

GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/37/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/65)

Date: 03.07.2020

Name and address of the applicant	:	M/s Jayshreeben Rameshchandra Kothari, G.F.1, Adesh Apartment, Near Somnath Willa, Dandia Bazar, Vadodara-390001
GSTIN/ User Id of the applicant	:	24ARDPK0507E1ZH
Date of application	:	30.11.2018
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	e) Determination of the liability to pay tax on any goods or services or both.
Date of Personal Hearing	:	18.06.2020 (through Video Conferencing)
Present for the applicant	:	Shri Dhaval Shah

BRIEF FACTS OF THE CASE:

The applicant is a Proprietor of **M/s Dimple Colour Lab**, having a GSTIN: 24ARDPK0507E1ZH, filed an application for Advance Ruling under Section 97 of CGST Act, 2017 and Section 97 of the GGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs. 5,000/- each under the CGST Act and the SGST Act.

2. The applicant submitted that they are engaged in supply of goods such as Temporary live videography with LED & LCD Screen, Live Telecast equipment, Cameras, etc. on hire basis to Central Govt., State Govt., Union Territory, Local Authority, Village Panchayat, who undertake activities in relation to any function entrusted under Article-243G of the Constitution.

3. The applicant further submitted that Central Govt., State Govt., Union Territory, Local Authority, Village Panchayat, place orders to them for providing/supplying Temporary live videography with LED & LCD Screen, Live Telecast equipment, Cameras, etc.. They have enclosed specimen Work Orders viz. (a) Work Order No. AB/TC/1082 dated 26.04.2017 issued by Office of the

Executive Engineer, Baroda Electrical Division, R & B Department, Vadodara and (b) Work Order No. Duda/Vasi dated 28.08.2018 issued by the Collector, Bharuch.

4. The applicant submitted that the illustrative supply of services which constitute hire charges for a consideration, *inter-alia*, include:

(a) Hire Charges for erecting and dismantling of TV with necessary suitable cables as provided on site as per the requirement on Site and as per the direction of Engineer-in-Charge;

(b) LED Screen with suitable Iron Platform Structure, back support of Iron H Frames and wiring etc., complete 16 mega pixel Outdoor Screen with a refresh rate of 4800 MHZ or so as per requirement of on Site and as per the direction of Engineer-in-Charge;

(c) Hire Charges, for providing, erecting and dismantling of DTH system, having enough size Disc for receiving Digital Signal and Set Top Box, as required for program, with good quality interconnecting wires & necessary re-charge (Tata Sky, Dish TV, Airtel etc.);

(d) Hire charges for providing, erecting and dismantling of HD Digital Video Recording (3CCD) for receiving and general Shoots, with competent Authorized Person (each camera), as per the direction of Engineer-in-Charge;

(e) Hire charges for providing, erecting and dismantling, after use of HD Online Recording Set-up and providing HD DVD's as per function requirement, as per the direction of Engineer-in-charge;

(f) Hire Charges for providing erection and dismantling after use of live Black Magic HD Digital set up for mixing, as per direction of Engineer-in-charge.

5. The applicant further submitted that after completion of the event all the instruments and accessories which are deployed at site for an event are taken back by the applicant and are used for another event. In other words, the Equipment are given on "Hire" only and there is no transfer of ownership of goods at any point of time. The consideration charged by applicant are "hire Charges".

6. The applicant further submitted that the activity-transfer of the right to

use any goods, for any purpose (whether or not, for a specified period), for cash deferred payment or other valuable consideration is considered as Supply of Service as per clause 5 (f) of Schedule II to the Central Goods and Service Tax Act, 2017.

7. The applicant further submitted that the said service falls under the category of “Pure Services” and not in the nature of Works Contract service or Composite supply, involving supply of any Goods.

8. Accordingly, the applicant sought the Advance Ruling on the following questions:

(i) *Whether or not, the aforesaid services fall under the scope of clause 5 (f) of the Schedule II to the Central Goods and Service Tax Act, 2017?*

(ii) *Whether or not, the Service related to collection of Hire Charges for temporary transfer of right to use goods from “Central Govt., State Govt. or Union Territory or Local Authority or a Government 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” are covered and exempted under the scope of Sr. No. 3 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017?*

Statement containing the applicant’s interpretation of law and/or facts, as the case may be, in respect of aforesaid question(s):

9. The applicant, vide their letter dated 23.01.2019, submitted that as per clause No. 5(f) of the Schedule-II to the CGST Act, 2017, transfer of the right to use any goods, for any purpose (whether or not for a specified period), for cash, deferred payment or other valuable consideration, shall be treated as ‘Supply of services’. The services supplied by the applicant, being in the nature of transfer of the right to use any goods for any purpose, for a specified period, fall under the aforesaid clause.

10. The applicant further submitted that they supply the services, viz. Transfer of right to use any goods, for any purpose, for a specified period, to Central Govt., State Govt. or Union Territory or Local Authority or a Governmental Authority, which covered under Sr. No. 3 of the Notification No.12/2017-CT (Rate) dated 28.06.2017.

11. The applicant further submitted that from the List of activities specified under Twelfth Schedule (Article 243-W of the Constitution) and under Eleventh Schedule (Article 243-G of the Constitution), it is evident that **“Promotion of Cultural, Educational and Aesthetic Aspects”** is one of the Functions, specified under Article 243-W of the Constitution and **“Cultural Activities”** are specified under Article 243-G of the Constitution.

12. In view of the aforesaid provisions, the applicant further submitted that Services, without involving any Supply of Goods, would be treated as Supply of ‘Pure Services’. Therefore, supply the Services, viz. Temporary Live Videography with LED & LCD Screen, Live Telecast Equipment, Cameras etc., on hire, which is nothing but transfer of the right to use any goods for any purpose for a specified period to Central Govt., State Govt. or Union Territory or Local Authority or a Governmental Authority, fall under Sr. No. 3 of the Notification No.12/2017-CT (Rate) dated 28.06.2017.

13. At the time of personal hearing held through Video Conferencing on 18.06.2020, the Authorised Representative of the applicant, Shri Dhaval Shah reiterated the facts as stated in the Application and requested to allow to submit further submission.

14. In the addition to earlier submission dated 23.01.2019, the applicant has submitted additional submission vide their letter dated 22.06.2020 with documents as under:

[i] The Applicant is engaged in providing services to the Government of Gujarat and its various ministries through the Government owned bodies. They are providing Temporary LED Screen with live Videography for celebration of various cultural/social/educational/aesthetic/slum improvement and up gradation/urban poverty alleviation/Development of Agricultural industries/Irrigation, water management and watershed development/Social Forestry and Farm Forestry etc., in a different nomenclature viz. “Namami Devi Narmade Mahostav”, “Poshan Abhiyan Programme at Public Entrance & Parking” , “Sujlam Suflam Jal Abhiyan”, “Divyang Shay Vitran Camp, “VishvaAdivashi Divas”, “National School Child Health Programme” , “National Tribal Art Festival 2019”, “ Gujarat Gaurav Din”, “International Yoga Day” or such other kind of Cultural Programme. The Applicant has submitted various work order issued by the State Government for the different programmes/events on different time, which is annexed herewith and marked as ANNEXURE – A collectively.

[ii] The Applicant have provided pure services to the State Government and its bodies and never provided services other than the Government. The Applicant application is in respect of classification of services and benefit of the notification No. 12/2017- CGST (Rate) which is to be decided keeping in mind the facts and evidence produced herein.

[iii] The work order issued by the State Government clearly provides that the scope of their work is only supply of services and no goods are supplied to the state government. The Applicant have already submitted the scope of their services by its submission dated 23.01.2019 but as a matter of repetition, reiterate as under:

(A) The Applicant have been given a work order for providing services to the State Government for live videography of the event of Chief Minister or other ministers and have to erect and dismantle TV sets. The applicant has to lay necessary suitable Cables as per direction of Engineer in Charge on temporary basis at the site.

(B) The Applicant have to install LED screens at the venue on Iron Platform structure, back support of Iron H Frames and Wiring etc., with 16 Mega Pixel camera so 4 that large group of people can see the event even seating at distant places at the same venue.

(C) That the Applicant have to run DTH System with enough size disc for proper Digital Signal and Set TOP Box as per requirement compatible to Tata Sky, Dish TV, and Airtel.

(D) After completion of the event, all the instruments and accessories, which are deployed at Site, for an event are taken back by the applicant and are used for another event of the state government. The equipment was used by the applicant and there is no transfer of ownership of goods or no one else uses their systems at any point of time. Copy of colour photographs are also annexed herewith to give an idea about the work undertaken by the Applicant and marked as ANNEXURE – B collectively;

[iv] Now to arrive at any conclusion, one has to see the activity of the applicant *viz-a-viz* the scope of work ordered under work contract. Admittedly, the applicant has been given the work for services only and remuneration was also paid accordingly. This would clarify for the work order submitted at Annexure – A to this submission.

[v] The CGST Act, 2017 provides the definition of Supply of Services under clause (5) of Schedule II. It states that the following shall be treated as supply of services, namely --- (a)..... 5 (b)..... (f) *transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuation consideration.* However, the services they have provided was temporary and no right to use was even transferred to other parties. They took their materials/equipment at the venue and their staff provided the services and brought back all the equipment after completion of the event.

[vi] In this background of the facts, it is clear that they have neither provided any goods nor transferred the right of a goods. This entire activity is nothing but “Pure Service” as defined under sub-clause (5) of Schedule II of CGST Act, 2017 and, therefore, the applicant satisfies one of the criteria of Sr. No. 3 of Notification no. 12/2017- Central Tax (Rate) dated 28.06.2017.

[vii] Now, another aspect of the matter is whether the applicant is eligible for the Sr. No. 3 of the Notification No.12/2017- Central Tax or not. For proper appreciation of the case, Sr. No. 3 of the said notification is reproduced as below:

Sr. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (percent)	Condition
3	Chapter 99	<i>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 243 G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.</i>	Nil	Nil

[viii] In view of the above referred entry, it is clear that this Notification is application to the service provider, who only provides services and not

Undertaking any works contract or other composite supplies involving supply of any goods. The applicant has produced enough material to show that they have provided only services and therefore, applicant is eligible for the benefit of Sr. No. 3 mentioned above.

[ix] It is also established that the applicant has provided services to Government of Gujarat or its bodies and, therefore, the applicant is covered under the second limb of Sr. No. 3 that the pure service should be provided to the Central Government, State Government or Union territory or local authority or a Governmental authority. The work order made it very clear that the applicant have provided services to the Government only and, therefore, the applicant has satisfied second limb of Sr. No. 3 of the notification and, therefore, eligible for the said notification.

[x] That the third limb of Sr.no. 3 of the Notification No.12/2017-Central Tax is that the activities should fall under article 243-G and 243-W of the Constitution of India respectively.

[xi] Now, upon plain reading of Article 243-G and 243-W read with Schedule XI and XII respectively, their activities squarely cover under both the schedules and therefore, the applicant is falling under four corners of Sr. 3 of Notification No. 12-2017- Central Tax.

[xii] The applicant has been awarded work for various event, such as Namami Devi Narmade Mahostav & Sujlam Sufalam Jal Abhiyan, the said events are related to the Clause 5 of Schedule XII of the Constitution, which provides for the water supply for Domestic, Industrial and Commercial purpose. These activities are also covered under clause (1) & (3) of Schedule XI of Article 243-G, which provides for Agriculture and Minor Irrigation, water management and Watershed development. Similarly, another event, namely “Poshan Abhiyan”

would also cover under Clause (25) of XI schedule of Article 243G, which provides for Women and Child Development. The applicant provided services for the event, namely “Divyang Sadhan Sahay Vitran Camp by Central Minster”, however, these activities directly covered under sub-clause (26) of Schedule XI, which provides for the social welfare, including welfare of the handicapped and mentally retarded. These activities are also covered under sub-clause (9) of Schedule XII, which provides safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded. Another event, which was handled by the applicant was “Visva Adivashi Divas-

APMC”, however, this activity also covers under the safeguarding the interest of weaker section of society, which falls under both the schedules. Similarly, various other events like International Yoga Day, which would fall under the cultural and other sub-clauses of both the schedules. The applicant further submitted that all the work orders issued to the applicant squarely fall under Schedule XI and XII respectively, which can be verified from the work order itself and, therefore, the eligibility of the Notification No.12/2017- Central Tax dated 28.6.2017 is not in dispute.

[xiii] That the Collector Bharuch also issued an order dated 28.08.2018, whereby it is specifically mentioned that in view of the Sr. No. 3 of the Notification, no GST is payable and, therefore, the payment was made to the applicant without deducting GST amount. However, this also clarifies the situation that the applicant is not liable to pay any GST on the activities mentioned in the work order. A copy of the order dated 28.08.2018 is annexed herewith and marked as ANNEXURE–C hereto;

[xiv] That this issue is otherwise held in favour of the trade by the different AAR in the case of City and Industrial Development Corporation of Maharashtra Ltd. reported in 2019 (26) GSTL 394 (AAR-GST) & in the case of Sri Roopesh

Kumar reported in 2019 (10) TMI 944 – AAR, Karnataka. Both the benches allowed the benefit of the Notification No. 12/2017- Central Tax. The issue involved in both the above referred cases are similar to the applicant’s and, therefore, benefit of Notification No.12/2017-Central Tax should be available to the applicant also.

DISCUSSION & FINDINGS:

.15 We have considered the submissions made by the applicant in their application for advance ruling as well as at the time of personal hearing. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant’s interpretation of law. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

16. As applicant stated, they are engaged in providing of services, i.e. providing of temporary L.E.D. and Videography for various programs to be held

under Vadodara Electrical (R&B) Department of Gujarat Government on hire basis. To perform said services, they took their instruments/equipment, viz. LED & LCD Screen, Live Telecast equipment, Cameras, etc. at the venue, their staff provide said services and after completion of the specific event, all the instruments/ equipment, which are deployed at site, are taken back by them and use for other event.

16.1 The applicant has also furnished the copies of some work orders executed by them. Details thereof are as below:

Sr. No.	Date of Work Order	Scope of Work	Value (Rs.)	Name of the Department who awarded Work Order
1	21.04.2018	Turnkey work of design, supply, installation, testing and commissioning of Laser Show with HD Projection on Aqua Screen, Sound System, Light Effects, Pyro Colour Flame including related civil, mechanical structure and electrical work at Mataria Lake Show date 29 th and 30 th April, 2018	2650000	Jilla Shaheri Vikas Agency (DUDA), New Collector Office, Bharuch.
2	20.06.2018	Providing Temporary LED Screen, Camera on occasion of "World Yoga Day" by Hon'ble Minister at Central Vista Garden, Dist.-Gandhinagar, on 21.06.2018	590700	Office of the Executive Engineer, Ahmedabad Electrical Division No.2, Ahmedabad
3	24.04.2018	Providing Temporary LED Screen with Videography, for Yuva Sammelan main programme for State level Celebration of "Gujarat Gaurav Din" (1 st May, 2018) by Hon'ble CM at Hostel Ground, Bharuch	905961	Office of the Executive Engineer, Baroda Electric Division, R&B Department, Vadodara
4	23.01.2020	Providing Temporary LED Screen with Videography, for cultural programme on the eve of 26 th January, 2020 (on 25 th January) by Hon'ble CM at Hostel Ground, Bharuch	259242	Office of the Executive Engineer, Baroda Electric Division, R&B Department, Vadodara
5	24.04.2018	Providing Temporary Live Videography with LED Screen, for "Sujalam Suflam Jal Yojna" (Lake side) for State level Celebration of "Gujarat Gaurav Din" by Hon'ble CM at Kosambli, Ankleshwar	542389	Office of the Executive Engineer, Baroda Electric Division, R&B Department, Vadodara
6	24.04.2018	Providing Temporary LED Screen with Videography, for Main Dome, for State level Celebration of "Gujarat Gaurav Din" by Hon'ble CM at Kosamdli, Ankleshwar	808470	Office of the Executive Engineer, Baroda Electric Division, R&B Department, Vadodara
7	19.05.2018	Providing Temporary Live Videography with LED Screen, for "SujalamSuflam Jal Abhiyan 2018" by Hon'ble CM at Nani Saran, Tal.-Santrampur, Dist.-Mahisagar on 22.05.2018	326798	Office of the Executive Engineer, Baroda Electric Division, R&B Department, Vadodara
8	16.05.2018	Providing Temporary Live Videography with LED Screen, for	326798	Office of the Executive

		“SujalamSuflam Jal Abhiyan 2018” by Hon’ble CM at Kanthagar, Tal-Fatepura, Dist.-Bharuch on 19.05.2018		Engineer, Baroda Electric Division, R&B Department, Vadodara
9	30.01.2019	Providing Temporary Live Videography with LED Screen, for “Inauguration Programme of National Tribal Festival 2019” by Hon’ble CM at Dahod on 03.02.2019	581537	Office of the Executive Engineer, Baroda Electric Division, R&B Department, Vadodara
10	26.01.2020	Providing Temporary Live Videography with LED Screen, for “PoshanAbhiyaan Programme” by Hon’ble CM at Dahod on 23.01.2020	269085	Office of the Dy. Executive Engineer, Baroda Electric Division, R&B Department, Vadodara
11	16.09.2020	Providing Temporary LED Screen with Live Videography for celebration of “Namami Devi NarmadeMahotsava” at Tal.- Dist. ChhotaUdepur	219974	Office of the Dy. Executive Engineer, Baroda Electric Division, R&B Department, Vadodara
12	29.05.2018	Providing Temporary Live Videography with LED & LCD Screen, for “SujalamSuflam Jal AbhiyanSamapanSamaroh 2018” at Karadi, Tal- Jambusar, Dist.-Bharuch on 31.05.2018	494591	Office of the Executive Engineer, Baroda Electric Division, R&B Department, Vadodara
13	16.05.2018	Providing Temporary Live Videography with LED Screen, for programme of Hon’ble CM of “SujalamSuflam Jal Abhiyan” at Chekala, Dediypada, Dist.-Narmada on 19.05.2018	308121	Office of the Executive Engineer, Baroda Electric Division, R&B Department, Vadodara
14	26.02.2019	Providing Temporary Live Videography with LED Screen, for “DivyangSadhan Sahay Vitran Camp” by Central Minister, at Dudhdhara Dairy, Bharuch, on 28.02.2019	549797	-do-
15	05.08.2019	Providing Temporary LED Screen with Live Videography, for celebration of “Vishva Adivasi Divas” at APMC, Naswadi, Tal-Naswadi, in presence of Hon’ble Dy. CM on 09.08.2019	298750	Office of the Dy. Executive Engineer, Baroda Electric Division, R&B Department, Vadodara
16	22.11.2018	Providing Temporary Live Videography with LED Screen, for “National School Child Health Programme” by Hon’ble CM at Jambughoda Dist., on 27.11.2018	468935	Office of the Executive Engineer, Baroda Electric Division, R&B Department, Vadodara

16.2 The applicant further stated that they have provided “pure services” and thus, not undertaken any works contract or other composite supplies involving supply of any goods. They have provided services to the State Government and its bodies, who undertaken activities in relation to any function entrusted under Article-243G and Article- 243W of the Constitution. Further, they have never provided services to other than the Government.

17. In backdrops of above facts, the applicant has sought the Advance Ruling on the following questions:

- (i) *Whether or not, the aforesaid services fall under the scope of clause 5 (f) of the Schedule II to the Central Goods and Service Tax Act, 2017?*
- (ii) *Whether or not, the Service related to collection of Hire Charges for temporary transfer of right to use goods, from “Central Govt., State Govt. or Union Territory or Local Authority or a Government 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” are covered and exempted under the scope of Sr. No. 3 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017?*

18. Now, we take up the first issue for ruling, as to whether services provided by the applicant would fall under the scope of clause 5 (f) of the Schedule II to the Central Goods and Service Tax Act, 2017.

18.1 As per clause 5 (f) of the Schedule-II to the CGST Act, 2017, “*transfer of the right to use any goods, for any purpose (whether or not for a specified period), for cash, deferred payment or other valuable consideration*”, shall be treated as ‘Supply of services’.

19. In terms of sub-clause (d) of clause (29A) of Article 366 of the Constitution of India, the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration is deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made. Here, it is essential to determine whether, in terms of the contract, there is a transfer of the right to use the goods. To determine whether a transaction involves transfer of the right to use goods, the following conditions to be satisfied:

- a. There must be goods available for delivery;
- b. There must be a consensus ad idem as to the identity of the goods;
- c. The transferee should have a legal right to use the goods - consequently all legal consequences of such use, including any permissions or licenses required therefore should be available to the transferee;

d. For the period during which the transferee has such legal right, it has to be to the exclusion to the transferor this is the necessary concomitant of the plain language of the statute - viz. a “transfer of the right” to use and not merely a licence to use the goods;

e. Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same right to others.

20. In the applicant case, none of the work orders cited above fulfil any of the condition mentioned above, in as much the applicant’s activity does not involve the sale of goods but it involves supply of services of live telecast, videography etc. by using their own instruments/equipment’s viz. LED & LCD Screen, Live Telecast equipment, Cameras, etc., at site for various events undertaken by them and after completion of the specific event, all the instruments/ equipment, which are deployed at site, are taken back by them and use for other event. The applicant during the course of supply might also transfer some goods/ undertake the construction activity, for which he recovers consideration for the same as hiring charges from them. Thus, said services are to be construed as supply of services/ goods/ works contract depending upon the nature of contract entered by them or Work Order received by them.

21. In view of the above, we hold that the services provided by the applicant would not fall under the scope of clause 5 (f) of the Schedule II to the Central Goods and Service Tax Act, 2017.

22. The next question is to be decided,

whether or not, the Service related to collection of Hire Charges for temporary transfer of right to use goods from “Central Govt., State Govt. or Union Territory or Local Authority or a Government 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” are covered and exempted under the scope of Sr. No. 3 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017?

23. For better appreciation of the issue, Entry at Sr. No. 3 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, is reproduced herein below:

Sr. No.	Chapter, Section, Heading, Group or Service Code	Description of Services	Rate (percent)	Condition
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	(Tariff)			
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 243 G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.	Nil	Nil

23.1 Thus, three conditions required to be satisfied for a service to be covered under subject entry of the notification, are as below:

- (i) It must be pure service not involving any supply of goods;
- (ii) It must be provided to the Central Government or State Government or Union Territory or Local Authority or a Governmental Authority or a Government Entity;
- (iii) It must be an activity in relation to any function entrusted to a:
 - (a) Panchayat under Article 243G of the Constitution; or
 - (b) Municipality under Article 243W of the Constitution.

24. Regarding the first condition, we are required to examine as to what constitutes 'Pure Service'. In CGST Act, 2007, "Pure Service" has not been defined. Accordingly, in general terms, we can conclude that any activity/supply, which does not involve goods can be termed as 'Pure Service'.

24.1 We further note that the Work Order dated 21.04.2018 as mentioned at Sr. No. 1 in **para 16.1** above, has been awarded by the Jilla Shaheri Vikas Agency (DUDA), New Collector Office, Bharuch for execution of "Turnkey work

of design, supply, installation, testing and commissioning of Laser Show with HD Projection on Aqua Screen, Sound System, Light Effects, Pyro Colour Flame including related **civil, mechanical structure and electrical work** at Mataria Lake Show scheduled on 29th and 30th April, 2018". Therefore, the applicant was also required to supply goods for execution of civil, mechanical structure and electrical work. Hence, this work order will not fall under supply of "pure service", also involving supply of goods. As such, this work order does not satisfy the first condition of "pure service". Further, some of work orders may

involve supply of goods and some of work orders may involve services. Further, the applicant has also not produced any evidence which can establish or conclude that the work orders do not involve supply of goods. As such, these work order do not satisfy the first condition of “pure service”.

24.2 The second condition to be verified is as to whether the entities mentioned at **para 16.1** above are “Central Government” or “State Government” or “Local authority” or “Governmental authority” or “Government Entity”. For better appreciation, definitions of the above terms as provided under the CGST Act, 2017 are reproduced herein below:

- (i) *As per Section-2(53) of the CGST, Act, 2017, “Government” means the Central Government.*
- (ii) *As per Section-2(53) of the Gujarat GST, Act, 2017, “Government” means the State Government.*
- (iii) *“local authority” means—*
 - (a) *a “Panchayat” as defined in clause (d) of article 243 of the Constitution;*
 - (b) *a “Municipality” as defined in clause (e) of article 243P of the Constitution;*
 - (c) *a Municipal Committee, a ZillaParishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;*
 - (d) *a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;*
 - (e) *a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;*
 - (f) *a Development Board constituted under article 371 of the Constitution; or*
 - (g) *a Regional Council constituted under article 371A of the Constitution;*
- (iv) *As per clause(zf) of paragraph-2 of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, “governmental authority” has the same meaning as assigned to it in the explanation to clause (16) of section 2 of the Integrated Goods and Services Act, 2017 (13 of 2017). Clause (16) of section 2 of the Integrated Goods and Services Act, 2017 (13 of 2017) reads as under:*

Explanation.—For the purposes of this clause, the expression “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 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;

Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 was further amended by Notification No.32/2017-Central Tax (Rate) dated 13.10.2017 wherein it is mentioned as under:

in paragraph 2, for clause (zf), the following shall be substituted, namely: -

(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 ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243 W of the Constitution or to a Panchayat under article 243 G of the Constitution.

(v) (zfa) "Government Entity" means an authority or a board or any other body including a society, trust, corporation,

(i) set up by an Act of Parliament or State Legislature; or

(ii) established by any Government,

with 90 per cent. or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority."

24.2.1 On examination of the details submitted by the applicant as well as taking into consideration the definitions mentioned above, we find that applicant has not provided any evidence to substantiate that these entities satisfy the above conditions.

24.3 The third condition to be verified is whether the services provided to these entities mentioned above, are services provided 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.

24.3.1 For better appreciation, the functions entrusted to the panchayats under Article 243G of the Constitution of India are reproduced herein below:

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.

14. *Rural electrification, including distribution of electricity.*
15. *Non-conventional energy sources.*
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.*

24.3.2 The functions entrusted to the municipalities under 243W of the Constitution of India are reproduced hereunder:

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.*

24.4 We find that during the course of discharge of various functions by various entities, different work orders are issued according to which services are provided by the applicant. The scope of work as defined in the Work Orders submitted by the applicant on sample basis do not get covered under any such 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. Since the applicant, at various stages, enters into different agreements with various

authorities for provision of services, it is not practical to examine at this stage, each contract, he has entered into with the recipients of services. Further, during the course of providing services, the applicant may also enter into further agreements with the service recipients. It is not possible to foresee the nature of all these agreements at present. Further, there could also be modifications/ amendments in the existing agreements and the nature of service could be subsequently altered. Therefore, the reply to the query raised by the applicant cannot be answered in plain 'no' or 'yes'. Therefore, we hold that the nature of these agreements and the services provided by the applicant would determine whether the third condition as discussed above has been met or otherwise. We hold that applicant shall be eligible for the exemption under the Notification No.12/2017-State Tax (Rate) dated 28.06.2017 only if all the conditions as specified at para 23.1 supra are met in respect of supply of such services. Therefore, the exemption sought by the applicant will depend upon the nature of services provided by them in terms of specific contracts entered by them with respective service recipients.

25. In view of the above facts, we come to the conclusion that we do not find sufficient evidence to establish conclusively that all such conditions have been satisfied in respect of services provided by the applicant.

26. In light of the foregoing, we rule as under –

R U L I N G

Question-1: Whether or not, the aforesaid services fall under the scope of clause 5 (f) of the Schedule II to the Central Goods and Service Tax Act, 2017?

Answer: *Answered in negative.*

Question-2: Whether or not, the Service related to collection of Hire Charges for temporary transfer of right to use goods from “Central Govt., State Govt. or Union Territory or Local Authority or a Government 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” are covered and exempted under the scope of Sr. No. 3 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017?

Answer: *Answered in negative.*

(SANJAY SAXENA)

MEMBER

Place: Ahmedabad

Date: 03.07.2020.

(MOHIT AGRAWAL)

MEMBER