



GOODS AND SERVICES TAX,  
HARYANA VANIJYA BHAWAN, PLOT NO 1-3, SECTOR 5,  
PANCHKULA-134151 (HARYANA)



ADVANCE RULING NO.HAR/HAAR/R/2019-20/11  
(In Application No.: 11/2019-20, dated 18.07.2019)

Name & Address of the Applicant	:	M/s MSV International Inc., Unit 514, 515 & 516, 5 <sup>th</sup> Floor, Suncity Success Tower, Sector-65, Golf Course Extension Road, Gurgaon, Haryana.
GSTIN of the Applicant	:	06AADCM1304M1ZP
Date of Application	:	18.07.2019
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised.	:	Clause(b)- applicability of a notification issued under the provisions of this Act.
Date of Personal Hearing	:	10.10.2019
Present for the Applicant	:	Sh. Rajesh Kumar Soota (Advocate) and Dr. Monika Goel (Advocate)

Memo No.: 1051/AAR  
Dated: 28/8/2020

**Brief facts:**

1.1 The Applicant is a foreign company engaged in providing independent engineering consultancy services which includes preparation of detailed project report, city development plans, designs and drawings and supervision thereof, for projects in different parts of the country for construction of Roads and Bridges, Solid Waste Management, Water Supply and Sanitation, Urban Development, Buildings and Environment. The company is registered at Gurgaon holding GSTIN 06AADCM1304M1ZP. The Applicant has approached the Authority for Advance Ruling seeking a ruling on the following issues:

- (i) Whether the services by way of Independent Consultancy Services provided or to be provided by the Applicant to Public Works Department, Gurgaon as per Request for Proposal (RFP) (submitted with this Authority) for design, Engineering, Finance, Construction, Operation and Maintenance of Gurgaon- Faridabad and Ballabhgarh-Sohna Roads on BOT basis are activity in relation to function entrusted to Panchayat or Municipality under Article 243G or Article 243W respectively, of the Constitution of India?
- (ii) Whether the services by way of Independent Consultancy Services provided or to be provided by the Applicant to Public Works Department, Gurgaon as per Request for Proposal (RFP) are Pure Services qualifying for exemption from levy of CGST and SGST, as





notified in serial number 3 of Notification No. 12 of 2017- Central Tax (Rate) dated 28.06.2017 issued under Central Goods and Services Tax Act, 2017 (CGST Act, 2017) and corresponding notifications issued under Haryana Goods and Services Tax Act, 2017 (HGST Act, 2017)?

- (iii) If the answer to Question No. (ii) above is negative, whether, the Applicant is within its rights under the CGST and HGST Acts for charging GST to the Service Recipient on the service value for the services provided as per RFP (Annexure 1)?

**2. Applicant's submission:**

2.1 The Applicant is a foreign company engaged in providing independent engineering consultancy services which includes preparation of detailed project report, city development plans, designs and drawings and supervision thereof, for projects in different parts of the country for construction of Roads and Bridges, Solid Waste Management, Water Supply and Sanitation, Urban Development, Buildings and Environment.

2.2 In order to provide the above services, the company submits its expression of interest in response to requests for proposal (RFP) containing description of work.

2.3 The Public Works Department (Executive Engineer, Provincial Division No. I, PWD B&R Br)., Gurugram, has invited expression of interest for Independent Consultancy Services For Operation & Maintenance Supervision with Construction Supervision of Balance Work of Project named Design, Engineering, Finance, Construction, Operation and Maintenance of Gurgaon- Faridabad and Ballabhgarh-Sohna Roads on BOT basis. The role and functions of the Applicant, as per the RFP, shall include the following:

- (i) Review, inspection and monitoring of Construction of balance Works with Operation and Maintenance (O&M) supervision:
- (ii) Conducting Tests on completion of construction of balance work and issuing Completion certificate;
- (iii) Review, inspection and monitoring of O&M;
- (iv) Review, inspection and monitoring of Divestment Requirements;





- (v) Determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
- (vi) Determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- (vii) Assisting the Parties in resolution of disputes as set forth in Paragraph 9 and undertaking all other duties and functions in accordance with the Agreement.

**3. Applicant's Interpretation of law and facts:**

3.1 Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 of the Government of India has been issued under Section 11 of CGST Act exempting the notified services from levy of GST. Entry Sl. No. 3 of the said Notification which is reproduced below exempts “pure services” provided to Central Government or any State Government or any Union territory or any 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.

Entry Sl.No.3 of Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 is as under:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (percent)	Condition
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 [or a Government Entity] by way of any activity in relation to any	Nil	Nil





		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.		
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3.2 For the applicability of the above mentioned entry, the following requirements need to be fulfilled:

- (i) The supply must be a case of supply of pure services excluding works contract service or other composite supplies involving supply of goods;
- (ii) Supply must be made either to Central Government or a State Government or Union Territory or a Local Authority or a Governmental Authority.
- (iii) The service so supplied must be in relation to any function entrusted to a Panchayat under Article 243G or entrusted to a Municipality under Article 243W.

3.3 All the three conditions need to be fulfilled to construe that a supply is covered under S.No.3 of Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017. The above three conditions should be evaluated in the context of the services provided or to be provided by the Applicant.

- (i) From the RFP, it is apparent that the Applicant is required to render Independent Consultancy Services for Design, Engineering, Finance, Construction, Operation and Maintenance of Gurgaon- Faridabad and Ballabhgarh-Sohna Roads which does not involve supply of goods either as works contract service or other composite supply as defined in Section 2(30) of CGST Act, 2017. Therefore, the first requirement is fulfilled.
- (ii) As the RFP has been invited by Governor of Haryana, it is also apparent that the Recipient of service is State Government of Haryana, through Public Works Department. Therefore, the second requirement is also fulfilled.





- (iii) The Applicant is required to render Independent Consultancy Services for Design, Engineering, Finance, Construction, Operation and Maintenance of Gurgaon- Faridabad and Ballabhgarh-Sohna Roads. This brings us to the question of whether construction of the two-lane with paved shoulders / four lane Project highways and other related works is a function of Panchayat or Municipality under Article 243G or Article 243W of the Constitution. Panchayats and Municipalities have clearly demarcated limits. Panchayats and Municipalities are responsible for maintenance of public infrastructure that is located within their limits or boundaries. Functions of a Panchayat and Municipality cannot travel beyond their territorial limits.

3.4 The applicant further submits that District Roads (Gurgaon- Faridabad and Ballabhgarh-Sohna Roads) begin from the end of Panchayat or Municipal limits. Thus, the State Highways and District Roads are not within the boundaries or limits of Panchayats and Municipalities. Development and Maintenance of District Roads are always the responsibility of State Government as they are beyond the territorial limits of a Municipality or a Panchayat.

3.5 The Applicant has received the RFP from the Public Works Department of Government of Haryana and not from a Panchayat or Municipality. All the works of Panchayat or Municipality would be awarded by the respective Panchayat or a Municipality, which is not the case here. This fact clearly demonstrates that the Services provided or to be provided by the Applicant would not fall within the functions entrusted to a Panchayat or a Municipality under Article 243G or 243W, respectively of the Constitution of India. Hence, third requirement is not fulfilled.

#### 4. Discussion:

4.1 In order to decide the issue at hand, the following questions require clarity;

(i) What is a pure service?

(ii) Whether Public Works Department (PWD), Haryana is a Government Entity?



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(iii) Whether the pure services received by the PWD fall under Serial No. 3 of Notification No. 12/2017 Central Tax (rate) dated 28.06.2017?

4.1.1 Although "Pure services" have not been defined under the Goods and Services Tax Act, 2017, but it is meant to mean supply of services without involving any supply of goods. Entry No. 3 of Notification 12/2017- Central Tax (rate) dated 28.06.2017 lends weight to this definition, whereby the works contract services and composite supplies involving supply of any goods are excluded from pure services. The engineering consultancy services which involve preparation of detailed project report, city development plans, designs and drawings and supervision thereof, for projects in different parts of the country for construction of Roads and Bridges, Solid Waste Management, Water Supply and Sanitation, Urban Development, Buildings and Environment offered by the applicant does not involve any supply of goods and such it is a "pure service".

4.1.2 "Government Entity", as per Section 2(zfa) of the Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017, 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% 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." The Public Works Department, Haryana is a Department of the State Government, established by the State Government, with the state having full control over its functioning and is carrying out functions entrusted by the State Government. Thus, the Public Works Department, Haryana is a Government Entity as per the definition of Government Entity as contained under Section 2(zfa) of the Notification No. 12/2017 Central Tax (Rate), dated 28.06.2017.

4.1.3 Serial No. 3 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 covers following services of the following description:-

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



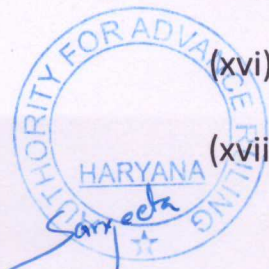


Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution.

Now, in order to decide the applicability of the said notification, it has to be ascertained whether the activities with regard to which the services are offered/ provided by the applicant are 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 of India.

**4.2 The functions entrusted to a Panchayat under Article 243G are:-**

- (i) Agriculture, including agricultural extension.
- (ii) Land improvement, implementation of land reforms, land consolidation and soil conservation.
- (iii) Minor irrigation, water management and watershed development.
- (iv) Animal husbandry, dairying and poultry.
- (v) Fisheries.
- (vi) Social forestry and farm forestry.
- (vii) Minor forest produce.
- (viii) Small scale industries, including food processing industries.
- (ix) Khadi, village and cottage industries.
- (x) Rural housing.
- (xi) Drinking water.
- (xii) Fuel and fodder.
- (xiii) Roads, culverts, bridges, ferries, waterways and other means of communication.
- (xiv) Rural electrification, including distribution of electricity.
- (xv) Non-conventional energy sources.
- (xvi) Poverty alleviation programme.
- (xvii) Education, including primary and secondary schools.





- (xviii) Technical training and vocational education.
- (xix) Adult and non-formal education.
- (xx) Libraries.
- (xxi) Cultural activities.
- (xxii) Markets and fairs.
- (xxiii) Health and sanitation, including hospitals, primary health centres and dispensaries.
- (xxiv) Family welfare.
- (xxv) Women and child development.
- (xxvi) Social welfare, including welfare of the handicapped and mentally retarded.
- (xxvii) Welfare of the weaker sections,  
and in particular, of the Scheduled Castes and the Scheduled Tribes.
- (xxviii) Public distribution system.
- (xxix) Maintenance of community assets.

**4.3 Functions entrusted to Municipality under Article 243W are as under:-**

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.





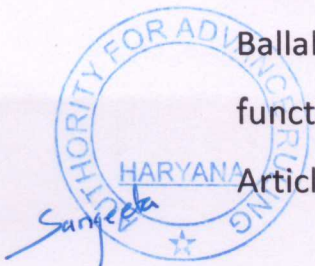
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
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.

Both the Municipalities and Panchayats have their territorial jurisdiction. They do not exercise extra-territorial jurisdiction.

The engineering services offered/ provided by the applicant to the PWD, a department of the State Government, are with respect to Gurgaon-Faridabad and Ballabhgarh- Sohna roads, which are beyond the territorial limits of a Panchayat or Municipality, as has been admitted by the applicant in its written submission. As such the services of the applicant are not in relation to functions entrusted to the Panchayats or the Municipalities under the XI or the XII Schedule of the Constitution of India, as the case may be.

## 5. **Ruling:**

- 5.1 The services by way of Independent Consultancy Services provided or to be provided by the Applicant to Public Works Department, Gurgaon as per Request for Proposal (RFP) at for Design, Engineering, Finance, Construction, Operation and Maintenance of Gurgaon- Faridabad and Ballabhgarh- Sohna Roads on BOT basis are not an activity in relation to function entrusted to Panchayat or Municipality under Article 243G or Article 243W respectively, of the Constitution of India.



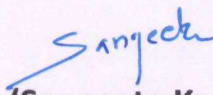


5.2 The services offered/ provided by the applicant are pure services within the definition of 2(zfp) but are not exempted from levy of tax under CGST/ HGST Act.


5.3 The applicant is within its right and legally bound to charge tax under CGST/ HGST Act, 2017.

Ordered accordingly.  
To be communicated.

11.10.2019  
Panchkula.

  
(Sangeeta Karmakar)  
Member CGST



  
(Madhubala)  
Member SGST

**Regd. AD/Speed Post**

M/s MSV International Inc.,  
Unit 514, 515 & 516, 5<sup>th</sup> Floor,  
Suncity Success Tower, Sector-65,  
Golf Course Extension Road, Gurgaon, Haryana.

Copy to:

1. The Principal Commissioner of Central Goods & Service Tax, GST Bhawan, Plot No. 36-37, Sector-32, Gurugram, Haryana.
2. Deputy Excise and Taxation Commissioner (ST), Gurugram (South).

o/c