

AUTHORITY FOR ADVANCE RULING, TAMILNADU
DOOR NO.32, INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX
VTH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,
CHENNAI -600 003.

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.

Members present are:

1. Shri B. Senthilvelavan, I.R.S., Additional Commissioner/Member,
Office of the Principal Chief Commissioner of GST & Central Excise, Chennai.600 034.
2. Shri Kurinji Selvaan V.S., M.Sc., (Agri.), M.B.A., Joint Commissioner (ST)/ Member,
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-3.

ORDER No. 15/ARA/2021 Dated: 28.04.2021

GSTIN Number, if any / User id		33AAALT1624R1ZO
Legal Name of Applicant		TIRUPPUR CITY MUNICIPAL CORPORATION
Trade Name of the Applicant		TIRUPPUR CITY MUNICIPAL CORPORATION
Registered Address / Address provided while obtaining user id		1, Mangalam Road, Tirupur--641604
Details of Application		Form GST ARA - 001 Application Sl.No.18/2020 dated 22.07.2020
Concerned Officer		State : Tiruppur Central I Assessment Circle, Tiruppur Centre: Coimbatore Commissionerate Division: Coimbatore I
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Service Provision
B	Description (in brief)	The applicant is a " Municipality" as defined in clause (e) of article 243P of the Constitution. They are rendering taxable services (viz) renting of immovable property service, mandap keeper service. They are doing the functions entrusted to a municipality under Twelfth Schedule to Article 243W of the Constitution. They are

	rendering the following functions directly as well as through contractors(through tender process)and collecting Fee from parks, Market fee-daily, Market fee –weekly, Fee for entry vehicle in the market, Fees for pay and use toilets, slaughter house fees, Fees for bays in bus stand (bus stand entrance fee collection), Bus –stand (others), charges for TV advt. in bus-stand, locker rent provided in bus-stand, cycle stand, scooter, auto, four wheeler stand in bus stand and other places, Bunk stalls, annual track rent – cable operator fee (Optical fibre laying fee).
Issue/s on which advance ruling required	<p>They are rendering the following functions directly as well as through contractors(through tender process)and collecting charges and <i>require clarifications as to whether their activities are covered under</i> Twelfth Schedule to Article 243W of the Constitution so as to claim appropriate exemption under Notfn. No. 12/2017&14/2017 etc.</p> <ol style="list-style-type: none"> 1.Fee from parks, 2.Market fee-daily, 3 (i)Market fee –weekly, (ii) Fish Market-Weekly 4.Fees for bays in bus stand (bus stand entrance fee collection), 5. Bus –stand (others), (A) charges for TV advt. in bus-stand , (B) locker rent provided in bus-stand 6. Bunk stalls, 7. Slaughter house fees, 8. Fees on pay & use toilets-bus stand and other common places, 9. Fee foe entry vehicle in bus stand-two wheeler Stand

	<p>10. Renting of immovable property (shopping complex etc.)-</p> <p>11. Lease of land-</p> <p>12. Community hall - In respect of Sl.No. 10, 11, 12 - immovable property service reverse charge is applicable w.e.f. 25-01-2018 in respect of the service availers who are registered with GSTN but tax was collected under direct charge from the service availers and whether it can be regularized.</p> <p>13. Rent on building-residential purpose</p> <p>14. annual track rent - Cable operator laying fee (optical fibre laying fee). They are collecting charges for laying of cables alongside roads and collecting road cutting charges as well as annual rent. They require advance ruling as to whether composite supply can be applied for classifying said service as renting of immovable property service and reverse charge can be applied for collecting GST as per entry Sl No 5A of the table to Notfn No 13/2017 (CE rate) dated 29-06-2017 as amended from the telephone operators who are GSTN holders.</p> <p>15. Renting of immovable property- Applicability of Sl.No. 8 of Notfn 12/2017 dt. 28.06.2017 to Renting of Immovable property directly by them on lease contract to another Central Government/State Government.</p>
Question(s) on which advance ruling is required	<p>Q.1. Advance Ruling is required in respect of Sl.No. 1 to 5, 7 to 9 as to whether the services rendered by them are exempted or not under the Notification No. mentioned against each Sl.No.</p> <p>Q.2 In respect of services rendered by them through tender contractors as mentioned in respect of Sl.No. 1 to 9 are exempted or not</p>

	<p>under the Notification No. mentioned against each Sl.No.</p> <p>In respect of Sl.No.10 to 12 instead of reverse charge they collected tax under direct charge from the service availers who are registered with GSTN w.e.f 25.01.2018 and whether it can be regularized or not.</p> <p>Q.3. In respect of Sl.No.14 they are collecting charges for laying of cables alongside roads and collecting road cutting charges as well as annual rent. They require advance ruling as to whether composite supply can be applied or not for classifying the said service as renting of immovable property service and reverse charge can be applied or not for collecting GST as per S.No. 5A of Notification 13/2017 CT(R)dated 29.06.2017 as amended form the telephone operators who are GSTN holders.</p> <p>Q.4. In respect of S.No. 13 full exemption is applicable or not as noted against the Sl.No.</p> <p>In respect of S.No. 15 the renting of immovable property service rendered by us as a local authority to (i) pure State Govt. Offices, (ii) Central Government Offices, Co-operative societies, (iii) Nationalised Banks are fully exempted nor not as per Sl.No. 8 of Notification 12/2017 dated 28.06.2017.</p>
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Note: Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

M/s. TIRUPPUR CITY MUNICIPAL CORPORATION, 1, Mangalam Road, Tirupur, Tamil Nadu. Tirupur. 641 604. (hereinafter called the 'Applicant') is registered with GSTIN No. 33AAALT1624R1ZO. The applicant is a "Municipality" as defined in clause (e) of article 243P of the Constitution. They are rendering taxable services (viz) renting of immovable property service, mandap keeper service and are doing the functions entrusted to a municipality under Twelfth Schedule to Article 243W of the Constitution. They have stated to undertake the following services directly/ through contractors by tender process and have sought ruling on the application of Notifications specified in Column E below:

Sl. No	Description of the service	Direct service by the corporation	Service through contractors by tender process	Advance ruling is required on the following .whether the services mentioned in Column B are exempted vide Notfn No or Sl No entry of the table to Notfn as noted against each Sl No in Column E.
A	B	C	D	E
1	Fee from parks	Yes	Yes(Three years lease)	Notfn. No14/2017 dt 28-06-2017(or) Sl no 4 of 12/2017 CT (Rate) dt 28-06-2017.Composite supply has to be applied w.r.t small canteen service rendered inside the park as the fee for park service and also small canteen service exempted vide entry Sl.No.9 of Notification No.12/2017 CT(Rate) dated 28.06.2017 since the value of taxable service is less than Rs.5000/-.
2	Market fee-daily	Yes	Yes(Three years lease)	Notfn. No 14/2017 dt28-06-2017(or) Sl no 4 of 12/2017 C.T. (Rate), dated 28-6-2017

3	Market fee – weekly (ii) Fish Market Weekly	Yes	Yes(Three years lease)	Notfn. No 14/2017 (or) Sl No. 4 of 12/2017 C.T.(Rate) dt 28-06-2017 Sl.No.5 of Notfn. No.12/2017 (or) Sl.No.24 of Notfn.11/2017 CT(Rate) dated 28.06.2017
4	Fees for bays in bus stand (bus stand entrance fee collection)	Yes	Yes (Three years lease)	Notfn. No 14/2017 (or) Sl no 4 of 12/2017 CT(rate) dt 28-06-2017
5	Bus –stand (others) A) charges for of TV advt. in bus-stand (B) locker rent provided in bus-stand	Yes	Yes(Three years lease)	A. Exempted vide Sl No 7 of Notfn. No 12/2017 (or) payment of tax under reverse charge under Sl no 5 of Notfn. No 13/2017-Central Tax (Rate) dated the 28.06.2017 B. Notfn No 14/2017 dt28-06-2017 (or) sl no 4 of 12/2017 CT(Rate) dt 28-06-2017 .
6	Bunk stalls		Yes (Three years lease)	Sl No 7 of Notfn No 12/2017 CT(Rate) 28.06.2017
7	Slaughter house fees	Yes	Yes (Three years lease)	Notfn No 14/2017 dt28-06-2017or sl no 56 of Notfn. No 12/2017 CT(Rate) dt 28-06-2017.
8	Fees on pay & use toilets- bus stand and other common places	Yes	Yes (Three years lease)	Notfn No 14/2017 dt28-06-2017(or) sl no 76 of Notfn. No 12/2017 CT(Rate) dt 28-06-2017.
9	For entry vehicle in the bus stand- two wheeler stand	Yes	Yes (Three years lease)	Notfn No 14/2017 dt28-06-2017 (or) sl no 4 of Notfn. No 12/2017 CT(Rate) dt 28-06-2017.
10	Renting of immovable property (Shopping complex etc.)	Direct by municipality on lease contract	No Middlemen involved	Nonpayment of tax under reverse charge under Sl No 5A of Notfn No 13/2017 dated 28-06-2017 but paid under direct charge and whether it can be condoned and regularised for the period from 25-01-2018 in case of services

				to GSTN holders
11	Lease of land	Direct by municipality on lease contract	No Middlemen involved	Nonpayment of tax under reverse charge under Sl No 5A of Notfn No 13/2017 dated 28-06-2017 but paid under direct charge and whether it can be condoned and regularised for the period from 25-01-2018 in case of services to GSTN holders
12	Community Hall	Direct by municipality on lease contract	No Middlemen involved	Nonpayment of tax under reverse charge under Sl No 5A of Notfn No 13/2017 dated 28-06-2017 but paid under direct charge and whether it can be condoned and regularised for the period from 25-01-2018 in case of services to GSTN holders
13	Rent on building-residential purpose	Recovered from salary of Government Servants		Exempted vide Sl.No.12 of Notification No.12/2017 CT(Rate)
14	annual track rent -Cable operator laying fee(optical fibre laying fee)	Direct Service based on contract		Composite supply can be applied for road cutting charges by treating it as renting of immovable property service and reverse charge is applicable under Sl No 5A of Notfn No 13/2017 dated 28-06-2017 as amended.
15	Renting of immovable property	Direct by the municipality on lease contract to another Central / State Government		Sl no 8 of the table to Notfn. No 12/2017 dated 28-06-2017

The Questions for which the ruling is sought are:

Q.1. Advance Ruling is required in respect of Sl.No. 1 to 5, 7 to 9 as whether the services rendered by them are exempted or not under the Notification No. mentioned against each Sl.No.

Q.2 In respect of services rendered by them through tender contractors as mentioned in respect of Sl.No. 1 to 9 are exempted or not under the Notification No. mentioned against each Sl.No.

(ii) In respect of Sl.No.10 to 12 instead of reverse charge we collected tax under direct charge from the service availers who are registered with GSTN w.e.f 25.01.2018 and whether it can be regularized or not.

Q.3. In respect of Sl.No.14 they are collecting charges for laying of cables alongside roads and collecting road cutting charges as well as annual rent. We require advance ruling whether composite supply can be applied or not for classifying the said service as renting of immovable property service and reverse charge can be applied or not for collecting GST as per S.No. 5A of Notification 13/2017 CT (R) dated 28.06.2017 as amended form the telephone operators who are GSTN holders.

Q.4. In respect of S.No. 13 full exemption is applicable or not as noted against the Sl.No.

(ii) In respect of S.No. 15 the renting of immovable property service rendered by us as a local authority to (i) pure State Govt. Offices, (ii) Central Government Offices, Co.operative societies, (iii) Nationalised Banks are fully exempted nor not as per Sl.No. 8 of Notification 12/2017 dated 28.06.2017.

The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017.

2.1 The applicant has stated that they are rendering the following functions directly as well as through contractors(through tender process)and and collecting Fee from parks, Market fee-daily, Market fee -weekly, Fee for entry vehicle in the market, Fees for pay and use toilets, slaughter house fees, Fees for bays in bus stand (bus stand entrance fee collection), Bus -stand (others), charges for TV advt. in bus-stand, locker rent provided in bus-stand, cycle stand, scooter, auto, four wheeler stand in bus stand and other places, Bunk stalls, annual track rent - cable operator fee (Optical fibre laying fee).

2.2 They have stated that, they undertake

- a. Direct collection till it is entrusted to the lease contractor in respect of
 - Fees from Park;
 - Bus-stand -others -locker rent
 - Slaughter house fees
 - Cycle stand, scooter, auto/scooter two -wheeler stand in bus stand

and in such cases

- service provider is the applicant.
- Service is
 - allowing public, who are service recipients entry to Park;
 - use the locker in Bus Stand by paying consideration to the locker rent @ Rs.5 per bag/suitcase.
 - allowing use of the slaughter house facility by the Public, who are service recipients
 - allowing public to park cycle/scooter/auto/car on hourly/daily basis
- consideration is the fee charged by the applicant for entry/use of the above facilities.

b. Direct Collection in respect of

- Market fee-daily for vegetable market;
- Market fee –weekly vegetable/animals/fish
- Fees for bays in bus stand
- Fees on pay & use toilets

and in such cases:

- service provider is the applicant.
- Service is
 - allowing farmers/Merchant, who are service recipients to use the infrastructure in respect of daily/weekly Markets;
 - allowing parking of bus by bus-owners/Govt. Transport Department, who are service recipients, in the bays in bus stand.
 - allowing the public, who are service recipients to use the toilet
- consideration is the fee charged by the applicant from the service recipients for use of the facilities/infrastructure

2.3 They have stated that they extend three years **tender contracts** by tender notice for the purpose of

- collection of entrance fee from Parks & for running a small stall for selling tea, snacks and ice-cream inside the park;
- collection of Market fees – daily for Vegetable market
- collection of Market fees – weekly for vegetables/animals/fish
- collection of fee for running a fish market - right to sell fish from shops allotted in a particular area
- collection of Fees for bays in bus stand

- Bus-stand -others - charges for of TV advt. in bus-stand; locker rent provided in bus-stand;
- collection of fees for using the Bunk stall for the purpose of shop
- collection of Slaughter house fees
- collection of Fees on pay & use toilets
- Cycle stand, scooter, auto/scooter two -wheeler stand in bus stand and in such cases:
- service provider is the applicant.
- Service is allowing the tender contractor who succeeded in the tender process and who is the service recipient:
 - the right to use the fees as per the prescribed conditions of tender in respect of fees from Park; Market fee-daily & weekly; right to sell fish from the shops allotted in a particular area as per the prescribed conditions of tender;
 - right to use the fees as per the prescribed conditions in the tender in respect of fess from parking bus-bays in bus-stand; bunk stall fees; slaughter house fees; Pay & use toilets; Cycle stand, scooter, auto/scooter two-wheeler stand in bus stand;
 - the right to use the advertisement through TV in the bus stand;
 - the right to use the collection of rent of locker in the bus stand;
- Consideration is the amount determined and confirmed in the tender process (One of the main condition is the amount realized from the public should be as per the amount prescribed by the Municipal Corporation)

2.4 They have stated that they collect Charges towards

(1) cutting, repairing & rectification of roads and

(2) payment of annual rent for the optical cable laid alongside roads

based on Contract in which the applicant is the service provider, the operator of phone/mobile services is the service recipient. The claim is as to whether the whole service can be treated as renting of immovable property service as composite supply and reverse charge can be applied since the service recipients are registered with GSTN and the service provider is a local authority.

2.5 On the renting of immovable property(Shopping complex etc.)/Lease of land/Community Hall, they have stated that they have rendered the renting services to persons registered under GST and the liability to pay the tax is as per

Reverse Charge on the service recipient whereas the applicant has stated to have collected GST under direct charge instead of reverse charge w.e.f 25.01.2018 and has sought if this can be regularised

2.6 They have further stated that they have rented immovable property to

- (i) to state Govt.(viz) state tax, police, local fund audit, ration shops
- (ii) to Central Govt . (viz) Post office etc
- (iii) to Co-operative society(viz) transport corporation TNSTC, SIDCO, Pollution Control Board, Common Effluent Treatment Plants
- (v) Nationalised Banks and General Insurance Companies

and has sought to know whether full exemption is applicable as per Sl.No. 8 of Notification No. 12/2017-C.T.(Rate) dated 28.06.2017

3.1 The applicant on their interpretation of law, has referred to

- the definitions of “Principal”, under Section 2(88); “agent” under Section 2(5); “Consideration” under Section 2(31); “Supplier” under Section 2(105); “Taxable Supply” under Section 2(108) of the GST Act.
- Schedule I of the CGST Act 2017 relating to Supply of Goods by a Principal to his agent/ by an agent to the Principal
- Section 7 (2) of CGST Act 2017
- Notification No. 14/2017-C.T.(Rate) dated 28th June 2017
- The functions entrusted to a municipality under the Twelfth Schedule to Article 243 W of the Constitution
- Section 270-B, 374, 358, 359 of the Tamil Nadu District Municipalities Act 1920

3.2 They have stated that in general, their activities under consideration are purely on public interest and are undertaken as mandatory and statutory functions. It could not to be treated as a service as per the Notfn. No. 14/2017. Therefore, such activities assigned to and performed by a sovereign / public authority under the provisions of any law, could not be treated as taxable service. Any amount / fee collected for such activity could not to be treated as consideration for the purpose of levy of GST.

3.3 On the activity specific, in respect of the activities directly undertaken by them, they have stated that:

- As per **Notification No. 14/2017-Central Tax (Rate)** New Delhi, the 28th June, 2017 "Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution or to a Municipality under article 243W of the Constitution" is not a service. Hence it is not chargeable to tax.
- Even if an argument is placed that it is a service, it is exempted as per Sl No 4 of Notfn No 12/2017 dated 29-06-2017 as amended which states that Services by governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution is NIL.

The applicant has stated the relevant head under which the activities are covered as per the entries in the Twelfth Schedule to Article 243 W of the Constitution along with activity specific exemptions, as under:

- **Fees from Parks-** - Maintenance of park is covered under (l) of Twelfth Schedule to Article 243W of the Constitution which reads as follows :
 - (l) *Provision of urban amenities and facilities such as parks, gardens, playgrounds.*
- **Market fee-daily & Market fee-weekly** - Market fee is covered under (c),(i) and (l) of Twelfth Schedule to Article 243W of the Constitution which reads as follows :
 - (c) *Planning for economic and social development*
 - (i) *Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.*
 - (l) *Provision of urban amenities and facilities such as parks, gardens, playgrounds.*

As per Sl no 24 of the table to Notification No. 11/2017-C.T. (Rate), dated 28.06.2017 as amended it is a support service and hence it is fully exempted

- **Fees for Bays in Bus stand** (bus stand entrance fee collection) – covered under (q) & (l) of Twelfth Schedule to Article 243 W of the Constitution which reads as follows :
 - (q) *Public amenities including street lighting, parking lots, bus stops and public conveniences*
 - (l) *Provision of urban amenities and facilities such as parks, gardens, playgrounds.*
- **Bus Stand -Others-**

- **Locker Rent** - covered under (l) of Twelfth Schedule to Article 243W of the Constitution which reads as follows :

(l) Provision of urban amenities and facilities such as parks, gardens, playgrounds.

- **Slaughter house fees:-** Maintenance of slaughter house are covered under (r) of the Twelfth Schedule to Article 243 W of the Constitution which reads as follows:

(r) Regulation of slaughter houses and tanneries

Further exempted vide Sl.No. 56 of Notfn. No. 12/2017-C.T.(Rate) as amended.

- **Fees on Pay & use toilets** – is covered under (q) of Twelfth Schedule to Article 243 W of the Constitution which reads as follows:

q) Public amenities including street lighting, parking lots, bus stops and public conveniences

- **Fee for Parking and entry fee for vehicle in bus stand-cycle stand, scooter, auto/scooter two wheeler stand in bus stand** is covered under (q) of Twelfth Schedule to Article 243W of the Constitution which reads as follows :

q) Public amenities including street lighting, parking lots, bus stops and public conveniences

3.4 On the activities when tendered to successful bidder and undertaken by the successful bidder, the applicant has stated that :

Even if an argument placed that service has been rendered by the municipal corporation to contractors, it is submitted that it is not a taxable service due to the following reasons. On combined reading of CGST Act, 2017 with The Tamil Nadu District Municipalities Act, 1920 it is a fact that the contractors of municipal corporation are public servants and the services rendered by the municipal corporation to the contractors (public servants) could not be termed as service and the contractors could not be termed as business entities but they are agents of the municipality as per the definition under Section 2(5) and Section 2(105) of the CGST Act 2017. Hence the collection and maintenance work entrusted by the municipality to the contractors could not be termed as service since it is arrangement between principal and agent (ie) in this case Govt. and public servant and amount paid by the contractor to Govt. towards rendering of work entrusted under Section 374 and other provisions of the Tamil Nadu District Municipalities Act, 1920 and the functions entrusted to a municipality under the twelfth schedule to article 243W of the constitution could not be termed as service. As there is

no service the question of payment of GST will not arise on all those lease contracts since the rate fixed by Govt. was adopted and the service was rendered by the contractor to the public in the name of the local authority and receipt has been issued in the name of the local authority to the public.

3.5 Apart from the general contention, as above in respect of the activities undertaken entirely through contractors, the applicant has stated as follows:

- Fish Market(Weekly)– As per the functions entrusted to a Panchayat under the Eleventh Schedule to Article 243 G of the Constitution, Entry (v) states 'Fisheries'. As per Sl.No. 5 to Notification No. 12/2017-C.T.(Rate) dated 28.06.2017 and Notfn No. 14/2017-C.T.(Rate), this activity is exempted as they are doing the activity of Panchayat; Further the service is exempted as per the departmental clarification on Agriculture, forestry, fishing and Animal husbandry support services; As per Sl.No. 24 of Notification No. 11/2017-C.T.(Rate), it is a support service and hence it is fully exempted
- Bus stand-others-TV Advt in bus Stand: As per entry Sl.No. 7 of Notfn. No. 12/2017-C.T. (Rate) dated 28.06.2017, the services provided by the applicant to the business entity whose aggregate turnover is less than exemption limits in the preceding financial year the GST chargeable is 'NIL' subject to the conditions specified therein and even if an argument is placed that it is chargeable to tax, it is chargeable under reverse charge as per Sl.No. 5 of Notification No. 13/2017-C.T.(Rate) dated 28.06.2017
- Bunk Stall – It could not be termed as immovable property. As per entry Sl.No. 7 of Notfn. No. 12/2017-C.T. (Rate) dated 28.06.2017, the services provided by the applicant to the business entity whose aggregate turnover is less than exemption limits in the preceding financial year the GST chargeable is 'NIL' subject to the conditions specified therein.

3.6 Renting of Immovable Property(shopping complex), Lease of land, Community hall(Mandap keeper service) – The said services were under direct charge w.e.f 01.07.2017 and an amendment under Sl.No.5A was effected w.e.f 25.01.2018 vide Notification No.03/2018-CT(Rate) dated 25.01.2018 in Notification 13/2017 CT(Rate) dated 28.06.2017. They have stated that the said amendment was not implemented and they continued to collect GST under direct charge and paid the same to Government i.e the service rendered by them had suffered tax but it was not discharged by the service availer as per the Notification. They have

submitted that they felt there is no need to collect GST from Service availer once again and the lapse can be condoned and regularised in future.

3.7 **Rent on building-Residential purpose:** The amount realised relates to renting of residential dwelling for use by the officers of State Government which is covered under full exemption by way of renting of residential dwelling for use as residence under Sl.No.12 of Notfn 12/2017 CT(rate) dated 28.06.2017

3.8 **Annual Track rent – Cable operator laying fee** – Two charges are collected (i) road cutting charges towards laying of cable; (ii) renting of road for the optical cables laid. They have stated that, in this case, as per Section 2(30) the supply for which charges collected is a 'Composite Supply', the principal supply being renting of space for laying cable, the whole service has to be classified as renting of immovable property service. As per Sl no 5A of the table to **Notification No. 13/2017- Central Tax (Rate)** New Delhi, the 28th June, 2017 the telephone companies who are registered with GSTN have to pay GST under reverse charge.

3.9 **Renting of immovable property service to another central /state Govt Departments** - As per Sl No 8 of the table to Notfn No12/2017 central tax (rate) dated 28-06-2017 as amended the renting of immovable property service rendered by them as a local authority to pure state Govt. offices (viz) Asst. Director Of L F Accounts, Police Department, ration shops, State Tax and Central Govt offices (viz) Central Tax are fully exempted. The renting of immovable property service rendered by them as a local authority to Co-operative society, TNSTC, Office of Pollution Control Board, SIDCO, TWAD Board are not exempted but chargeable to tax since the Co-operative society, transport corporation TNSTC, Office of Pollution Control Board, SIDCO, TWAD Board are covered under the definition of Government Entity only and they are not State Govt. General Insurance Companies (Viz) New India Insurance Co. Ltd and Banks are not central Govt. and so the services rendered to them are not exempted but chargeable to tax.

4.1 Due to prevailing pandemic, the applicant was addressed through their e-mail seeking their willingness to participate in the hearing in the digital mode. The applicant consented and the authorized representatives appeared for virtual Hearing on 17.09.2020. They furnished a written submission through email which was taken on record. The authorized representative reiterated the submissions made along with the application and that mailed. It was intimated that of the

questions on which ruling is sought, question relating to activity at Sl.No. 10 to 12 of Annexure A is not admissible as the same is not in the purview of the authority. The applicant acceded to this.

The applicant was asked to furnish-Details of invoice/bills raised for each activity of 1 to 9 with any resolutions, guidance note, G.O; Details of agreement, rent receipt, collection mechanism in respect of SL.No.13 rent on building residential purposes; Details of contracts(Samples)/invoices with specifics and any G.O or other regulations for Sl.No14; Sl.No.15-Rent agreements/receipts with specific details for which exemption is claimed along with constitution of tenants to establish the eligibility to exemption.

4.2 In the written submissions made during the virtual hearing, the applicant submitted the table given in para 1 with a column specifying the entry under the Twelfth Schedule of the Constitution under which they claim that the said activity is covered as under:

Sl. No	Description of the service	Entry of Twelfth Schedule under which the service is covered
A	B	C
1	Fee from parks	(l) of 243W
2	Market fee-daily	(xxii) of 243 G
3	(i)Market fee –weekly (ii) Running a Fish market	(xxii) of 243 G (v) of 243 G & (xxii) of 243 G
4	Fees for bays in bus stand (bus stand entrance fee collection)	(q) of 243 W
5	Bus –stand (others) A) charges for of TV advt. in bus-stand (B) locker rent provided in bus-stand	NA (l) of 243 W
6	Bunk stalls	(xvi) & (xxviii) of 243 G
7	Slaughter house fees	(r) of 243 W
8	Fees on pay &use toilets	(q) of 243 W

9	For entry vehicle in the bus stand- two wheeler stand	(I)of 243 W and (xxii) of 243 G
10	Renting of immovable property (Shopping complex)	NA
11	Lease of land	NA
12	Community hall	NA
13	Rent on building -residential purpose	
14	annual track rent -Cable operator laying fee(optical fibre laying fee)	NA
15	Renting of immovable property	NA

The applicant has stated that

- they are a local authority in which they are engaged as public authority and rendered the above services as listed in the above table Sl.No. 1 to 9 except 5A, by way of any activity in relation to a function entrusted to a Panchayat under Article 243 G of the Constitution or to a Municipality under Article 243 W of the Constitution and hence exempted as per Notification No. 14/2017-C.T.(Rate) dated 28.06.2017.
- there is no restriction to do the services listed in 243 G as a public authority
- As per the Notfn No. 14/2017-C.T.(Rate), when it is neither treated as supply of goods nor a supply of service the question of levy of GST will not arise and the services listed in the table from Sl.No.1 to Sl.No.9 (except Sl.No. 5A) are not treated as supply of service and it is not at all chargeable to GST when either done by them directly or through tender contractors.
- Even if the functions are treated as service, they are exempted as per Notfn No. 11/2017, 12/2017
- When the service itself is exempted, it is not chargeable to GST when either done by them or through tender contractors since it is a function under 243W as well as 243G.
- As per Schedule I of CGST 2017, Supply of goods from the Principal to agent are treated as supply but it is not applicable in the case of supply of service.
- Their contractors/agents are public servants as per the Tamil Nadu District Municipalities Act 1920. Hence full exemption is applicable for the services rendered by them through tender contractors also in respect of Sl.No.1 to 9 of the table.

4.3 The applicant on 12/10/2020, submitted the following documents:

- ORDER -IN-ORIGINAL ORDER Sl.No.05/2019-COMMR dated 28.05.2019 issued by the Principal Commissioner of GST & Central Excise, Coimbatore
- Form SVLDRS-1, its acknowledgement, Form SVLDRS-3, Form-SVLDRS-4(Discharge Certificate)
- Circular No.13052/2016/D2 dated 03.05.2017 issued by the Commissioner of Municipal Corporation- The circular refers to GOI, Ministry of Finance, Notification 25/2012 Service tax -clause 39 -dated 20.06.2012.

4.4 The applicant submitted the following documents on 23.11.2020

- Lease agreement dated 04.06.2018 entered between the applicant and the Tamilnadu Industrial Investment Corporation for leasing the premises in II floor, Kumaran Shopping complex, Tirupur which is owned by the applicant
- The tender documents for the years 2017-2018, 2019-2022 containing the conditions of tender/contract/lease covering most of the services rendered by the Municipality including Sl.No.1,2,3(i)&(ii),4,5A&B,7,8,9 is submitted
- Sample contract orders in respect of Fee on Pay & use toilet, Fee for running fish market, Market fee-Weekly, Slaughter house fee, Fees for bays in bus stand fee, Fee from parks
- Sample allotment letter for Slaughter house activity
- Sample token issued in the name of Municipality for Market fee daily, fee for bays in bus stand .

4.5 On perusal of the details furnished, it was seen that the following were not furnished and the applicant were asked to furnish the same vide letter dated 09.12.2020:

- They have furnished sample allotment letter in respect of Slaughter House activity (Sl.No.7). It may be confirmed whether in respect of all activities for which ruling is sought, the allotment letter to the successful bidder has the same terms & conditions as in the above allotment letter, if not sample allotment letter for other activities may be furnished.
- Lease agreement with Tamilnadu Industrial Investment Corporation (TIIC) has been furnished. It may be confirmed whether the lease contracts entered upon with other State/ Central Government offices, Public Sector Undertaking mentioned in Sl.No.15 of their ARA application has the same terms & conditions as in the above cited lease agreement, if not sample lease

agreement for each class of tenant may be furnished. Further, sample rent receipts may also be furnished.

- The work order submitted in respect of activity mentioned in Sl.No.14 it is seen that the work order issued by Erode Corporation is submitted. The document corresponding to Tirupur City Corporation may be furnished. Further, details of Account Head under which the income for the activity (Sl.No.14) is accounted along with trail of accounts maintained is required for decision.
- The applicant was also asked whether they wished to be heard again virtually.

4.5 The applicant vide their letter dated 12.01.2021 received on 22.01.2021 submitted that

- The terms and conditions in the allotment letters are the same. Sample copies of allotment letters for pay and use toilets, fee from parks, acceptance letter of contractor for market fee weekly, fee from parks, tender advertisement copy, rental collection receipts for market fee daily, fee from park, pay and use toilet, market fee weekly.
- They have confirmed that the lease contract entered with other state/central/public sector undertakings are with the same terms and conditions similar to lease agreement of TIIC.
- Sample copies of cable laying allotment letter are attached. They have also submitted that cable operator fee optical fibre laying fee is accounted under head 1100, road cutting charges are accounted under accounting head 1041.

They stated that based on the available document and written & oral submissions advance ruling may be pronounced and if any further clarification is required a hearing in digital mode may be extended.

5.1 The applicant is under the administrative control of State authorities. The Assistant Commissioner, Tirupur Assessment Circle vide their Ref. No. 510/2020/A1. Dated 26.08.2020, submitted that there is no show cause notice issued against the applicant on the issue raised in their application.

5.2 The Central Jurisdictional authority was asked to furnish comments on the issue raised in the Advance Ruling application of the applicant. The central Jurisdictional authority vide their letter dated 04.08.2020 submitted that the applicant is under the administrative control of the state authorities. However, prior

to GST, the assessee had one case of non-payment of service tax and non-filing of ST-3 return under the category of "Renting of Immovable property service". The SCN was issued by DGCEI and adjudicated. The assessee had filed an application under SVLDRS (LD2611190000311) and their application was accepted and discharge Certificate (SVLDRS 4) was also issued. Further in response to the letter issued by the Authority for Advance Ruling, seeking the details of SCN issued in the applicants case, the Central Jurisdictional authority vide their letter dated 11.09.2020 submitted the following documents.

- SCN No.18/2018 (ST) dated 25.04.2018 issued by DGGSTI, Coimbatore Zonal Unit
- ORDER -IN-ORIGINAL ORDER Sl.No.05/2019-COMMR dated 28.05.2019 issued by the Principal Commissioner of GST & Central Excise, Coimbatore
- Form No.SVLDRS-4.

6. We have carefully examined the Statement of facts; Supporting documents filed by the Applicant, submissions made during & after hearing and the comments of the Jurisdictional Officers. The facts as available before us is that the applicant is a 'Municipality' as defined in clause (e) of article 243 P of the Constitution and has stated to be covered under the definition of 'Local Authority' as defined under Section 2(69) of the CGST Act 2017. They are rendering the following functions directly as well as through contractors(through tender process)and collecting (1) Fee from parks; (2)Market fee-daily; (3)(i) Market fee -weekly,(ii)Fish Market weekly; (4) Fee for bays in bus stand; (5) Bus Stand Others (A) Charges for TV Advt in bus-stand (B) Locker rent provided in bus stand; (6) Bunk stalls; (7) Slaughter House fees; (8) Fees for pay and use toilets bus stand and other common places; (9) Fee for entry vehicle in bus stand-two wheeler stand; (10)Renting of immovable property(Shopping complex); (11) Lease of land; (12) Community hall; (13)Rent on building residential purpose; (14) Annual track rent-cable operator laying fee(optical fiber laying fee); (15) Renting of immovable property. They have stated that they require clarifications whether these activities are covered under Twelfth Schedule of Article 243 W of the constitution so as to claim appropriate exemption under Notfn No. 12/2017 & 14/2017-C.T.(Rate) dated 28.06.2017 as amended. They have sought ruling on the following questions:

Q.1. Advance Ruling is required in respect of Sl.No. 1 to 5, 7 to 9 as whether the services rendered by them are exempted or not under the Notification No. mentioned against each Sl.No.

Q.2 In respect of services rendered by them through tender contractors as mentioned in respect of Sl.No. 1 to 9 are exempted or not under the Notification No. mentioned against each Sl.No.

(ii) In respect of Sl.No.10 to 12 instead of reverse charge we collected tax under direct charge from the service availers who are registered with GSTN w.e.f 25.01.2018 and whether it can be regularized or not.

Q.3. In respect of Sl.No.14 they are collecting charges for laying of cables alongside roads and collecting road cutting charges as well as annual rent. We require advance ruling whether composite supply can be applied or not for classifying the said service as renting of immovable property service and reverse charge can be applied or not for collecting GST as per S.No. 5A of Notification 13/2017 CT(Rate) dated 29.06.2017 as amended form the telephone operators who are GSTN holders.

Q.4. In respect of S.No. 13 full exemption is applicable or not as noted against the Sl.No.

(ii)In respect of S.No. 15 the renting of immovable property service rendered by us as a local authority to

- (i) pure State Govt. Offices (viz) State tax, Police, local fund audit, ration shops are fully exempted nor not as per Sl.No. 8 of Notification 12/2017 dated 28.06.2017.
- (ii) Central Government Offices (viz) post offices are fully exempted nor not as per Sl.No. 8 of Notification 12/2017 dated 28.06.2017.
- (iii) Co.operative society,, transport corporation TNSTC,SIDCO, Pollution Control Board, Common Effluent Treatment Plants are exempted or not as per Sl.No. 8 of Notification 12/2017 dated 28.06.2017.
- (iv) Nationalised Banks and General Insurance Companies are exempted or not as per Sl.No. 8 of Notification 12/2017 dated 28.06.2017

6.2 Of the above questions, Q. No. 2(ii) seeks whether the tax paid by them under Direct charge, when the same is to be paid under Reverse Charge can be condoned as a technical lapse and regularized. Section 97(2) of the CGST Act / Tamil Nadu GST Act (TNGST) gives the scope of Advance Ruling Authority, i.e., the question on which the Advance Ruling can be sought. For ease of reference, the section is reproduced as under:

97 (2) The question on which the advance ruling is sought under this Act, shall be in respect of,—

- (a) classification of any goods or services or both;
- (b) applicability of a notification issued under the provisions of this Act;
- (c) determination of time and value of supply of goods or services or both;
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;
- (e) determination of the liability to pay tax on any goods or services or both;
- (f) whether applicant is required to be registered;
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

The Act limits the Advance Ruling Authority to decide the issues earmarked for it under Section 97(2) and no other issue can be decided by the Advance Ruling Authority. The question at Sl.No.4 seeks regularization of the payment made by them considering the same as a technical lapse, which is not in the purview of this authority as per Section 97 (2) above. This position was explained during the personal hearing and was stated that this question No. 2(ii) is not admissible for consideration. The other questions are taken up for consideration.

7.1 The applicant has sought clarification whether in respect of activities at Sl.No. 1 to 5, 7 to 9, the services rendered by them directly are covered under Twelfth schedule of Article 243 W of the Constitution and/or exempted under the Notfn. No. mentioned therein as under:

Sl. No	Description of the service	Entry of Twelfth Schedule under which the service is covered	Advance ruling is required on the following .whether the services mentioned in Column B are exempted vide Notfn No or Sl No entry of the table to Notfn as noted against each Sl No in Column E.
A	B	C	E
1	Fee from parks	(1) of 243W	Notfn. No14/2017 dt 28-06-2017(or) sl no 4 of 12/2017 dt 28-06-2017
2	Market fee-daily	(xxii) of 243 G	Notfn. No 14/2017 dt28-06-2017(or) sl no 4 of 12/2017 dt 28-06-2017(or) Sl no 24 of the table to Notification No. 11/2017-C.T. (Rate), dated 28-6-2017
3	(i) Market fee –weekly	(xxii) of 243 G	Notfn. No 14/2017 dt28-06-2017or sl no 4 of 12/2017 dt 28-06-2017(or) Sl no 24

			of the table to Notification No. 11/2017-C.T. (Rate), dated 28-6-2017
4	Fees for bays in bus stand (bus stand entrance fee collection)	(q) of 243 W	Notfn. No 14/2017 dt28-06-2017or sl no 4 of 12/2017 dt 28-06-2017
5	Bus –stand (others) A) charges for of TV advt. in bus-stand (B) locker rent provided in bus-stand	NA (l) of 243 W	A. Exempted vide Sl No 7 of Notfn. No 12/2017 (or) payment of tax under reverse charge under sl no 5 of Notfn. No 13/2017-Central Tax (Rate) dated the 28th June, 2017 B. Notfn No 14/2017 dt28-06-2017or sl no 4 of 12/2017 dt 28-06-2017.
7	Slaughter house fees	(r) of 243 W	Notfn No 14/2017 dt28-06-2017or sl no 56 of Notfn. No 12/2017 dt 28-06-2017.
8	Fees on pay &use toilets	(q) of 243 W	Notfn No 14/2017 dt28-06-2017(or) sl no 76 of Notfn. No 12/2017 dt 28-06-2017.
9	For parking & entry vehicle in the bus-stand	(l)of 243 W and (xxii) of 243 G	Notfn No 14/2017 dt28-06-2017(or) sl no 4 of Notfn. No 12/2017 dt 28-06-2017.

7.2 From the table above, it is seen that the applicant claims that the activities are those in relation to that listed at (l), (q), (r) of the Twelfth Schedule of the Constitution under Article 243 W/(xxii) of the Eleventh Schedule of the Constitution under Article 243 G. The said entries of the Eleventh and the Twelfth Schedule of the Constitution are as under:

Twelfth Schedule:

(l) *Provision of urban amenities and facilities such as parks, gardens, playgrounds.*

(q) *Public amenities including street lighting, parking lots, bus stops and public conveniences.*

(r) *Regulation of slaughter houses and tanneries*

Eleventh Schedule:

(xxii) *Markets and fairs.*

They claim exemption in respect of all the activities vide Notfn.No.14/2017-C.T.(Rate) dated 28.06.2017(or) Sl.No. 4 of Notfn.No. 12/2017-C.T.(Rate) dated 28.06.2017 apart from certain other specific entries such as Sl.No. 56/76 of Notfn.

No. 12/2017-C.T.(Rate) dated 28.06.2017 and/or sl.no. 24 of Notification no. 11/2017-C.T.(Rate) dated 28.06.2017.

7.3 Notification No. 14/2017 under which exemption is claimed in respect of all the activities where they provide the services directly is examined as under:

Notification No. 14/2017-Central Tax (Rate)

In exercise of the powers conferred by sub-section (2) of section 7 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council hereby notifies that the following activities or transactions undertaken by the Central Government or State Government or Union territory or any local authority in which they are engaged as public authority, shall be treated neither as a supply of goods nor a supply of service, namely:-

“Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution [or to a Municipality under article 243W of the Constitution]².”

The above Notification provides that the activities in relation to a function entrusted to a Panchayat under Article 243 G of the Constitution (effective from 01.07.2017) and the activities in relation to a function entrusted to a Municipality under Article 243 W of the Constitution (effective from 26.07.2018), when undertaken by a ‘Local Authority’ in which they are engaged as public authority, are to be treated as neither supply of goods nor supply of services. Local Authority is defined under Section 2(69) of the GST Act 2017 as:

(69) “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;

.....;

or

(g) a Regional Council constituted under article 371A of the Constitution

Applying the above, to the case at hand, the applicant being a Municipality as defined in clause (e) of article 243 P of the Constitution, is a Local Authority under the GST Act. Therefore, if the services listed at Sl. No. 1 to 6, 8, 9 & 13 are found to be that in relation to the entries of Eleventh/Twelfth Schedule of the Constitution, and the said activities are undertaken by the applicant, a Local authority, when engaged as a ‘Public Authority’, then the said activities are to be treated neither as supply of goods nor supply of services effective from 26.07.2018.

7.4 Alternatively, the applicant has claimed that the services are covered under the exemption at Sl.No. 4 of Notification No. 12/2017-C.T.(Rate) dated 28.06.2017 as amended. The entry Sl.No. 4 is as below:

4	99	<i>Services by local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution</i>	Nil	Nil
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As can be seen, the entry is not applicable in respect of 'Local Authority' effective from 26.07.2018 and stands covered under Notification No. 14/2017-C.T.(Rate) dated 28.06.2017. Further, Governmental Authority as defined under 2(zf) of the Notification No. 12/2017-C.T.(Rate) dated 28.06.2017 effective from 13.10.2017 is as follows:

(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 90per 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.

In the case at hand, the applicant is a Municipality, which is a local authority and is not a Governmental Authority. Therefore, this entry does not have any application to the applicant. Advance Ruling is applicable to the supplies currently being made or proposed to be made as per S.95 of the GST Act. In that count also, the application in hand being filed after 26.07.2018, the date effective which, the words, 'Local Authority' stands omitted, sl.No. 4 of the notification No. 12/2017-C.T.(Rate) dated 28.06.2017 do not have any application and this claim is rejected.

7.5 The various services of the applicant listed at Sl.No. 1 to 5, 7 to 9 and its relevance to the entries under Eleventh Schedule and Twelfth Schedule of the constitution and whether the applicant undertakes such activities when engaged as a public authority so that the activities are covered under Notification No. 14/2017-C.T.(Rate) dated 28.06.2017 as amended are examined as under.

1.Fee from Park – It is stated that the fee is collected for allowing the public, entry to the park maintained by the applicant. As per entry (l) of the Twelfth Schedule above, 'Provision of Urban amenities such as Parks' is a function

bestowed with the Municipality under Article 243 W of the Constitution. The applicant being a local authority is to provide such urban amenities as a public authority. The said fee for allowing the public is a consideration collected by the applicant as a public authority for maintenance of the parks, therefore, the same is in relation to the function- 'Provision of Urban amenities and facilities such as Parks' as per entry (l) of the Twelfth Schedule of the constitution. The said activity when provided by the applicant, as per Notification No. 14/2017 C.T.(Rate) dated 28.06.2017 as amended with effective from 26.07.2018, is neither a supply of goods nor supply of service and not taxable to GST.

2. & 3(i). Market Fees- Daily & Weekly- It is stated that the applicant collects entrance fee from the farmers/Merchants on daily basis for allowing them entry into the market. From the submissions, it is seen that the considerations are for the infrastructure of the shop (thatched shop/ thatched shed/ RC shop/ AC Sheet shed) in the market, open space allotted and the entities (vegetable bundle/ fish basket/ hen/ handcart/ coconut/ leaves bundle/ tomato basket) brought to the market. Providing 'Markets & Fairs' is a function listed at (xxii) of Eleventh Schedule under Article 243 G and the applicant being a local authority is to provide such Markets for the convenience of the Public. The considerations collected based on the infrastructure extended to the farmers/merchants and the entities brought for sale are to convenient the public, wherein the applicant acts as a 'Public authority', in relation to the function 'Markets & Fairs' listed in the Eleventh Schedule. The said activity when provided by the applicant, as per Notification No. 14/2017 C.T.(Rate) dated 28.06.2017, is neither a supply of goods nor supply of service and not taxable to GST.

4. Fees for bays in bus-stand: It is stated that the applicant collects the fees from the bus owners/Govt. transport department for allowing parking of bus on per day basis and they claim the same is in relation to the public amenity listed at (q) of Twelfth Schedule of the Constitution. Entry (q) states - '*Public amenities including street lighting, parking lots, bus stops and public conveniences*'. From the submissions it is seen that the fees are collected for maintenance of bays in bus bus-stand, while providing the said bus-bays for the buses in the bus-stand which is an activity in relation to that stated at (q) of Twelfth Schedule above. The applicant undertakes the above activity as

a public authority and therefore, the said activity when provided by the applicant, is neither a supply of goods nor supply of service as per Notification No. 14/2017-C.T.(Rate) dated 28.06.2017 as amended effective from 26.07.2018.

5. Bus-stand – others: Among the activities listed under this Sl.No., it is stated that only activities against B is undertaken directly by the applicant and therefore only the activity under B is considered for this question

B. Locker rent – It is stated that the lockers are extended for rent for the public. The consideration is collected per bag/suitcase. The applicant has claimed that the activity is in relation to the function stated at (l) of the Twelfth Schedule of the Constitution. Entry at (l) states 'Provision of urban amenities and facilities such as parks, gardens, playgrounds.' Here, the activity is providing Lockers in the Bus-stand which is not in the genre stated in the said entry. Therefore, providing lockers in the Bus-stand is not an activity in relation to the function at (l) of the Twelfth Schedule and hence, Notification No. 14/2017-C.T.(Rate) dated 28.06.2017 as amended is not applicable to this activity.

7. Slaughter house fees: It is stated that the service is allowing the public for the purpose of slaughter of animals. The applicant has stated that the same is in relation to the function at (r) *Regulation of slaughter houses and tanneries* of the Twelfth Schedule of the Constitution. The applicant undertakes the above activity as a public authority and therefore, the said activity when provided by the applicant, is neither a supply of goods nor supply of service as per Notification No. 14/2017-C.T.(Rate) dated 28.06.2017 as amended effective from 26.07.2018.

8. Fees on Pay & use Toilets: The applicant has stated that the activity is allowing the public, use of the toilet. They claim that the activity is in relation to (q) of the Twelfth Schedule of the Constitution, which is '*Public amenities including street lighting, parking lots, bus stops and public conveniences*'. Providing toilets for use of Public in public places is a public amenity of Public conveniences and therefore, allowing use of toilet is an activity in relation to function at (q) of the Twelfth schedule entrusted to a Municipality under Article 243 W. The applicant undertakes the above

activity as a public authority and therefore, the said activity when provided by the applicant, is neither a supply of goods nor supply of service as per Notification No. 14/2017-C.T.(Rate) dated 28.06.2017 as amended effective from 26.07.2018.

9. Cycle Stand, Scooter, Auto/ scooter two wheeler stand in Bus-stand:

The applicant has stated that the activity is allowing public to park cycle/scooter/auto on hourly/daily basis in the bus-stand. The consideration is charged towards maintenance of such facility. They claim that the activity is in relation to the function at (q) of the Twelfth Schedule of the Constitution. *'Public amenities including street lighting, parking lots, bus stops and public conveniences'* is listed at (q) of the said Schedule. The applicant provides parking lots which is an activity specified in the said entry. The applicant undertakes the above activity as a public authority and therefore, the said activity when provided by the applicant, is neither a supply of goods nor supply of service as per Notification No. 14/2017-C.T.(Rate) dated 28.06.2017 as amended effective from 26.07.2018.

7.6 In view of the above, we hold that the activity (1) Fee from Parks; (2) Market fee-daily; (3)(i) Market fee-weekly; (4) Fees for bays in bus-stand; (7) Slaughter house fees; (8) Fees on pay & use toilets; (9) - Cycle stand, Scooter, auto stand in the bus-stand are activities in relation to functions entrusted under Article 243 G and Article 243 W of the Constitution and are treated as neither supply of goods nor services when provided by the applicant as 'Public authority' as per Notification No. 14/2017-C.T.(Rate) dated 28.06.2017 as amended vide Notification No. 16/2018 dated 26.07.2018. In respect of activity 5(B) Locker Rent in the bus-stand, the activity is not in relation to the functions entrusted under Article 243 G and 243 W of the Constitution and therefore is treated as 'Services' and Locker Rent is liable to GST.

8.1 In respect of Q.No. 2 above, the applicant has sought ruling as to whether in respect of the services rendered by them from Sl No 1 to 9 through tender contractors, they are covered under Twelfth Schedule to Article 243W of the Constitution and/or exempted vide the Notfn. no. mentioned against each Sl No. In this question, the applicant seeks the eligibility of the exemption notification, when the services/activities are provided by the contractors, to whom the right to collect

the consideration from the service recipients is supplied by the applicant through the tender process. Their contention in this claim is that

- On combined reading of CGST Act, 2017 with The Tamil Nadu District Municipalities Act, 1920, the contractors of municipal corporation are public servants and the services rendered by the municipal corporation to the contractors (public servants) could not be termed as service and the contractors could not be termed as business entities but they are agents of the municipality as per the definition under Section 2(5) and Section 2(105) of the CGST Act 2017. Hence the collection and maintenance work entrusted by the municipality to the contractors could not be termed as service since it is arrangement between principal and agent (ie) in this case Govt. and public servant and amount paid by the contractor to Govt. towards rendering of work entrusted under Section 374 and other provisions of the Tamil Nadu District Municipalities Act, 1920 and the functions entrusted to a municipality under the twelfth schedule to article 243W of the constitution could not be termed as service.
- As there is no service the question of payment of GST will not arise on all those lease contracts since the rate fixed by Govt. was adopted and the service was rendered by the contractor to the public in the name of the local authority and receipt has been issued in the name of the local authority to the public.

8.2 The relevant statutory provisions referred by the applicant are examined as under:

Section 358 of the Tamilnadu District Municipalities Act, 1920 states as:

358. Application of term 'public servant' to municipal officers, agents and sub-agents .— Every municipal officer or servant, every contractor or agent for the collection of any municipal tax, fee or other sum due to the Municipal Council and every person employed by any such contractor or agent for the collection of such tax, fee or sum shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code (Central Act XLV of 1860).

Section 21 of the Indian Penal Code is as below:

21. "Public servant".—The words "public servant" denote a person falling under any of the descriptions hereinafter following; namely:—

.....;

[(Twelfth) —Every person—

(a) in the service Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).

Explanation 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

‘Public Servant’ is to be understood as every person who is in actual possession of the situation of a public servant, whatever, the legal defect there may be in his right to hold that situation as per the Indian Penal Code; and the Tamilnadu District Municipalities Act 1920, under S.358 provides that every contractor or agent for collection of any fees shall be deemed to be a public servant. The applicant on reading the above provisions, contends that the contractor who has been awarded the right to collect the various fees instituted by the applicant is a Public servant and they cannot be termed as business entities.

8.3 In the case at hand, from the terms of the tender documents and the contract agreements furnished before us, we find that the contractors are vested with the right to collect the fees fixed by the applicant for various activities through a tender process. The eligible persons/entities submit their bid for every activity and the person/entity who is the highest bidder and satisfies all the tender condition is awarded the contract. The contractor then enters into an agreement with the applicant. On entering into the agreement and paying the bid amount to the applicant, the contractor holds the actual possession of the situation in respect of the activity covered in the said contract and is a public servant only for the purposes of ‘Tamilnadu District Municipalities Act’, through which the contractor is legally enabled to collect the fees fixed for various activities, for which he had successful won the tender. This being the situation, the claim of the applicant that the service provided by them to such contractors could not be termed as ‘Service’ is without any merit and is not accepted.

8.4 The applicant has further contended that the contractors are not business entities but are agents of the Municipality as per the definition under Section 2(5) and 2(105) of the GST Act. Section 2(5) of GST Act 2017 defines agent as

(5) "agent" means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another;

Thus, a person who carries on the business of supply of service on behalf of another is defined as 'agent'. Section 2 (105) of the GST Act, defines supplier as:

(105) "supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;

In the case at hand, the criteria for the contractors to be termed as 'agent' of the applicant is when the contractors act on behalf of the applicant, i.e., when such contractors are assigned only the collection of the fees fixed by them and remittance of the same to the applicant. On perusal of the various conditions of the tender Documents and the contracts, it is seen that the contract is awarded to the successful bidder for a period of three years. The rates at which various fees are to be collected item-wise are fixed by the applicant. The successful bidder, irrespective of the fees/ charges collected by him is to pay the applicant, a fixed sum based on which the contractor was declared successful in the bid. Also, there are conditions in the tender document that the amount declared by the successful contractor is to be paid by him to the applicant, irrespective of any defaulting conditions relating to affecting the collection of fees fixed for the said amenity, that may prevail. Thus, it is seen that once the tender process is completed, with the contractor entering into the agreement with the applicant and on paying the sum bided in the tender, the possession of the situation is given to the contractor and thereupon the entire control of the said situation is shifted to tender contractors and the applicant do not hold any control over the transferred situation. In the case of agent- principal relationship in a transaction, the entire control over the transactions are well with the principal and not in the hands of agents and the agents merely act as intermediary between the customer and principal for certain commission which is not the case in hand. The tender is floated to enable the business entities to participate for a fee, and the person who bids a high price for such tender, i.e., collection of fees fixed by the applicant for the various public amenities is awarded the contract for a period of three years. The applicant, in the case at hand, supplies the right of collection of fees fixed by them for such amenities to the successful contractor and receives a fixed consideration, which is independent of the fees collected by the said contractor from the said

amenity/activity and it is definitely a supply of service. For these reasons, the contractors do not fall under the definition of 'agents' defined in the GST Act. Thus, for the purposes of GST, we hold that the contractors of the applicant, though, are 'Public Servants' for the purposes of collection of the fees fixed by the applicant under the Tamilnadu District Municipalities Act 1920, are not mere agents undertaking the collection of fees fixed by the applicant but are independent business entities who have been supplied with the 'right to collect the fees' for the various amenities based on the tender conditions. The claim of applicant that the tender contractors are to be considered as agents as in the principle-agent relationship is not acceptable and rejected.

8.5 In this scenario, the ruling sought on whether in respect of services rendered by them from Sl No 1 to 9 through tender contractors are covered under Twelfth Schedule to Article 243W of the Constitution and/or exempted vide the Notfn. no. mentioned against each Sl No is taken up for consideration. As brought out in para 8.4 above, the applicant supplies the 'Right to collect the fees/right to sell in the fishing market' in respect of the various activities from Sl.No. 1 to 9 in the table mentioned at Para 1 above. Supply of Rights held by the applicant to the contractors through the tender process is a supply made by the applicant to the contractors, who are business entities for furtherance of their business and is not an activity in relation to the functions entrusted under Article 243 G/243W and therefore the considerations received from the successful contractors are liable to tax.

8.6 On the question whether in respect of the services rendered by them from Sl.No. 1 to 13 through tender contractors are covered under Twelfth schedule to Article 243 W of the Constitution and /or exempted, it has been brought out clearly that the contractors are not agents. The service provided by the applicant to the contractors are 'Supply of rights' as discussed in para 8.5 above. The activity entrusted through the contracts by the applicant are undertaken by the contractors and in such cases, the contractors of the applicant are the suppliers of the said services to the service recipients. Section 95 (a) of CGST and TNGST Act defines 'Advance Ruling' as

(a) "advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;

Thus, a person can seek ruling only on the supplies being undertaken or proposed to be undertaken by him and cannot seek ruling on the supplies being made or proposed to be made by any other person. Moreover, the ruling pronounced by this authority is binding only on applicant and Jurisdictional Officer and not on any other person. Therefore, the GST law empowers the Advance Ruling Authority to issue ruling for the issues/matter/questions relating to the applicant only. Hence, we hold that the contractors being not 'agents of the applicant and the applicant supplying the 'Right to undertake certain activities' to the contractors, who are independent entities, the Question raised by the applicant with regard to supply undertaken by their contractors is not answered as per S.95(a) readwith S.103(1) of the GST Act.

9.1 The Q.No.3 raised before us is in respect of Sl No 14, Annual track rent-Cable Operator laying fee (optical fiber laying fee). It is stated that they are collecting charges for laying of cables alongside roads and collecting road cutting charges as well as annual rent. They require ruling whether composite supply can be applied for classifying the said service as renting of immovable property service and reverse charge can be applied for collecting GST as per entry Sl No 5A of the table to Notfn No 13/2017 (CE rate) dated 29-06-2017 as amended from the telephone operators who are GSTIN holders

9.2 The applicant has stated that there are two charges collected (i) road cutting charges towards laying of cable and (ii) renting of road for the optical cables. Their claim is renting of space for laying cable is the principal supply and therefore applying the definition of 'composite Supply' under S.2(30) of the GST Act, road cutting charges has to be treated as renting and the whole service has to be classified as renting of immovable property.

9.3 On perusal of the document C1/2715/2017 dated 02.04.2018 issued to M/s. JIO digital, it is seen that permission is granted to lay OFC cable alongside the length of road, on payment of Road Cutting Charges and annual track rent charges. It is further stated that the Track rent is accounted under Accounting head 1110 and the Road cutting charges (Road restoration) is accounted under Accounting head 1041. From the above, it is evident that while Annual Track rent is a recurring charge to be paid by the service recipient, the Road cutting charges (Road restoration) is a onetime charge collected while laying the OFC initially.

9.4 Section 2(30) of the GST Act 2017 states that

“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;

Thus, for a supply to be a ‘Composite supply’ it should consist of two or more supplies which are naturally bundled and supplied in conjunction with each other in the ordinary course of business. In the case at hand, the ‘Road Cut charges’ are one-time charges collected initially while OFC is permitted to be laid and the Annual Track charges are periodical charges collected by the applicant from the service recipients. Both these charges are collected from the same service recipient (i) for allowing the cutting of road for laying the OFC and (ii) for allowing the space of road to be used for the OFC lines. While the Road cutting is a one-time supply, the rental charges are periodical. Thus, it is evident that both these supplies are not supplied in conjunction with each other in the ordinary course of business and therefore the same is not a ‘Composite supply’.

9.5 In view of the above, we hold that the supply of allowing the road cut for laying the OFC and allowing the space alongside the road for the OFC lines are not ‘composite supply’ in as much as these two supplies are not made in conjunction with each other in the ordinary course of business.

10.1 The Q.No. 4 raised before us is in respect of S.No. 13- renting of building- Residential purpose. It is stated that the rent is being recovered from the salary of the employee and the applicant has claimed full exemption as per Sl.No. 12 of Notification No. 12/2017-C.T.(Rate) dated 28.06.2017. The applicant has not furnished any other particulars /documents with regard to this activity. They were specifically asked to furnish the collection mechanism in respect of this activity during the hearing, which is not furnished.

10.2 Sl.No. 12 of Notification No. 12/2017-C.T.(Rate) dated 28.06.2017 is as follows:

12	Heading 9963 or Heading 9972	Services by way of renting of residential dwelling for use as residence.	Nil	Nil
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The above entry exempts services by way of renting of residential dwelling for use as residence without imposing any conditions. In the case at hand, the exemption provided in the said entry will be applicable to the applicant, in case of the applicant providing the 'residential dwellings' owned by them for use as residence.

11.1 The final question to be considered is whether the renting of immovable property service rendered by them as a local authority to

- (i) Pure state Govt. offices (viz) Asst. Director Of L F Accounts, Project Officer, ICDS, ICDS Centre: Deputy Supt. Of Police and pure Central Govt offices (viz) post offices; (ii) Co-operative society(viz) Chindhamani Super Market, Jeeva Co-Op Society, TNSTC Staff Society, Jeeva Co-Op Society and transport corporation TNSTC; and iii) Nationalised Banks

are fully exempted or not as per entry Sl no 8 of the table to Notfn. No 12/2017 dated 28-06-2017.

11.2 The applicant in their submissions has stated that the Renting of Immovable Property service rendered by them as a local authority to State Govt. offices and Central Govt offices are fully exempted. The renting of immovable property service rendered by them as a local authority to Co-operative society are not exempted but chargeable to tax since the society and transport corporation TNSTC are covered under the definition of Government Entity only and they are not State Govt. Nationalised Banks are not central Govt. and so the services rendered to them are not exempted but chargeable to tax.

11.3 From the Lease Agreement executed on the 4th day of June 2020, it is seen that the applicant has leased a part of the premises owned by them to the 'The Tamilnadu Industrial Investment Corporation Ltd' for a monthly rent. Also, from the rental receipt copies furnished by the applicant, it is seen that the premises is leased on monthly rental basis. The nature of supply is 'Renting of immovable property' as claimed by the applicant. The issue to be decided is whether the exemption under Sl.No. 8 of the Notification No. 12/2017-C.T.(Rate) dated 28.06.2017 is applicable to such supplies.

11.4 The entry at Sl.No.8 of the Notification No. 12/2017-C.T.(Rate) is as follows:

8	Chapter 99	<p>Services provided by the Central Government, State Government, Union territory or local authority to another Central Government, State Government, Union territory or local authority:</p> <p>Provided that nothing contained in this entry shall apply to services-</p> <p>(i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;</p> <p>(ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(iii) of transport of goods or passengers.</p>	Nil	Nil
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From the above, it is seen that any service provided by Central Government, State Government, Union territory or a local authority to another Central Government, State Government, Union territory or local authority, which is not included in the Proviso therein, is exempted under the said entry. In the case at hand, the applicant is a 'Local Authority' and therefore, the service of Renting of Immovable Property service, supplied to Central Government, State Government are exempted vide this entry.

11.5 Therefore, renting of immovable property service provided by the applicant to another central/state government, union territory or local authority is exempted from tax as per Sl. No. 8 of Notification 12/2017 dated 28.06.2017. The said exemption is not available in respect of Co-Operative Societies and Nationalised banks.

11. In view of the above, we rule as under,

Ruling

Q.1. Advance ruling is required in respect of Sl No 1 to 5, 7 to 9, as to whether the services rendered by us directly are covered under Twelfth Schedule to Article 243W of the Constitution and /or exempted under the Notfn. No mentioned against each Sl No as detailed below .

Sl. No	Description of the service	Ruling
1	Maintenance of Park	Not a Supply of Service as per Notification. No14/2017 – CT(R) & dt 28-06-2017 as amended vide Notfn. No. 16/2018 dated 26.07.2018
2	Providing Market facilities -daily	Not a Supply of Service as per Notification. No14/2017 – CT(R) & dt 28-06-2017
3	(i)Providing Market facilities -weekly	Not a Supply of Service as per Notification. No14/2017 – CT(R) & dt 28-06-2017
4	Providing bays in bus stand	Not a Supply of Service as per Notification. No14/2017 – CT(R) & dt 28-06-2017 as amended vide Notfn. No. 16/2018 dated 26.07.2018
5	(B) Locker rent facilities	(B)Facility of providing locker for rent directly by the applicant is taxable for the reason that this does not fall under Notification No 14/2017 dt 28-06-2017 and is taxable
7	Providing Slaughter house facilities	Not a Supply of Service as per Notification. No14/2017 – CT(R) & dt 28-06-2017 as amended vide Notfn. No. 16/2018 dated 26.07.2018
8	Providing Toilet facilities	Not a Supply of Service as per Notification. No14/2017 – CT(R) & dt 28-06-2017 as amended vide Notfn. No. 16/2018 dated 26.07.2018
9	Providing stand for cycle, scooter, auto, four wheeler stand in bus stand and other places	Not a Supply of Service as per Notification. No14/2017 – CT(R) & dt 28-06-2017 as amended vide Notfn. No. 16/2018 dated 26.07.2018

Q2. *In respect of services rendered by us from Sl No 1 to 9 through tender contractors whether they are covered under Twelfth Schedule to Article 243W of the Constitution and/or exempted vide the Notfn. no. mentioned against each Sl No.as follows.*

The applicant supplies the 'Right to collect the fees/right to certain amenities' to the contractors and the supply undertaken by the contractors are as per the tender conditions which is an independent supply. The applicability of the Notification to the supplies of the contractors is not answered as per S.95(a) readwith S.103(1) of the GST Act.

Q2(ii) *In respect of Sl No 10 to 12 w.e.f. 25-01-2018, instead of reverse charge we collected tax under direct charge from the service availers who are registered with GSTN and whether it can be regularised.(to be treated as technical lapse and condoned since the service rendered by us had suffered tax and Govt. revenue is not affected)*

The question seeks regularization of the payment made by them considering the same as a technical lapse, which is not in the purview of this authority as per Section 97 (2) and therefore, the question is not admitted under Section 98(2) of the Act

Q.3. *In respect of Sl No 14 we are collecting charges for laying of cables alongside roads and collecting road cutting charges as well as annual rent. We require advance ruling whether composite supply can be applied for classifying the said service as renting of immovable property service and reverse charge can be applied for collecting GST as per entry Sl No 5A of the table to Notfn No 13/2017 (CE rate) dated 29-06-2017 as amended from the telephone operators who are GSTN holders*

Supply of allowing the road cut for laying the OFC and allowing the space alongside the road for the OFC lines are not 'composite supply' as defined under S. 2(30) of the GST Act, 2017 in as much as these two supplies are not made in conjunction with each other in the ordinary course of business. Hence Composite supply cannot be applied for classifying the said service as 'Renting of Immovable property service'

Q.4. *In respect of Sl.No. 13 whether full exemption is applicable or not*

The exemption provided in the entry no. 12 of Notification no. 12/2017-C.T.(Rate) dated 28.06.2017 will be applicable to the applicant, in case of the applicant providing the 'residential dwellings' owned by them for use as residence

Q.4 (ii). *In respect of Sl No 15 the renting of immovable property service rendered by us as a local authority to*

- (i) *Pure state Govt. offices (viz) Asst. Director Of L F Accounts, Project Officer, ICDS, ICDS Centre: Deputy Supt. Of Police and pure Central Govt offices (viz) post offices are fully exempted or not as per entry Sl no 8 of the table to Notfn. No 12/2017 dated 28-06-2017.*
- (ii) *Co-operative society(viz) Chindhamani Super Market, Jeeva Co-Op Society , TNSTC Staff Society, Jeeva Co-Op Society and transport corporation TNSTC are exempted or not as per entry Sl no 8 of the table to Notfn. No 12/2017 dated 28-06-2017.*

(iii) Nationalised Banks are exempted or not as per Sl no 8 of the table to Notfn. No 12/2017 dated 28-06-2017.

Service of renting of immovable property by the applicant to another Central/State government/Union territory or Local authority alone is exempted from tax as per Sl. No. 8 of Notification 12/2017 dated 28.06.2017 and the services of renting of immovable property to other than Central/State Government, Union Territory or Local authority, are not exempted under Sl No. 8 of the table to Notification No.12/2017-C.T.(Rate) dated 28.06.2017.

Shri . Kurinji Selvaan. V.S.,
(Member SGST)

**AUTHORITY FOR
ADVANCE RULING**

28 APR 2021

GOODS AND SERVICE

To

THE Tiruppur City Municipal CORPORATION,
No. 1, Mangalam Road,
Tiruppur

// By RPAD/By e-mail:commr.tiruppur@tn.gov.in//

Shri. B. Senthilvelavan/
(Member CGST)

Copy Submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Principal Secretary/Commissioner of Commercial Taxes/Member,
IIndFloor, Ezhilagam, Chepauk, Chennai - 600 005.

Copy to:

3. The Principal Commissioner of GST & Central Excise,
Coimbatore Commissionerate
6/7, ATD Street, Race Course Road, Coimbatore - 641018
4. The Assistant Commissioner (ST),
Tiruppur Central I Assessment Circle,
Tiruppur-641601
5. Master File/ Spare-2