

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)

GSTIN No.	AD270420003512S
GSTIN Number, if any/ User-id	27AAJAS7455F1Z4
Legal Name of Applicant	M/s. Sir J J College of Architecture Consultancy Cell
Registered Address/Address provided while obtaining user id	78/3, Sir J J College of Architecture, D.N. Road, Fort, Mumbai City, Maharashtra, 400001
Details of application	GST-ARA, Application No. 13 Dated 31.08.2020
Concerned officer	MUM-VAT-C-602, NODAL DIVISION-01
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A	Category
B	Description (in brief)
	Service
	Comprehensive architectural services that includes architectural design, structural design, MEP design, HVAC services design and preparation of drawings.
Issue/s on which advance ruling required	
<ul style="list-style-type: none"> Applicability of a notification issued under the provisions of the Act 	
Question(s) on which advance ruling is required	
As reproduced in para 01 of the Proceedings below.	

NO.GST-ARA- 13/2020-21/B- 15

Mumbai, dt. 01.02.2022

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. Sir J J College of Architecture Consultancy Cell, the applicant, seeking an advance ruling in respect of the following questions.

Applicability of GST exemption on Comprehensive architectural services that includes architectural design, structural design , MEP design , HVAC services design, preparation of drawings etc for repairs/ restoration, reconstruction for development of recreation ground cum textile museum at United India Mills 2 & 3 at Kala chowky provided by the Applicant to Municipal Corporation of Greater Mumbai (‘MCGM’).

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. FACTS AND CONTENTION – AS PER THE APPLICANT FACTS:

- 2.1 Sir JJ College of Architecture Consultancy Cell, the 'Applicant', was formed as per the guidelines of the Council of Architecture, a statutory body under the Act of Parliament and University of Mumbai. The Government of Maharashtra has permitted the applicant to render comprehensive architectural services.
- 2.2 The Applicant provides services to Government bodies, State corporations and Public Sector Undertakings (PSUs) in relation to comprehensive architecture including architectural design, structural design, MEP design, HVAC design, preparation of drawings, etc.
- 2.3 The Applicant has entered into an agreement with the Municipal Corporation of Greater Mumbai, (MCGM), the service receiver in the subject case, to provide comprehensive architectural services for repairs/restoration, reconstruction for development of recreation ground cum textile museum, located at India United Mills Nos., 2 & 3 at Kala Chowky, 'E' Ward, Mumbai.
- 2.4 The comprehensive architectural services being provided by the Applicant are in accordance with the 'Schedule of Services' in Para 4 of the service agreement dated 26.09.2017. The said services have been summarized below;
- Concept designing including site evaluation, performing structural audit, soil investigation, making detailed inventory list and submission of detailed project report along with rough cost estimation
 - Preparing drawings and designs for approval of MCGM
 - Assisting MCGM to obtain statutory approvals for the drawing and designs
 - Preparing tender documents, inviting, receiving and analyzing tenders and advising MCGM on appointment of contractors.
 - Preparing and issuing working drawings for effective work execution during construction, approving samples, deputing engineers/architects for day to day supervision of work, verification of contractor's bills for payments based on work certified, monitoring of work progress on site and issue of certificate of visual completion of project work
 - Preparing and submitting complete reports and drawings for the project and assisting MCGM in obtaining Completion/Occupancy Certificate from statutory authority, whenever required
- 2.5 The service agreement dated 26.09.2017 provides for supply of comprehensive architectural services by the Applicant to MCGM, and provides for particulars of schedule of services to be provided by the Applicant, professional fees for the provision of services, rights and obligations of the applicant, roles and responsibilities of MCGM, etc.

B. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW

- 2.6 The applicant is of the view that the supply of services under consideration are exempt by relying on the below mentioned interpretation of law and/or facts;

- a. The provision of service under consideration qualifies as 'supply' within the purview of GST
b. The aforesaid supply is exempt under the provisions of GST law
- 2.7 In view of the provisions of Section 7 of the Central Goods and Services Tax Act, 2017, supply includes all forms of supply of services made or agreed to be made for a consideration in the course or furtherance of business. In the instant case, Applicant is providing comprehensive architectural services involving all the services as enlisted and summarized in Para 4 of Annexure 1, which are in the course and furtherance of business of the Applicant. Therefore, the aforesaid services qualify as supply within the purview of GST.
The supply under consideration is exempt under the provisions of GST law
- 2.8 As per Sr. No. 3 of Notification no. 12/2017 – Central Tax (Rate) ('exemption notification') dated 28th June 2017 (as amended from time to time) 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.....'
- 2.9 The impugned supply of the applicant is supply of pure services which does not involve supply of any goods, any composite supply involving supply of goods, or works contract service.
- 2.10 Further, Article 243W of the Constitution of India, empowers the Municipality for performance of functions enlisted in the Twelfth Schedule. Sub-clause (ii) of clause (a) of article 243W of the Constitution of India makes a reference to the twelfth schedule. However, the use of word, 'including' in the said sub-clause implies that the scope of article 243W is not restricted to the functions enlisted in the twelfth schedule but will extend to all functions or schemes entrusted to the municipality by the State Government. Thus, it can be stated that the list of functions under the twelfth schedule is illustrative and not exhaustive.
- 2.11 The complete list of functions entrusted to the local authority by the State government needs to be referred in context to the respective state legislature. In accordance with article 243W, every state government has enacted the law which provides functions and powers entrusted to its municipalities (i.e. local authority). The State Government of Maharashtra has enacted Brihan Mumbai Municipal Corporation Act, 1888 to provide such functions and powers entrusted to the MCGM. The provisions, object and purpose of the said act clearly suggest that it is incorporated to provide powers and entrust functions to the MCGM.
- 2.12 Applicant further refer to the duties and powers entrusted to the municipal authorities under the BrihanMumbai Municipal Corporation Act, 1888 and has reproduced Section 63 of the said Act.
- 2.13 The Applicant is providing comprehensive architectural services involving all the services as enlisted and summarized in Para 4 of Annexure 1 for the repairs/ restoration, reconstruction for development of recreation ground cum textile museum. As the article 243W of the Constitution of India provides for illustrative list in the twelfth schedule, reference needs to be placed on the state legislature to interpret the functions entrusted to the Municipality. The services provided by the applicant to MCGM are in line with the functions in S.63(c) and (d) of

- the Brihan Mumbai Municipal Corporation Act, 1888, which is part of state legislature governing the state.
- 2.14 Further, the service recipient is MCGM is a local authority and has legal recognition vide the Brihan Mumbai Municipal Corporation Act, 1888.
- 2.15 Given the above, it is evident that the Applicant is fulfilling all three conditions for the services being provided to fall within the ambit of the exemption notification as under:
- a. The supply by the applicant i.e. provision of comprehensive architectural services is in the nature of pure services
 - b. The activity by MCGM for which pure services is rendered i.e. Repairs /restoration, reconstruction for development of recreation ground cum textile museum falls within the purview of the functions entrusted to municipality under article 243W of the Constitution of India
 - c. Service recipient i.e. MCGM is a local authority
- 2.16 Hence, the supply under consideration is covered within the ambit of exemption notification and consequently is exempted from the levy of GST.

APPLICANT SUBMISSION DATED 14.07.2021:-

Clarification with regards to the submission made by State Tax officer, (MUM- VAT- C 602), Nodal Division-1, Mumbai (Mail dated 06-07-2021) -

- 2.17 With respect to the submissions made by the Learned State tax Officer, applicant's submissions are as under:
- 2.17.1 The Learned State Tax Officer has agreed that applicant is satisfying first two legs of the exemption notification no. 12/2017 for availing the exemption, namely, (a) That the nature of Supply is Pure service and (b) That the recipient of Services is a Local authority.
- 2.17.2 However, the Learned State Tax Officer has stated that, the activity by MCGM for which pure services is rendered i.e. repairs/restoration, reconstruction for development of recreation ground cum textile museum does not find direct mention in Twelfth Schedule of Article 243W of Constitution and therefore the applicant does not qualify for GST exemption as per Notification No. 12/2017-Central Tax (Rate) dated 28 June 2017.
- 2.17.3 The applicant submits that, Article 243W of the Constitution of India empowers the State Government to enact such Laws to confer powers and responsibilities upon the Municipalities for the preparation of plans for economic development and social justice and the performance of functions and the implementation of schemes as may be entrusted to them. Further, the said Article refers to the matters listed in the Twelfth Schedule of the Constitution of India by use of the term 'includes'. In accordance with the general rules of interpretation, reference to matters listed in the Twelfth Schedule will thus be an 'inclusive clause' in Article 243W. Hence, it is evident that the Twelfth Schedule is not exhaustive and the State legislature can confer powers upon the local authority of Municipality by enacting a law to fulfil the responsibilities entrusted on such local authority. The same is envisaged in Article 243W of the Constitution of India.
- 2.17.4 Accordingly, the Government of Maharashtra has enacted the Mumbai Municipal Corporation Act, 1888 in which there are two types of responsibilities entrusted on the Municipality given as 'Obligatory Duties' and 'Discretionary Duties'.

2.17.5 Section 63 of Mumbai Municipal Corporation Act, 1888 is given as under:

The corporation may, in their discretion, provide from time to time, either wholly or partly, for all or any of the following matters, namely:

(a) ... ;

(c) the establishment, aiding or maintaining libraries, museums, art galleries, botanical or zoological collections ; ...

Thus, the Discretionary function of the Municipality also includes 'aiding or maintaining museums'. The Comprehensive architectural services that includes architectural design, structural design, MEP design, HVAC services design, preparation of drawings etc for repairs/restoration, reconstruction for development of textile museum cum recreation ground is within the purview of the functions entrusted to the Municipality as per Article 243W.

2.17.6 Without prejudice to the above, it is iterated that in accordance with the general rules of interpretation and the principle of natural justice, any exemption notification should be construed liberally with the intent to benefit the applicant. Hence applicant requests that applicant may be allowed exemption from GST in respect of the impugned supply.

03. CONTENTION – AS PER THE CONCERNED OFFICER:

OFFICER SUBMISSION DATED 21.06.2021:-

3.1 As per the entry no. 3 of Notification No 12/2017 – C.T. (Rate) dated 28.06.2017 as amended by Notification No. 02/2018 dated 25.01.2018, stipulates conditions to be satisfied for claiming exemption:

3.2 The Nature of Supply should be in the form of "pure services". The Applicant is providing comprehensive architectural services as per the Agreement with MCGM, which is supply of pure services not involving supply of any goods, any composite supply involving supply of goods, or works contract service.

3.3 The service recipient in this case is MCGM, which is a local authority and governed as per Brihan Mumbai Municipal Corporation Act, 1888.

3.4 However, the impugned activity (pure services) is rendered for repairs/restoration, reconstruction for development of recreation ground cum textile museum which does not find direct mention in Twelfth Schedule of Article 243W of Constitution. Hence, the applicant does not qualify for GST exemption as per Notification No. 12/2017-Central Tax (Rate) dated 28 June 2017. This service would be covered by SAC 9983 and would be subject to 18% tax rate (9% CGST and 9% SGST).

04. HEARING

4.1 Preliminary e-hearing in the matter was held on 22.06.2021. Authorized Representatives of the applicant, Shri. Puneet Darra, CA, Shri. Kaushal Mehta, CA, Shri. Sumesh Porwal, CA were present. Jurisdictional officer Shri. Mangesh Deshmukh, STO, MUM-VAT-C-602 was also present. The Authorized Representatives made oral submissions with respect to admission of their application.

- 4.2 The application was admitted and called for final hearing on 07.12.2021. Authorized Representatives of the applicant, Shri. Puneet Darra, CA, Shri. Kaushal Mehta, CA, were present. Jurisdictional officer Shri. Mangesh Deshmukh, STO, MUM-VAT-C-602 was also present.
- 4.3 We heard both the sides.

05. DISCUSSIONS AND FINDINGS:

- 5.1 We have gone through the documents on record, understood the facts of the matter and considered the oral/written submissions made by both, the applicant as well as the jurisdictional officer.

- 5.2 Sir JJ College of Architecture Consultancy Cell, the Applicant has entered into an agreement dated 26.09.2017, with the Municipal Corporation of Greater Mumbai (MCGM), to provide architectural services for repairs/restoration, reconstruction for development of recreation ground cum textile museum, in Mumbai. The details of supply undertaken by the applicant are mentioned in para no. 4 of applicant's original submissions. The said agreement provides for supply of comprehensive architectural services by the Applicant to MCGM, professional fees for the provision of services, rights and obligations of the applicant, roles and responsibilities of MCGM, etc.

- 5.3 It is the contention of the applicant that, the impugned supply is exempt under Sr. No. 3 of Notification No. 12/2017 – Central Tax (Rate) dated 28th June 2017, as amended from time to time, in as much as the applicant is supplying pure services to MCGM, a local authority by way of an activity in relation to any function entrusted to a Municipality under article 243W of the Constitution.

- 5.4.1 The relevant Sr. No. 3 of Notification No. 12/2017 – Central Tax (Rate) dated 28th June 2017 as amended by Notification No. 16/2021 - Central Tax (Rate) New Delhi, 18th November, 2021, with effect from 01.01.2022, is reproduced 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 composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.	Nil	Nil

- 5.4.2 For any supply to be covered under Sr. No. 3 of the above said amended Notification, 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 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.

5.5.1 From the oral and written submissions made by the applicant we observe that, in the instant case, pure services are supplied by the applicant to MCGM. This is because the applicant during the course of the personal hearing, stated that no goods are supplied by them at all, under the impugned agreement. Thus, the first part of the conditions mentioned at Sr. No. 3 of the aforesaid amended Notification is satisfied in the subject case.

5.5.2 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. We find that the applicant is supplying pure services to MCGM which is a local authority under the GST Laws. Thus, the second condition mentioned at Sr. No. 3 of the aforesaid Notification is also satisfied in the subject case.

5.5.3 Now it is to be seen whether the third condition viz *"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"* is also satisfied or not.

5.5.4 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."*

5.5.5 Twelfth Schedule of the Indian Constitution provides for the following functions as under:

1. Regulation of land use and construction of land buildings.
2. Urban planning including the town planning.
3. Planning for economic and social development
4. Urban poverty alleviation
5. Water supply for domestic, industrial and commercial purposes
6. Fire services
7. Public health sanitation, conservancy and solid waste management
8. Slum improvement and up-gradation
9. Safeguarding the interests of the weaker sections of society, including the physically handicapped and mentally unsound
10. Urban forestry, protection of environment and promotion of ecological aspects
11. Construction of roads and bridges
12. Provision of urban amenities and facilities such as parks, gardens and playgrounds
13. Promotion of cultural, educational and aesthetic aspects
14. Burials and burials grounds, cremation and cremation grounds and electric crematoriums

- 15. Cattle ponds, prevention of cruelty to animals
- 16. Regulation of slaughter houses and tanneries
- 17. Public amenities including street lighting, parking spaces, bus stops and public conveniences
- 18. Vital statistics including registration of births and deaths

5.5.6 The applicant is emphasizing on clause (a) (ii) of Article 243W of the Constitution which states that *"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"*. According to the applicant the use of word, 'including' in the said sub-clause implies that the scope of article 243W is not restricted to the functions enlisted in the twelfth schedule but will extend to all functions or schemes entrusted to the municipality by the State Government. Thus, applicant has submitted the list of functions under the twelfth schedule as illustrative and not exhaustive and therefore the subject activity is entrusted to the MCGM by the State Government as can be seen from Section 63 of the Brihan Mumbai Municipal Corporation Act, 1888 mentioned above.

5.5.7 Section 63 of the Brihan Mumbai Municipal Corporation Act, 1888 is reproduced as under:-

63. The corporation may, in their discretion, provide from time to time, either wholly or partly, for all or any of the following matters, namely :—

- (a)
- (aa)
- (b)
- (c) the establishment, aiding or maintaining libraries, museums, art galleries, botanical or zoological collections ;
- (d) the laying out or the maintenance of public parks, gardens or recreation grounds ;
- (e)
-
- (m)

5.5.8 Section 63 of the Brihan Mumbai Municipal Corporation Act, 1888 states that, the **corporation may, in their discretion**, provide from time to time, either wholly or partly, **"(c) for the establishment, aiding or maintaining libraries, museums, art galleries, botanical or zoological collections ; (d) the laying out or the maintenance of public parks, gardens or recreation grounds."**

5.5.9 From a reading of the said Section 63, it is crystal clear that the impugned activities, even though at the discretion of MCGM, are entrusted to MCGM by the State Government and such activities can be considered to be in the nature of **functions or schemes entrusted to the municipality by the State Government**. Thus, we find that, the impugned activities are entrusted to the MCGM by the State Government and therefore the same are covered under clause (a) (ii) of Article 243W of the Constitution.

5.5.10 Further, we also reproduce Section 63A of the MCGM Act as under:-

63A. Where any duty has been imposed on, or any function has been assigned to the Corporation under this Act or any other law for the time being in force, or the Corporation has been entrusted with the implementation of a scheme, the Corporation may—

- (a) either discharge such duties or perform such functions or implement such scheme by itself; or

(b) subject to such directions as may be issued and the terms and conditions as may be determined by the State Government, cause them to be discharged, performed or implemented by any agency :

Provided that the Corporation may also specify terms and conditions, not inconsistent with the terms and conditions determined by the State Government, for such agency arrangements.

5.5.11 Section 63A states that Where any duty has been imposed on, or any function has been assigned to the Corporation under this Act or any other law for the time being in force, or the Corporation has been entrusted with the implementation of a scheme, the Corporation may, ***either discharge such duties or perform such functions or implement such scheme by itself or cause them to be discharged, performed or implemented by any agency.*** In the subject case MCGM is performing the impugned activities through an agency, viz. the applicant Sir JJ College of Architecture Mumbai, which is affiliated to the University of Mumbai.

5.5.12 We find that, the Government of Maharashtra has enacted Brihan Mumbai Municipal Corporation Act, 1888 vide which certain functions and powers are entrusted to the MCGM. As per the provisions of Mumbai Municipal Corporation Act 1888, it is the duty of the MCGM to provide services to the citizens of Mumbai City and Suburbs. The obligatory duties of MCGM are mentioned in Section 61 of this Act and the voluntary duties of MCGM are mentioned in Section 63 of MMC Act. MCGM performs its duties and functions only as per these clauses. The provisions, object and purpose of the said Act clearly suggest that it is incorporated to provide powers and entrust functions to the MCGM. Further, Section 63 of the Brihan Mumbai Municipal Corporation Act, 1888 clearly states that MCGM, ***may, in their discretion, provide from time to time, either wholly or partly, "(c) for the establishment, aiding or maintaining ..., museums, ; (d) the laying out or the maintenance of public parks, gardens or recreation grounds."***

5.5.13 The MCGM cannot perform any activity which it is not empowered to do so by the Mumbai Municipal Corporation Act 1888, an Act which has been promulgated by the State Government. Thus all activities, obligatory or voluntary, which are required to be performed by MCGM under the Mumbai Municipal Corporation Act 1888 will be considered as activities performed by MCGM as entrusted to it, by the State Government under the Mumbai Municipal Corporation Act 1888.

5.5.13 In view of the above, and in view of the oral submissions made by the authorized representatives of the applicant, during the course of the Final Hearing that, there is no supply of goods in the instant case, we find that that the third condition of Sr. No. 3 of the above referred Notification, viz. ***"such pure services should be provided by way of any activity in relation to any function entrusted to a Municipality under article 243W of the Constitution"*** is also satisfied in the subject case.

5.5.14 Therefore we hold that, the applicant is entitled for exemption under Sr. No. 3 of Notification No. 12/2017 – CTR dated 28.06.2017 as amended.

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 :- Applicability of GST exemption on Comprehensive architectural services that includes architectural design, structural design, MEP design, HVAC services design, preparation of drawings etc for repairs/ restoration, reconstruction for development of recreation ground cum textile museum at United India Mills 2 & 3 at Kala chowky provided by the Applicant to Municipal Corporation of Greater Mumbai ('MCGM').

Answer:- GST exemption vide Sr. No. 3 of Notification No. 12/2017 – Central Tax (Rate) dated 28th June 2017, is applicable on Comprehensive architectural services that includes architectural design, structural design, MEP design, HVAC services design, preparation of drawings etc for repairs/ restoration, reconstruction for development of recreation ground cum textile museum at United India Mills 2 & 3 at Kala chowky provided by the Applicant to Municipal Corporation of Greater Mumbai ('MCGM').




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. The 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.