

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

(constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri B. V. Borhade, Joint Commissioner of State Tax

(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax

GSTIN Number, if any/ User-id		27AAFCA9143A1ZZ
Legal Name of Applicant		KHILARI INFRASTRUCTURE PRIVATE LIMITED
Registered Address/Address provided while obtaining user id		101, PRABHAT CENTRE ANNEX, SEC 1A, CBD, BELAPUR
Details of application		GST-ARA, Application No. 04 Dated 06.12.2017 and revised application on 05.02.2018
Concerned officer		Commissioner CGST & Central Excise, Range- III, Div-I, Belapur.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Works Contract
B	Description (in brief)	A brief description of the nature of activity in respect of which advance ruling is sought is mentioned in the application attached herewith and marked as statement of facts
Issue/s on which advance ruling required		(iv) admissibility of input tax credit of tax paid or deemed to have been paid (v) determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by **KHILARI INFRASTRUCTURE PRIVATE LIMITED**, the applicant, seeking an advance ruling in respect of the applicability of GST on:

- 1) Determination of GST leviable on operation and maintenance work order given by municipal corporations.
- 2) Admissibility of ITC (input Credit tax) of purchases against such work order.
- 3) Determination of responsibility of municipal authority of discharging such GST Liability payable to contractor.
- 4) Applicability of GST on Service Contract where labour job Contribute 95% to 98 of Contract Value and 2-3% as Oil and Lubricant and pertains to consumable Purchase to operate the Existing Plant.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST 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 MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

FACTS AND CONTENTION - AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus-



1. Appellant Company is a registered Civil Contractor, carrying out the business of
 - a. Construction, erection, commissioning of sewerage treatment plant.
 - b. Operation & Maintenance of Sewerage Treatment and Disposal Plants.
 as per the Work awarded by various Municipal Corporations / Councils/Local Authority.
2. During the FY 2016-17 appellant had made the Total Contract Receipts amounting to Rs.200,89,26,040/-, which included

- a. Rs.1,78,11,70,457/- in respect of civil construction contract work for Solid Waste Management and
- b. Rs. 22,77,55,583/- in respect of **Operation & Maintenance work for Sewerage Treatment and Disposal Plant.**

3. During the year under consideration FY 2017-18 Appellant Company has been awarded work order of Operation & Maintenance contract from various Municipal Corporations and the details are as under:

I. **NAVI MUMBAI MUNICIPAL CORPORATION (NMMC):**

- a. Operation & Maintenance of Sewerage Treatment and Disposal Plant at Site Nerul STP Agreement dated 30.11.2017 against Letter of Acceptance vide Ref. No. NMMC/CE/1432/2017 dated 29.11.2017 for Tender vide Ref. No. B-2/ACE/10(01)/2015-16 detailing terms of work for Operation & Maintenance as under: as per **Annexure - 9.**

Scope of Work page no. 136 para no. viii.

Contract Price page no. 126 para no. 27.

Operator Responsibility (i.e. NMMC) page no. 121 para no. 20 include Replacement of Machinery is not the part of Contract. Pls. refer Page No-121 Point no.20.2.

As per the above work order of Operation & Maintenance of STP, the major portion of work being labor oriented i.e. 95%) of Sewerage Treatment and Disposal Plant and balance 5% consumables are Adhesives, Grease, Oil and lubricants. Land & Building and Plant & Machinery owned by Municipal Corporation floated tender to optimize the solution under SWM Rule-2000. In all such contract the responsibility of Contractor is to run the plant effectively using his own Skill set & Manpower to maintain the quality of treated sewage within the standard Prescribed under SWM Rule-2000.

The Appellate had prepared and submitted the financials bid for the Operation & Maintenance work order considering the old Indirect Tax Laws wherein, Service Tax was exempt as per Notification no.25/2012 dated 20.06.2012 entry no. 12.

On Implementation of GST, 2017 the said Operation & Maintenance work was taxed as per notification no. 11/2017 dated 28.06.2017 and notification no. 20/2017 dated 22.08.2017. However, the Municipal Corporation has disregarded levying of GST on the said work saying it is exempt under section 243 (W). During the course of discussion with the Municipal Corporation the appellant has submitted the local authority copy of relevant portion of the GST Act, 2017 and also the amended portion, however the local authority have rejected the claims made by appellant. As per discussion with NMMC all such contract related to Operation and Maintenance of STP Plant comes under Rule 243 W and Not Applicable for GST. The service of Operation and Maintenance of STP Plant related to Public Interest and no GST is applicable for all such Job. As per **Annexure - 17.**

Similar to the above Operation & Maintenance work order for STP's we have work Order for below sites

- b. Comprehensive Contract for Operation & Maintenance of Sewerage Treatment and Disposal Plant at Site Vashi STP Agreement dated 30.11.2017 against Letter of Acceptance vide Ref. No. NMMC/CE/1408/2017 dated 27.11.2017 for Tender vide Ref. No. B-2/ACE/10(02)/2015-16. As per **Annexure -10.**
- c. Comprehensive Contract for Operation & Maintenance of Sewerage Treatment and Disposal Plant at Site Airoli STP Agreement dated 12.12.2017 against Letter of Acceptance vide Ref. No. NMMC/CE/1534/2017 dated 12.12.2017 for Tender vide Ref. No. B-2/ACE/10(03)/2015-16. As per **Annexure - 11.**
- d. Comprehensive Contract for Operation & Maintenance of Sewerage Treatment and Disposal Plant at Site CBD Belapur STP Agreement dated 19.12.2017 against Letter of Acceptance vide Ref. No. NMMC/E.E.(B)/124/2017 dated 12.12.2017 for Tender vide Ref. No. B-2/ACE/16(01)/2014-15. As per **Annexure - 12.**
- e. **MUNICIPAL COUNCIL (PANDHARPUR):** Comprehensive Contract for Operation & Maintenance of Sewerage Treatment and Disposal Plant at Site PANDHARPUR Agreement dated 25.01.2015 against work order vide Ref. No. OUTNO./PNP/WS/19/15 dated 25.01.2015 for Tender vide Ref. NO. OUTNO./PNP/WS/708/14. As per **Annexure - 13.**
- f. **PANVEL MUNICIPAL COUNCIL RAIGAD:** Comprehensive Contract for Operation & Maintenance of Sewerage Treatment and Disposal Plant at Site PANVEL Agreement dated 09.09.2015 against Letter of Acceptance vide Ref. No. OUTNO./PNP/WS/5233/15 dated 15.09.2015 for Tender vide Ref. No. OUTNO./PNP/WSS/7/15. As per **Annexure - 14**

II. **NAVI MUMBAI MUNICIPAL CORPORATION (NMMC):**

Daily O & M of Solid Waste Processing Plant (Compost plant) at Site Turbhe SWM dumping yard site Agreement dated 21.08.2017 against Letter of Acceptance vide Ref. No. NMMC/CE/1572/2017 dated 19.08.2017 for Tender vide Ref. NO. NMMC/CITY_ENGINEER/77/2016-17 detailing terms of work for Operation & Maintenance as under: As per **Annexure - 15.**

Scope of Work page no. 232.

Contract Price (Provisional Sums) page no. 313.



Tax clause 98 & 99 page no. 312 and 313.

As per the above work order of Operation & Maintenance of Solid Waste Processing Plant, the major portion of work being labor oriented i.e. 98%) Disposal Plant and balance 2% consumables. The Applicant had prepared and submitted the financials bid for the Operation & Maintenance work order considering the old Indirect Tax Laws wherein, Service Tax was exempt as per Notification no.25/2012 dt 20.06.2012 entry no. 12.

III. **CITY AND INDUSTRIAL DEVELOPMENT CORPORATION OF MAHARASHTRA LIMITED (CIDCO);** Operation & Maintenance of Sewerage Treatment and Disposal Plant at Site Ulwe STP against Letter of Acceptance vide Ref. No. CIDCO/CE/(NM)/2014/243 dated 25.07.2014 for Tender vide Ref. No. 02/CIDCO/SE(ULWE)/EE(UL-II)/2013-14 detailing terms of work for Operation & Maintenance as under:

As per **Annexure - 16**

Scope of Work clause no. 2 and section 4 page no. 469

Contract Price clause 32. page no. 491

Taxes & Reimbursement of Tax clause no. 70.2 & 71.1 page no. 448

As per the above work order of Operation & Maintenance of Sewerage Treatment and Disposal Plant, the major portion of work being labor oriented i.e. 95%) of Sewerage Treatment & Disposal Plant and balance 5% consumables are Adhesives, Oil & Lubricants.

The Appellate had prepared and submitted the financials bid for the Operation & Maintenance work order considering the old Indirect Tax Laws wherein, Service Tax & VAT was exempt as per Notification no.25/2012 dated 20.06.2012 entry no. 12.

4. As per the Earlier Indirect Tax Laws i.e. Service Tax (Finance Act,1994) the Operation & Maintenance Service of Sewerage Treatment and Disposal Plant was exempt Under Notification no.25/2012 dated 20.06.2012 entry no. 12 as per **Annexure - 3**.
5. As per the Goods & Service Tax Act, 2017 notification no. 11/2017 dated 28.06.2017 and notification no. 20/2017 dated 22.08.2017 read as below; complete notification as per **Annexure - 4 & Annexure - 5**.
6. As per the notification no. 12/2017 of GST Act, 2017 dated 28.06.2017 exempt list of services issued by GST Council read as below; complete notification as per **Annexure - 6** and Article list under 243W of the constitution of India is as per **Annexure - 7**.
7. For the betterment development of Town, City & Villages and in Public Interest we feel that all such Contracts related to Operation & Maintenance of STP Plants and Solid waste Management should come under Rule 243 W and Not Applicable for GST.
8. There is lack of clarity about GST chargeability on the Operation & Maintenance contract service provided to Local Authorities (Where Major Portion of work being Labour oriented i.e. 95% & other 5% is consumable expenses to operate the Plant).

In respect to the above, appellant has made its best efforts, pursuing the Municipal Corporation/Councils/Local Authority in connection to levy of GST on the relevant contracts with the appellant during the year. However in spite of repeated reminders the Municipal Corporation/Councils/Local Authority failed to adhere the same.

03. **CONTENTION - AS PER THE CONCERNED OFFICER**

The submission, as reproduced verbatim, could be seen thus-

Accordingly, the Para-wise comments on the application filed by M/s Khilari Infrastructures Pvt. Ltd are as follows:-
Sr. No. 1 to 13.- No Comments.

Question -1 -Determination of GST leviable on operation and maintenance work order given by such Municipal Corporation.

Comments:- The application and the documents submitted by them have been examined in light of the provisions for Municipal Corporation / of the CGST Act, 2017. Prior to 01.07.2017, their services i.e. operation and maintenance work were exempt from Service Tax vide Notification No. 25/2012 Service Tax dated 20.06.2012. They are now registered under CGST Act and falling under the jurisdiction of Range III of Belapur Dn-1. Under GST law, their services attracted CGST under Not. No. 11/2017-Central Tax (Rate) dated 28.06.2017 @9% with effect from 01.07.2017 and @6% with effect from 22.08.2017 vide Notification No. 11/2017-Central Tax dated 28.06.2017 as amended vide Notification No. 20/2017-Central Tax (Rate) dated 22.08.2017. However, vide Exemption Notification No.2/2018 Central Tax (Rate) dated 25.01.2018 this service is exempted with effect from 25.01.2018 provided the value of supply of goods does not exceed 25% of value of composite supply.

Question-2- Admissibility of ITC (input Credit tax) of purchases against such work order.

Comments:- The applicant is eligible for availing ITC (input Credit Tax) under the CGST Act, 2017 read with the CGST, Rules 2017.

Question - 3 Determination of responsibility of municipal authority of discharging such GST Liability payable to the contractor.

Comments:- As regards the claim of the Municipal authorities that the services under reference are covered by Article 243W of the Constitution and hence exempt from GST does not appear to be correct. As per Not No. 12/2017-Central Tax (Rate) dated 28.06.2017 with effect from 01.07.2017, **pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Govt, State Govt 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 W of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution are exempt from tax.** It can be seen from the submission of the applicant that they



use some consumables such as oil, lubricant etc. As such their services cannot be termed as pure services attracting exemption under Not No. 12/2017 and the applicant will have to pay the GST on the services provided by them.

However, their services have been exempted from GST vide Notification No. 2/2018- Central Tax (Rate), dated 25.01.2018 which reads as below:

"Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply 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 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."

In view of the above, prior to 25.01.2018, the services of M/s Khilari Infrastructures Pvt. Ltd were taxable as detailed in Comments on Questions Nos 1 & 3 above.

Question – 4 Further, we seek guidance from GST Council/ Appropriate authority towards applicability of GST on Service Contract where labour job Contribute 95% to 98% if Contract Value and 2-3% as Oil and Lubricant and pertains to consumable Purchase to operate the Existing Plant.

Comments:- As explained in comments on Question No. 3 above.

In view of the above, the application, filed by M/s Khilari Infrastructures Pvt. Ltd, may be rejected for the period from 01.07.2017 to 24.01.2018.

Sr.No. 15:- No Comments as these are facts.

Sr.No. 16 to 18: No Comments.

04. HEARING

The case was taken up for hearing on dt. 30.01.2018 when Sh. Rohidas Sanap, Chief Financial Officer alongwith Sh. Siddharth Kheria, (C.A.) appeared and they were orally informed that their application was not specific with respect to contract entered into and their queries are very general queries without putting the factual position as per contract entered into before the ARA . In view of this they agreed to submit full details and file revised application with complete details latest by 05.02.2018, otherwise their application was liable to be treated as rejected. In view of this, the applicant has filed fresh application on 05.02.2018.

The final hearing was held on 21.02.2018 when Sh. Siddharth Kheria, (C.A.) along with Sh. Roshan Mene, Accountant appeared and submitted copy of Notification 2/2018 dated 25th January 2018. Jurisdictional Officer Sh. R. M. Gangreddiwar, Asstt. Commissioner, Belapur – Division-I alongwith Ms. S. V. Tambe, Inspector attended and furnished a written submission.

05. OBSERVATIONS

We have gone through the facts of the case, documents on records and submissions made by the Applicant. The primary issue put before us is whether the Applicant is exempted from payment of GST on Operation and Maintenance contracts/work orders entered into by them with Navi Mumbai Municipal Corporation (NMMC), Panvel Municipal Corporation (PMC), Municipal Council, Pandharpur (MCP) and City & Industrial Development Corporation of Maharashtra, Ltd. (CIDCO). The other issue raised before us is whether the Applicant is entitled to Input Credit Tax (ITC), of purchases against such work order and whether it is the responsibility of municipal authority to discharge such GST Liability payable to the Applicant.

The Applicant has submitted that their Company is a registered Civil Contractor, carrying out the business of Construction, erection, commissioning of sewerage treatment plant and Operation & Maintenance of Sewerage Treatment and Disposal Plants work, which is awarded to them by the various Municipal Corporations/Councils/Local Authority, as mentioned above. For the year under consideration FY 2017-18 they have been awarded work order of Operation & Maintenance contract by various Municipal Corporations, details of which have been submitted by them. As per their submissions the



Operation & Maintenance Service of Sewerage Treatment and Disposal Plant was exempt from service tax under Notification no.25/2012 dated 20.06.2012 entry no. 12 as per Annexure – 3, of the Erstwhile Finance Act, 1994. They have further submitted that all such Contracts related to Operation & Maintenance of Sewage Treatment Plants (STP) and Solid Waste Management (SWM) are under the purview Rule 243 W of the Constitution of India and therefore should not attract GST. They have also submitted that there is lack of clarity about GST chargeability on the Operation & Maintenance contract services provided to Local Authorities, where the major portion of work comprises of labour i.e. 95% & the remaining 5% comprises of consumable expenses i.e. Adhesives, Oil & Lubricants, to operate the Plant.

The Applicant has given details of the work order in respect of Operation & Maintenance of Sewerage Treatment and Disposal Plant at Site Nerul STP Agreement dated 30.11.2017, against Letter of Acceptance vide Ref. No. NMMC/CE/1432/2017 dated 29.11.2017 for Tender vide Ref. No. B-2/ACE/10(01)/2015-16 which they have entered into with NMMC. They have submitted that as per the above work order of Operation & Maintenance of STP, the major portion of work is labor oriented i.e. 95% of Sewerage Treatment and Disposal Plant and balance 5% pertain to consumables like Adhesives, Grease, Oil and lubricants. Land & Building and Plant & Machinery are owned by NMMC. In this contract it is the applicant's responsibility to run the plant effectively using their own Skill set & Manpower. They have also submitted that, on the implementation of GST, 2017 the said Operation & Maintenance work was taxed as per notification no. 11/2017 dated 28.06.2017 and notification no. 20/2017 dated 22.08.2017. However, NMMC has disregarded levying of GST on the said work saying it is exempt under section Rule 243 (W) of the Constitution of India. Similar work orders have been purportedly received by them from other Local Bodies.

They have further cited another work order vide agreement dated 21.08.2017, with NMMC, in respect of Solid Waste Processing Plant (Compost plant) at Site Turbhe SWM dumping yard site, against Letter of Acceptance vide Ref. No. NMMC/CE/1572/2017 dated 19.08.2017 for Tender vide Ref. NO. NMMC/CITY ENGINEER/77/2016-17 detailing terms of work for Operation & Maintenance. Wherein they have stated that the Scope of Work and Contract Price (Provisional Sums) are mentioned at page no. 232 and page no. 313, respectively. Here they have submitted that as per the said work order, the major portion of work is labor oriented i.e. 98% and balance 2% consumables. In this case too they have stated that, on the implementation of GST, 2017 the said Operation & Maintenance work was taxed as per notification no. 11/2017 dated 28.06.2017 and notification no. 20/2017 dated 22.08.2017 and NMMC has disregarded levying of GST on the said work saying it is exempt under section Rule 243 (W) mentioned above.

The third work order cited by them pertains to work order received from CIDCO for Operation & Maintenance of Sewerage Treatment and Disposal Plant at Site Ulwe STP against Letter of Acceptance vide Ref. No. CIDCO/CE/(NM)/2014/243 dated 25.07.2014 for Tender vide Ref. No. 02/CIDCO/SE(ULWE)/EE(UL-II)/2013-14 detailing terms of work for Operation & Maintenance. Here also they have submitted that as per this work order of Operation & Maintenance of Sewerage Treatment and Disposal Plant, the major portion of work is labor oriented i.e. 95% and balance 5% consists of consumables I.e. Adhesives, Oil & Lubricants.



The department has contended that it can be seen from the submission of the applicant that they use some consumables such as oil, lubricant etc. As such their services cannot be termed as pure services attracting exemption under Not No. 12/2017 and they will have to pay the GST on the services provided by them. Under GST law, the Applicant's services attract CGST under Not. No. 11/2017-Central Tax (Rate) dated 28.06.2017 @ 9% with effect from 01.07.2017 and @ 6% with effect from 22.08.2017 vide Notification No. 11/2017-Central Tax dated 28.06.2017 as amended vide Notification No. 20/2017-Central Tax (Rate) dated 22.08.2017. However, vide Exemption Notification No.2/2018 Central Tax (Rate) dated 25.01.2018 this service is exempted with effect from 25.01.2018 provided the value of supply of goods does not exceed 25% of value of composite supply.

Now we take up and examine the terms and conditions of the two agreements mentioned below (the other agreements have not been submitted in full), submitted by the Applicant for detailed analysis as follows:-

I. Agreement dated 30.11.2017 with NMMC in respect of Operation & Maintenance of Sewerage Treatment and Disposal Plant at Site Nerul STP, Sector 50, Nerul Mumbai against Letter of Acceptance vide Ref. No. NMMC/CE/1432/2017 dated 29.11.2017 for Tender vide Ref. No. B-2/ACE/10(01)/2015-16

As per the conditions of the said work order/contract :-

- the definition of operator is given in page 112 as *"Operator" means successful applicant ... The term 'Operator' in this document ... and shall mean the preferred Party*
- As per Para 15.1 (a) (vii), replacement of mechanical and electrical equipments which become beyond repair will be done by the operator i.e. the applicant in this case.
- As per para 15.3.1(a) it is the responsibility of the operator to INSTALL HIGH EFFICIENCY LIGHTING SYSTEMS..
- As per Para 15.3.1(b) it is the responsibility of the operator to INSTALL CAPACITORS TO REDUCE POWER.
- As per Para 15.3.1(c) REPAIRING AND REPLACING OLD AND WORN OUT PIPES AND BLOWERS AND COMPRESSORS is the responsibility of the operator.
- As per Para 15.3.1(c), REPAIRING AND REPLACING OLD AND WORN OUT PIPES AND BLOWERS AND COMPRESSORS is also the responsibility of the operator.
- As per Para 15.4(b to h), REPLACING DAMAGED PIPES, FITTINGS, VALVES, BEARING, MECHANICAL SEALS, O RING, GASKETS, PUMP IMPELLERS, ETC, by the operator is stated.
- As per Para 16.2 :- *For the work of extension/modification to the sewerage network, improvement to civil structures, etc., the NMMC shall reimburse on the prevailing schedule of rates or the actual cost of procurement by the operator, whichever is lower. NMMC reserves the right to either procure those items of stores or fix a rate contract against which the operator can procure such stores.*
- As per Para 20.2, *the operator shall procure all spare parts required for the maintenance of the equipment, excluding those supplied by the NMMC.*
- As per Para 20.5, the operator shall provide adequate engineering equipment, inventories. PLANT AND MACHINERY and all other things, WHETHER OF A TEMPORARY OR PERMANENT NATURE, required for carrying out the operations under the contract.



- As per Para 25.3, 'For non-replacement of damaged and missing manhole covers or frames there would be a penalty levied (this implies that the operator i.e. the applicant is also responsible for replacement of manhole covers.
- As per Para 27.1, 'THE CONTRACT PRICE SHALL COVER..... SPARES AND CONSUMABLES and include taxes'.
- As per the taking over process by NMMC, para 43.2 (b) says that **the operator shall hand over all documents and supplies for which they have received payments.**

Under the DETAILED SCOPE OF WORK-OPERATION AND MAINTENANCE OF STP it is mentioned as follows.

- As per Clause iii, All necessary repairs, preventive and breakdown maintenance, overhaul, replacements, etc. shall be made during the O&M.
- As per Clause v, the O & M price by the tendered shall include supply of **all tools, tackles, spares, oil and lubricants, laboratory chemicals, glassware, chemicals like chlorine, coagulants etc.**
- As per Clause vii, The scope of work shall but not limited to the following items: 'Replacement of electrical, mechanical and electronic equipments which become beyond repair'. 'All the equipment even standby supplied, installed and commissioned by the applicant shall be in operational/functional condition throughout the O&M period.
- As per para i page 142 of their submissions, the operator shall replace electrical and mechanical equipments which become beyond repair.
- As per (j) page 143 under SPARE PARTS it is mentioned that the operator shall keep a reasonable stock of spare parts so that the down time of equipment can be kept within specified limits.
- Under (l) page 143 of their submissions The operator has to ensure that there is always sufficient stock of 15 days of oil, grease, lubricants, consumables and laboratory chemicals.
- Under Operational Services, page 144 of their submitted contract "All consumables, polyelectrolyte, chemical and SPARE required in operating and maintaining the plant in good condition shall be provided by the operator.

CONTRACT BETWEEN THE APPLICANT AND CIDCO FOR Designing, Providing, Construction, Erecting and Commissioning of STP including O&M at Sector 6(P), Ulwe, Navi Mumbai. Agreement dated 30.11.2017 against Letter of Acceptance No. CIDCO/CE(NM)/2014/243 dated 25.07.2014.

Under the GENERAL CONDITIONS OF THIS CONTRACT it is mentioned as follows:-

- the definition of contractor as *"Contractor" means the person whose tender has been accepted.....*
- As per para 4.1 (b), the contractor shall not be required to obtain consent for the purchase of materials which are in accordance with the standards specified in the contract.
- As per Para 8.1, **THE CONTRACTOR SHALL PROVIDE ALL SUPERINTENDENCE, LABOUR, MATERIALS, PLANT, CONTRACTOR'S EQUIPMENTS AND ALL OTHER THINGS WHETHER OF A TEMPORARY OR PERMANENT NATURE.....**
- As per Para 12.1, THE Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Tender and of the rates and prices stated in the Bill of Quantities, all of which shall, except insofar as it is otherwise provided in the Contract, cover all his obligations under the contract (including those in respect of the supply of goods, materials, plant or services



or of contingencies for which there is a provisional sum) and all matters and things necessary for the proper execution and completion of the Works.

- As per para 37.3, "If, at the time, the materials or Plant are not ready for inspection or testing, the Engineer determines that the materials of Plant are defective
- As per para 40.4, ' The contractor shall be paid at the Contract rates full amount for Works executed at site, and in addition, certain amount certified by the Engineer for the value of such material (which material thereupon become the property of the Corporation) and
- As per para 58.1:- "Provisional Sum" means a sum included in the Contract and so designated in the Bill of Quantities for the execution of any part of the Works or **for the supply of goods, materials, Plant** or services, or for contingencies, which sum may be used in whole or in part,.....
- As per para 58.2:-the Engineer shall have the authority to issue instructionsor for the supply of goods, materials, Plant or services by the Contractor.....
- As per para 60.5 :- ADVANCE AGAINST MATERIAL ::: :Advance may, from time to time, if Engineer thinks fit, be made to the Contractor to the extent of 90% of the value of such material, worked out on the basis of Schedule of Rates.....
- In the Price Variation Clause mentioned in paras 70.1 (B) and (C) there is a 'Formula for Materials Component' at (B) and there is a separate 'Formula for Petrol, Oil and Lubricant (POL) Component at (C). There are also Price Adjustments for Cement Component, for HYSD/TMT steel component, Structural steel component, CI & DI Pipes, Bitumen.

Under the SPECIAL CONDITIONS OF CONTRACT and under the SCOPE OF WORK mentioned in para 2, it is mentioned that "The bid is for the work ofThe work to be carried out.....shallinclude all labour, material, tools, plants,

From the above reading of the contracts, copies of which have been submitted by the applicant themselves, it is very clear that their services are not pure services as contested by them to claim exemption. NMMC's contracts envisage replacement of mechanical and electrical equipments, installation of high efficiency lighting systems, oil and lubricants, laboratory chemicals, glassware, etc. In the CIDCO contract it is also mentioned that the rates and prices stated in the Bill of Quantities would include **those in respect of the supply of goods, materials, plant, etc.** The terms of the contracts, with respect to supply of spares, material, etc, are clearly contradicting the applicant's contention that the major portion of their work is labor oriented i.e. 95% and balance 5% are consumables are Adhesives, Grease, Oil and lubricants. They have not mentioned the fact of having to supply materials other than consumables, vide the NMMC contract. Since the contracts clearly require the applicant to supply materials and spares, in addition to consumable, it is seen that the applicant, in this ARA has not mentioned the complete facts of the matter which would clearly specify as to what is the correct proportion of services and actual quantity of materials to be used or supplied by the applicant. Hence keeping in mind the provisions of the two contracts mentioned above (since details of other contracts are not forthcoming), it is not difficult to come to a conclusion that the applicant has entered into a contract with the local bodies for both, supply of goods and also supply of materials and therefore there is no question of the same being considered as pure services contracts.



Notification No. 11/2017-Central Tax (Rate) dated 28th June, 2017 had notified levy of central tax, on the intra-State supply and as per Sr. No. 3, Heading 9954, (iii) of the said Notification, "construction services other than those mentioned at (i) and (ii)" of the said Sr. No. 3, Heading 9954 were leviable to tax @ 9%. This Notification was amended by Notification No. 20/2017-Central tax (Rate) dated 22.07.2017, wherein the tax rate was reduced to 6%. Notification No. 20/2017 amended the description mentioned at Sr. No. 3 Heading 9954 (iii) from "construction services other than those mentioned at (i) and (ii)" TO "composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied to the Government, a local authority or a Governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, - (c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.

In view of the fact that the services rendered by the applicant, as is seen from the terms of the contracts mentioned above, is a composite contract consisting of supply of services and also supply of goods in the form of materials, spares, consumables, etc., there is clearly a tax liability @ 9% each of CGST and SGST till 21.07.2017 and further @ 6% each of CGST and SGST with effect from 22.07.2017.

We see that up till 24.01.2018, as per Notification No. 12/2017-Central Tax (Rate), the exemption as per Sr. No. 3 was only in case of pure services. The same is reproduced as under:-

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	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 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

However on the basis of detailed discussions and findings above, it is very clear that the services provided by the applicant are not pure services and rather involve supply of materials and consumables, the supply which is in the nature of composite supply and works contract, is not exempt from levy of GST as per Notification No. 12/2017 and is therefore clearly taxable at the rates discussed above.

However with effect from 25.01.2018 it is seen that a new Sr.No. 3A has been incorporated in Notification No. 12/2017 vide Notification No. 2/2018-Central Tax which is reproduced as under:-

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
3A	Chapter 99	Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply 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 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



Here, it is seen that the type of services rendered by the applicant has been exempted with effect from 25.01.2018 subject to fulfilment of certain conditions. Exemption Notification No.2/2018 Central Tax (Rate) dated 25.01.2018, provided the value of supply of goods does not exceed 25% of value of composite supply.

Thus we see that with effect from 25.01.2018, the applicant can avail the benefit of the above said Exemption Notification No.2/2018 Central Tax (Rate) dated 25.01.2018 only if the value of supply of goods does not exceed 25% of value of composite supply. A fact to be noted from the submissions made by the Applicant, is that they themselves were aware that, on implementation of GST, 2017 the said supply of Operation & Maintenance work was taxable as per notification no. 11/2017 dated 28.06.2017 and notification no. 20/2017 dated 22.08.2017. However, the Municipal Corporation has disregarded levying of GST on the said work saying it is exempt and have rejected the claims made by appellant. As regards the claim of the Municipal authorities that the services under reference are covered by Article 243W of the Constitution and hence exempt from GST is not sustainable and is incorrect in view of detailed discussions above and it is clear that as per Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 with effect from 01.07.2017, only *pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Govt, State Govt 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 W of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution are exempt from tax* and with effect from 25.01.2018 exemption claimed under Notification No. 2/2018 Central Tax has to be first ascertained and verified and ensured that in the composite supply of goods and services the quantum or value of goods supplied do not exceed 25% of the total value of the value of contract.

It can be seen from the submissions of the applicant as well as the contracts that along with the services rendered they also supply to the Local Bodies, spares, materials and consumables such as oil, lubricant etc. Hence their services cannot be termed as pure services attracting exemption as per sr.No.3 of under Noti. No. 12/2017 and the applicant would have to pay the GST on the services provided by them to such Local Bodies. This would answer their query regarding liability to pay GST on composite supply of services/goods under work orders received from various local bodies. It appears that this ARA has been filed not because the applicant had doubts regarding levy of GST but because the Local bodies have refused to pay them the said GST.

With respect to their query regarding availability of input tax credit on purchases against such work order, Section 16 of the CGST Act, 2017, states that *"Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person."*

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.



Explanation. – For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Subject to the terms and conditions mentioned in Sections 16 to 22 of the CGST Act and Rules 36 to 45 of the CGST Rules, 2017, we are of the opinion that the applicant is eligible to take Input Tax Credit for purchases made against the said work orders entered into by them.

05. In view of the extensive deliberations as held hereinabove, we pass an order as follows :

ORDER

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 04/2017-18/B- 28 Mumbai, dt. 05.05.2018

For reasons as discussed in the body of the order, the questions are answered thus –

Question -1 –Determination of GST leviable on operation and maintenance work order given by such Municipal Corporation.

Answer :- Under GST Act, 2017, their services attracted CGST & SGST @ 9% each with effect from 01.07.2017 and CGST & SGST @ 6% each with effect from 22.08.2017. Post 25.01.2018, their services would be exempt only subject to fulfilment of conditions that the value of supply of goods does not exceed 25% of value of composite supply.



Question-2- Admissibility of ITC (input Credit tax) of purchases against such work order.

Answer:- The applicant is eligible for availing ITC (input Credit Tax) of purchases against such work order under the GST Act/Rules subject to the terms and conditions mentioned in section 16 to 22 of the GST ACT and rules 36 to 45 of the GST Rules ,2017.

Question - 3 Determination of responsibility of municipal authority of discharging such GST Liability payable to the contractor.

Answer :- The liability to pay GST is on the supplier, being a legal liability and no comments are offered in respect of recovery or otherwise from the recipient.

Question - 4 Further, we seek guidance from GST Council/ Appropriate authority towards applicability of GST on Service Contract where labour job Contribute 95% to 98% if Contract Value and 2-3% as Oil and Lubricant and pertains to consumable Purchase to operate the Existing Plant.

Answer:- Under GST Act, 2017, their services attracted CGST& SGST @ 9% each with effect from 01.07.2017 and CGST & SGST @ 6% each with effect from 22.08.2017. Post 25.01.2018, their services would be exempt only subject to the fulfilment of condition that the value of supply of goods does not exceed 25% of value of composite supply.



—sd—
B. V. BORHADE
(MEMBER)

—sd—
PANKAJ KUMAR
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of CGST, Churchgate, Mumbai.

Appeal to:-

Appeal against this order would lie to The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai - 400021.

CERTIFIED TRUE COPY


MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI