

ADVANCE RULING NO. RAJ/AAR/2024-25/14

Mahipal Singh Additional Commissioner	:	Member (Central Tax)
Mahesh Kumar Gowla Additional Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/s Technocraft Construction Private Limited, Shop No B/NS/24, Yojna Central Spine, Gyan Vihar, University Road, Mahal Road, Jagatpura, Jaipur-302017, Rajasthan[Nagar Nigam,Bikaner]
GSTIN of the applicant	:	08AAACT6428Q1ZQ
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	(b) applicability of a notification issued under the provisions of the Act (e) determination of the liability to pay tax on any goods or services or both
Date of Personal Hearing	:	13.05.2024
Present for the applicant	:	Mr. Yash Dhadda C.A.
Date of Ruling	:	26/07/2024

Note 1: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling, constituted under Section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.

Note 2: At the outset, we would like to make it clear that the provisions of both the CGST Act and the SGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the SGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / SGST Act would be mentioned as being under the "GST Act".

The issue raised by M/s Technocraft Construction Private Limited, Shop No B/NS/24, Yojna Central Spine, Gyan Vihar, University Road, Mahal Road, Jagatpura, Jaipur-302017, Rajasthan (hereinafter "*the applicant*") is fit to pronounce advance ruling as they have deposited prescribed Fee under CGST Act and it falls under the ambit of the Section 97(2)(a) given as under:

- (b) applicability of a notification issued under the provisions of the Act
- (e) determination of the liability to pay tax on any goods or services or both

A. SUBMISSION OF THE APPLICANT (in brief):-

1.1 M/s Technocraft Construction Private Limited is engaged in Replacement of old and damaged existing sewerage system along with laying of new sewerage system and all ancillary works along with Design, construction, supply, installation, testing and commissioning (Civil, Mechanical, electrical, instrumentation & other necessary works) of Sewage Pumping Station/MWP (if any), Sewage Treatment Plant based on SBR Process with provision for treated waste water reuse including 1 year defect liability and 5 years O&M for towns under package AMRUT-2.0/RAJ/SEWERAGE-13 for Bikaner, Rajasthan.

1.2 That in month of May 2023, Rajasthan Urban Drinking Water Sewerage and Infrastructure Corporation Limited on behalf of Nagar Nigam Bikaner, through open

competitive bidding system, invited open bids for Replacement of old and damaged existing sewerage system along with laying of new sewerage system and all ancillary works along with Design, construction, supply, installation, testing and commissioning (Civil, Mechanical, electrical, instrumentation & other necessary works) of Sewage Pumping Station/MWP (if any), Sewage Treatment Plant based on SBR Process with provision for treated waste water reuse including 1 year defect liability and 5 years O&M for towns under package AMRUT-2.0/RAJ/SEWERAGE- 13 for Bikaner, Rajasthan.

1.3 That the applicant through an unincorporated JV applied for aforesaid tender and vide letter of acceptance bearing number RUDSICO/AMRUT 2.0/2023-24/8236 dated 31/08/2023, the applicant was awarded such work by the Nagar Nigam Bikaner. The agreement between the querist and Nagar Nigam Bikaner.

1.4 That in the context of applicability of GST on the aforesaid awarded work to the applicant, the applicant was clear up to 19th October 2023, that it was liable to pay tax on the same. However, vide notification no 13/2023-CT (Rate) dated 19.10.2023, an amendment has been brought on NN 12/2017-CT (Rate) dated 28.06.2017, wherein in the exemption notification for applicability of GST on supply of services, an entry number 3B has been added with effect from 20.10.2023 which is read as under:

(1)	(2)	(3)	(4)	(5)
3B	Chapter 99	Services provided to a Governmental Authority by way of - (a) water supply; (b) public health; (c) sanitation conservancy; (d) solid waste management; and (e) slum improvement and upgradation.	Nil	Nil

1.5 That hence, in view of the above amendments and the contract in hand, the applicant is desirous of knowing its liability of GST in relation to the aforesaid activity and therefore seeks the ruling of the advance ruling authority on the below mentioned transaction.

1.6 This Contract shall involve of installation of a sewerage system in Bikaner as per drawing. The present usual form of disposal of waste is to either treat it in septic tanks within house or let the effluent flow in the drains or to put the same in drains directly. However, it may be noted that, Bikaner is partly covered with Sewerage network with STPs executed under AMRUT Mission and RUIDP schemes.

1.7 The scope of work is directed to create and commission the main sewers and laterals within the area under this contract. It is also planned to lay house connection sewer line up to the house boundary connected to the manholes so that they are also covered up so that the man hole/road are not damaged later for making the connections. The project also includes house sewer connections by connecting all the Toilets/WCs, bathrooms and kitchen to sewerage network. The O&M period of all the works under this package shall be 10 years in which the initial first year shall be the defect liability period.

1.8 In view of the above, it appears that the said activity is a composite supply of works contract classifiable under HSN code 9954 and taxable at the rate of Nil under Entry No. 3B of Notification No. 13/2023-Central Tax (Rate) dated 19.10.2023.

B. INTERPRETATION AND UNDERSTANDING OF APPLICANT ON QUESTION RAISED(in brief)

2.1 Section 9 of the CGST Act, 2017 empower levy of Central GST on intra state supplies of goods and services, the definition is as under:

"9. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person."

2.2 The term "goods" has been defined under section 2(52) *ibid* as

(52) "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

2.3 The term "services" has been defined under section 2(102) *ibid* as

(102) "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

2.4 As per Section 7 of Central Goods and Services Tax Act, 2017, the term 'supply' means:

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, 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;

(2)

(3)

2.5 As per Section 8 of Central Goods and Services Tax Act, 2017, tax liability on a composite supply be determined as under:

8. The tax liability on a composite or a mixed supply shall be determined in the following manner, namely: -

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(b)

2.6 As per Section 2(30) *ibid*, composite supply is defined as

(30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

2.7 Further, principal supply is defined under Section 2(90) *ibid* as

(90) "principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;

2.8 Further, clause 6 of the Schedule II is read as under:

The following composite supplies shall be treated as a supply of services, namely: -

- (a) works contract as defined in clause (119) of section 2; and
- (b)

2.9 The term works contract has been defined under Section 2(119) *ibid* as

(119) *"works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;*

The term movable and immovable property has not been defined under the Act.

Interpretation of provisions and applicable concepts

2.10 As per definition cited in Para 2.6 above, the essential conditions for a supply to qualify as composite supply can be highlighted as under:

- (a) Two or more taxable supplies of goods or services or both
- (b) The taxable supplies should be naturally bundled
- (c) The taxable supplies should be supplied in conjunction with each other
- (d) One taxable supply should be a principal supply

2.11 That the term 'Naturally Bundled' has not been defined under the GST Acts. However, under the erstwhile Service Tax regime the term "Bundled Services" was explained in the Education Guide issued by CBEC in the year 2012 which is as under:

"Bundled service" means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services. An example of 'bundled service' would be air transport services provided by airlines wherein an element of transportation of passenger by air is combined with an element of provision of catering service on board. Each service involves differential treatment as a manner of determination of value of two services for the purpose of charging service tax is different.

2.12 As per the Education Guide, whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below –

The perception of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expects such services to be provided as a package, then such a package could be treated as naturally bundled in the ordinary course of business. Majority of service providers in a particular area of business provide similar bundle of services. For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.

The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. For example, service of stay in a hotel is often combined with a service or laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.

Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are –

*There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.

*The elements are normally advertised as a package.

*The different elements are not available separately.

*The different elements are integral to one overall supply - if one or more is removed, the nature of the supply would be affected.

No straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above.

2.13 Where a supply satisfies all of the above conditions, it qualifies to be a composite supply and tax liability on composite supply has to be determined accordingly and the constituent supplies should not be viewed separately as distinct supplies. It is important to understand that a supply which comprises a single supply from an economic point of view should not be artificially split and such fact has been established through various judgments, some of them are cited below:

Gujarat State Petronet Ltd. v. Commissioner of Central Excise, Ahmedabad [2010] 20 STR 109 (Ahd. - CESTAT)

Classification of a composite service is based on that component of the service which gives the essential character. There is a need to determine whether a given transaction is the one containing major and ancillary elements or the one containing multiple and separate major elements. In the case of a transaction containing a major and ancillary element, classification is to be determined based on the essential features or the dominant element of the transaction. A supply which comprises a single supply from an economic point of view should not be artificially split. The method of charging or invoicing does not in itself determine whether the service provided is a single service or multiple services. Single price normally suggests a single supply though not decisive. The real nature and substance of the transaction and not merely the form of the transaction should be the guiding factor for deciding the classification.

Card Protection Plan Ltd vs. Commissioners of Customs and Excise [2012] 22 taxmann.com 176 (ECJ)

Two or more acts to be regarded as a single supply if they are so closely linked that they form a single indivisible economic supply: Where a transaction comprises a bundle of features and acts, then, whether it constitutes one single supply, or, two or more supplies should be determined taking into account the facts and circumstances of the case. There may be a single supply where some element(s) constitute the 'principal' supply, while others are 'ancillary'. Further, if two or more elements or acts supplied by the taxable person to the customer are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split, then, all those elements would constitute a 'single supply' for the levy of tax. The fact that a single price is charged for all elements is not conclusive. [Para 18]

2.14 Therefore, on the basis of the concept of natural bundling as explained in the Education Guide and judgements quoted above, it would be appropriate to state that if two or more supplies are bundled in the ordinary course of business and comprise a single supply from an economic point of view, such supply should not be artificially split and should be viewed as a composite supply only.

2.15 However, since composite supply of works contract has been explicitly classified as supply of service under Schedule II, tax liability on works contract service has been expressly prescribed. Therefore, the concept of works contract should to be discussed and settled first.

2.16 Works contract in itself is a composite supply in which construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning etc. are involved along with transfer or property in goods.

2.17 However under GST, there is a monumental shift in concept of Works Contract which was prevalent under erstwhile VAT and Service Tax regime. In GST, as per definition of works contract service if construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning is for immovable property only, then it will classify as works contract. Hence it means that aforesaid activities if they are undertaken for a movable property then it will not be works contract service.

2.18 Now whether a supply is a works contract or not is dependent on whether the plant or device or property is a movable or immovable property. To decide whether a property is movable or immovable, the given terms have not been defined under the Act and hence the reliance needs to be placed on other laws and judicial precedents.

2.19 Under the General Clauses Act 1897 the term immovable property has been defined under Section 3(26) as "immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;

2.20 As per the definition the term permanently fastened or attached to earth can be treated as immovable property. Any attachment with earth which is temporary in nature or can be shifted from part of earth to another without causing substantial damage to it cannot be treated as immovable property.

2.21 On the given issue, CBEC has also clarified in its circular number 58/1/2002-CX dated 15/1/2002 where in para (e) it was clarified that

e) If items assembled or erected at site and attached by foundation to earth cannot be dismantled without substantial damage to its components and thus cannot be reassembled, then the items would not be considered as moveable and will, therefore, not be excisable goods.

2.22 Though the concept of excisable is not applicable here but the inference can be drawn what is movable and what can be immovable from given clarification. Further in lot of judgments the given concept has been discussed which are of importance in given context.

2.23 In case of **Sirpur Paper Mills Ltd. v. Collector — 1998 (97) E.L.T. 3 (S.C.)** it was held by Hon'ble Supreme Court that

Apart from this finding of fact made by the Tribunal, the point advanced on behalf of the appellant, that whatever is embedded in earth must be treated as immovable property is basically not sound. For example, a factory owner or a house-holder may purchase a water pump and fix it on a cement base for operational efficiency and also for security. That will not make the water pump an item of immovable property. Some of the components of water pump may even be assembled on site. That too will not make any difference to the principle. The test is whether the paper making machine can be sold in the market. The Tribunal has found as a fact that it can be sold. In view of that finding, we are unable to uphold the contention of the appellant that the machine must be treated as a part of the immovable property of the company. Just because a plant and machinery are fixed in the earth for better functioning, it does not automatically become an immovable property.

2.24 Relying on the aforesaid judgment, the Hon'ble Supreme Court, in the year 2010, in the matter of Commissioner of Central Excise v. Solid and Correct Engg. Works & Ors. (2010 (175) ECR 8 (SC)) = 2010-TIOL-25-SC-CX, held that Asphalt Drum/Hot Mix Plants were not immovable property as the fixing of the plants to a foundation was meant only to give stability to the plant and keep its operation vibration free. Further, it was held that the setting

up of the plant itself is not intended to be permanent at a given place. The plant can be moved and is indeed moved after the road construction or repair project for which it is set up is completed. Hence, the said plants were held to be movable. Relevant extract of the judgement is reproduced as under for ease of reference:

'Applying the above tests to the case at hand, we have no difficulty in holding that the manufacture of the plants in question do not constitute annexation hence cannot be termed as immovable property for the following reasons:

(i) The plants in question are not per se immovable property.

(ii) Such plants cannot be said to be "attached to the earth" within the meaning of that expression as defined in Section 3 of the Transfer of Property Act

(iii) The fixing of the plants to a foundation is meant only to give stability to the plant and keep its operation vibration free.

(iv) The setting up of the plant itself is not intended to be permanent at a given place. The plant can be moved and is indeed moved after the road construction or repair project for which it is set up is completed.'

2.25 In furtherance to the aforesaid judgment, the Madras High Court in the case of Board of Revenue, Chepauk, Madras v. K. Venkataswami Naidu (AIR 1955 Mad 620, 1955 Cri LJ 1369), held that if something is temporarily embedded in the earth, it cannot be termed as immovable property. The relevant extract of the judgement is reproduced as under:

'2. The answer to the question depends upon whether the equipment of the touring cinema would/all within the category of immoveable property. We have no hesitation in holding that it does not. In the question referred to us. the properties are described as collapsible and capable of being removed. In the very' nature of things, properties of that nature cannot be immoveable property. The expression "permanently fastened" occurring in the question is a little misleading. Actually some of the machinery or the poles of the tent may be imbedded in the earth, but they are imbedded only temporarily and not permanently. If they were permanently fixed, the equipment would not form part of a touring cinema.'

2.26 Further, in case of Municipal Corporation of Greater Bombay &Ors. v. Indian Oil Corporation Ltd. [1991 Suppl. (2) SCC 18], one of the questions SC considered was whether a petrol tank, resting on earth on its own weight without being fixed with nuts and bolts, had been erected permanently without being shifted from place to place. It was pointed out that the test was one of permanency; if the chattel was movable to another place of use in the same position or liable to be dismantled and re-erected at the later place, if the answer to the former is in the positive it must be a movable property but if the answer to the latter part is in the positive then it would be treated a permanently attached to the earth.

2.27 A composite supply of erection, installation, commissioning etc. of a movable property cannot amount to works contract under GST.

2.28 Where a composite supply is not classifiable as works contract, such composite supply shall be treated as a supply of its principal supply according to Section 8 produced in Para 5 above.

2.29 According to definition of principal supply reproduced in Para 7 above, it should have following features:

It should be supply of goods or services which constitutes the predominant element of a composite supply.

Any other supply forming part of that composite supply is ancillary supply.

2.30 Thus which part of a composite supply is the principal supply must be determined keeping in view the nature of the supply involved. Value may be one of the guiding factors in this determination, but not the sole factor. The primary question that should be asked is what the essential nature of the composite supply is and which element of the supply imparts that essential nature to the composite supply.

Some decisions passed by European Court of Justice to explain the concept, scope and limitations of Natural Bundling, Principal Supply and Predominant element of supply are enumerated below:

Aktiebolaget NN vs. Skatteverket [2012] 22 taxmann.com 175 (ECJ)

Definition of - Predominant element determines classification - If service is only a better means of enjoying goods sold, then, service incidental to sale of goods - Cost of elements is also relevant, but, cost alone is not decisive - Assessee entered into a single contract of supply and installation of telecommunication cable across countries - Property in cable passed to client after cable was installed and tested - PHED demanded service tax contending whole of transaction was 'service' - HELD : Supply of Cable and laying thereof are so closely linked that they constitute a single indivisible economic transaction - Predominant element is supply of cable as property in cable is transferred to client without alteration/adaptation to requirement of client and cost of materials is major part of cost - Since supply of goods element is predominant whole contract is a 'sale', not service - Not liable to service tax [Paras 31 to 40] [In favor of assessee]

LevobVerzekeringen BV and OV Bank NV vs Secretary of State for Finance, Netherlands* [2012] 22 taxmann.com 174 (ECJ)

Service - Definition of - Under a single contract, basic software supplied, customization carried out and training provided by same supplier for prices were stipulated separately - PHED contended that whole transaction amounted to 'supply of service' liable to service tax - HELD : All such elements were so closely linked that they constituted a single indivisible economic transaction - Separate pricing was not relevant - Predominant element was customization as only customization would make the software useful to consumer and price thereof was also higher - Since service element viz., customization was predominant, whole contract constituted a 'single supply of service' and was liable to service tax [In favor of revenue]

Specified descriptions of services or Bundled Service principles of Interpretations - Combining various elements into single transaction - If two or more elements are so closely linked that they form a single indivisible economic supply, which can be split only artificially, all those elements constitute a 'single supply' [In favour of revenue]

Service - Definition of Predominant element determines classification - If predominant element is service, then, whole transaction amounts to 'service' even if element of goods is also involved - Predominance is to be determined considering extent, duration, usefulness and cost of various elements, economic essence and intention of parties [In favour of revenue]

2.31 Thus the principal supply in a composite supply should be determined on the basis of above principle of predominance and for the purpose of taxability, the composite supply should be treated as a supply of such principal supply.

TRANSACTION– Sewage System and O&M

2.32 The terms and scope of the contract combines installation of the sewerage system Model and O&M work. That the activities under sewerage system installation and O&M contract are so closely linked in a manner that they form a single indivisible supply. The driving factors are:

A single tender has been floated for installation of sewerage system and O&M Contract where the preamble of scope specifies that the contract combines providing, laying, testing, commissioning of sewerage system and O&M work.

The nature of contract is such that installation of sewerage system is the main service and the other services under O&M contract combined with such service are in the nature of

ancillary services which help in better operation of main activities of installing and commissioning the sewerage system and make the model successful.

Department expects the provision of both the contracts together by the same service provider to make the model successful.

2.33 Thus, based on above facts and concept explained in Para 14 above, such contract shall be a single supply and cannot be treated as distinct supplies. Since all the conditions of composite supply as discussed in Para 11 above are satisfied, it is a composite supply.

2.34 Further, since composite supply of works contract has been specifically classified as supply of service under Schedule II, it should be first analyzed whether the contract can be classified as a works contract or not.

2.35 The scope of work under Para 2.9 to Para 2.19 of the Tender Document has been carefully examined to derive that it involves

The contractor will have to fix the exact line of proposed layout of the sewer in all locations so as to avoid the existing underground installations as best as possible. He is required to make necessary enquiries from the relevant departments to assess the locations as best as possible. He shall also then pinpoint the existing installations by help of Geo-radar survey.

The final alignment of the sewer shall be proposed taking the information into account. A list of existing facilities that are required to be removed or realigned will also have to be prepared. The contractor will then put up both the details of the proposed alignment and the work required for removal/realigning the existing utilities of other organizations to the EIC for his approval. The EIC will take up the issues related to other departments with the relevant departments and local administration and finalize the alignment and also finalize the agency who will work for realigning/removing of the existing works that come in way.

Planning the excavation of the relevant sections in such a way that the traffic and access to the houses is still maintained during the work period. If necessary in view of EIC, the excavated material may have to be stored at a suitable place away from the site of excavation and brought back when refilling.

The excavated areas should be barricaded so as to prevent accidents.

Proper Cement Concrete (M15) encasing shall be done for the reaches of governing sewer line laid at less than 0.9 mts depth. The encasing shall also be done where sewer line passing through submerged areas and in hilly terrain having hard rock with steep slope and lesser depth.

Manhole chambers shall be constructed/assembled simultaneously with the laying of sewers as per drawing and detailed specification

Any data or information received by the Contractor, from the department or otherwise, shall not relieve the Contractor from his responsibility for the design and execution.

Suitable shoring and shuttering designs will be got approved from the EIC for all excavations and the shoring and shuttering will be provided.

Arrangements for dewatering (well points or small pumps) of the soil as required will have to be maintained during the work.

The lines laid will be hydraulically tested from manhole to manhole as soon as laid. The contractor shall have to conduct hydro-testing of the sewer line laid and the manholes constructed immediately after laying / construction.

The contractor will be responsible for procuring the sewer pipes, man hole frames and covers and other materials as required as per specifications, to maintain their safe custody and for proper installations.

2.36 It is understood based on the scope of work detailed above that it involves complete provision, installation and commissioning of the sewerage system along with O&M. For the same new immovable structure shall come into existence.

2.37 Based on above facts and the intent of the activity, it is implied that the given work is a contract for new sewerage system, wherein transfer of property in goods in the form of new sewerage system and mechanical/electrical equipment shall be involved in the execution of such contract.

2.38 That Works contract in itself is a composite supply in which construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning etc. are involved along with transfer or property in goods.

2.39 Further, such a contract can amount to works contract in GST only if the commissioning and installation is of any immovable property. The concept of immovable property has been explained above in Para 21 to 31. Taking references from the concepts evolved from the precedents cited therein, it is understood that the properties for which commissioning, and installation works has been assigned for sewerage system, it cannot be moved from one site to another. All the components of the sewerage system are erected at the prescribed location and permanently attached to the earth, and they cannot be dismantled and reassembled as such dismantling may cause substantial damage to the system and its components.

2.40 Thus, according to applicant the property under consideration for the given work of improvement is an immovable property and thus the given work should be treated as works contract.

2.41 The given activities undertaken by the applicant are culminating into works contract services. Now works contract service in itself is a composite supply. The same has been defined under Schedule-II under Entry 6 which is read as under:

6. Composite supply

The following composite supplies shall be treated as a supply of services, namely:—

(a) works contract as defined in clause (119) of section 2; and

(b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

2.42 According to definition of works contract, the supply of goods and services are done by the supplier simultaneously which is for immovable property. Hence in works contract supply of goods and services together is compulsory.

2.43 Once the given supply is a works contract, it is clear that by virtue of entry 6(a) of the Schedule-II it is a supply of service only. The next matter of consideration is classification and exemption. In Notification No. 13/2017 – CT(Rate), relevant entries for supply of service for the given case are

(1)	(2)	(3)	(4)	(5)
3B	Chapter 99	Services provided to a Governmental Authority by way of - (a) water supply; (b) public health; (c) sanitation conservancy; (d) solid waste management, and (e) slum improvement and upgradation.	Nil	Nil

2.44 That from above, it has already been deduced that services supplied by the applicant is a service i.e. works contract service. The same is for sewerage system installation and commissioning. Hence it is clearly a service by way of sanitation conservancy. Thus it gets classified under the clause (c) of the above entry 3B of NN 13/2023-CT (Rate) dated 19.10.2023. For exemption, it needs to finally analyzed if the services are supplied to a Governmental Authority. The said term has been defined under point 2(zf) of NN 12/2017-CT (Rate) dated 28.06.2017. It is read as under

*[(zf) "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 243W of the Constitution or to a Panchayat under article 243G of the Constitution;*

2.45 From the above, it is clear that to be considered as "Governmental authority" an entity must have been set up or established specifically to carry out the functions which are entrusted to a municipality under Article 243W of the Constitution. The list of functions envisaged under Twelfth Schedule [Article 243W of the Constitution (Seventy-Fourth Amendment) Act, 1992], consists of –

- (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;
- (5) Water supply for domestic, industrial and commercial purposes;
- (6) Public health, sanitation conservancy and solid waste management;
- (7) Fire services;
- (8) Urban forestry, Protection of the environment and promotion of ecological aspects;
- (9) Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded;
- (10) Slum Improvement and upgradation;
- (11) Urban poverty alleviation;
- (12) Provision of urban amenities and facilities such as parks, gardens, playgrounds;
- (13) Promotion of cultural, educational and aesthetic aspects;
- (14) Burials and burial grounds, cremation, cremation grounds and electric crematoriums;
- (15) Cattle ponds; prevention of cruelty to animals;
- (16) Vital statistics including registration of births and deaths;
- (17) Public amenities including street lighting, parking lots, bus stops & public conveniences.
- (18) Regulation of Slaughter houses and tanneries.

2.46 From the reading of above, it is clear that at entry no 6, the activity of sanitation conservancy is duly covered. Hence the services as supplied by the applicant are covered in the list of activities which are entrusted to municipality under Article 243W.

2.47 In the given case, the work has been awarded by the Municipal Council which has been formed under Rajasthan Municipalities Act 2009. Thus it has been constituted under the

Act which has been framed by the State Government. The Section 5 of the said Act is read as under

5. Establishment and incorporation of Municipality. - (1) In every transitional area, there shall be established a Municipal Board and every such Municipal Board shall be a body corporate by the name of the Municipal Board of the place by reference to which the Municipality is known and shall have perpetual succession and a common seal and may

sue or be sued in its corporate name.

(2) In every smaller urban area, there shall be established a Municipal Council and every such Municipal Council shall be a body corporate by the name of the Municipal Council of the city by reference to which the Municipality is known and shall have perpetual succession and a common seal and may sue and be sued in its corporate name.

(3) In every larger urban area, there shall be established a Municipal Corporation and every such Municipal Corporation shall be a body corporate by the name of the Municipal Corporation of the city by reference to which the Municipality is known and shall have perpetual succession and a common seal and may sue and be sued in its corporate name:

2.48 Thus, it is an entity set up by statute formed by state government and it also gets its status from the Constitution of India (Article 243P). Thus the governmental authority is subset of municipality only in terms of entry 3B of the NN 13/2023-CT (Rate) dated 19.10.2023. The functions as mentioned in the entry 243W are also entrusted to the municipality only i.e. the service recipient in the given case.

2.49 Thus if exemption is given under Entry 3B when the service recipient is governmental authority where it is related to the functions entrusted to a Municipality, then the said exemption is logically and naturally available when the said activities are directly awarded by the municipality to the service provider. Hence the given services as supplied by the applicant to the municipal council by way of sanitation conservancy by commissioning of sewerage system is exempt under entry 3B of NN 13/2023-CT (Rate) dated 19.10.2023.

2.50 Without prejudice to above, alternatively if it is held that the given exemption is not available, then in that case the applicant submits that the rate of tax in given service shall be determined in accordance with the Notification No 11/2017-CT (Rate) dated 28.06.2017, as amended from time to time.

APPLICANT'S UNDERSTANDING

That in case of above contract the entire work to be awarded shall be composite supply of works contract and the same appears to be classifiable under HSN 9954 and exempt under Entry No. 3B of Notification No 12/2017-CT (Rate) dated 28.06.2018.

C. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT:

Q. Whether the activity of providing, laying, jointing, testing and commissioning of sewer system and all ancillary works is exempt under entry 3B of the NN 13/2017-CT (Rate) dated 28.06.2017.?

D. PERSONAL HEARING

In the matter, personal hearing was granted to the applicant on 13.05.2024. Mr. Yash Dhadda C.A. Authorized Representative appeared for personal hearing. He reiterated the submission already made by them.

E. COMMENTS OF THE JURISDICTIONAL OFFICER: -

The comments received from the Joint Commissioner, State Tax, Circle-H, Zone-Jaipur-II Divisional Kar Bhawan Jaipur, Rajasthan vide letter NO. क्रमांक:-प.() सहा.आ. /एच-11/2024-25/807 dated 09.04.2024 are as under: -

Question on which advance ruling is sought: Whether the activity of providing, laying, jointing, testing, and commissioning of sewer system and all ancillary works is exempt under entry 3B of the NN 13/2017-CT (Rate) dated 28-06-2017

Comments:

1. For the sake of clarity, the entry at S. No. 3 with respect to Notification no. 12/2017-Central Tax (Rate) dated 28th June 2017, entry at S. No. 3A inserted vide notification no.2/2018- Central Tax Rate dated 25-1-2018 and entry at S. No. 3B were inserted vide notification no 13/2023- Central Tax (Rate) dated 19-10-2023 are reiterated here below:

Sl. No	Chapter, Section, Heading, Group or Service Code(Tariff)	Description of Services	Rate(per cent)	Condition
(1)	(2)	(3)	(4)	(5)
3	Chapter 99	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, Government or Union territory or local authority laa[***] 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 243 W of the Constitution.	Nil	Nil
2[3A	Chapter 99	Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 percent of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority laa [***]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 article243 W of the Constitution.	Nil	Nil]
2a[3B	Chapter 99	Services provided to a Governmental Authority by way of- (k) water supply; (l) public health; (m) sanitation conservancy; (n) solid waste management; and (o) slum improvement and upgradation.	Nil	Nil]

laa Words "or a Governmental authority or a Government Entity" omitted by Notification No 16/2021-Central Tax (Rate) dated 18-11-2021 wef 1-1-2022

2 Inserted by Notification No 2/2018-Central Tax (rate) dated 25-1-2018 wef 25-1-2018

2a Inserted by Notification No 13/2023-Central Tax (rate) dated 19-10-2023 wef 20-10-2023

2. The entries that have been entered at S. No. 3, 3A and 3B, it would not be appropriate to read the applicability of these entries in isolation or individuality, these are inter-related and the entry at S. No. 3B is only the expanded form of entry no. 3 and 3A and these entries go hand. So, the entry no. 3B cannot be interpreted in isolation.

3. In the referred application of applicant, the applicant was awarded work for: -

Providing, laying, jointing, testing and commissioning of sewer system and all ancillary works along with Design, construction, supply, installation, testing and commissioning (Civil, Electrical, Mechanical and Instrumentation and other necessary works) of Sewage Pumping Station/MWP(if any), Sewage Treatment Plant based on SBR Process with provision for waste water reuse including MPS and 10 MLD capacity STP based on SBR process with provision of 1 year defect liability 5 years O&M for towns under package AMRUT-2.0/RAJ/SEWERAGE-13 Bikaner.

4. After having gone through the above scope of work, it is clear that the scope of work as detailed in the respective bidding documents, letter of intent and contract agreements as provided by the applicant, the work includes supply of goods and services (both). It includes supply of goods like sewerage system and sewage pumping stations etc. and therefore, prima facie, these do not fall under the category of services.

5. Even for the sake of arguments, if it is considered that the work awarded to the applicant falls under the category at S.No. 3B, then said interpretation will not be consistent with the category at S.No. 3A, wherein it has clearly been specified that the composite supply of goods and services, the value of supply of goods should not constitute more than 25 per cent of the value of the said composite supply. The entry at S. No 3 and 3A are also required to be kept in mind while interpreting the entry at S. No. 3B and from these entries, it is amply clear that composite supply of goods and services, the provisions of entry at S. No. 3A are more relevant instead of 3B.

6. The applicant has himself admitted in the last para of the "Statement of Relevant facts having a bearing on the Questions raised" that the activity of applicant is a composite supply of works contract." Therefore, the applicability of provision of services in entry at S. No. 3B appears not to be appropriate.

7. In the para 5 of the "Statement of Relevant facts having a bearing on the Questions raised", applicant has submitted that the applicant was clear up to 19th October 2023, that it was liable to pay tax on the same. It means the applicant is amply clear that the entry at S.No. 3 and 3A are not applicable to his scope of work. The entry at S. No. 3 specifies about pure services and entry at S. No. 3A specifies about composite supply of goods and services wherein value of goods are not more than 25% of the value of composite supply. It means the applicant is amply clear that in his case, it is neither the pure services nor composite supply (where the value of goods is less than 25% of the value of composite value of goods and services). Now suddenly, after the notification no 13/2023- Central Tax (Rate) dated 19-10-2023, the applicability of its work under the services as per the said notification dated 19-10-2023 (Entry at S. No 3 B) neither justified nor appropriate.

Conclusion: Entry at 3B (presently in discussion) is nothing but only the extension of earlier entries at 3 and 3A. The taxpayer was paying tax because he himself was clear that he does not fall under the category at S. No. 3 & 3A because his supply does not fall under the category of pure services (defined in entry no 3) and his composite supply contains the value of goods more than 25% of the values of composite supply (defined in Entry at S. No. 3A). Now suddenly how the taxpayer can come under the category of services (defined in Entry at S. No. 3B). So, the scope of work carried out

by the taxpayer does not fall under the entry at S. No. 3B of notification dated 19-10-2023.

In view of above, the said notification no 13/2023-Central Tax (Rate) dated 19-10-2023 is not applicable to the work and scope carried out by the taxpayer in case(s) at hand.

F. FINDINGS, ANALYSIS & CONCLUSION:

1) We have carefully examined the statement of facts, supporting documents filed by the applicant along with the application, oral and written submissions made at the time of hearing and the comments of the Jurisdictional Tax Authority. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

2) M/s Technocraft Construction Private Limited is engaged in Providing, laying, jointing, testing and commissioning of sewer system and all ancillary works along with Design, construction, supply, installation, testing and commissioning (Civil, Electrical, Mechanical and Instrumentation and other necessary works) of Sewage Pumping Station/MWP(if any), Sewage Treatment Plant based on SBR Process with provision for waste water reuse including MPS and 10 MLD capacity STP based on SBR process with provision of 1 year defect liability 5 years O&M for towns under package AMRUT-2.0/RAJ/SEWERAGE-13.

3) The applicant has made a contract agreement with Nagar Nigam BIKANER, (The Procuring entity) for Providing, laying, jointing, testing and commissioning of sewer system and all ancillary works along with Design, construction, supply, installation, testing and commissioning (Civil, Electrical, Mechanical and Instrumentation and other necessary works) of Sewage Pumping Station/MWP(if any), Sewage Treatment Plant based on SBR Process with provision for waste water reuse including MPS and 10 MLD capacity STP based on SBR process with provision of 1 year defect liability 5 years O&M for towns under package AMRUT-2.0/RAJ/SEWERAGE-13.

4) We take up the contentions placed before us. We see that the applicability of GST on the aforesaid awarded work to the applicant, the applicant was clear up to 19th October 2023, that it was liable to pay tax on the same. However vide notification no 13/2023-CT (Rate) dated 19.10.2023, an amendment has been brought on NN 12/2017-CT (Rate) dated 28.06.2017, wherein the exemption notification for applicability of GST on supply of services, an entry number 3B has been added with effect from 20.10.2023 which is read as under:-

(1)	(2)	(3)	(4)	(5)
3B	Chapter 99	Services provided to a Governmental Authority by way of - (a) water supply; (b) public health; (c) sanitation conservancy; (d) solid waste management; and (e) slum improvement and upgradation.	Nil	Nil.

After the above amendment, the applicant contended that services supplied by him is a service i.e. works contract service for sewerage system installation and commissioning etc. hence it is a service by way of sanitation conservancy. Thus it may be covered under the clause (c) of the above entry 3B of notification no 13/2023-CT (Rate) dated 19.10.2023) as the services are supplied to a Government Authority.

5) At the outset first we discuss the bidding documents enclosed with the application (NIB No. 02/2023-24) for Providing, laying, jointing, testing and commissioning of Sewerage System and all ancillary works along with Design, construction, supply, installation, testing and commissioning (Civil, Mechanical, electrical, instrumentation & other necessary works) of Sewage Pumping Station/MWP(if any), Sewage Treatment Plant based on SBR Process with provision for waste water reuse including MPS and 10 MLD capacity STP based on SBR process with provision of 1 year defect liability 5 years O&M for towns under package AMRUT-2.0/RAJ/SEWERAGE-13. The key points of the bidding documents may be categorized under heading scope of work, objective of the project and treatment of taxes marked as a,b and c as under:-

a) Scope of work and general specifications

(i) The contractor is solely responsible for providing, laying, jointing, testing and commissioning the sewerage network in Bikaner in such a way that the waste water of the area under contract shall be discharged at the STPs confirming all technical as well as quality standards and upgradation of STP on turnkey basis for the designated discharge as per Tender Document.(2.1)

(ii) Providing, laying, jointing, testing and commissioning of sewer system and all ancillary works along with Design, construction, supply, installation, testing and commissioning (Civil, Electrical, Mechanical and Instrumentation and other necessary works) of Sewage Pumping Station/MWP(if any), Sewage Treatment Plant based on SBR Process with provision for waste water reuse including MPS and 10 MLD capacity STP based on SBR process with provision of 1 year defect liability 5 years O&M for towns under package AMRUT-2.0/RAJ/SEWERAGE-13. The work proposed has been surveyed, based on which a bill of quantities has been prepared as provided in the G- Schedule/H- Schedule/Price Schedule. The contractor is fully responsible for carrying out the work including commissioning of the system with respect to technical feasibility and quality standard and scope of work will cover the following but not limited to.(2.4)

(iii)The contractor will be responsible for procuring the sewer pipes, man hole frames and covers and other materials as required as per specifications, to maintain their safe custody and for proper installations.(2.19)

(iv) The O&M period of all the works under this package shall be 10 years in which the initial first year shall be the defect liability period. The annual/yearly O&M charges shall be fixed and as specified in the BOQ/Tender Document. O&M charges include all expenditures and expenses required to be incurred on labour, repair and/or replacement of material, preventive and / or breakdown maintenance including cost of any new material, equipment or machinery, equipment, consumable items, chemicals, fuel, water and all other matters and things of what so ever nature essential and desirable to run the system satisfactorily (the O&M charges do not include power charges which shall be paid by the department/line agency).(2.27)

b) Objective of the project :-

(i)The objective of the project is to upgrade/rehabilitate the existing 20 MLD Sewage Treatment Plant at Bikaner, which was commissioned in the year 2008, to improve the effluent standards based the NGT disposal standards.(3.1)

(ii)The main objective of sewage treatment is to stabilize decomposable organic matter present in sewage so as to produce an effluent and sludge which can be disposed of in the environment without causing health hazards or nuisance. The Sewage Treatment Plant is designed to deliver the treated sewage conforming to the standards specified by the State Government / CPHEEO manual / Ministry of Environment / National Green Tribunal in this case, for discharge of in the water bodies / reuse applications.(3.2)

(iii) Treatment Objective: Considering the raw sewage quality and the required treated effluent quality, the process train proposed by the contractor shall achieve the following objectives (3.4)

1. To achieve guaranteed treated effluent quality or even better.
2. To ensure that the upgradation of the treatment process is the most appropriate and state of the art in terms of both efficiency of treatment, performance and operating cost.
3. To ensure that the process is cost effective from both capital and running costs, considering that is power consumed.

(iv) For Instrumentation and Electrical works, in general bidder shall follow specification given in subsection. However, design criteria shall be as per bidder's design. Bidder shall furnish detailed specification of other equipment not listed in the main bid. The bidder shall ensure compliance of all Governmental regulatory requirements along with those

pertaining to the plant construction, operation & maintenance requirements. The bidder shall arrange submission and clearance of appropriate drawings, details etc. and obtain all necessary statutory clearances as deemed necessary.(3.9)

c) The general conditions of the contract regarding levy of taxes are summarized in sub clause 15.20 which is reproduced as under:-

i) VAT/ Sales Tax, service tax or any other taxes and duties on Materials, works or services in respect of this Contract shall be payable by the Contractor according to Law in effect.

ii) The Contractor shall deposit royalty and obtain necessary permit for supply of the red earth, moorum, sand, chips, bajri, stone, kankar, etc. from local authorities. The liability, if any, on account of quarry fees, royalties, octroi and other taxes and duties in respect of materials actually consumed on the Works, shall be borne by the Contractor.

iii) If pursuant to or under any Law, notification or order any royalty, cess or the hike becomes payable to the Government of India and does not at any time become payable by the Contractor to the State Government/ Local authorities in respect of any Material used by the Contractor in the Works then in such a case, it shall be Lawful to the Government of India and it will have the right and be entitled to recover the amount paid in the circumstances as aforesaid from the dues of the Contractor.

iv) In respect of goods and Materials procured by the Contractor, for use in Works under the Contract, VAT will be paid by the Contractor himself but in respect of such goods manufactured and supplied by the Contractor and Works executed under the contract, the responsibility of payment of VAT shall be that of the Procuring Entity.

Taking account the scope and objectives of bidding documents, it is seen that the applicant is engaged for Providing, laying, jointing, testing and commissioning of Sewerage System and all ancillary works along with Design, construction, supply, installation, testing and commissioning (Civil, Mechanical, electrical, instrumentation & other necessary works) of Sewage Pumping Stations.

6) As per sub-clause (119) of the Section 2 of the CGST Act, 2017, the 'works contract' means:-

(119) "works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;

On going through the work order awarded to the applicant, as discussed here-in-above, it is clear that in the instant case the applicant is engaged in providing 'works contract services'. The applicant also admits the fact that they are engaged in supply of goods along with services for an immovable property. Thus, the services provided by the applicant are found to be works contract services, where goods along with services are supplied.

7) Now, we examine the exemption notification No. 12/2017-CT(R) dated 28.06.2017 which is reproduced as under:-

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate	Condition
3	Chapter 99	Pure services (excluding works contract service or other composite supplies involving supply of any	Nil	Nil

		goods) provided to the Central Government, State Government or Union territory or local authority [or a Governmental authority or a Government Entity] by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.		
3A	Chapter 99	Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority [or a Governmental authority or a Government Entity] by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.	Nil	Nil
3B	Chapter 99	Services provided to a Governmental Nil Nil"; Authority by way of - (a) water supply; (b) public health; (c) sanitation conservancy; (d) solid waste management; and (e) slum improvement and upgradation	Nil	Nil

- a) The entries at Sr. No. 3 and 3A of exemption Notification No. 12/2017-CT(R) dated 28.06.2017, exempt supply of pure services and composite supplies (goods component 25% or less) supplied to Central Government, State Government or Local Authority, by way of any activity in relation to Municipal or Panchayat functions under Article 243G or 243W of the Constitution.
- b) Prior to 1.1.2022, the exemption entries covered services supplied to Governmental authority and Governmental entities also.
- c) Vide notification no 13/2023-CT (Rate) dated 19.10.2023, an amendment has been brought on NN 12/2017-CT (Rate) dated 28.06.2017, wherein in the exemption notification for applicability of GST on supply of services, an entry number 3B has been added with effect from 20.10.2023 which is read as under:-

(1)	(2)	(3)	(4)	(5)
"3B	Chapter 99	Services provided to a Governmental Authority by way of - (a) water supply; (b) public health; (c) sanitation conservancy; (d) solid waste management; and (e) slum improvement and upgradation.	Nil	Nil";

8) With regard to the question raised by the applicant, let us see the definition of the terms used in the above notification: -

A) "local authority" means-

- (a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution;
- (b) a "Municipality" as defined in clause (e) of article 243P of the Constitution;
- (c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
- (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006 (Central Act No. 41 of 2006);
- (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;

Article 243P in constitution of India

In this Part, unless the context otherwise requires, –

(e) “Municipality” means an institution of self-government constituted under article 243Q;

243Q. Constitution of Municipalities.

(1) There shall be constituted in every State, –

- (a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;
- (b) a Municipal Council for a smaller urban area; and
- (c) a Municipal Corporation for a larger urban area,

B) The notification of Law Department for Rajasthan Municipalities Act, 2009 is reproduced as under: –

LAW (LEGISLATIVE DRAFTING) DEPARTMENT

(GROUP-II)

NOTIFICATION

Jaipur, September 11, 2009

No. F. 2 (21) Vidhi/2/2009.-In pursuance of Clause (3) of Article 348 of the Constitution of India, the Governor is pleased to authorize the publication in the Rajasthan Gazette of the following translation in the English language of the Rajasthan Nagarpalika Adhiniyam, 2009 (2009 Ka Adhiniyam Sankhyank 18):-

Rajasthan Municipalities Act, 2009

(Act No. 18 of 2009),

Published in Rajasthan Gazette Extraordinary Part 4(ka) dated 11.9.2009. Notification No.P 2(21) Legal/2/2009. Last Updated 5th October, 2019 [rj018] Be it enacted by the Rajasthan State Legislature in the Sixtieth Year of the Republic of India, as follows:

CHAPTER I

1. **Short title, extent and commencement.** - (1) This Act may be called the "Rajasthan Municipalities Act, 2009". (2) It extends to the whole of the State of Rajasthan, excluding cantonment areas therein. (3) It shall come into force on such [date] as the State Government may, by notification in the Official Gazette, appoint.

2. **Definitions.** - In this Act, unless the context otherwise requires, -

i).....

ii)...

iii)....

iv)...

(xiii) "Municipality" means a Municipal Corporation, Municipal Council, and a Municipal Board in existence at the time of commencement, or constituted in accordance with the provisions of this Act;

9) In view of above definitions and legal provisions, BIKANER NAGAR NIGAM is covered under the definition of Local Authority. In the instant case, the applicant is providing services to BIKANER NAGAR NIGAM which is a local authority as discussed above.

10) Now, before discussing the insertion entry 3B vide Notification No. 13/2023-Central Tax (Rate) dated 19.10.2023, it is imperative to discuss the background and Minutes of Meeting of the GST Council on the recommendation of which, the instant entry was inserted.

For reference, the para 5.51 and 5.52 of Minutes of 52nd GST Council Meeting held on 07.10.2023 are reproduced hereunder:-

5.51 Joint Secretary, TRU informed the Council that the next agenda was to specify a positive list of services under SR No. 3 and 3A of Notification no. 12/2017-Central Tax(Rate). She stated that this issue was discussed in earlier council meetings and Fitment was asked to examine whether there was a need to prune the list of exempt supplies of pure services or composite supplies by way of activity in relation to functions listed in Articles 243G and 243W of the Constitution of India when supplied to Central Government, State Government or local Authority. However, during previous discussions on the same, states had opined that the list should continue as it exists. She stated that the Fitment Committee had recommended to maintain the existing list of services in 3 and 3A of Notification No 12/2017-CTR dated 28.06.2017.

5.52 It is further stated that prior to 01.01.2022, the exemption also covered services supplied to Government authority and Government entities also. The Fitment Committee had also recommended to create a new entry to exempt the following five services supplied to Government Authority:

Water Supply

Public Health

Sanitation Conservancy

Solid Waste Management

Slum improvement and upgradation

11) Vide Notification No. 16/2021-Central Tax(Rate) dtd 18.11.2021 wef 01.01.2022, "a Government Authority or a Government Entity" words are omitted from SR No. 3 and 3A of the Notification No. 12/2017-CTR dtd 28.06.2017. From the para 5.52 reproduced *supra*, it is clear that the Sr No. 3B was inserted to provide the exemptions on supply of certain services supplied to Government Authority, which was previously curtailed by the above referred Notification dtd 18.11.2021 wef 01.01.2022. Thus, entry Sr No. 3B is not a new entry, rather it is extension of existing entries of Sr No. 3 and 3A.

The Sr No. 3 and 3A of the Notification No.12/2017-CTR dtd 28.06.2017 are applicable only in the case of pure services or composite supply having value of supply of goods not more than 25 percent. Since, Sr No 3B is also extension of Sr No 3 and 3A and all these entries are inter-related and it won't be appropriate to read all these entries in isolation or individually. Therefore, Sr No. 3B will also be applicable in case of pure services or composite supply, where value of the goods is not more than 25 percent.

12) As discussed above, the applicant provides services to Nagar Nigam, Bikaner, which is a 'local authority' and all the three entries Sr No 3, 3A and 3B of the Notification No. 12/2017-CTR dtd 28.06.2017 are consistent and should not be read individually, the rate of tax on services provided by the applicant should be decided in terms of Sr No. 3 and 3A, since the said entries cover services provided to 'local authority', there is no need to go to Sr No. 3B.

13) It is pertinent to mention here that the applicant has discharging it's tax liability by paying 18% GST(SGST 9%& CGST 9%) considering the supply of construction civil work under SAC 995424 prior to 19.10.2023. The SAC 995424 stands for general construction services of local water and sewerage pipelines, electricity and communication cables and related works.

14) The applicant is providing its services to NAGAR NIGAM, BIKANER (local authority) of Providing, laying, jointing, testing and commissioning of sewer system and all ancillary works along with Design, construction, supply, installation, testing and commissioning (Civil, Electrical, Mechanical and Instrumentation and other necessary works) of Sewage Pumping Station/MWP(if any), Sewage Treatment Plant based on SBR Process with provision for waste

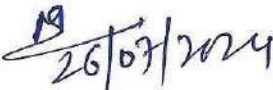
water reuse including MPS and 10 MLD capacity STP based on SBR process with provision of 1 year defect liability 5 years O&M for towns under package AMRUT-2.0/RAJ/SEWERAGE-13.. So, exemption entry No. 3B is not applicable to the applicant.

In view of the foregoing, we rule as under:-

RULING

Q. Whether the activity of providing, laying, jointing, testing and commissioning of sewer system and all ancillary works is exempt under entry 3B of the NN 13/2017-CT (Rate) dated 28.06.2017.?

Ans. The activity of providing, laying, jointing, testing and commissioning of sewer system and all ancillary works by the applicant to Nagar Nigam Bikaner, being a local authority is not exempted under entry 3B of the NN 13/2017-CT (Rate) dated 28.06.2017.


(Mahipal Singh)
MEMBER
CENTRAL TAX




(Mahesh Kumar Gowla)
MEMBER
STATE TAX

F. No. AAR/SF/2024-25/ 93-98
SPEED POST

Date: 29/07/2024

To,
M/s TECHNOCRAFT CONSTRUCTION PRIVATE LIMITED
Shop No B/NS/24, Yojna Central Spine, GyanVihar,
University Road, Mahal Road, Jagatpura,
Jaipur-302017, Rajasthan

Copy to: -

1. The Chief Commissioner, CGST and Central Excise (Jaipur Zone), NCRB, Statue Circle, Jaipur, Rajasthan-302005
2. The Chief Commissioner, State Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme, Jaipur-302005.
3. The Pr.Commissioner, CGST and Central Excise Commissionerate, JAIPUR, Rajasthan.
4. Joint Commissioner, State Tax, Circle-H, Zone-Jaipur-II Divisional Kar Bhawan, Jaipur, Rajasthan
5. Assistant Commissioner, CGST Division-D, Sector-10, Vidhyadhar Nagar, near RTO, Jaipur, Rajasthan

O/C