

GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX A/5, RAJYA KAR BHAVAN, ASHRAM ROAD AHMEDABAD – 380 009.	
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ADMISSION ORDER NO. GUJ/GAAR/R/08/2019
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/3)

Date :01/05/2019

Name and address of the applicant	:	Shri Jayesh Anilkumar Dalal, 'Jalaram Shakti', B/S. Dhavalgiri Apt., Near Lourdes Convent School, Surat – 395 001.
GSTIN of the applicant	:	24AAVPD9061B1ZS
Date of application	:	29/01/2018
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(b) applicability of a notification issued under the provisions of this Act
Date of Personal Hearing	:	05/02/2018
Present for the applicant	:	Shri Jignesh A. Dalal.

2 The applicant Shri Jayesh Anilkumar Dalal (GSTIN: 24AAVPD9061B1ZS) has given following queries for advance ruling:

“Whether or not my supply of services in the nature as mentioned in point 12(B), provided to Local Authorities, Urban Development Authority, Dist. Panchayat R&B Div. and other Government Departments which are entrusted with the functions mentioned under article 243G and 243W of the Constitution of India can be termed as “Pure Services” as referred in

1. SI. 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 Services Tax?
 2. SI. No 3 - (Chapter 99) of Table mentioned in Notification No.12/2017-(Gujarat) State Tax (Rate) Dated 30/06/2017 and accordingly eligible for exemption from Gujarat Goods and Services Tax?”
- 2.2.The Applicant Shri Jayesh Anilkumar Dalal, vide Statement-I to his application dated 29/01/2018, has submitted that he has been providing consultancy services in the field of structural, architectural and project management consultancy covered under(SAC 998331) intrastate within Gujarat as well as interstate. He was registered under Service Tax vide STC: AAVPD9061BST001 and migrated to GST vide GSTIN: 24AAVPD9061B1ZS and is charging GST. The nature of services and recipient of the service are given below:

2.3. Nature of Services : (Point 12(B) of the application)

- (a) Structural Designing & architectural Planning.
- (b) Project management consultancy services including complete project supervision, monitoring & quality Assurance.
- (c) Providing third party inspection services for road & building construction work.
- (d) Preparation of DPR (detail project report).
- (e) Preparation of HFAPOA (House for all plan of action) and DPRS for BLC (Beneficiary led Construction) under different verticals of housing for all (HFA) (Urban mission/pradhan mantri Awas Yojana (PMAY)).
- (f) Technical Audit & Quality Assurance.

Description of Service:

- Architectural / Structural Planning of Housing project LIG MIG in respect Of affordable Housing scheme under PMAY, Rajiv Gandhi Awas Yojna, Jn nurm.
- Other Services like Planning of school building, hostel building, party hall, Auditorium , community hall, Sports Complex, stadium, office building, shopping complex, Bus Terminals, Fire Station, river front, lake development, recreational activity like beach development, TPI Of Road Carpeting & winding. Etc.

Recipient of the Services:

1	Surat Municipal Corporation	9	Ahmedabad Municipal Corporation
2	Surat Urban Development Authority	10	Ahmedabad Urban Development Authority
3	Vadodara Urban Development Authority	11	Gujarat Housing Board, Ahmedabad
4	Gujarat Housing Board, Vadodara	12	Rajkot Municipal Corporation
5	Gandhinagar Municipal Corporation.	13	Rajkot Urban Development Authority
6	Gandhinagar Urban Development Authority	14	Punjab Urban Development Authority
7	Sports Authority of Gujarat, Gandhinagar	15	Gujarat State Police Housing Corporation Ltd.
8	Executive Engineer, R&B Division, Himmatnagar	16	R & B Panchayat Div. Vadodara

3 The applicant has submitted that they have been providing services to above authorities/departments since under Services Tax Law and also continued in the GST regime and made invoices for their services by charging GST. However, the applicant submitted that, some of the departments from above are of the view that his services are exempted from CGST and Gujarat GST as per of Notification No.12/2017 Central Tax (Rate) dated 28/06/2017 and Notification No.12/2017— (Gujarat) State Tax (Rate) dated 30/06/2017 respectively.

The applicant also took the base of FAQ (Frequently Asked Question) publish on www.cbec.gov.in —> GST —> My GST—>Sectorial FAQ —> Government Service —> Question No. 25, which is reproduced as under:-

Question 25: What is the scope of ‘pure services’ mentioned in the exemption notification No. 12/2017—Central Tax (Rate), dated 28.06.2017?

Answer: In the context of the language used in the notification, supply of services without involving any supply of goods would be treated as supply of ‘pure services’. For example, supply of manpower for Cleanliness of roads, public places, architect services, Consulting engineer services, advisory services, and like services provided by business entities not involving any supply of goods would be treated as supply of pure services. On the other hand, let us take the example of a governmental authority awarding the work of maintenance of street lights in a Municipal area to an agency which involves apart from maintenance, replacement of defunct lights and other spares. In this case, the scope of the service involves maintenance work and supply of goods, which falls under the works contract services. The exemption is provided to services involves only supply of services and not for works contract services.

3.1 The applicant has further mentioned in the Statement II, of the application, that:

- i. The word “Pure Services” referred in notification has nowhere been defined in the Act, Rules or notification themselves. They also do not provide any mechanism to determine particular service as “Pure Services”.
- ii. The Notification also does not specifically name the services which are eligible for exemption and which are excluded.
- iii. The plea of the government department by taking the base of FAQ as mentioned herein before in statement 1, is also not reliable since the fact that the FAQs represent the best efforts, general guidance about the question only and which cannot be quoted in any legal purpose. It is not intended to be treated as legal advice or legal purpose. The GST department could not be abiding by the FAQs for any action taken by taxpayer on the bases of FAQs.
- iv. In order to avoid future litigation, the applicant is issuing the invoices by charging the GST.
- v. Considering the above, Applicant has submitted that whether or not his services can be regarded as “Pure Service” and accordingly' eligible for exemption?

4 The Central Goods and Services Tax Deputy Commissioner, Surat, in his letter dated. 26.02.2018, has mentioned that “pure services” which has been mentioned in Exemption Notification No. 12/2017-Cental Tax (Rate) dated 28.06.2017 has been explained in Q.No.25 of FAQ issued by CBEC regarding Govt. Services which is reproduce as under :-

"In the context of the language used in the Notification, supply of services without involving any supply of goods would be treated as supply of pure services'. For example, supply of man power for cleanliness of roads, public places, architect services, consulting engineering services, advisory services and like services provided by business entities not involving any supply of goods would be treated as supply of pure services. On the other hand, let us take the example of governmental authorities awarding the work of maintenance of street lights in a municipal area to agency which involve apart from maintenance, replacement of defunct lights and other spares. In this case, the scope of the service involves maintenance work and supply of goods, which falls under the works contract services. The exemption is provided to services involves only supply of services and not for work contract services”.

4.1 He has, inter-alia, mentioned that as per the documents submitted by the applicant, it appears that the services provided by applicant do not involve any supply of goods and hence they are falling in the definition of “Pure Services”.

4.2 He has mentioned that on going through the work order submitted by the applicant in respect of Gandhinagar Urban Development Authority and Rajkot Municipality it appears that The applicant is providing consultancy services for providing Architectural design and Project management Consultancy for Housing project which is not a statutory function mentioned under article 243G and 243W of the Constitution of India for local bodies. Therefore in his opinion the benefit under Sl.No.3— (Chapter 99) of table mentioned in Notification No. 12/2017-Central Tax (Rate) dated 28.06.17 is not eligible to them for these two particular projects.

5 To take up the query of the Applicant we reproduce the relevant portion of the Notification No. 12/2017 –Central Tax (Rate) dated 28/06/2017 and Notification No. 12/2017 – (Gujarat) State Tax (Rate) dated 30/06/2017 which is as follows:

“.....

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:-

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

5.1 From the above it is forthcoming that the services are exempted from the CGST and SGST Tax if they are 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.

5.2 We place the reliance on FAQ (Frequently Asked Question) publish on www.cbec.gov.in —> GST —> My GST—> Sectoral FAQ —> Government Service —> Question No. 25, which is reproduced in Para 4 above.

5.3 From the documents submitted by the applicant, it appears that the services provided by them do not involve any supply of goods and hence the services appear to be falling in the definition of “Pure Services”. However, the definition of pure services requires the verification of facts involves in the execution of contract. Similarly whether the contract is related to the function covered under the Article 243G and 243W is to be interpreted as to how the Local Authority is going to utilize the services provided under the contract, it is also therefor the question of interpretation of fact that the services provided by the applicant are actually utilized by the Local Authority for the function covered by Article 243G and 243W.

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

R U L I N G

Question: Whether or not my supply of services in the nature as mentioned in point 12(B) above, provided to Local Authorities , Urban Development Authority, Dist. Panchayat R&B Div. and other Government Departments which are entrusted with the functions mentioned under article 243G and 243W of the Constitution of India can be termed as “Pure Services” as referred in

1. 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.
2. Sl. No. 3 – (Chapter 99) of Table mentioned in Notification No. 12/2017 – (Gujarat) State Tax (Rate) Dated 30/06/2017 and accordingly eligible for exemption from Gujarat Goods and Service Tax.

Answer: The services provided by the Applicant, Shri Jayesh Anilkumar Dalal, (GSTIN: 24AAVPD9061B1ZS) may be termed as “Pure Services” provided they fulfill the following conditions:

- i) It excludes works contract service
- ii) It excludes other composite supplies involving supply of any goods
- iii) It is supply of services without involving any supply of goods

The services provided by the applicant is eligible for the exemption from Goods and Service Tax as per Sl. No. 3 – (Chapter 99) of Table mentioned in Notification No. 12/2017 –Central Tax (Rate) dated 28/06/2017 and as per Sl. No. 3 – (Chapter 99) of Table mentioned in Notification No. 12/2017 – (Gujarat) State Tax (Rate) dated 30/06/2017 if they are pure services and are provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity to a Panchayat under article 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.

(R.B. Mankodi)
Member

(G.C. Jain)
Member

Place: Ahmedabad
Date: 01/05/2019