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)

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ARN	No.	AD271219011321J										
GSTI	N Number, if any/ User-id	27AAATM5001D1Z6										
Legal	Name of Applicant	M/s. Mumbai Port Trust										
Regis	tered Address/Address	Port House, Shoorji Vallabhdas Marg, Ballard Estate,										
provi	ded while obtaining user id	Mumbai -400 001										
Detai	ls of application	GST-ARA, Application No. 79 Dated 12.12.2019										
Conce	erned officer	MUM-VAT-E-617, LTU-004, MUMBAI										
Natur	re of activity(s) (proposed/pre	esent) in respect of which advance ruling sought										
A Ca	tegory	Leasing Business, Service Provision										
B De	escription (in brief)	Applicability of GST on payments received from MMRDA for										
		leasing of land and water areas of Mumbai Port Trust, for										
		construction of MTHL by MMRDA										
	s on which advance ruling											
OVANCE Tequit	ed	of this Act										
185		(vii)Whether any particular thing done by the applicant with										
2 0000	151	respect to any goods or services or both amounts to or results in										
哥	3 = 1	a supply of goods or services or both, within the meaning of that										
*	} ~ /	term.										
Quest	ion(s) on which advance	As reproduced in para 01 of the Proceedings below.										
ruling	is required	BS (RA)										

NO.GST-ARA- 79/2019-20/B- 7 \

Mumbai, dt. 11.10.2021

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. Mumbai Port Trust**, the applicant, seeking an advance ruling in respect of the following questions.

Whether in law and in facts and circumstances of the case, the Applicant ("MbPT") is entitled to
exemption from payment of GST in terms of Entry No.3 of the Notification No.12/2012-CTR
dtd.20-06-2012 on the following considerations payable to it by Mumbai Metropolitan Region

Development Authority ("MMRDA") in terms of Memorandum of Understanding (MOU) entered into between the MbPT and MMRDA.

- a. Way Leave fees & Lease rent payable every year as consideration for the grant of lease and way leave permission for the plot of land and water areas required by MMRDA for the MTHL project. The Annual Lease Rent of Rs.22,58,30,199 is payable in respect of (i) Area under permanent occupation (i.e. 30 years lease period) and the Annual Lease Rentals of Rs.33,23,36,835 is payable in respect of (ii) Area under temporary occupation during the construction period (i.e. Temporary occupation).
- b. Compensation equivalent to the amount of Rs.24.48 crores in lieu of demolition of 4 existing sheds at STP yard situated on the said plot of land which is licensed to MMRDA for the purpose of the MTHL project and required to be demolished in order to render vacant possession of the said plot of land to MMRDA for the purposes stated in the MOU. The amount is arrived at on the basis of reconstruction cost at the present rate of construction based on Ready Reckoner of Government of Maharashtra (GOM) and payment thereof is one of the conditions of MOU.

Compensation equivalent to the amount of Rs.64 crores in lieu of decommissioning of Old Pir Pau Jetty / Berth situated on the said plot of land which is licensed to MMRDA for the purpose of the MTHL project and required to be decommissioned by MbPT in order to render vacant possession of the said plot of land to MMRDA for the purposes stated in the MOU and payment thereof is one of the conditions of MOU.

An amount equivalent to 15% of the Security Deposit, received by MbPT from MMRDA under the name of "Way Lease Agreement Charges" to meet the cost of execution of execution of Way lease agreement & Lease Agreement to be entered into between MbPT and MMRDA, for and on behalf of MMRDA on exact reimbursement basis. In other words, these amounts, if found excess will be refunded to MMRDA or if found less, will be called from MMRDA.

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- e. Refundable Security Deposit to be returned to MMRDA only on termination of the agreement.
- f. Refundable Security Deposit of Rs.20 Crores, to meet the cost of damages during the execution of work, if any, in the future. The said deposit will be refunded to MMRDA after satisfactory completion of work including rectification work after deduction of the cost of rectification work, if any, not carried out by MMRDA.

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 the applicant are as under:-

- 2.1 The applicant, Mumbai Port Trust (MbPT), registered under CGST Act, 2017, is one of the major ports in India, established under the Bombay Port Trust Act, 1879 and governed by the provisions of Major Port Trust Act, 1963 (MPT Act). The authority for the appointment of port authorities for administration, control, and management of the port, is vested with the Central Government of India, acting through the Ministry of Shipping.
- 2.2 Various types of port operations are undertaken by the applicant port. The applicant is also engaged in the leasing of immovable properties and water areas within its territory, as per the guidelines approved by Government of India from time to time. The applicant is duly discharging GST liability in respect of various taxable supplies made by it.
- 2.3. Mumbai Metropolitan Region Development Authority (MMRDA) is a body established under Mumbai Metropolitan Region Development Authority Act, 1974 ('MMRDA Act') and 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.

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The Government of Maharashtra has entrusted the responsibility of the execution of MTHL project to MMRDA. The MTHL project, undertaken by Government of Maharashtra, refers to the construction of 'Mumbai Trans Harbour Link' (MTHL) 21.8 km, freeway grade Road Bridge for connecting the island city of Mumbai with mainland across the harbor and would also connect Sewri West and the Eastern Freeway through the Sewri Interchange over the Sewri Bunder Road after the construction of a bridge across the Central Railway Harbour line tracks and water areas of MbPT. MMRDA, approached to Applicant for acquisition of certain land and water areas belonging to MbPT and required for the purpose of the said MTHL project, by way of the long term lease. To make the said areas available to MMRDA for the MTHL Project, the Applicant had to demolish its 4 existing sheds at STP yard situated on the said plot of land and decommission Old Pir Pau Jetty / Berth. MMRDA agreed to compensate the Applicant for the same.

- 2.5 Accordingly, applicant has entered into Memorandum of Understanding (MOU) with MMRDA, to grant MMRDA a lease and way leave permission of land and water areas belonging to it, for the MTHL project. As per the MOU, MMRDA agreed to make the following payments.
 - a. Annual Lease Rent of Rs.22,58,30,199 in respect of Area under permanent occupation (i.e. 30 years lease period) and
 - b. Annual Lease Rentals of Rs.33,23,36,835 in respect of (ii) Area under temporary occupation during the construction period (i.e. Temporary occupation).
 - c. A compensation of Rs.24.48 crores in lieu of demolition of 4 existing sheds at STP yard situated on the said plot of land licensed to MMRDA and required to be demolished in order to render vacant possession of the said plot of land to MMRDA.
 - d. A compensation of Rs.64 crores in lieu of decommissioning of Old Pir Pau Jetty / Berth situated on the said land licensed to MMRDA and required to be decommissioned by MbPT in order to render vacant possession of the said plot of land.
- 2.7 The cost of execution of said Way Leave Agreement and Lease Agreement will be borne by MMRDA who is required to pay 'Way Leave Agreement charges' to MbPT on actual reimbursable basis. Charges to be calculated as 15% of security deposit payable by MMRDA to MbPT (equivalent to 12 months way leave fee/lease rent).
- 2.8 In addition to above, MMRDA to lodge with MbPT, interest-free refundable security deposit equivalent to 12 months Way Leave fee/Lease rent.
- 2.9 MMRDA is also required to pay to MbPT in advance, a refundable deposit of Rs. 20 Crores to be adjustable only against possible damages during the execution of work, if any.

Entry no. (3) of Notification No. 12/2017-CTR provides an exemption from GST in respect of pure services supplied to Governmental Authority, by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or to a Municipality under article 243W of the Constitution. Accordingly, the applicant wants to examine the applicability of the said entry to payments received by the applicant from MMRDA for activities contemplated under the said MoU. For the purpose of deciding the applicability of the entry No. (3) to the payments received/ receivable by the Applicant, supply made should be that of "pure services", such supply should be made to the Central Government, State Government or Union territory or local authority or governmental authority or a Government Entity and the services should be 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.

- 2.10.2 As per the relevant provisions of the CGST Act, services in the nature of the lease, tenancy, easement, license to occupy land is a supply of 'pure services' as it does not involve the supply of any goods. Therefore, subject services supplied by Applicant are in the nature of "pure services".
- 2.10.3 The definition of the term 'Governmental Authority' as given in Para 2(zf) of Notification No. 12/2017-CT(R) dated 20.06.2017 means an authority or a board or any other body,—
 set up by an Act of Parliament or a State Legislature; or established by any Government, with 90% or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution;
- 2.10.4 MMRDA is established by the State of Government of Maharashtra as per MMRDA Act, 1974 and is controlled entirely by the state Government. Further, the functions entrusted to MMRDA are primarily covered under Sr. No. (1) of the Twelfth Schedule i.e. Urban Planning including town planning. Also, MMRDA is also involved in other functions of the Twelfth Schedule such as planning for economic and social development, Roads and bridges and Slum improvement and up-gradation. Hence, MMRDA can be said to be a 'governmental authority' in terms of Para 2(zf) of Notification No. 12/2017-CT(R) dated 20.06.2017.
- Therefore, it is clear that in terms of entry no. (4) Of twelfth schedule i.e. 'roads and bridges' and entry no. (13) Of the eleventh schedule, the construction of MTHL by MMRDA can be said to be covered within the scope of expression 'function entrusted to Municipality/ Panchayat'.

 2.11 Applicant relies on the decision of the Maharashtra Advance Ruling Authority in the case of
 - Applicant relies on the decision of the Maharashtra Advance Ruling Authority in the case of CIDCO LTD. 2019 (26) GSTL 394 in which leasing of plots by the applicant to a Municipality i.e. a local authority in relation to a function entrusted to such Municipality under Article 243W of the Constitution was held to be exempt as per Sr. No. 3 of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017.
 - 2.12 In the light of aforesaid discussion, all payments made to the Applicant by MMRDA under MOU are towards obtaining services of grant of wayleave/lease in respect of land & water areas, required for functions listed in Articles 243W/243G of the Constitution of India & is exempt from payment of GST as per Entry No.3 of No.12/2017-CTR dtd.28-06-2017.

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2.13 Payment of compensation of Rs.24.48 crores in lieu of demolition of 4 existing sheds at STP yard and compensation of Rs.64 crores in lieu of decommissioning of Old Pir Pau Jetty / Berth situated on the said plot of land is also for obtaining the grant of wayleave/lease.

- 2.14 The amount equivalent to 15% of the Security Deposit, received by the applicant by way of Way Leave Agreement Charges is only in the nature of deposit for incurring expenditure to be incurred for and on behalf of MMRDA. The applicant will, therefore, be only acting as paying agent of the MMRDA in respect of such services procured by MMRDA from third parties or any expenditure incurred on account of MMRDA in connection with the execution of a Way Leave Agreement & Lease Agreement. The said amount is not payable by MMRDA to the Applicant as "quid pro quo" or "consideration" for provision of any service by the latter to the former, and thus there is no service provider/service receiver relationship between the applicant and MMRDA as regards the said payment. Consequently, the said amount would not attract any GST. Even otherwise, the said payments are made under the MOU and in connection with obtaining services of grant of way leave/lease in respect of land and water areas, which is directly required for the purposes of the MTHL project and consequently, it is exempt from payment of GST in terms of the Entry No.3 of No.12/2017-CTR dtd.28-06-2017.
- 2.15 The Refundable Security Deposit will be returned to MMRDA only on termination of the agreement/ or handing over vacant possession of the premises to MbPT & after payment of all arrears that may become due and payable provided, there are no breaches of the covenants of the Way Leave / Lease agreement. As per section 2(31) of the CGST Act, any deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply. Hence, payment of security deposit shall not be regarded as consideration for services and not liable for GST.

2.16 Hence subject payments to be made by MMRDA to the applicant are exempt from payment of GST in terms of the Entry No.3 of No.12/2017-CTR dtd.28-06-2017.

2.17 The Refundable Security Deposit of Rs.20 Crores payable by MMRDA to the applicant, in terms of the MOU, is in the nature of deposit only to cover the cost of such damages which MMRDA has authorised the applicant to pay out of such deposit, in case MMRDA did not pay the same separately to its vendors carrying out rectification work. Therefore, the reasoning provided above as regards "Way Leave Agreement Charges" is equally applicable in the present case and there is no GST liability on the said amount.

03. CONTENTION – AS PER THE CONCERNED OFFICER:

The submissions made by the jurisdictional/concerned officer are as under:-

3.1 This office, after scrutinizing the following documents, literature and other references – 1. The AAR Application by MbPT. 2. The Notification No 12 of 2017 dated 28.06.2017. 3. Schedule II of the CGST Act. 4. MMRDA Act-1974. 5. Article 243 of the Indian Constitution. 6. Integrated

- Goods & Services Act has reached the following conclusion that MMRDA, a body of government of Maharashtra is responsible for preparation of Regional Plan and the infrastructure development of the MMR.
- 3.2 The subject transaction pertains to leasing of Land and Water Areas which is categorized as 'Supply of Service' under Entry 3 of Schedule II of the CGST Act. The recipient of the service is MMRDA which is a body of the Government of Maharashtra and is a governmental authority because it satisfies he clause 2zf of the above said notification.
- 3.3 Further, the MMRDA Act clearly sets out the basic objective of establishing the MMRDA which is to plan and execute the developmental and infrastructure work which was otherwise being done by the municipalities themselves. Thus, it is proved that the MMRDA has been established with the objective of doing works which were originally done by the municipalities. So, any work being done by the MMRDA can be termed as related to the functions entrusted to the municipalities under article 243W of the Indian Constitution. Hence, the transactions between MMRDA and MbPT clear this criteria too for becoming eligible for exemption under the Entry no 3 of Notification No.12/2017-CTR dtd.28-06-2017.
- 3.5 Thus, in the opinion of this office which has been formed on the basis of the docuemnts mentioned above, the present transactions between MbPT and MMRDA clear all the criteria for becoming eligible for exemption under the said notification.

04. HEARING

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Preliminary hearing in the matter was held on 22.01.2020. Smt. Gayatri Vidhate, Account Officer and Shri. Mandar Telang, CA appeared, and requested for admission of the application. Jurisdictional Officer Smt. Supriya Kokane, Deputy Commissioner, E-617, LTU-004, Mumbai also appeared.

- 4.2 Final hearing was held on 14.09.2021. The Authorized representative of the applicant Shri. Mandar Telang, CA was present. The concerned jurisdictional officer Smt. Supriya Konkane Deputy Commissioner of State Tax was present. The Authorized representatives made oral and written submissions in this matter. The Nodal Officer to submit written submission with copy to applicant (hard copy), on or before 27.09.2021 and has accordingly submitted reply vide email dated 27.09.2021 which has been incorporated above.
- 4.3 We heard both sides.

05. DISCUSSIONS AND FINDINGS:

- We have perused the documents on record, facts of the matter and submissions, both oral and written, made by the applicant as well as the jurisdictional officer.
- 5.2 Mumbai Port Trust, the applicant, in addition to other business are also engaged in the leasing of immovable properties and water areas within its territory, as per the guidelines approved by Government of India from time to time. The applicant is duly discharging GST liability in respect of various taxable supplies made by it.
- 5.3 The applicant has already submitted as to what the 'Mumbai Trans Harbour Link' (MTHL) project is. Government of Maharashtra has entrusted the responsibility of the execution of MTHL project to the Mumbai Metropolitan Region Development Authority (MMRDA).
- 5.4 The applicant has agreed to transfer certain land and water areas belonging to itself and required for the purpose of the said MTHL project, by way of the long term lease vide a MOU, to MMRDA, for which Applicant had to demolish its 4 existing sheds at STP yard situated on the said plot of land and decommission Old Pir Pau Jetty / Berth and in respect of such demolition/decommissioning the MMRDA agreed to compensate the Applicant.
- 5.5 For such grant of such a lease and way leave permission on Applicant's land, MMRDA agreed to make the following payment to the applicant.
 - Annual Lease Rent of Rs. 22,58,30,199 in respect of Area under permanent occupation (1.e. 30 years lease period);
 - Annual Lease Rentals of Rs. 33,23,36,835 in respect of (ii) Area under temporary occupation during the construction period (i.e. Temporary occupation);
 - Compensation amount of Rs.24.48 crores in lieu of demolition of 4 existing sheds at STP yard situated on the said plot of land which is licensed to MMRDA for the purpose of MTHL project and required to be demolished in order to render vacant possession of the said plot of land to MMRDA for the purposes stated in the MOU.
 - d. Compensation amount of Rs.64 crores in lieu of decommissioning of Old Pir Pau Jetty / Berth situated on the said plot of land, licensed to MMRDA for the MTHL project and required to be decommissioned by MbPT in order to render vacant possession of the said plot of land to MMRDA for the purposes stated in the MOU.
 - e. MMRDA will be required to pay 'Way Leave Agreement charges' to MbPT for the said purpose on the actual reimbursable basis. The charges will be calculated as 15% of security deposit payable by MMRDA to MbPT (equivalent to 12 months way leave fee/lease rent), in terms of clause 10 of the MOU.

- f. MMRDA will be required to lodge with MbPT interest-free refundable security deposit equivalent to 12 months Way Leave fee/Lease rent.
- g. MMRDA will also be required to pay to MbPT in advance, a refundable deposit of Rs. 20 Crores to be adjustable by the MbPT only against possible damages during the execution of work, if any, the cost of which is not paid separately by the MMRDA.
- 5.6 The applicant has queried as to whether entry no. (3) of Notification No. 12/2017-CTR which provides an exemption from GST in respect of pure services supplied to Governmental Authority, by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or to a Municipality under article 243W of the Constitution, is applicable to their subject case also.
- 5.7.1 We observe that the underlying supply in respect of all receivable amounts by the applicant, mentioned at para 5.5 (a) to (g) above are arising only on account of grant of a lease and way leave permission to MMRDA by the Applicant which is nothing but lease of land. To answer the query of the applicant regarding the admissibility of entry no. (3) of Notification No. 12/2017-CTR in the subject case we need to find whether the subject supply is a supply of Pure Services or otherwise.

The provisions relating to "Scope of Supply" are enumerated in Section 7 of the CGST Act, 2017, which are as under:

Section 7

(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, b

(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation.- For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;

(b) import of services for a consideration whether or not in the course or furtherance of business; and

- (c) the activities specified in Schedule I, made or agreed to be made without a consideration, an(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.
- (1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

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(4)	•	•	٠	٠	٠	٠	٠	٠	٠	۰	٠	٠	٠	٠	٠	٠	٠	٠	٠	٠		٠	٠		•	٠	٠	

- (3)
- 5.7.3 Schedule II lists the activities or transactions to be treated as 'supply of goods' or 'supply of services'. Entry 2 (a) of Schedule II states that "any lease, tenancy, easement, licence to occupy land is a supply of services".
- 5.7.4 Thus, we find that in the instant case, the supply of leasing of immovable properties and water areas within its territory by the applicant to MMRDA is nothing but supply of services. From the submissions made by the applicant we observe that the impugned MOU does not envisage any supply of goods whatsoever, along with the supply of leasing services and therefore we conclude that the subject activity is a supply of pure services.

7.5 Relevant Entry No. (3) Of Notification No. 12/2017-CT(R) dated 28.06.2017 is as under:-

SI.	Heading, Group		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 or a Governmental authority 1 [or a Government Entity] by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.	Nil	Nil

- 5.7.6 For any supply to be covered under Sr. No. 3 mentioned in 5.7.5 above, 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.
- 5.7.7 From the submissions made by the applicant and a perusal of the documents on record, we find that the impugned MOU does not envisage any supply of goods individually or along with the supply of services in the instant case. We therefore find 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 above is satisfied in the subject case.
- 5.8.1 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].
- 5.8.2 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.

 5.8.3 MMRDA cannot be considered as a Central Government, State Government, State Government, Thus we need to 6.

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,

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- (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".
 - 5.8.4 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. We find that the definition of 'Government Entity' as given in this Notification is as under:-

- "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."
- 5.8.5 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.
- 5.8.6 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;
 - this 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;

- 5.8.7 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.
- 5.9 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.
- 5.9.1 Article 243W of the Indian Constitution states as under:

WANTE RUL(Q) "Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow:-

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-

The preparation of plans for economic development and social justice;

- 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.
- The Committees with such powers and authority as may be necessary to enable them to (b) 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;
- (2) Regulation of land-use and construction of buildings
- (3) Planning for economic and social development
- (4) Roads and bridges
- Further, Article 243G of the Indian Constitution states as under: 5.9.2

"Article 243G. Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority and 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."

Article 243G of the Constitution refers to a list of functions enumerated in the Eleventh schedule. Entry 13 of the Eleventh schedule which is relevant states the following:

"14. Roads, culverts, bridges, ferries, waterways and other means of communication."

5.9.3 We find that the impugned pure services supplied by the applicant can be covered under any of the clauses 1, 3, and 4 of the Twelfth Schedule above as well as clause 14 of the Eleventh Schedule pertaining to Articles 243W and Article 243G of the Constitution, respectively, "by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution".

In view of the above discussions, we are of the

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 243G of the Constitution or in relation to any function entrusted to a Municipality 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 services supplied by the applicant are exempted from GST.

- 5.11 Further, The 'Way Leave Agreement charges', at the rate of 15% of security deposit payable by MMRDA to MbPT (equivalent to 12 months way leave fee/lease rent), in terms of clause 10 of the MOU, being amount received in lieu of the lease of land, etc., i.e pure services rendered by the applicants will also be exempt from payment of GST under Entry No. (3) Of Notification No. 12/2017-CT(R) dated 28.06.2017, mentioned above.
- 5.12 Similarly interest-free security deposit equivalent to 12 months Way Leave fee/Lease rent to be received by the applicant from MMRDA in terms of clause 10 of the MoU, and to be refunded by MbPT to MMRDA after the termination of the lease agreement can be considered as amounts received in relation to pure services rendered by the applicants to a Government Entity, will also

be exempt from payment of GST under Entry No. (3) Of Notification No. 12/2017-CT(R) dated 28.06.2017, mentioned above.

- 5.13.1 In terms of clause 12 of the MoU, MMRDA will be required to pay to MbPT in advance, a refundable deposit of Rs. 20 Crores to be adjustable by the MbPT only against possible damages during the execution of work, if any, the cost of which is not paid separately by the MMRDA. The advance will be refunded by MbPT to MMRDA after completion of work, by deducting the cost of rectification work, if any, not carried out by MMRDA (but which was supposed to be undertaken by MMRDA).
- 5.13.2 Again, this amount of Rs. 20 crores is received in relation to pure services rendered by the applicants to a Government Entity, will also be exempt from payment of GST under Entry No. (3) Of Notification No. 12/2017-CT(R) dated 28.06.2017, mentioned above.
- 5.13.3 Further, Applicant has taken a refundable security deposit from MMRDA as security against possible damages during the execution of works. It was stated during the hearing that, the security deposit is free from any interest payable to lessee that is 'Interest Free Security Deposit'.
- nature can be understood in terms of following parameters namely:

 Supply of goods or services. Supply of anything other than goods or services or both, does not attract GST.

 2. Supply should be made for a

 - 3. Supply should be made in the course or furtherance of business.
 - Supply should be made by a taxable person.
 - 5. Supply should be a taxable supply.

Besides above parameters, GST Laws have provided certain exceptions to the requirement of supply being made for consideration and in the course of furtherance of business.

We therefore have to find whether the security deposit taken from lessee on account of security against damages, if any, caused during the work undertaken, constitutes consideration vis a vis any supply under the provisions of GST Act.

- 5.13.5 Section 2(31) defines the term consideration as following:-
 - (31) "consideration" in relation to the supply of goods or services or both includes,-
 - (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

- (b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government: Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply.
- 5.13.6 The definition of consideration is inclusive and the consideration may be in cash or kind. The payment received will not be treated as consideration, if there is no direct link between the payment and supply. From the close scrutiny of above definition it is clear that there should be a close nexus between the payment and supply and thus any payment/exchange/barter etc would be treated as consideration for supply and liable to GST. Prima facie a conclusion can be drawn without much difficulty that a deposit given in respect of the supply shall not be considered as payment made for such supply unless the supplier appropriates such deposit as consideration for the said supply.
- 5.13.7 The term deposit is not defined in the GST Act. From the perusal of Dictionary meaning, deposit has several dimension that include part or full price of the purchase, sum money paid into a bank considered as security deposit should have following attributes namely:
 - i) For performance of an obligation.
 - ii) Security against return of the hired goods.
 - ii) Security against damage to properties rented.
 - iv) Must be reasonable.
 - 5.13.8 Applying the above test to the facts of the case we find that, the security deposit taken by the applicant is to secure or to act as a guarantee as per the terms of the MOU against possible damages to the properties. The fact is that the amount of deposit taken by the applicant is till the time the work has not been completed by MMRDA. We find, as per the submissions made by the applicant and the facts of the matter as stated by them, that the applicant will not apply such deposit received, as consideration for the said supply and therefore the provision to Section 2 (31) will not be applicable to this matter. Thus we find that in the subject case, the deposit received by the applicant cannot be treated as consideration for the supply made by the applicant and therefore they will not be liable to pay GST on such deposit amount received by them.
 - 5.13.9 Even otherwise, we have already found herein above that all amounts received by the applicant are in relation to pure services rendered by the applicants to a Government Entity, and will be exempt from payment of GST under Entry No. (3) Of Notification No. 12/2017-CT(R) dated

28.06.2017. Even the refundable security deposit received by the applicant from MMRDA, as security against possible damages during the execution of works, is in relation to pure services rendered by the applicants to a Government Entity, and will be exempt from payment of GST under Entry No. (3) Of Notification No. 12/2017-CT(R) dated 28.06.2017. Even if, at the time of completion of the lease tenure, the entire deposit or a part of it is withheld and not paid back by the applicant, as a charge against damages, etc. then also such amounts not returned back will not be liable to GST in view of Entry No. (3) Of Notification No. 12/2017-CT(R) dated 28.06.2017, being amounts received from a Government Entity in respect of an activity carried out 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.

06. In view of the above discussions, we pass an order as under:

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 –

NEWER RULING Question. Whether in law and in facts and circumstances of the case, the Applicant ("MbPT") is entitled to exemption from payment of GST in terms of Entry No.3 of the Notification No.12/2012-CTR dtd.20-06-2012 on the following considerations payable to it by Mumbai Metropolitan Region Development Authority ("MMRDA") in terms of Memorandum of WARASHITRA !! Understanding (MOU) entered into between the MbPT and MMRDA.

- Way Leave fees & Lease rent payable every year as consideration for the grant of lease and way leave permission for the plot of land and water areas required by MMRDA for the MTHL project. The Annual Lease Rent of Rs.22,58,30,199 is payable in respect of (i) Area under permanent occupation (i.e. 30 years lease period) and the Annual Lease Rentals of Rs.33,23,36,835 is payable in respect of (ii) Area under temporary occupation during the construction period (i.e. Temporary occupation).
- b. Compensation equivalent to the amount of Rs.24.48 crores in lieu of demolition of 4 existing sheds at STP yard situated on the said plot of land which is licensed to MMRDA for the purpose of the MTHL project and required to be demolished in order to render vacant possession of the said plot of land to MMRDA for the purposes stated in the MOU. The amount is arrived at on the basis of reconstruction cost at the present rate of construction based on Ready Reckoner of Government of Maharashtra (GOM) and payment thereof is one of the conditions of MOU.

- c. Compensation equivalent to the amount of Rs.64 crores in lieu of decommissioning of Old Pir Pau Jetty / Berth situated on the said plot of land which is licensed to MMRDA for the purpose of the MTHL project and required to be decommissioned by MbPT in order to render vacant possession of the said plot of land to MMRDA for the purposes stated in the MOU and payment thereof is one of the conditions of MOU.
- d. An amount equivalent to 15% of the Security Deposit, received by MbPT from MMRDA under the name of "Way Lease Agreement Charges" to meet the cost of execution of execution of Way lease agreement & Lease Agreement to be entered into between MbPT and MMRDA, for and on behalf of MMRDA on exact reimbursement basis. In other words, these amounts, if found excess will be refunded to MMRDA or if found less, will be called from MMRDA.
- e. Refundable Security Deposit to be returned to MMRDA only on termination of the agreement.
- f. Refundable Security Deposit of Rs.20 Crores, to meet the cost of damages during the execution of work, if any, in the future. The said deposit will be refunded to MMRDA after satisfactory completion of work including rectification work after deduction of the cost of rectification work, if any, not carried out by MMRDA.

Answer: - Answered in the affirmative in view of the discussions made above. The Applicant is entitled to exemption from payment of GST in terms of Entry No.3 of the Notification No.12/2012-CTR dtd.20-06-2012 on the above listed considerations payable to it by Mumbai Metropolitan Region Development Authority ("MMRDA") in terms of Memorandum of

PLACE - Mumbai DATE - 11-10-21

> 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.

<u>Note:</u> 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.