

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)

(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

ARN No.	—	
GSTIN Number, if any/ User-id	27AAMCM7279C1Z3	
Legal Name of Applicant	M/s MAHA MUMBAI METRO (M3) OPERATION CORPORATION LIMITED	
Registered Address/Address provided while obtaining user id	C-14,15, Ground Floor, MMRDA Off Building, Bandra Kurla Complex, Bandra East, Mumbai Suburban, Maharashtra, 400051	
Details of application	GST-ARA, Application No. 13 Dated 14.06.2021	
Concerned officer	MUM-VAT-C-903, NODAL DIV-V	
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in brief)	Applicant will be engaged in providing Local land transport services of passengers by railways, metro, monorail, bus, tramway and other motor vehicles. Applicant is incurring various expenses like, Salary & Wages for employee, Contribution to provident Fund, Training expenses, Canteen expenses, Advertisement expenses, Manpower expenses etc. Currently, no revenue is generated by applicant by incurring these expenses in relation to Operation and Maintenance activity. All the expenses incurred by applicant are reimbursed by MMRDA (Holding Entity) at cost
Issue/s on which advance ruling required		<ul style="list-style-type: none"> ➤ Determination of time and value of supply of goods or services or both ➤ Determination of the liability to pay tax on any goods or services or both ➤ Whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term
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" respectively] by **M/s MAHA MUMBAI METRO (M3) OPERATION CORPORATION LIMITED**, the applicant, seeking an advance ruling in respect of the following question.

- (i) Whether GST is applicable on reimbursement of expenses such as salaries, rent, training, staff welfare expenses etc.?
- (ii) If above answer is affirmative, at what rate GST should be charged?

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 any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2.

(A) **FACTS AND CONTENTION – AS PER THE APPLICANT:**

The submissions made by MAHA MUMBAI METRO (M3) OPERATION CORPORATION LIMITED, the applicant, are as under:-

2.1

The applicant, having their principal place of business at C-14, 15, Ground Floor, MMRDA Office Building, Bandra Kurla Complex, Bandra East, Maharashtra, 400051 is engaged in supply of service with bearing GSTIN-27AAMCM7279C1Z3. Applicant is engaged in providing Local land transport services of passengers by railways, metro, monorail, bus, tramway, autos, three wheelers, scooters and other motor vehicles. The SAC for the service is 9964 and GST rate in relation to same is 18%.

2.2

Applicant is wholly owned subsidiary of Mumbai Metropolitan Region Development Authority (herein referred as "MMRDA") whose aim is to integrate the Operation and Maintenance of all Metro corridors under one authority with objectives as follows:

- (a) To independently carry out business of Operation and Maintenance (O&M) related functions of all Metro lines in Mumbai Metropolitan Region.
- (b) To carry out Planning, Identification, Development and Implementation of all Non-Fare Box Revenue measures.
- (c) Execute Property development and construct or maintain or lease out various facilities in relation to rail transport system.

2.3

To achieve the above objective, applicant is incurring various expenses such as Salary & Wages for employee, Contribution to provident Fund, Training expenses, Canteen expenses, Advertisement expenses, Manpower expenses etc. Currently, no revenue is generated by applicant by incurring these expenses in relation to Operation and Maintenance activity since at

present no such activities have started to be undertaken by the applicant. All the expenses incurred by applicant are reimbursed by MMRDA at cost. No additional payment is done by MMRDA.

B. APPLICANT'S INTERPRETATION OF LAW/APPLICANT'S SUBMISSIONS:

2.4 The term reimbursement is not defined in the GST laws although references to the term can be found under the concept of 'pure agent'.

The term reimbursement comes from the Latin root and has been defined in various dictionaries, as given below:

- Black's Law Dictionary, Sixth Edition defines the expression 'reimburse' to mean "To pay back, to make restoration, to repay that expended; to indemnify, or make whole."
- In P. Ramanath Aiyer's The Law Lexicon, 2nd Edition at page 1641, the meaning of the expression 'reimburse' has been defined as
"To reimburse is to pay back, and this primary meaning to the word is to be imputed to it, where the meaning is not controlled by context or contract stipulations."

2.5 In the case of Tata Iron and Steel Co. Ltd. v. Union of India, [MANU/SC/0745/2000] the Honorable Supreme Court interpreted the words "reimbursed to the exporter" in the context of the International Price Reimbursement Scheme. The Supreme Court held as follows:

10: In common acceptation, the word "reimburse" means and implies "to pay back or refund": As a matter of fact, it denotes restoration of something paid in excess; as regards the Respondent Union of India it cannot but mean to indemnify having regard to the common grammatical meaning of the word "reimbursement". Reimbursement has to mean and imply restoration of an equivalent for something paid or expended. Reimbursement presupposes previous payment.

2.6 The Goods and Service Tax (GST) regime has introduced the concept of supply as a taxable event while doing away with the erstwhile taxable events of manufacture, sale, service etc.

2.7 As per Section 7 of the CGST Act, the term 'supply' also includes transaction in goods or services between related persons or distinct persons, whether or not for a consideration. It would be relevant to note that the scope of supply includes supply of goods or services in different forms viz; sale, transfer, barter, exchange, license, rental, lease or disposal, made or agreed to be made for a consideration by a person in the course or furtherance of business. While "goods" have been defined in terms of Section 2(52) of the CGST Act to mean every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. In terms of Section 2(102) of the CGST Act "services" is defined to mean anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged. Reimbursements can be made, subject to tax only if it qualifies as a consideration, i.e. the payment should be in respect of, in response to or for inducement of supply in a contractual framework. Therefore, it can be said that reimbursement will be subject to tax only if the payment has been made in exchange for provision of supply of goods or services.

- 2.8 In applicant's case, only mere reimbursement are received from MMRDA against expense incurred by applicant and no other income is being generated or earned from those expense.
- 2.9 In case of Authority to Advance Ruling of **M/S HABUFA MEUBELN B.V.**- The reimbursement of expenses and salary paid by M/s Habufa Meubelen B.V.(HO) to the liaison office established in India - Registration of Liaison Office required or not - HELD THAT:- The reimbursement of expenses and salary paid by M/s Habufa Meubelen B.V to the liaison office, is not liable to GST, as no consideration for any services is being charged by the liaison office - Further, the kind of reimbursement claimed by them from their HO is also falling out of the purview of supply of service and as there are no such taxable supplies made by the Liaison office, they are not required to get themselves registered under GST.
- 2.10 In case of Union of India vs. M/s. Intercontinental Consultants and Technocrats Pvt. Ltd, the issue was as to whether the value of free supplies of diesel and explosives in respect of the service of 'Site Formation and Clearance Service' can be included for the purpose of assessment to service tax under Section 67 of the Act. The assessee had not availed the benefit of aforesaid Notifications Nos. 15/2004 and 4/2005. Therefore, the issue has to be adjudged simply by referring to Section 67 of the Act. We have already held above that the value of such material which is supplied free by the service recipient cannot be treated as 'gross amount charged' and that is not the 'consideration' for rendering the services. Therefore, value of free supplies of diesel and explosives would not warrant inclusion while arriving at the gross amount charged on its service tax is to be paid. Therefore, all these appeals are also dismissed.

FURTHER SUBMISSIONS MADE BY THE APPLICANT

- 2.11 Notification 12/2017 Central Tax rate government has exempted following services provided by governmental entity:-
- i) Services by governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution
 - ii) Services by a Governmental Authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution.
- 2.12 "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.]
- 2.13 243G. Powers, authority and responsibilities of Panchayats.—Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to—
- (a) the preparation of plans for economic development and social justice;

- (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

2.14 243W :Powers, authority and responsibilities of Municipalities, etc.—Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow—

- (a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to—
- (i) the preparation of plans for economic development and social justice;
 - (ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;
- (b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

2.15 Following activities are mentioned in Eleventh schedule of 243G of constitution of India 1949:-

- i. Agriculture, including agricultural extension.
- xiii Roads, culverts, bridges, ferries, waterways and other means of communication.

2.16 Following activities are mentioned in Twelfth schedule of 243W of constitution of India 1949:-

- i. Urban planning including town planning.

2.17 As per Advance ruling in case of M/s. Amaravathi Metro Rail Corporation Ltd. (AMRCL) (Government Authority) it was held that AMRCL is a SPV which is set up vide Government of Andhra Pradesh G.O. Ms. 141 of MA &UD. The applicant has also submitted that it is 100% owned by state of A.P.; that it is answerable to Government of Andhra Pradesh; that its Chairman is the Principal Secretary. The Government of Andhra Pradesh, issued G.O. Rt.No: 599, MA&UD(H2) Department, dated 14.09.2015, in which, the Government of Andhra Pradesh has decided that the special purpose vehicle for Vijayawada Metro Rail Project, hence forth be called as AMARAVATHI METRO RAIL CORPORATION LIMITED (AMRC)'. Based on above facts, it is evident that the applicant is a Government authority as per the Notification No. 12/2017 - Central Tax dated 28th June 2017.

2.18 Urban Planning is a function entrusted to Municipality under Article 243 W of the Constitution. The applicant has invited our attention to Ministry of Urban Development, Government of India in K-14011/07/2007/Metro/UT dt.29-08-2007, addressed to all the Chief Secretaries of the States and Union Territories, informing the decision that the urban transport and urban planning must go together and that urban transport is an integral part of urban development, which will help in ensuring that urban transport remains an integral part of urban planning at all

the times and cities are planned in a wholistic manner - Urban Transportation also is a part of Urban Planning.

- 2.19 All the activity is in the nature of urban transportation and urban planning and the same is covered under the purview of the functions of Municipality under article 243W read with Twelfth Schedule to the constitution of India, and the same fall within the purview of the aforesaid exemption notification 12/2017-Central Tax (Rate), dated : 28th June 2017
- 2.20 The consultancy services for preparation of transport studies such as comprehensive mobility plan, transit oriented development plan, NMT plan and consultancy services of transaction advisors/preparation of DPRs comes within the purview of the functions of Municipality under article 243 read with Twelfth Schedule to the constitution of India, and accordingly, falls within the purview of the aforesaid exemption notification.
- 2.21 MMRDA is holding more than 90% equity in MMMOCL, so MMMOCL will be considered as government entity. MMMOCL is government entity, incurring expense for maintaining Mumbai metro operations and in turn recovering amount from MMRDA. The activity in relation to metro operations is covered under other means of communication of eleventh schedule. Since the activity is covered under eleventh schedule, amount received in relation to reimbursement of expense is exempt under GST. Alternatively, It can also be considered in twelfth schedule as per Advance Ruling in case of M/s. Amaravathi Metro Rail Corporation Ltd.

2.22 As per notification 12/2017 Central Tax rate government has exempted supply of service by a Government Entity to Central Government, State Government, Union territory, local authority or any person specified by Central Government, State Government, Union territory or local authority against consideration received from Central Government, State Government, Union territory or local authority, in the form of grants.

2.23 In case of APITCO LTD. VERSUS CST, honorable CESTAT authority (Affirmed by Supreme Court) said- *We have given careful consideration to the submissions. It is not in dispute that the assessee-company had implemented welfare schemes for the Central and State governments for the benefit of the poor or otherwise vulnerable/weaker sections of the society and collected grants-in-aid from the governments concerned. It is not in dispute that these grants-in-aid had been totally utilized for implementing the welfare schemes. Nothing over and above these grants-in-aid was received by the assessee from any of the governments. In other words, the assessee did not receive any consideration for "any service" to the governments. Therefore, we hold that, in the implementation of the Governmental schemes, the assessee as implementing agency did not render any taxable "service" to the government. The department seems to be considering the Governments to be "clients" of APITCO. The question now is whether there was "service provider-client" relationship between the assessee and the governments. Here, again, the nature of the amounts paid by the governments to the assessee is decisive. A client must not only pay the expenses of the service but also the consideration or reward for the service to the service provider. Admittedly, in the present case, there was no payment, by any government to the assessee, of any amount in excess of what is called "grant-in-aid". Thus any service provider-client relationship between the assessee and the governments is ruled out. It is true that the assessee had executed the governmental schemes mainly through their engineers (technocrats)*

but this was not enough for the revenue to bring the assessee within the ambit of "scientific or technical consultancy" as clearly held by this Bench in the case of Administrative Staff college of India (supra). [An organization rendering "scientific or technical consultancy" service under Section 65(105)(za) of the Finance Act 1994 must be a science or technology institution. The assessee-company has not been shown to be such an institution, a moreover, the revenue has failed to show that any scientific or technical advice or consultancy or assistance was rendered by the assessee to the governments. Many of the activities in question, such as micro-enterprises development, training programmes, project planning, infrastructure planning etc., are apparently in the nature of projects involving application of social science principles. The revenue has not shown that any techniques or principles of pure and applied sciences were applied in the implementation of the governmental schemes by the assessee. In the case of Administrative Staff College of India (supra), this Bench held that, as the research activities of the assessee (Administrative Staff College) were related to social science, they would not be within the ambit of "scientific or technical consultancy" and hence no service tax could be levied under that category, which view is squarely applicable to the facts of the present case. The view taken by the Tribunal in the above case stood affirmed by the apex court in the above case with the dismissal of the department's Civil Appeal filed against the Tribunal's Order.

2.24 In case of M/s Bellary Nirmithi Kendra, honourable Advance Ruling Authority held that the supply of service by a Government controlled Association to State Government, Local Authority or any person specified by State Government, Local Authority against consideration received from State Government, Local Authority, in the form of grants is not liable to GST only if the Government controlled Association is covered under the definition of "Government Entity" and if not, then the same is liable to tax.

2.25 MMMOCL has received grant for MMRDA for running operations of Mumbai metro. The grant received is utilised for incurring day to day expense. Since MMRDA is local authority and MMMOCL is government entity, grant received by MMMOCL is exempt under GST.

03. CONTENTION – AS PER THE CONCERNED OFFICER:

OFFICER SUBMISSION DATED 19.07.2021:-

3.1 With reading of application and question raised by application, in my opinion, though the applicant has called the amount received from M.M.R.D.A. as a reimbursement, it is a consideration paid by principal contractor to his sub-contractor and should be taxed as per law.

04. HEARING

4.1 Preliminary e-hearing in the matter was held on 20.07.2021. Authorized representatives of the Applicant, Shri Vishal Sheth, CA and Shri Rajkumar Kendre, General Manager were present and made submissions with respect to admission of their application. Jurisdictional officer Shri. K. Shrikhande, STO, C-903, Bandra East, Nodal Division 5, Mumbai was also present.

4.2 The application was admitted and called for final e-hearing on 12.10.2021. The Authorized representatives of the applicant, Shri. Vishal Sheth, CA and Shri. Rajkumar Kendre, GM (HR) were present. Jurisdictional officer Shri. K. N. Shrikhande, STO, MUM-VAT-C-903, Nodal-5 was absent. The jurisdictional officer wanted a week's time to file written submission, same was

granted. The applicant raised new issue by referring to certain exemption under schedule entry of Tax rate.

4.3 Heard the matter.

05. OBSERVATIONS AND FINDINGS:

5.1 We have gone through the facts of the case, documents on record and written/oral contentions made by both, the applicant and as well as the jurisdictional officer at the time of hearings.

5.2 M/s MAHA MUMBAI METRO (M3) OPERATION CORPORATION LIMITED, the applicant, wholly owned subsidiary of Mumbai Metropolitan Region Development Authority ("MMRDA") is engaged in providing Local land transport services of passengers by railways, metro, monorail, bus, tramway, autos, and other motor vehicles.

5.3 The aim of MMRDA ("MMRDA") is to integrate the Operation and Maintenance of all Metro corridors under one authority, namely, the applicant, and to achieve the said objective, applicant is incurring various expenses such as Salary & Wages for employee, Contribution to provident Fund, Training expenses, Canteen expenses, Advertisement expenses, Manpower expenses etc. Applicant has submitted that currently, no revenue is generated by applicant in relation to Operation and Maintenance activity since no such activities have started to be undertaken by the applicant. All the expenses incurred by applicant are reimbursed by MMRDA at cost. No additional payment is done by MMRDA.

5.4 The applicant has submitted a draft Memorandum of Understanding (MOU), wherein it is mentioned that applicant company has been set up by Government of Maharashtra on 10.06.2019, with an objective to integrate the Operation and Maintenance of all Metro corridors of Mumbai Metropolitan Region upon completion, under one authority for ease of operation and the applicant will use the funds transferred under this Memorandum of Understanding for the purposes of its smooth and effective functioning and further, the Funds transferred under the MOU would be available for obligation and expenditure for the purposes for which such funds are authorized only and in accordance with Schedule of Powers and directions of MMRDA.

5.5 From a reading of the MOU, it is seen that funds would be transferred by MMRDA to the applicant for its smooth and effective functioning and only for authorized expenditure.

5.6 Thus, the applicant has submitted that, in the subject case, only mere reimbursement are received from MMRDA against expenses incurred by applicant and no other income is being generated or earned from those expense. In other words applicant has stated that no supply of goods/services are being provided to MMRDA.

5.7 However in their additional submissions, the applicant has also stated that it is rendering consultancy services for preparation of transport studies such as comprehensive mobility plan, transit oriented development plan, NMT plan and consultancy services of transaction advisors/preparation of DPRs, which comes within the purview of the functions of Municipality under Article 243 read with Twelfth Schedule to the Constitution of India, and accordingly, falls within the purview of Sr. No. 3 of Notification 12/2017- Central Tax (Rate) dated 28.06.2017 which provides exemption to 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 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. During the course of the final hearing, the applicant reiterated that even though it is providing such consultancy services without any supply of goods, the fact of the matter is that they are not receiving any consideration for the same. All that the applicant is receiving is reimbursement from MMRDA which cannot be treated as consideration received. The authorized representative also stated that assuming without admitting, even if the reimbursement amount received by the applicant is treated as 'consideration', the same would be against pure services supplied to a Government Entity (MMRDA) for an activity carried out by it, in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

5.8 From the submissions made by the applicant we observe that the applicant company has been set up by Government of Maharashtra as a 100% subsidiary of MMRDA. Even though the applicant has strongly submitted that they are receiving reimbursements from MMRDA, we find that the applicant has also submitted that it is providing consultancy services for preparation of transport studies such as comprehensive mobility plan, transit oriented development plan, NMT plan and consultancy services of transaction advisors/preparation of DPRs. Thus there is a supply effected by the applicant to MMRDA and there are amounts received by the applicant from MMRDA which is being treated as reimbursement by the applicant.

5.9 We observe that, the amounts received by the applicant may be against actual expenses incurred but appear to be given to the applicant in lieu of consultancy services rendered by the applicant to MMRDA. Thus we infer that, in the subject case, consideration is received by the applicant for supply of services and such consideration is in the form of reimbursement of expenses. Hence, we do not agree with the applicant's claim to treat the amounts received from MMRDA, as 'grants'. Thus the amounts received from MMRDA by the applicant are nothing but consideration received for providing consultancy services.

5.10 The consultancy services are in the nature of preparation of transport studies such as comprehensive mobility plan, transit oriented development plan, NMT plan and consultancy services of transaction advisors, etc. and as per the applicant's submissions, at present there is no supply of goods. Thus, in our opinion the applicant is rendering Pure Services to MMRDA.

5.11 Since the applicant has also contended if the amounts received by them are treated as consideration for services rendered then the provisions of Sr. No. 3 of Notification No. 12/2017-CT(R) dated 28.06.2017 are applicable in its case. The Relevant Entry No. (3) Of Notification No. 12/2017-CT(R) dated 28.06.2017 is as under:-

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent)	Condition
(1)	(2)	(3)	(4)	(5)
3	Chapter 99	Pure services (excluding works contract service or other	Nil	Nil

		composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority <u>1</u> [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.		
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5.12 For any supply to be covered under Sr. No. 3, the supply should be in respect of only Pure Services, secondly such Pure Services must be provided to the Central Government, State Government or Union territory or local authority or a Governmental authority [or a Government Entity] and finally such services should be provided by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

5.13 From the submissions made by the applicant we have already found that, in the instant case, pure services are supplied by the applicant to MMRDA. Thus the first part of the conditions mentioned at Sr. No. 3 of the aforesaid Notification is satisfied in the subject case.

5.14 The second condition to be satisfied for availing exemption under the above referred Notification is that such pure services, as are being rendered in the subject case, should be supplied to the Central Government, State Government or Union territory or local authority or a Governmental authority [or a Government Entity].

5.15 Thus we need to discuss whether MMRDA can be considered as a Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity.

5.16 MMRDA cannot be considered as a Central Government, State Government or Union territory or local authority. Thus we need to find whether MMRDA can be considered as a Governmental authority or a Government Entity for which, we need to have a look at Notification No. 31/2017 Central Tax (Rate) dated 13th October, 2017. The relevant provisions pertaining to the present case are mentioned in Notification No. 31/2017 Central Tax (Rate) dated 13th October, 2017 which are reproduced as under:-

Notification No. 31/2017-Central Tax (Rate) dated the 13th October, 2017

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 9, sub-section (1) of section 11, sub-section (5) of section 15 and sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No.11/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 690(E), dated the 28th June, 2017, namely:-

In the said notification,

(i) in the Table, -

(a) against serial number 3, -

- A. in item (iii), in column (3), for the words "Government, a local authority or a Governmental authority", the words "Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity" shall be substituted;
- B. in item (vi), in column (3), for the words "a local authority or a Governmental authority" the words "a local authority, a Governmental Authority or a Government Entity" shall be substituted;
- C. in items (iii) and (vi), in column (5), for the existing entry, the following entry shall be substituted, namely: -
"Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be"

.....
 (iii) in paragraph 4, after clause (viii), the following clause shall be inserted, namely: -

"(ix) "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 90 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.

(x) "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".

5.17

In view of the above, we are required to ascertain whether 'MMRDA' would be covered under the definition of 'Government Entity' as given in Notification No. 31/2017 dated 13.10.2017 referred above.

5.18

MMRDA is a body established by the Government of Maharashtra under Mumbai Metropolitan Region Development Authority Act, 1974 ('MMRDA Act'). As per the preamble of the Act, the MMRDA has been established for the purpose of planning, coordinating and supervising the proper, orderly and rapid development of the Mumbai Metropolitan Region (MMR); to formulate and execute plans, projects and schemes for the development of the MMR and to provide for matters connected with the purposes aforesaid. Therefore, MMRDA is seen to be under the control of the Govt. of Maharashtra.

5.19

As per the MMRDA Act, the Authority comprises consists of the following members, namely :-

(i) The Minister for Urban Development;

(ii) The Minister for Housing;

(iii) The Minister of State for Urban Development;

(iv) The [Mayor of Mumbai];

(v) The Chairman, Standing Committee, Municipal Corporation of Brihan Mumbai (MCGM);

(vi), (vii) and (viii) three Councillors of the MCGM elected by the Corporation, the election being held by ballot according to the System of proportional representation by means of the single transferable vote;

- (ix) and (x) two members of the Maharashtra Legislative Assembly, representing constituencies falling, wholly or partly, within the limits of the Mumbai Metropolitan Limits, to be nominated by the State Government;
- (xi) one member of the Maharashtra Legislative Council, to be nominated by the State Government;
- (xii) the Chief Secretary to the Government of Maharashtra;
- (xiii) the Municipal Commissioner of the MCGM
- (xiv) the Secretary to the Government of Maharashtra, Urban Development Department;
- (xv) the Secretary to the Government of Maharashtra, Housing Department;
- (xvi) the Managing Director, City and Industrial Development Corporation of Maharashtra;
- (xvii) the Metropolitan Commissioner;

5.20 Thus from the above, we clearly find that MMRDA is constituted and established by the State Government of Maharashtra with 100% participation by way of Equity or Control to carry out the function entrusted to it by the State Government viz. Preparation of Regional Development Plans , Providing financial assistance for significant regional projects, Providing help to local authorities and their infrastructure projects, coordinating execution of projects and/or schemes in MMR, etc. in the State of Maharashtra and therefore MMRDA is clearly covered under the definition of 'Government Entity' as can be seen from the definition of a 'Government Entity' mentioned above. Further, Section 46A of the MMRDA Act provides for control by the State Government in regard to its powers and duties.

5.21 Further, the third condition of Entry No. (3) Of Notification No. 12/2017-CT(R) dated 28.06.2017 is that pure services should be provided to a Government Entity, etc., by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution.

5.22 Article 243W of the Indian Constitution states as under:

"Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow:-

- (a) *The Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as maybe specified herein, with respect to-*
 - i. *The preparation of plans for economic development and social justice;*
 - ii. *The performance of functions and the implementation of schemes as may be entrusted to them including those in relation to matters listed in the twelfth Schedule.*
- (b) *The Committees with such powers and authority as may be necessary to enable them to carry out the responsibility conferred upon them including those in relation to the matters listed in the Twelfth Schedule."*

Twelfth Schedule of the Indian Constitution provides for the following functions (relevant) as under:

(1) *Urban planning including town planning;*

.....

(3) *Planning for economic and social development*

.....

- 5.23 We find that the impugned pure services supplied by the applicant can be covered under clause 1, of the Twelfth Schedule above, pertaining to Articles 243W of the Constitution, "by way of any activity in relation to any function entrusted to a Municipality under article 243W of the Constitution".
- 5.24 In view of the above discussions, we are of the opinion that the applicant is supplying pure services to a Government Entity in relation to any function entrusted to a Panchayat under article 243W of the Constitution and therefore, as per the provisions of Entry No. (3) Of Notification No. 12/2017-CT(R) dated 28.06.2017, mentioned above, the said amounts received by the applicant are not liable to tax.
- 5.25.1 The applicant has submitted that, its aim is to integrate the Operation and Maintenance of all Metro corridors under one authority by way of : independently carrying out business of Operation and Maintenance (O&M) related functions of all Metro lines in Mumbai Metropolitan Region ; carrying out Planning, Identification, Development and Implementation of all Non-Fare Box Revenue measures and executing Property development and construct or maintain or lease out various facilities in relation to rail transport system.
- 5.25.2 At present none of the said activities mentioned in 5.25.1 is being carried out by the applicant. As per applicant's submissions the only activity being carried out is consultancy services and accordingly it is held that the provisions of Entry No. (3) Of Notification No. 12/2017-CT(R) dated 28.06.2017, is applicable to the present case.
- 5.25.3 However, as and when the supply as mentioned in para 5.25.1 is undertaken by the applicant, the situation will change and this order will not be applicable in that particular situation/case.
06. 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)

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

Question 1: -Whether GST is applicable on reimbursement of expenses such as salaries, rent, training, staff welfare expenses etc.?

Answer:- Answered in the negative in view of the discussions made above.

Question 2: -If above answer is affirmative, at what rate GST should be charged?

Answer:- Not answered in view of answer to Question No. 1 above.

PLACE - Mumbai

DATE – 10.11.21


RAJIV MAGOO
(MEMBER)


T. R. RAMNANI
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint Commissioner of State Tax, Mahavikas for Website.

Note:-An Appeal against this advance ruling order shall be made before, The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on **gst.gov.in** for online appeal application against order passed by Advance Ruling Authority.

