

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 Number, if any/ User-id		27AAECN7738D1ZC
ARN No. of Application		AD270221006981E.
Legal Name of Applicant		M/s. NAGPUR WASTE WATER MANAGEMENT PVT LTD
Registered Address/Address provided while obtaining user id		4th Floor, Madhu Madhav Tower, Laxmi Bhuvan Square, Dharampeth, Maharashtra, Nagpur 440010.
Details of application		GST-ARA, Application No. 76 Dated 15.02.2021
Concerned officer		NAG-VAT-C-023
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Service Provision, Office/Sale Office
B	Description (in brief)	M/s. Nagpur Waste Water Management Private Limited, the Applicant) is a Private Limited Company registered under the Companies Act. The Applicant is also registered under Central Goods and Services Tax Act, 2017 (CGST Act) and Maharashtra Goods and Service Tax Act, 2017 (MGST Act) w.e.f. 01.07.2017.
Issue/s on which advance ruling required		(i) Classification of goods and/or services or both (ii) 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.

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. Nagpur Waste Water Management Private Limited, the applicant, seeking an advance ruling in respect of the following questions.

- Whether the Royalty paid or payable by the applicant to Nagpur Municipal Corporation (NMC) for supplying "Tertiary Treated Water" to Mahagenco, by treating the Sewage Water supplied by NMC is liable to tax under the GST Law?

- 2) If yes, whether the tax is to be paid by NMC under forward charge or same is to be paid by the applicant under reverse charge?
- 3) If tax is to be paid, then whether the applicant would be entitled for Input Tax Credit?

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:

The submissions made by M/s. Nagpur Waste Water Management Private Limited, the applicant, are as under:-

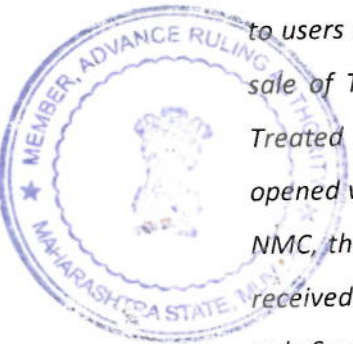
A. **Statement of relevant facts having a bearing on the question(s) raised**

2.1 M/s. Nagpur Waste Water Management Private Limited, the Applicant is registered under the Companies Act as well as the GST Act, 2017.

2.2 Nagpur Municipal Corporation (NMC) is constituted under the city of Nagpur Corporation Act, 1948. Therefore, NMC is "Local Authority". The NMC, under Article 243W of the Constitution of India, read with 12th Schedule to the Constitution, is required to provide the services of management of sewage system for the city of Nagpur for which, it has set up and is operating the Sewage Treatment Plant (STP) located at Bhandewadi, Nagpur for reuse of Sewage Effluent/Water. NMC thereafter decided to augment and expand capacity of existing SWP and for that has appointed the applicant, under PPP contract basis, for Implementing, Designing, Engineering, Developing in Financing, Procurement, Supply, Install, Construction, Augmentation, Testing and Commissioning of all Civil, Electrical, Mechanical and Instrumentation works consisting of Intake works and Raw Sewage Pumping station, Transmission pipelines from Intake works to existing STP, Augmentation of existing STP, Treated Sewage Pumping station and Tertiary Treated facility (if any) along with operation and maintenance of the entire plant for treatment of sewage water for a period of 30 years, under a contract, to set up and operate the Sewage Treatment Plant (STP) located at Bhandewadi, Nagpur on Build Operate and Transfer basis (BOT basis). As a consideration for setting up and operating of STP, the applicant is being paid by NMC on the basis of agreed

capital expenditure (CAPEX) and operating expenses (OPEX). In addition, the applicant also got special right to sell Tertiary Treated Water (TTW) to users of Nagpur. The applicant is raising its bills in respect of CAPEX (for capital investment) on quarterly basis and bills of OPEX (for operating expenses) on monthly basis at the pre decided rates between the NMC and Applicant. GST is applicable on this bill which is being charged by applicant and NMC is paying the GST to the applicant.

- 2.3 The recital Clause (A) of the agreement states that, optionally it is responsibility of the Applicant to setup Tertiary Treatment Plant. The scope of the work is stated in Article- 2 of the Agreement Clause 2.2(b) gives an option for sale of Treated Effluent/ sale of TTW for reuse by users of Nagpur, if applicant is setting up Tertiary Treatment Plant. Article-3 of the Agreement provides for the concession granted by NMC to the applicant. Under Clause 3.1(i), NMC has granted, to the applicant, a special right to sell the Treated Effluent/ TTW to any person for non-potable application subject to the payment of royalty to the NMC as agreed under Schedule-13 of the Agreement. The right of applicant to sell the TTW/ Treated Effluent to users of Nagpur has been further clarified in Clause 10.12 of the Agreement. If there is no sale of TTW no royalty is to be paid by the applicant to NMC. The sale consideration of Treated Effluent/ TTW is required to be deposited by the applicant in an ESCROW Account opened with designated bank (see Para 3.1.1 of Schedule 7). The ESCROW Bank is Trustee for NMC, the lenders representative and the concessionaire. All sale proceeds for sale of TTW is received by trustee bank in the ESCROW Account. Under the Agreement NMC is supplying only Sewage Water, the applicant is providing services of treating sewage water to NMC. The applicant is entitled for consideration in the form of CAPEX and OPEX and right to sale TTW. If there is no sale of TTW/ Effluent then NMC will pay "Net monthly operational support grant (NMOSG)" calculated as per Para 3 of the Schedule-6. However, if there is sale of treated water/effluent then the applicant will be paid "net payable monthly amount (NPMA)" only. NPMA will be calculated as per Para 4 of the Schedule-6 of Agreement which is equal to NMOSG less amount calculated as per Schedule 13 of the agreement based upon quantity of water sold. This amount to be deducted as per Schedule-13 is termed as royalty payable by the applicant to NMC (see Clause 4 of Schedule 8 of the Agreement). Therefore, royalty payment is nothing but reduction in total consideration payable by NMC to applicants. It may be noted that the responsibility of continuous supply of Sewage Water to the applicant is of NMC. There is no new supply by NMC to applicant for sale of treated water/effluent.



2.4 Maharashtra State Electricity Generating Company Ltd (Mahagenco) is a Limited Company registered under the Companies Act. NMC, Mahagenco and the applicant have entered into tripartite agreement dtd.29.12.2017 for supply of TTW by the applicant to Mahagenco on daily basis. Under the agreement, the applicant is required to set up a Tertiary sewage treatment plant (TTP) to further treat water from STP at Bhandewadi and supply the TTW to Mahagenco through pipeline set up by the applicant from its Bhandewadi TTP to Mahagenco's Koradi and Khaperkheda Thermal Power Plant. As per agreement the applicant in exchange of supply of treated water to Mahagenco will raise bill at pre-decided rates on per CUM basis. This pre-decided rate is inclusive of Royalty to be paid by applicant to NMC Para 5.9 of Tripartite Agreement dtd.29.12.2017 acknowledges this payment. Thus, bill raised by applicant consists up of two parts, one amount of royalty and second amount of its charges. The applicant is not permitted to sell the TTW to any person other than Mahagenco. The water supplied is not a potable drinking water but is suitable for Industrial use. The applicant is informed that the Mahagenco may further treat the TTW for its various uses by adding chemicals and applying other process. The taxes payable on such supply of the Tertiary Treated Water, if any, will be responsibility of the applicant.

2.5 The applicant is not paying any consideration to NMC for allowing to use sewage water for treatment. Under the Constitution of India and other appropriate laws of country it is responsibility of NMC to manage Sewage and discharge them after proper process. This responsibility is delegated by the NMC to the applicant. The NMC, is therefore paying consideration for the same to applicant. However, if Treated Water is sold by applicant to outsiders, the consideration is reduced and this reduction is termed under agreement as royalty. The royalty amount is required to be reduced by NMC only if treated water is sold. No royalty is paid if treated water is discharged in rivers or not sold.

2.6 The applicant has supplied/sold "TTW" to Mahagenco and raised its first invoice for this supply bearing No. NW/MHGN/2021/001 dtd.01.12.2020. Therefore, with reference to this sale of TTW to Mahagenco, the applicant is required to pay royalty to NMC. The NMC is not issuing any bill/document for this royalty but is required to adjust the same from amount payable by NMC to applicant. In order to facilitate the deduction, the applicant, for the amount payable to NMC as per Schedule-13 has issued Credit Note No. NWW/NMC/CN/01 dtd.07.12.2020. Accordingly, in relation to supply of TTW by applicant to Mahagenco vide invoice No.NW/MHGN/2021/001 dtd.01.12.2020, the applicant has calculated an amount of Rs.15,

22, 57,210/- which is to be deducted by NMC as royalty from the consideration under the contract.

2.7 The applicant is advised that no GST is payable by the applicant on this amount deducted by NMC from consideration determined as CAPEX/OPEX either under forward charge basis or under Reverse charge basis because of the following grounds.

(i) The applicant is providing services to NMC of Treating Sewage Water which is primary responsibility of the NMC under Article 243W of Constitution and therefore, on consideration received by applicant tax is exempt under Notification No.12/2017 dtd.28.06.2017. The applicant is of the view that for supply of this services of Treating Sewage Water consideration is received by two ways (a) by way of direct consideration from NMC (b) by way of right to sale Treated Water.

(ii) The NMC has basically given a right to process Natural Sewage Water. Water is goods and its processing by applicant is service. Since the service is to process the goods i.e. Natural Sewage Water, the service provided by applicant is tax free under Notification 12/2017 dtd.28.06.2017 as goods processed are tax free.

(iii) No consideration is payable by the applicant to NMC for acquiring right to sale TTW. Under the contract primary arrangement is to provide service by the applicant to NMC and for that NMC will pay consideration to the applicant. However, if treated water is sold then the consideration payable by NMC will reduce. The amount though termed as royalty in fact is reduction in consideration payable by NMC to applicant as the applicant would be getting some revenue from sale of Treated Water. Thus, the arrangement between NMC and the applicant is of a revenue sharing model for sale of TTW /reduction in consideration. Therefore, the amount deducted by NMC through ESCROW arrangement is not a consideration/royalty but it is a revenue sharing arrangement/reduction in applicant's consideration for service to NMC.

B. APPLICANT'S INTERPRETATION OF LAW APPLICANT'S INTERPRETATION

(A) For Question No-1.

1. Notification No. 1/2017-C.T.(Rate) dt.28.06.2017 was issued to prescribe rate of tax under the CGST Act. Similar notifications are also issued under the SGST and IGST Acts for prescribing rate of tax on supply of goods and services under relevant Acts. Entry relating to water was notified in Schedule III of the Notification at Serial No. 24. The entry in notification is reproduced below:

Sr. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (%) #	Condition
	(3)	(4)	(5)	(6)
24	2201	Waters, including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavoured.	9	Nil

1. Entry 24 of Schedule III of Notification No. 1/2017 C.T.(Rate) dtd. 28-06-2017 which relates to "Water" was subject to amendment vide Notifications No. 06/2018-C.T. (Rate), dt. 25-01-2018. Also new entry relating to water was inserted vide same Notification at Sr. No. 46B of Schedule II of the Notification. Effect of all above mentioned notification w.e.f. 25.01.2018 on the entry 24 of Notification No. 1/2017 Central Tax (Rate) is as under:

Schedule	Sr. No.	Chapter,Section, Heading,Group orService Code (Tariff)	Description of Services	Rate (%)	Condition
(1)		(3)	(4)	(5)	(6)
Schedule II- 6%	46B	2201	Drinking water packed in 20 litres bottles	6	Nil
Schedule III- 9%	24	2201	Waters, including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavoured other than Drinking water packed in 20 litres bottles	9	Nil

#combined rate (SGST& CGST)/ IGST is 12% and 18% respectively.

2. Notification No. 02/2017-Central Tax (Rate), dtd. 28-06-2017 was issued to notify the exemptions on supply of goods under CGST Act. Entry relating to water was notified at Serial No. 99 of the Notification. The same is reproduced below: -

Sl. No.	Chapter, Section, Heading, Group or Service Code(Tariff)	Description of Services	Rate (%)	Condition
(1)	(2)	(3)	(4)	(5)
99	2201	Water [other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container]	Nil	Nil

The combined reading of entries in, Notification No.1/2017 C.T. dtd.28.06.2017 Notification No.2/2017 C.T.(Rate) dtd.28.07.2017, make it clear that the Natural Water is exempt from tax. The applicant is receiving Sewage Water which is flowing in the city, and therefore, it is a Natural Water. Thus, the water supplied by NMC to the applicant is exempt from tax.

3. Under Notification No. 12/2017 Central Tax (Rate) dtd.28.06.2017 supply of certain services are exempt from tax. The entry-3 of the said notification is produced below: -

Sr. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (%)	Condition
	(3)	(4)	(5)	(6)
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 Government 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

4. NMC, as per Agreement, has given right to applicant to obtain the sewage water which is flowing through three rivers in the city of Nagpur. It is an obligation of the applicant to treat the sewage water and discharge the same in river. To provide these services the NMC is paying the applicant consideration as per Schedule-8 (NMOSG). In order to reduce cost to NMC, applicant is given right to sale TTW. Right of setting up Tertiary Treatment Plant and sale of water is with an objective to reduce cost to NMC for treating sewage. At the end of contract entire project is to be handed over to Concessional authority. Therefore, if TTW is sold, amount of consideration (NMOSG) is reduced to NPMA. Sizable part of sale proceeds of treated water is appropriated by NMC. It could be noted that for supplying water to Mahagenco during June to Sept., 2020 the applicant will be entitled for Rs.44,05,53,300/- from Mahagenco out of which a sum of Rs.15,22,57,210/- is to be deducted by NMC for same duration to arrive at NPMA. Sale proceeds of TTW is required to be deposited in ESCROW account and from there NMC's share is directly appropriated as Royalty and applicant is getting rest of sales consideration. So long as the applicant is not supplying or selling TTW, the NMC will not get any amount as royalty. If such treated water is sold, then entire consideration of treated water is required to be deposited in ESCROW account. NMC after deducting amount as calculated as per Schedule-13 (termed as Royalty, will only pay net monthly operational support grant and balance sale consideration of Treated Water will be received by applicant. Therefore, it becomes clear that applicant is not paying any consideration to NMC but NMC is paying consideration for services provided by applicant.

5. The applicant believes that the NMC has basically given a right to process the natural sewage water. There is no doubt that the natural sewage water is covered by Notification No. 2/2017 C.T. (Rate) and therefore, supply of such water by NMC to applicant is exempt from tax. Further for procuring natural sewage water the applicant is not paying any consideration to the NMC, on the contrary the NMC is paying to the applicant for setting up sewage treatment plant and operating the same on the basis of CAPEX for capital expenditure and OPEX for operating expenditure. In addition, if, applicant sets up Tertiary Treatment Plant and operate the same, the right to sale the treated water is given to applicant. Thus, as additional consideration for supply of this service, special right is given to applicant for sale of TTW with a rider that entire sale proceeds would be deposited in ESCROW account and from that account part of amount will be paid by NMC to applicant.
6. The transfer of right to use any goods for any purpose is a supply of service covered by Heading No. 9971 and the same would be taxable at the same rate of Central Tax as applicable to supply of like goods. The applicant got right to procure natural sewage water, subject the same to Tertiary Treatment and thereafter sell the TTW. Even assuming that applicant is paying royalty to NMC same is paid for right to process natural sewage water. The amount of this right is termed as Royalty and quantified with reference to the quantity of TTW sold. The applicant believes that since natural sewage water is exempt from tax, the royalty paid by the applicant to NMC for transfer of right to use the natural sewage water for tertiary treatment is a service provided for treatment of sewage and is service to NMC. This consideration for providing service will also be exempt from tax as sewage water is exempt from tax.
7. It is therefore, submission of the applicant that amount deducted by the NMC (Termed as Royalty) is not liable to tax on following grounds: -
- (i) The applicant is providing services to NMC of Treating Sewage Water, which is primary responsibility of the NMC under Article 243W of Constitution and therefore, consideration received for this service by applicant, tax is exempt under Notification No.12/2017 dtd.28.06.2017. The applicant is of the view that for supply of services of Treating Sewage Water, the consideration is received by two ways (a) by way of direct consideration from NMC (b) by way of right to sale Treated Water.
 - (ii) The NMC has basically given a right to process Natural Sewage Water. Water is goods and its processing by applicant is service. Since the service is to process the Natural Sewage Water which is tax free the service provided by the applicant is also tax free under Notification

12/2017 dtd.28.06.2017. No consideration is payable by the applicant to NMC for acquiring right to sale TTW. Under the contract primary arrangement is to provide service by the applicant to NMC and for that NMC will pay consideration to the applicant. However, if treated water is sold then the consideration payable by NMC will reduce. The amount though termed as royalty in fact is reduction in consideration payable by NMC to applicant as the applicant would be getting some revenue from sale of Treated Water. Thus, the arrangement between NMC and the applicant is of a revenue sharing model for sale of TTW/reduction in consideration. Therefore, the amount deducted by NMC through ESCROW arrangement is not a consideration/royalty but it is a revenue sharing arrangement/reduction in applicant's consideration for service to NMC.

(B) For Question No-2.

8. In case the submission, in respect of Royalty, is not accepted and it is held that the applicant is required to pay the tax on a royalty paid by it to NMC, it is submitted that as per section 9(3) of CGST Act, the government may specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both. Notification to this effect has been issued by the Government of India. Notification no. 13/2017-Central Tax (Rate) dated 28.06.2017 (relevant extract) is reproduced below:

Sl. No	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
5	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, - (1) renting of immovable property, and (2) services specified below- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers.	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.

In view of the above, the applicant believes that in such an event the tax is to be paid on the value of Royalty by the applicant on the reverse charge basis and not by NMC.

(C) For Question No-3.

9. Under the contract the applicant is required to augment the existing STP of NMC located at Bhandewadi, Nagpur and expand its capacity from 100 MLD to 200 MLD. The applicant is

required to implement, design, supply and install and also do all civil, electrical, mechanical and instrumental work consist of Intake water and raw sewage pumping station, transmission pipelines to and fro flow from STP and operate the entire project facilities of 200 MLD for a period of 30 years and for that purpose is required to incur operating expenses including use of materials. At the end of 30 years the entire project facility, which include the STP plant and Tertiary Treatment Plant to NMC free of cost. The applicant is being paid by NMC on CAPEX/OPEX basis. The Tertiary Treatment of Sewage is a part of contract. The Sewage for this is an input. The royalty is paid by the applicant to NMC only if TTW is sold. The input for the same is Sewage Water. Since this is a single contract and for consideration received by the applicant from NMC on CAPEX/OPEX basis for operating project for 30 years and thereafter transfer the same to NMC, the applicant is paying applicable tax under GST laws. Under entire project output service i.e. setting up plant and transfer the same to NMC is taxable. Therefore, if the applicant is required to pay the tax on royalty paid under reverse charge then the applicant believes that it would also be entitled for input tax credit of that tax to be Set-off against the output tax liability of the applicant on consideration received from NMC on the CAPEX/OPEX basis.

03. CONTENTION – AS PER THE CONCERNED OFFICER:

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

Submissions for question 1 are as under:

- 3.1** Nagpur Municipal Corporation (NMC), a local authority is required to provide the services of management of sewage system within the city of Nagpur & for this purpose decided to set up & operate the Sewage Treatment Plant (STP) located at Bhandewadi, Nagpur. NMC has appointed the applicant under PPP contract basis for treatment of Sewage Water. Accordingly, the contract of set up & operate the Sewage Treatment Plant (STP) was awarded to the applicant on 12.12.2014 located at Bhandewadi, Nagpur on Build, Operate & Transfer basis (BOT).
- 3.2** Maharashtra State Electricity Company Ltd (MAHAGENCO), NMC & applicant has entered into tripartite agreement on 29.12.2017 for supply of TTW on daily basis. Under this agreement, the applicant is required to set up a Tertiary Treatment Plant (TTP) to further treat water from STP at Bhandewadi, Nagpur & supply the Tertiary treated water to MAHAGENCO.
- 3.3** Applicant supplies TTW to MAHAGENCO and received consideration for that supply. With reference to this sale/ supply of tertiary treated water to MAHAGENCO, the applicant is

required to pay royalty to NMC. This activity not covered under article 243W of constitution. Royalty charge by NMC is supply, as per sub section (1) section 7 of the GST Act., 2017, which is narrated as under.

(1) For the purposes of this Act, the expression "supply" includes—

(a) all forms of supply of goods or services or both such as 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;

Therefore, payment of royalty is for license to further supply to Mahagenco and the amount of royalty paid is based on the quantum of tertiary treated water.

3.7 Hence royalty paid or payable by the applicant to Nagpur Municipal Corporation (NMC) for supplying "Tertiary Treated Water" to Mahagenco, by treating the sewage water supplied by NMC is liable to tax under the GST Law.

Submissions for question 2 are as under:-

3.8 Regarding applicability of tax under Forward Charge Mechanism or Reverse Charge Mechanism, Notification No. 13/2017 C.T.(Rate) dated 28/06/2017 is reproduced as follows-

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
5	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, - (1) renting of immovable property, and (2) services specified below- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers.	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.

It is clear from the above entry that tax shall be paid on reverse charge basis by the applicant for getting service of right of sale of Tertiary Treated Water from local Authority i.e. NMC.

Submissions for question 3 are as under:-

8. GST paid on goods or services under RCM is available as ITC subject to condition under section 16, 17 and 18 of GST Act.

04. **HEARING**

4.1 Preliminary hearing in the matter was held on 16.03.2021. Shri Ashok Chandak, CA, Shri Suresh Agrawal, Director, Shri Rajesh Kakani, Finance officer and Shri Mahesh Thakur,

President appeared, and requested for admission of their application. Learned Jurisdictional Officers Shri Harish Chandra Shelke, AC (D-008), Nagpur division and Shri Bawane STO (VAT C-023) Nagpur division were also present.

- 4.2 The application was admitted and case was posted for final hearing on 20.04.2021 but was adjourned on applicant's request. Thereafter, online final hearing was held on 27.8.2021, in which Shri Ashok Chandak, learned CA, and other authorized representatives appeared, and made oral and written submissions. Jurisdictional Officer Shri Harish Chandra Shelke AC (D-008), Nagpur Division also attended and made oral and written submissions.
- 4.3 We heard both the sides.

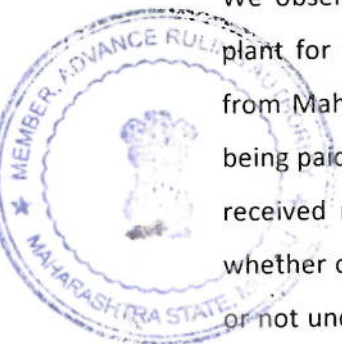
05. DISCUSSIONS AND FINDINGS:

- 5.1 We have perused the records on file and gone through the facts of the case and the submissions made by the applicant as well as the department. The matter is related to applicability of GST on Royalty paid by the applicant to the Nagpur Municipal Corporation (NMC) and consequent claim of ITC in the hands of applicant under the GST Act.
- 5.2 The applicant viz. M/s. Nagpur Waste Water Management Private Limited is awarded a contract to set up and operate the Sewage Treatment Plant (STP) on Built Operate and Transfer basis (BOT basis) by the Nagpur Municipal Corporation (NMC), for which the applicant is raising its bills in respect of CAPEX on quarterly basis and bills of OPEX on monthly basis at the pre-decided rates agreed to between the parties to the contract. Applicable GST is being charged by the applicant and the NMC is paying the GST to the applicant. In addition, the applicant also has been given the right, by the NMC, to sell the Treated Effluent/ Tertiary Treated Water to any person for non-potable purposes. The applicant supplies such Treated Effluent/ Tertiary Treated Water to the Maharashtra State Electricity Generating Co. Ltd. (hereinafter referred as MAHAGENCO), Maharashtra. The impugned product is called as "Tertiary Treated Water" (TTW) which is generated from the Sewage Treatment Plant (STP) and such TTW is sold by the applicant to Mahagenco for consideration.
- 5.3 We find that Applicant has entered into tri-party contract with the NMC and Mahagenco. As per the Agreement, it is the applicant's responsibility to set up the Tertiary Treatment Plant; NMC has granted to the applicant, a special right to sell the Treated Effluent/ TTW to any person for non-potable application subject to the payment of royalty to the NMC; the sale consideration of Treated Effluent/ TTW is to be deposited by the applicant in an ESCROW Account opened with the designated bank. The ESCROW Bank is Trustee for NMC, the lenders'

representative and the concessionaire i.e. the Applicant. Entire sale proceeds generated out of sale (supply) of TTW is deposited by applicant in the trustee bank in the ESCROW Account.

5.4 Further, under the Agreement : the applicant is entitled for consideration in the form of the CAPEX, the OPEX and the right to sell TTW ; if there is no sale of TTW, then NMC will pay "Net monthly operational support grant (NMOSG)" calculated as mentioned in the agreement ; however, if there is sale of treated water/effluent water then the applicant will be paid "net payable monthly amount (NPMA)" only which is equal to NMOSG less amount calculated as per the agreement, based upon the quantity of water sold. There is certain amount to be deducted as per Schedule-13 which is termed as royalty payable by the applicant to NMC as per Schedule 8 of the Agreement. Therefore, royalty payment is a reduction from total consideration receivable by the applicant.

5.5.1 We observe that, the applicant has essentially asked a question which is related to the liability of GST on royalty paid /payable by the applicant to NMC. This royalty is paid by the applicant for the right received by the applicant from the NMC to sell the treated water to Mahagenco. We observe that, the applicant is operating and maintaining the sewage water treatment plant for which it receives consideration from NMC. Further, consideration is also received from Mahagenco against supply of treated water (i.e. output of the Plant), on which GST is being paid by the applicant. Also, there is an amount to be paid as royalty to NMC for the right received regarding sale of treated water to Mahagenco. The question of the applicant is whether consideration amount payable to NMC (which is in the nature of 'royalty') is taxable or not under GST Act and if taxable, whether the said tax is required to be paid under reverse charge mechanism. The applicant has submitted that no consideration is payable by the applicant to NMC for acquiring right to sale TTW ; the contract arrangement is for provision of service by the applicant to NMC for which it receives consideration from NMC ; if treated water is sold then the consideration payable by NMC will reduce and this amount though termed as royalty in fact is reduction in consideration payable by NMC to applicant; the arrangement between NMC and the applicant is of a revenue sharing model for sale of TTW/reduction in consideration. Therefore, the amount deducted by NMC through ESCROW arrangement is not a consideration/royalty but it is a revenue sharing arrangement/ reduction in applicant's consideration for service to NMC.



5.5.2 Thus the applicant has stated that the amounts to be paid to NMC on account of sale of treated water is not payment against royalty services received from NMC. Rather it is a revenue sharing arrangement between the applicant and NMC.

5.5.3 We find that Schedule 13 of the agreement is related to royalty payable to Concessioning Authority (NMC) and is reproduced as under:

1) *Royalty (Per MLD) payable to the Concessioning authority for sale of treated Effluent by the Concessionaire, if concessionaire enter into agreement with all persons or agency together: after following cumulative quantity:*

- | | |
|-----------------------|--|
| a. 0 to 25 MLD | = Nil (reserve for concessionaire Authority) |
| b. 25 MLD to 100 MLD | = GAOSG / Rated Capacity of plant. |
| c. 100 MLD to 200 MLD | = (GAOSG +Capital Grant)/ Rated Capacity of plant. |

Where " GAOSG" shall be as per Schedule -8.

2) *Transfer of secondary Treated Effluent to Concessioning Authority up to 25 MLD (Maximum) shall be without any charge for Concessioning Authority's use or after makeup of shortfall to Mahagenco's Plant. The quantity exceeding 25 MLD shall be transfer as per this schedule.*

5.5.4 Thus, in the subject case, what is liable to tax is the act of "grant of license". The impugned agreement itself uses and defines the word "ROYALTY" as reproduced under:

" Royalty" shall mean the charges payable from time to time by the Concessionaire to the Concessioning Authority against the sale of the Treated Effluent /Tertiary Treated sewage water as set out in schedule-13 and as per the provisions of this agreement.

On the perusal of the above schedule and other clauses discussed in present order, it is clear that the formula arrived upon by the concerned parties to the impugned agreement, in respect of payment of 'royalty' by the applicant is in respect of the right given to applicant, by NMC, to sell the treated water.

5.5.5 In the present transaction in hand, we observe that there is transfer of rights by NMC to sell the processed water. The supplier of services is NMC and the recipient of such service is the Applicant. It is further observed that against the transfer of such rights, NMC is getting consideration in the form of "royalty", from the applicant. The term Royalty is defined in the agreement itself and its quantum is also to be decided as mentioned in Schedule 13 as mentioned above. Thus we hold that the amounts to be paid to NMC by the applicant on account of treated water sold is nothing but amounts paid against Royalty services received

from NMC. It is not a revenue sharing model because in lieu of the amounts to be received by the NMC against sale of treated water, the fact is that, NMC is reducing its payment to the applicant against such amounts receivable.

5.5.6 To answer the question whether the 'royalty' paid by applicant is taxable or not it is to be noted that the transfer of rights is a covered under "supply of services" which are provided by local authority (NMC) to the business entity (Applicant). As per the provisions of GST laws, the services of 'Royalty' are actually in the form of a licence and licence is taxable event under GST. In the subject issue, the Applicant is a business entity who is recipient of services. The payment of royalty is for licence to further supply to 'Mahagenco' and the amount of royalty paid is based on the quantum of tertiary treated water supplied. Actually the treated water belonged to NMC (or citizens of Nagpur). NMC gave the right/license to the applicant regarding sale/supply of treated water to Mahagenco.

5.5.7 Applicant has referred to Entry No. 3 of Exemption Notification No. 12/2017 dated 28.6.2017 pertaining to pure services. We find that the said Entry No. 3 of Exemption Notification No. 12/2017 dated 28.6.2017, speaks of 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 Government 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

5.5.8 We find that the subject question raised by the applicant pertains to applicability of GST on payments made by it to NMC against licence given to them to sell the TTW which is termed as 'Royalty' in the impugned agreement. Even though this can be considered as 'Pure Service' it is seen that such services are not rendered by the applicant to a local authority (to be covered under the aforesaid Entry No. 3). Rather the said service is rendered by the local authority to the applicant and is therefore out of the purview of the said Entry No. 3. Therefore, we are not in agreement with the contention submitted by the applicant that the impugned services are exempt under the aforementioned Entry No. 3. Hence, in our opinion, the consideration paid by the applicant to NMC against receipt of 'Royalty' service is not exempt from GST.

5.5.9 The applicant is supplying TTW to Mahagenco and receiving consideration against such supply. Such supply made by the applicant has been considered as taxable by this authority and accordingly order No. GST ARA 65/2020-21/2021-22/ B -35 Mumbai dated 27/07/2021, has

been passed on another application filed by the applicant, wherein it is held that the supply of 'Tertiary Treated water' to the Mahagenco is 'taxable supply' and it is liable to tax @18% (9% SGST & 9% CGST)/ IGST under Entry 24 of Schedule-III of Notification No. 1/2017 Central Tax (Rate) dtd.28.06.2017 as amended by Notification No. 06/2018 Central Tax (Rate) dtd.25.01.2018.

5.5.10 In the subject case, there is no doubt about the fact that consideration is being paid by the applicant to NMC for grant of license i.e. supply of right to sell treated water to other persons. This act of grant of license is not exempt under the GST Act. Therefore, in this matter, there is no merit in the contention of the applicant because **the basic service which is liable to tax is act of grant of license**. As per the provision of GST Act, **royalty is service and "transfer of the right to use any goods for any purposes (whether or not for a specified period) for cash, deferred payment or other valuable consideration" is covered under taxable services under chapter heading No. 9973**. Hence royalty received against supply of transfer of rights would also be taxable under GST Act. The views of jurisdictional/Nodal officer are also considered and found appreciable in this matter.

5.5.11 Further, in the FAQs issued by the Directorate General of Taxpayer Services, a similar issue regarding payment of GST amount on the form of royalty or any other form paid/payable to the Government for assigning the rights to use of natural resources has been answered. The same is reproduced as under:-

Question 30: Whether an amount in the form of royalty or any other form paid/payable to the Government for assigning the rights to use of natural resources is taxable?

Answer: The Government provides license to various companies including Public Sector Undertakings for exploration of natural resources like oil, hydrocarbons, iron ore, manganese, etc. For having assigned the rights to use the natural resources, the licensee companies are required to pay consideration in the form of annual license fee, lease charges, royalty, etc to the Government. The activity of assignment of rights to use natural resources is treated as supply of services and the licensee is required to pay tax on the amount of consideration paid in the form of royalty or any other form under reverse charge mechanism.

5.5.12 In view of the above, it is held that the Royalty paid or payable by the applicant to Nagpur Municipal Corporation (NMC) for purchase of license or right of supplying "Tertiary Treated Water" to Mahagenco, by treating the Sewage Water supplied by NMC is liable to tax under the GST Act.

5.6 The second question raised by the applicant is whether tax is to be paid by NMC or by the recipient (applicant) under reverse charge basis. We find from the section 9(3) of CGST Act, the government may specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both. To remove the ambiguity and clear the doubt of taxpayer, Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017 has been issued by the Government of India. As per this notification, it is found that Entry Serial No. 5 prescribed that *"services supplied by the Central Government, State Government, Union Territory or local authority to a business entity"* in that case, the liability to pay tax is on the **recipient of such service on RCM** basis. Hence, since NMC is a Local Authority, the liability to pay tax is cast on recipient of the supply i.e. the applicant. Hence, as per the aforesaid notification entry, applicant would be liable to pay GST on reverse charge basis under section 9(3) of CGST Act.

5.7.1 Vide Question no. 3, the applicant is asking, whether the applicant would be entitled for Input Tax Credit (ITC), if tax is to be paid under Reverse Charge Mechanism.

5.7.2 The provisions of ITC are covered under section 16 to 21 of CGST Act. Section 16 is related to eligibility and conditions for taking ITC. Section 17 is related to apportionment of credit and blocked credits. The relevant sections are reproduced here as under:

Section 16(1) reads as below:

"every registered person shall subject to such conditions and restrictions as may be prescribed and in manner specified in section 49, be entitled to take credit of input tax charged of any supply of goods or services or both to him which are used or intended to be used in course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person".

Section 17 (2) of CGST Act, reads as below.

(2) "Whether the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rate supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rate supplies".

The provisions of Section 17(5) of the CGST Act puts restrictions on availability of ITC in certain situations. As per this section ITC is not available on few categories of supplies mentioned in sub clause from (a) to (i).

5.7.3 In the present matter, applicant has supplied the taxable goods i.e. treated water, to Mahagenco which is the applicant's outward supply on which GST is payable by the applicant. The subject supply of Royalty services is taxable under reverse charge mechanism in the hands of the applicant. Hence, the applicant would be eligible for ITC as per the provisions of section 16 to 21 of CGST Act, subject to fulfilment of conditions as mentioned under the GST Act. ITC is available when the inputs are used in course of business or furtherance of business when supplier is making outward taxable supply. The Transfer of rights to sale of processed water is provided by NMC to the applicant on the basis of which, the applicant is supplying the treated water to Mahagenco on payment of consideration.

5.7.4 Considering the aforesaid provisions and present subject issue, applicant is a recipient of services in the form of rights transferred by the NMC and is liable to pay taxes on amounts paid under reverse charge mechanism. Accordingly, relevant ITC provisions of section 16 to 21 will also be applicable to the applicant's transaction. The applicant can avail the ITC as per the provisions of law on the subject transaction only if it satisfies the relevant conditions mentioned under the GST Act, relating to availment of ITC. Whether the applicant satisfies the conditions depends on facts during the relevant period and the provisions applicable during that period, for which no details or facts are provided in the present matter. Hence, we hold that ITC would be available to the applicant subject to the conditions mentioned under the provisions of section 16 to 21 of CGST/MGST ACT, 2017.

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)

NO:-GST-ARA- 76/2020-21/2021-22/B- 63

Mumbai, dt.24/09/ 2021.

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

Question 1:- Whether the Royalty paid or payable by the applicant to Nagpur Municipal Corporation (NMC) for supplying "Tertiary Treated Water" to Mahagenco, by treating the Sewage Water supplied by NMC is liable to tax under the GST Law?

Answer:- Answered in the affirmative.

Question 2:- If yes, whether the tax is to be paid by NMC under forward charge or same is to be paid by the applicant under reverse charge?

Answer: - The taxes are to be paid by the applicant under reverse charge basis (RCM). NMC is not liable to pay taxes on the subject transaction as discussed in present order.

Question 3:- If tax is to be paid, then whether the applicant would be entitled for Input Tax Credit?

Answer:- ITC would be available to the applicant subject to fulfillment of the conditions mentioned under sections 16 to 21 of CGST/MGST ACT, 2017 .




RAJIV MAGOO
(MEMBER)


T. R. RAMNANI
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Hon 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. The online facility to file an appeal is provided by the department on GST web portal. Appellant may file an appeal on GST web portal.