **SCHEDULE II (See Section 7) ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES**

#### **1. Transfer**

- (a) any transfer of the title in goods is a supply of goods;
- (b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;
- (c) any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.

#### **2. Land and Building**

- (a) any lease, tenancy, easement, licence to occupy land is a supply of

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services;

(b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

3. Treatment or process Any treatment or process which is applied to another person's goods is a supply of services.

4. Transfer of business assets

(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;

(b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services;

(c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—

(i) the business is transferred as a going concern to another person; or

(ii) the business is carried on by a personal representative who is deemed to be a taxable person.

As per S. No. 2(a) of Schedule II of CGST Act, 2017, any licence to occupy land is a supply of services.

As mentioned by the applicant in his submission that Sopo is a nominal fee collected from vendors, hawkers and small merchants on a daily basis for occupation of space (both open and covered) in the Municipal Market area.



Harmonious reading of Section 7(1)(d) combined with S. No. 2(a) of Schedule II of CGST Act, 2017 makes it clear that Sopo falls within the definition of 'Supply' under GST.

The Central Government had issued Notification No. 16/2018-Central Tax(Rate), dated 26 July, 2018 under Section 7(2) of CGST Act, 2017 wherein it was notified that following activities or transactions undertaken by any local authority in which they are engaged as public authority, shall be treated neither as supply of goods nor a supply of service, namely: -

The issue is whether making available a space, both open and covered within the area of the Municipal Market to vendors, hawkers and small merchants is covered in "Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution or to a Municipality under article 243W of the Constitution"

Twelfth Schedule of the Constitution of India lists out the functions entrusted to a municipality under article 243W and the same are reproduced below –

1. *Urban planning including town planning.*
2. *Regulation of land-use and construction of buildings.*
3. *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, playgrounds.*
- 13. Promotion of cultural, educational and aesthetic aspects.*
- 14. Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.*
- 15. Cattle pounds; 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.]*

However, Eleventh Schedule of the Constitution lists out the functions entrusted to a Panchayat under Article 243G and the same are reproduced as under:

- 1. Agriculture, including agricultural extension.*
- 2. Land improvement, implementation of land reforms, land consolidation and soil conservation.*
- 3. Minor irrigation, water management and watershed development.*
- 4. Animal husbandry, dairying and poultry.*
- 5. Fisheries.*
- 6. Social forestry and farm forestry.*
- 7. Minor forest produce.*
- 8. Small scale industries, including food processing industries.*
- 9. Khadi, village and cottage industries.*
- 10. Rural housing.*
- 11. Drinking water.*
- 12. Fuel and fodder.*
- 13. Roads, culverts, bridges, ferries, waterways and other means of communication.*



C/673

14. *Rural electrification, including distribution of electricity.*
15. *Non-conventional energy sources. 1*
16. *Poverty alleviation programme.*
17. *Education, including primary and secondary schools.*
18. *Technical training and vocational education.*
19. *Adult and non-formal education.*
20. *Libraries.*
21. *Cultural activities.*
22. *Markets and fairs.*
23. *Health and sanitation, including hospitals, primary health centres and dispensaries.*
24. *Family welfare.*
25. *Women and child development.*
26. *Social welfare, including welfare of the handicapped and mentally retarded.*
27. *Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.*
28. *Public distribution system.*
29. *Maintenance of community assets.]*

The Eleventh Schedule of Constitution of India includes entry of markets and fairs at Sl. No. 22. However, no such entry is available in Twelfth Schedule. The applicant here is Municipality and as such cannot be said to be providing services by way of an activity in relation to a function entrusted to a Municipality under Article 243 W of the Constitution. Moreover, such fees for occupation of open space are collected even by private parties in areas where there are business activities, as such it is not the function which is entrusted to local authority in which it is engaged as public authority.

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In view of the above facts and provisions the ruling is given as under:

ADVANCE RULING UNDER SECTION 98 OF THE CGST/GGST ACT,

2017

GST is payable on collection of Sopo from 1 July, 2017.

(J. K. Meena)  
Member

26/11/19

(Sarita S. Gadgil)  
Member

Dated: -26/11/2019

Place: - Panaji – Goa

To,

Bicholim Municipal Council,

Bicholim, Goa,

Copy to

1. The State Tax Officer, Bicholim Ward, Panaji – Goa;
2. The Dy. Commissioner of State Tax, Bicholim Ward, Panaji;
3. The Commissioner of State GST, Panaji – Goa;
- ✓ 4. The Commissioner of Central GST, Panaji – Goa;
- ✓ 5. Office file;
6. Guard file.

