

AUTHORITY FOR ADVANCE RULING, TAMILNADU
INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, DOOR NO.32,
5TH 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. Thiru Senthilvelavan B., IRS, Additional Commissioner/Member,
Office of the Principal Chief Commissioner of GST & Central Excise, Chennai-34.
and
2. Tmt. Padmavathi. T. Joint Commissioner (ST) / Member
Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-6

ORDER No.31/ARA/2021 Dated: 10.08.2021

GSTIN Number, if any / User id		33AAIFP7751M1ZR
Legal Name of Applicant		M/s Padmavathi Hospitality & Facilities Management Service
Trade Name of The applicant		M/s Padmavathi Hospitality & Facilities Management Service
Registered Address / Address provided while obtaining user id		New No.51, Old No.117, JVL Towers, 2 nd Floor, Nelson Manickam Road, Aminjakarai, Chennai-600029
Details of Application		GST ARA-01 No. 11 /2021/ARA dated 30.03.2021
Concerned Officer		State : The Assistant Commissioner (ST), Koyembedu Assessment Circle, CMDA Administration Building, 2 nd Floor, Koyambedu, Chennai -107. Centre : Chennai North Commissionerate Division: Purasawalkam
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 engaged in providing Housekeeping /cleaning including pest control service and security services.
Issue/s on which advance ruling required		1. Classification of any goods or services or both 2. Applicability of a Notification 3. Determination of the liability to pay tax on any goods or services or both

Question(s) on which advance ruling is required	<p>1. Whether services provided by Padmavathi Hospitality & Facilities Management Services (PHFMS) to DME are classifiable as a function entrusted to a Panchayat or a Municipality under the constitution? If not then can we conclude that no exemption is available to PHFMS?</p> <p>2. Whether services provided by PHFMS to DME is exempted under Sl.No.3 of Notification 12/2017 Central Tax dated 28.06.2017 read along with amendment dated 25.01.2018?</p> <p>3. Whether Services provided by PHFMS to DME including institutions of Government Hospitals and colleges are liable for GST or not? If yes, what is the rate of GST applicable to these services</p> <p>4. Whether services rendered by PHFMS to DME can be classified as pure services or Composite Supplies?</p>
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Note: Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Rulings, Chennai as under Sub Section (1) of CGST Act / TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed 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. Padmavathi Hospitality & Facilities Management Services, New No.51, Old No.117, JVL Towers, 2nd Floor, Nelson Manickam Road, Aminjakarai, Chennai-600029 (hereinafter referred as 'Applicant' or 'PHFMS') is registered under the GST Act 2017 vide GSTIN No. 33AAIFP7751M1ZR. The applicant is engaged in providing Mechanized and Manual Housekeeping services/Cleaning services including Pest Control services; Security services, non-medical Man Power supply to support Medical and paramedical services in hospital projects; Bio Waste Management for all Hospitals under DME as bundled services to Directorate of Medical Education (DME) that includes Government Medical College Hospitals,

Government Medical Colleges and Government Nursing Colleges. The applicant has sought Advance Ruling on the following questions:

1. Whether services provided by Padmavathi Hospitality & Facilities Management Services (PHFMS) to DME are classifiable as a function entrusted to a Panchayat or a Municipality under the constitution? If not then can we conclude that no exemption is available to PHFMS?
2. Whether services provided by PHFMS to DME is exempted under Sl.No.3 of Notification 12/2017 Central Tax dated 28.06.2017 read along with amendment dated 25.01.2018?
3. Whether Services provided by PHFMS to DME including institutions of Government Hospitals and colleges are liable for GST or not? If yes, what is the rate of GST applicable to these services
4. Whether services rendered by PHFMS to DME can be classified as pure services or Composite Supplies?

The applicant 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 providing Manual and Mechanised House Keeping services, Man Power Supply and Security Services to Directorate of Medical Education under whom all the Tamil Nadu State Government Medical Colleges and Hospitals are functioning. The contract for the said services was originally sanctioned to them in the year 2013 for a period of three years and was renewed for a further period of three years which expired in the year 2019. Hence, they participated in the tender called for by the TNMSCL in the year 2019. They had quoted financial bid price with GST @ 18%. However, DME had received alternative quotation from other service providers of whom, one service provider had given the Financial price bid with no GST claiming that GST is fully exempt for such services provided to Government Hospitals and Colleges under Notification No.12/2017-CT (Rate) dated 28.06.2017as amended. DME also had the same opinion that the services provided to them are exempt from GST under exemption notification No. 12/2017-CT (Rate) as the services provided to DME, Tamil Nadu Medical Services Corporation are nothing but performing functions entrusted to a panchayat under Article 243 G of the Constitution-'Health and Sanitation, including Hospitals, Primary Health Centers and dispensaries/ functions entrusted to the municipality under article 243 W of the constitution-'Public Health

Sanitation, conservancy and solid waste management. Originally they made an application with AAR on the issue of applicability of GST on the above said services rendered in 2019 and no ruling was pronounced as the issue raised was pending in WP 24412 dt 19/08/2019 before the Hon'ble Madras High Court. Now the court case which was pending is withdrawn and there is no case similar pending under any other forum. The appellate authority of Advance Ruling has passed order asking them to make a fresh application with AAR in this regard and a fresh application is made.

2.2 On the interpretation of law, they have stated that GST@18% will be applicable to Mechanised and Manual housekeeping services and cleaning services, Pest control and security services provided as bundled services to Government hospitals and colleges due to below reasons.

- As per Exemption Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 under Chapter 99 read along with amendment issued on 25.01.2018 BOTH refers to services provided “to the Central Government, State Government or Union territory or local Authority or Governmental Authority by way of any activity in relation to any function entrusted to Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.
- Their services i.e Mechanised and manual Housekeeping/cleaning services including Pest control services Security services are not falling under the above categories of Article 243G and 243W of Indian Constitution and so GST exemption is not available in this instance and also as per the advance ruling Given in case No. 34/2018 vide order number 38/WBAAR/2018-19, dated 28.01.2019 clarifies the same.
- A study of the two lists, as given above, makes it clear that “Security Services” provided to Government Hospitals and Medical Colleges as institutions of Central/State/District/ Local Authorities are clearly not covered under the either list.
- Sanitation and similar services are classified under SAC 99945. As clarified in Advanced Ruling order No. 38/WBAAR/2018-19, dated 28.01.2019 that “.....It includes sweeping and cleaning, but only with reference cleaning of road/street. Cleaning of hospital premises are not, therefore classified under sanitation or similar service. The services, the Applicant bundled under the

description 'Scavenging Services' are therefore, not exempt under Sl. No.3 of the Exemption Notification."

- As per the advanced ruling order No. 38/WBAAR/2018-19, dated 28.01.2019, benefit of exemption from the payment of GST is not available under Notification 12/2017-CT(Rate), dated 28.06.2017 and WB Government Gazette Notification – 1136FT, dated 28th June, 2017 as amended for the supply of security services and the bundle of service described as "Scavenging Services"
- As per the advanced ruling order No. 21/WBAAR/2019-20, dated 09.09.2019, benefit of exemption from the payment of GST is not available under Notification 12/2017-CT(Rate), dated 28.06.2017 and WB Government Gazette Notification – 1136FT, dated 28th June, 2017 as amended for the supply of security services and cleaning and sweeping services.
- The original notification 12/2017 read along with amendment 2/2018 dated 25.01.2018 refers to "any activity in relation to any function entrusted to Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution". However, they are of the opinion that all the 95 government hospitals falling under the DME comes under Municipality and not Panchayat and the notification specifically states activities entrusted to a municipality or panchayat. Hence it is very clear that this exemption notification applies to panchayat and municipalities only and does not apply to services provided by a private party to any state government hospitals.
- Under article 243G of the Constitution, activities in relation to any function entrusted to Panchayat is clearly listed out in the eleventh schedule the functions entrusted to a Panchayat are as under:
 - (i) Agriculture, including agricultural extension.
 - (ii) Land improvement, implementation of land reforms, land consolidation and soil conservation.
 - (iii) Minor irrigation, water management and watershed development.
 - (iv) Animal husbandry, dairying and poultry.
 - (v) Fisheries.
 - (vi) Social forestry and farm forestry.
 - (vii) Minor forest produce.
 - (viii) Small scale industries, including food processing industries.
 - (ix) Khadi, village and cottage industries.
 - (x) Rural housing.
 - (xi) Drinking water.
 - (xii) Fuel and fodder.

- (xiii) Roads, culverts, bridges, ferries, waterways and other means of communication.
- (xiv) Rural electrification, including distribution of electricity.
- (xv) Non-conventional energy sources.
- (xvi) Poverty alleviation programme.
- (xvii) Education, including primary and secondary schools.
- (xviii) Technical training and vocational education.
- (xix) Adult and non-formal education.
- (xx) Libraries.
- (xxi) Cultural activities.
- (xxii) Markets and fairs.
- (xxiii) Health and sanitation, including hospitals, primary health centres and dispensaries.
- (xxiv) Family welfare.
- (xxv) Women and child development.
- (xxvi) Social welfare, including welfare of the handicapped and mentally retarded.
- (xxvii) Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
- (xxviii) Public distribution system.
- (xxix) Maintenance of community assets.

They are of the view that from out of the above list the functions relevant to the applicant are mentioned under clause xxiii which covers "health and sanitation including hospitals, primary health centres and dispensaries"; hence the health and sanitation services including hospitals falling under panchayat and primary health centres are exempt and the hospitals which are covered under DME falls under municipality and not panchayat and hence exemption is not available as per article 243G of the constitution.

➤ Further the functions entrusted to a municipality under the Twelfth Schedule to Article 243W of the Constitution are as under:

- (a) Urban planning including town planning.
- (b) Regulation of land-use and construction of buildings.
- (c) Planning for economic and social development.
- (d) Roads and bridges.
- (e) Water supply for domestic, industrial and commercial purposes.
- (f) Public health, sanitation conservancy and solid waste management.
- (g) Fire services.
- (h) Urban forestry, protection of the environment and promotion of ecological aspects.
- (i) Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
- (j) Slum improvement and up gradation.
- (k) Urban poverty alleviation.
- (l) Provision of urban amenities and facilities such as parks, gardens, playgrounds.
- (m) Promotion of cultural, educational and aesthetic aspects.
- (n) Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.

- (o) Cattle pounds; prevention of cruelty to animals.
- (p) Vital statistics including registration of births and deaths.
- (q) Public amenities including street lighting, parking lots, bus stops and public conveniences.
- (r) Regulation of slaughter houses and tanneries

From out of the above list the functions relevant to the applicant are the services as specified under clause (f) viz “Public Health Sanitation, Conservancy and Solid Waste Management.....” Hence it is very clear that the functions entrusted to Municipalities under article 243W which are relevant to the applicant is only Public Health Sanitation, Conservancy and Solid Waste Management.....”. However they are providing Manual and Mechanised housekeeping services and Man power and security services to Hospitals covered under DME tender falling under municipalities and are not falling under clause f of article 243W of the constitution.

- The dictionary meaning of the term public health sanitation is “Sanitation refers to public health conditions related to clean drinking water and adequate treatment and disposal of human excreta and sewage. ... Sanitation systems aim to protect human health by providing a clean environment that will stop the transmission of disease, especially through the fecal–oral route.”
- The term public health sanitation services as stated in twelfth schedule means sanitation and similar services which are classified under SAC99945 which includes sweeping and cleaning but only with reference to cleaning of roads and street and cleaning of hospital premises is not covered under sanitation or similar services.
- In Circular No.51/25/2018-GST dated 31/07/2018, the Central Government clarifies that the service tax exemption under Sl.No. 25(a) of Notification No. 25/2012 dated 20/06/2012 has been substantially, although not in the same form, continued under GST vide Sl.No. 3 and 3A of the Exemption Notification. The above circular leaves no doubt that the phrase ‘in relation to any function’ as applied in Sl.No. 3 and 3A, makes no substantial difference between Sl.No. 25(a) of the ST Notification and Sl.No. 3/3A of the exemption Notification No. 12/2017 & 2/2018.
- The phrase ‘in relation to any function’ refers not to who the service provider is or what activities the recipient of the service is engaged in, but only to what service the supplier is providing. If the service is an activity relatable to a function like public health, sanitation, etc., listed under the Eleventh or the

Twelfth Schedule under Article 243 G or 243 W of the Constitution, its supply to the government, Governmental authority, local authority or a government entity should be exempt under Sl.No. 3/3A of the Exemption Notification 12/2017 & 2/2018, provided it is either a pure service or a composite supply where the supply of goods constitutes not more than 25% of the value

- The supplies made by them are to a State Government hospital and therefore, their service in terms of the above work order qualifies to be a supply to the Government. They are providing Manual and Mechanised house Keeping Services and Man Power Supply and Security services, which is a composite supply having supply of cleaning material ancillary or incidental to the principal supply of cleaning and sweeping service. Therefore, the only point that needs to be examined is whether the service being provided is an activity relatable to a function listed under the Eleventh or the Twelfth Schedule under Art 243 G or 243 W of the Constitution
- The Manual and Mechanized house keeping services, Man power supply and security services provided to government hospitals and medical colleges are not covered under either of the eleventh schedule or twelfth schedule of the Constitution. 'Cleaning and Sweeping services' can be considered as related to the function listed under Sl.No23 of the Eleventh Schedule, namely "Health and Sanitation, including hospitals, primary health centres and dispensaries", provided 'Sanitation service', as classified under SAC 99945, includes sweeping and cleaning of places like hospitals etc
- As the scope of the functions listed under the Eleventh Schedule is considered with respect to applicability of the Exemption Notification under the GST, the scope of any service should be determined in terms of the Scheme of classification of the Services referred to in Explanation 3(i) of the Exemption Notification.
- 'Sanitation and similar services', classified under SAC 99945, includes sweeping and cleaning, but only with reference to cleaning of a road or street. Cleaning of hospital premises is not, therefore classified under 'Sanitation or similar service'

3.1 Due to the prevailing PANDEMIC situation and in order not to delay the proceedings, the applicant was addressed through the Email Address mentioned in the application to seek their willingness to participate in a virtual

Personal Hearing in Digital mode. The applicant requested for physical hearing and did not agree to participate in the Digital mode. The Authorized Representative of the applicant vide mail date 14.07.2021 requested for an early physical personal hearing and the hearing was held on 28.07.2021 in person. The Authorised representatives S/Shri. P.Ramachandran, Chartered Accountant, P.Lokesh Kumar, Certified Practicing Accountant and Ms. G. Anitha, Chartered Accountant appeared for the hearing. The Authorised representative reiterated their written submissions. They stated that the issue before the authority is whether their activity is exempted or taxable, and if taxable, whether the supply is a composite supply. They stated that they are providing similar services to Hospitals in the State of Andhra Pradesh. They stated that they intend to participate in the forth coming tender by DME, Tamil Nadu and requested for clarification. They were asked to furnish the following documents.

1. Evidence to establish the calling of Tenders for the services for which the ruling is sought
2. Invoice copies for the services supplied to Hospitals in the State of Andhra Pradesh with copies of Work Order/Agreement.
3. Write-up on the activities covered under the proposed Tender and its Similarities/variance with the activity undertaken in the Hospitals in Andhra Pradesh
4. Pre-GST/Post GST invoices for similar works undertaken in the State of Tamil Nadu for similar class of persons.

The Assistant Commissioner, Koyambedu Assessment Circle also participated in the hearing.

3.2 The applicants produced the following documents in pursuance of the personal hearing.

1. Tamil Nadu Medical Services Corporation Bid Reference 432/Outsourcing/DME/TNMSC/ENGG/2019 dt 19.02.2019 (in which applicants have participated)
2. Copy of Tax Invoice No. TN1819P0010001 dated 07/05/2018 raised on The Director of Medical Education for 'Outsourcing of Housekeeping & Security Services by PHFMS for the month of April-2018 along with the Proceedings of the Director of Medical Education in Ref. No. 34366/OSC/2018 dated 15.05.2018;
3. Copy of Bill Invoice No. PHFMS/2343 dated 06.04.2017 along with the

Proceedings of the Director of Medical Education, Chennai-10 in Ref. No. 34457/OSC/2017 dated 17.05.2017

4. Copy of Tax Invoice No. AP2021P0620010 dated 04/03/2021 raised on The Principal, Govt. Medical College, Vijayawada, Andhra Pradesh along with the copy of tender and the service agreement copy for pest control services supplied to hospitals in the state of Andhra Pradesh.

5. Copy of Tax Invoice No. AP2021P0550011 dated 04/03/2021 raised on The Superintendent, Govt. General Hospital, Kurnool, Andhra Pradesh along with the Agreement copy.

6. Tamil Nadu Medical Services Corporation Bid Reference 697/DMS-Outsourcing/DME/TNMSC/ENGG/2021 dt 05.07.2021 in which the applicant propose to participate

3.3 They furnished a Write up on the activities covered under the proposed tender- with its similarities/variance with the activity undertaken in hospitals in Andhra Pradesh.

3.4 On perusal of the documents, it is noticed that at present they are not providing any service to DME and the proposed Tender is called for by Tamil Nadu Medical Services Corporation Limited(TMSCL) for Outsourcing of Housekeeping, Security Services and Assistance in Electrical, Plumbing, Laundering, Cooking, Catering, Gardening and Carpentry Services in 93 Government Hospitals under the control of Directorate of Medical & Rural Health Services -86 Institutions and Directorate of Medical & Rural Health Services (ESI) -7 Institution. Whereas, the question raised in the application is on the supply of services to Directorate of Medical Education, for whom no services are rendered by them presently.

3.5 The Registry vide letter No.ARA No.11/2021 dated 30.07.2021 issued a notice offering an opportunity to explain in writing and in response to that the applicants filed written submissions on 03.08.2021 stating that they need ruling on the applicability of GST on services proposed to be rendered to both DME/DMS so that the applicant can participate in the present and future tenders.

4. The applicant is under the administrative control of the State Jurisdiction. The State jurisdictional authority, Assistant commissioner (ST), Koyembedu Assessment Circle vide his letter Roc.No.534/2019 dated 22.04.2021 has stated that the applicant has already sought clarification before the authority

for Advance Ruling for the similar issue for which remarks were already submitted on 20.09.2019 and enclosed a copy of the same. He further stated that, the issue of determining the rate of tax applicable in the individual case depends on the facts of the case which would be examined at the time of scrutiny of returns by proper officer under Section 61 of TNGST Act 2017 after the taxpayer furnishes their return under Section 39 of TNGST Act 2017. The State authority has not stated that any proceedings is pending in respect of this applicant and therefore it is construed that no proceedings are pending in the case of the applicant.

5. The Central Jurisdictional authority vide their letter GEX/COM/TECH/MISC/1132/2021-TECH dated 06.05.2021 has informed that in respect of the applicant there are no pending proceedings on the subject issue.

6.1 We have carefully examined the statement of facts, supporting documents filed by the Applicant along with application, submissions made at the time of personal hearing and thereafter, comments of the Jurisdictional Authority. The applicant has stated that they were providing Housekeeping/Cleaning including Pest Control services and Security services as bundled services to Directorate of Medical Education (DME) that includes Government Medical College Hospitals, Government Medical Colleges and Government Nursing Colleges. They were providing above said services to 95 hospitals since 2013 and their contract expired on 2019. At present they are not providing any services to Directorate of Medical Education (DME). The applicant has sought Advance Ruling on the following questions:

1. Whether services provided by Padmavathi Hospitality & Facilities Management Services (PHFMS) to DME/DMS are classifiable as a function entrusted to a Panchayat or a Municipality under the constitution? If not then can we conclude that no exemption is available to PHFMS?
2. Whether services provided by PHFMS to DME/DMS is exempted under Sl.No.3 of Notification 12/2017 Central Tax dated 28.06.2017 read along with amendment dated 25.01.2018?
3. Whether Services provided by PHFMS to DME/DMS including institutions of Government Hospitals and colleges are liable for GST or not? If yes, what is the rate of GST applicable to these services
4. Whether services rendered by PHFMS to DME/DMS can be classified as pure services or Composite Supplies?

The questions raised as above requires ruling on the applicability of Sl.No.3 of Notification 12/2017 Central Tax dated 28.06.2017 read along with amendment dated 25.01.2018 in respect of the activity for which Tenders has been floated by Tamil Nadu Medical Services Commission (TNMSC).

6.2 On perusal of the supporting documents furnished by the applicant, it is seen that TNMSC had floated tender for providing Housekeeping/cleaning and Security services to be provided to the Government Medical College Hospitals, Government Medical Colleges and Government Nursing Colleges under the Directorate of Medical Education (DME) and this tender has been finalized and the same is not allocated to the applicant as stated by them in their written submissions. However, they have requested to furnish the ruling in respect of the activities covered under the said tender also, stating that it would facilitate to participate in future tenders. Section 95(a) of CGST Act 2017 defines Advance Ruling to mean a decision provided by the authority or the Appellate Authority or the National 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 or of section 101C of the CGST Act, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the Applicant. With respect to the bid for the services tendered by TNMSC in respect of Medical College Hospital, Medical College and Nursing College under DME, as the applicant has not established their proposal for undertaking the activity presently and/or no documentary proof has been furnished to establish that TNMSC would call for tenders for similar activity in the future also, the activity covered under the said tender document are not taken up for consideration on merits under Section 95(a)/97(2) of the GST Act.

6.3 They have submitted a tender offer document of Tamil Nadu Medical Services Corporation Bid Reference 697/Outsourcing/DMS/TNMSC/ENGG/2021 dt 05.07.2021 - Tender for outsourcing of housekeeping, Security Services and Assistance in Electrical, Plumbing, laundering, Cooking, Catering, Gardening & Carpentry Services in 93 Government Hospitals under the Control of Directorate of Medical & Rural Health Services -86 Institutions, Directorate Medical & Rural Health Services (ESI)- 7 institutions. They have sought ruling on the applicability of entry No.3 of Notification No.12/2017-C.T.(rate) dated 28.06.2017 as amended,

in as much as the activities for which the tender is floated are Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or union territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution. In this case, the applicant has stated that they propose to participate in this tender and as a proposed activity they seek ruling, which is admissible and within the ambit of this authority as per Section 95(a)/97(2) of GST Act and therefore the question raised in respect of the activities tendered and to be provided to DMS, if awarded to the applicant, is taken up for consideration on merits.

7.1 On perusal of the documents produced by the applicant, it is seen that Tamil Nadu Medical Service Corporation Ltd., (TNMSC) has called for a tender vide Bid Reference 697/Outsourcing/DMS/TNMSC/ENGG/2021 dt 05.07.2021, Tender for outsourcing of housekeeping, Security Services and Assistance in Electrical, Plumbing, laundering, Cooking, Catering, Gardening & Carpentry Services in 93 Government Hospitals under the Control of Directorate of Medical & Rural Health Services (DM&RHS), -86 Institutions, Directorate Medical & Rural Health Services (ESI) (DM&RHS ESI) - 7 institutions. It has been proposed to identify an agency /agencies for one or any or all of the four zones through a transparent bidding process to accomplish the task. From the various clauses of the Bid document, the following are seen:

- 1.1.1 B. The bidders are expected to offer Comprehensive Facility Management Solutions for all of the following services, individually or as a part of a consortium to be set up for an effective service delivery process” for one or any or all of the four zones separately”.
 - 1) Housekeeping / Cleaning including Biomedical Waste Management & Pest Control Services
 - 2) Security Services
 - 3) Assistance in Electrical, Plumbing, Laundering, cooking, catering, gardening & Carpentry Services
- 1.1.22 After Notification of award and issue of detailed order by the Directorate of Medical and Rural health services, the successful bidder shall enter into contract agreement with the DM&RHS and DM&RHS (ESI) in the

prescribed format within 15 days from the date of issue of detailed order.

- 1.1.27 Any notice given by one party to the other pursuant to this contract shall be sent to other party in writing or by fax facsimile and confirmed in writing to the other party's address specified. For the purpose of all notices, the following shall be the address of end user.

The Director of Medical and Rural health Services
Directorate of Medical and Rural health Services,
DMS Complex, Chennai -600006

- 1.3 Bid Format-A –indicates the shift wise deployment and Total no. of persons to be provided in each category of workers for each hospital covered under each zone. This Format A which is Zone and Hospital / Location Specific contains the Designation of the various manpower requirements such as Manager, Supervisors, Housekeeping staff, Security Guards, Electrician, Plumber, Cook, Dhobi, Gardener who are to be provided on a regular basis and Carpenter on per day basis;
- 1.3 Bid Format-B for each hospital covered under each zone indicating the minimum requirement of equipment for 3 years, consumables per month and durables for 3 months; Format- C Summary of cost for A) Manpower cost for Hospital level and B) Resource cost equipment/consumables for the Hospitals covered in Zone cost; Format D –Indicates the prices/cost for the Zone level Management/Monitoring Services; Format E-Indicates the prices/cost for the Zone level Resource Requirement administration which includes the cost for Computer System, on-line, identity card, visitors card, biometric systems, Profit/margin, supervision/monitoring, contingencies and other administrative cost; Format-F provides for the consolidation of all costs at Format C,D, E; It is also specified that the contractor is advised to provide manufacturer specifications for all the equipment and consumables to be provided for performing the Overall Management/Operational Services at the Hospitals under the control of DM&RHS / DM &RHS(ESI) and the cost of equipment should be amortized for 3 years and annual costs to be specified in summary sheets
- 2.1.2 The Tender inviting authority and Tender Accepting Authority means The Tamil Nadu Medical services Corporation (TNMSC).
- 2.1.3 Implementing authority/ Department means The Director of Medical and Rural health Services on behalf of the Heads of the 93 Hospitals who is placing the contract.

- 2.1.7 The services mean the services and goods that the contractor is required to provide under the contract
- 2.2.1 The successful bidders are required to sign the contract agreement with the Directorate of Medical & Rural Health Services within 15 days of the date of issuance of Letter of Intent (LOI).....
- 2.2.4 EXECUTION METHOD: the successful bidders shall get the following documents approved by the DM & RHS for Management and effective performance of tasks.....
- 2.2.28 PAYMENT: An invoice shall be rendered on the contractors' own invoice form to the authority at monthly intervals

7.2 From the above, the following are deduced:

- Tender is called for by Tamil Nadu Medical Services Corporation(TNMSC), which is a body corporate
- The works involved is Housekeeping/cleaning including Biomedical Waste Management & Pest Control Services; Security Services; Assistance in Electrical, Plumbing, Laundering, Cooking, Catering, Gardening & Carpentry services
- The works are to be provided to the 86 Hospitals under the Directorate of Medical & Rural Health Services and 7 Hospitals under Directorate of Medical & Rural Health Services(ESI)
- The successful bidder is to provide the entire Man power required for effective performance of Housekeeping, cleaning, security, etc along with administrative personnel in the Hospital level, Zonal level and equipment, consumables, etc., for providing such services.
- TNMSC is the Tender Inviting Authority & Tender Accepting Authority
- DM&RHS is the contract signing authority to which the works are provided by the successful bidder

In short, it can be stated that the works involved in the tender is offering 'Comprehensive Facility Management Solutions' to the Hospitals under DM&RHS in the area of Housekeeping, Cleaning, Security, maintenance, etc by providing effective manpower including supervisory persons and the required equipment, consumables, etc. The tender considers the entire works as 'Services' which by the clauses of the tender includes goods and services. From the part of the tender pages 1 to 55, furnished before us, we find that the person bidding for the tender has to provide the man-hour cost and the cost of resources such as equipment(amortized),

consumables, etc to be used by the bidder for effective provision of the comprehensive management solution related to cleaning, housekeeping, security and maintenance of the Hospitals under the DM&RHS.

8.1 The applicant has sought ruling on the applicability of entry No. 3 of the Notification No. 12/2017-C.T.(Rate) to the scope of work to be undertaken in the 86 Government Hospitals under the control of Directorate of Medical & Rural Health Services and 7 Hospitals under the control of Directorate of Medical & Rural Health Services(ESI) in the proposed tender Document issued by TNMSC. Entry No.3 of Notification 12/2017 CT(R) dated 28.06.2017 is examined as under:

Sl. No	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Con dition
3	Chapter 99	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or union territory or local authority or a Governmental authority 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

On a cogent reading of the above, it is seen that the entry is applicable to

- All Pure Services;
- Provided to the Central/State Government or Union territory or Local authority or a Governmental Authority;
- By way of any activity; In relation to any function entrusted to ;A Panchayat under Article 243G of the Constitution or ;A Municipality under Article 243 W of the Constitution.

Thus, the entry applies to Pure Services provided to the defined class of service recipients and the services are to be of any activity in relation to any function

entrusted to a Panchayat/Municipality under Article 243 G/243W of the Constitution. Now we examine whether in the case at hand, in respect of the 'Scope of works' covered under said tender, the above stands satisfied in order that the entry will be applicable. The main query of the applicant is whether the 'scope of work' envisaged in the bid is an activity in relation to any function entrusted to Panchayat/Municipality under Article 243 G /243 W of the Constitution and whether the activity is a 'Pure service' or a 'Composite supply'. It is also to be seen as to whether the supply is made to the 'class of recipient' specified in the notification, i.e., Whether the Director of Medical and Rural health Services (DMS) can be construed as State Government Department and the role of the Tamil Nadu Medical Service Corporation Ltd., (TNMSC) in the entire transaction.

8.2 In the case under discussion, it is observed that the proposed supply is 'Comprehensive Facility management services', which includes extending suitable man power for various activities in the hospitals under DM&RHS such as Housekeeping, Cleaning, Security Services and Assistance in Electrical, Plumbing, laundering, Cooking, Catering, Gardening & Carpentry Services and undertaking such services with the required essential consumables, goods and equipment. The 'Scope of Work' as seen from the portion of the tender bid furnished before us envisages receipt of service of housekeeping, cleaning including Bio medical disposal & pest Control, Security services, maintenance of the Hospitals by assisting in electrical, plumbing, etc. Thus, in the case at hand, the scope of work is the supply of Comprehensive facility management service for the upkeep/running of the hospitals, i.e., the successful bidder uses the materials required for provision of such services and the various services are supplied to the recipient by such successful bidder. Hence, the recipient is supplied with 'Pure services' of Housekeeping/cleaning including Pest Control services; Security services; manpower for various maintenance services. The first limb of the said notification specifies 'Pure Services (excluding works contract service or other composite supplies involving supply of any goods)', in the instant case, the services provided are 'Pure Services' and the said entry covers all the 'Pure services', therefore, this limb is fulfilled.

8.3 The webpage <https://tnhealth.tn.gov.in/tngovin/orgnstructure.php>, gives the Organisational structure of Ministry of Health and Family Welfare, Tamil Nadu and DM&RHS is listed as a Directorate under the said Ministry.

Further, the webpage <https://health.tn.gov.in/tngovin/dms/dms.php> states the evolution of public health systems in Tamil Nadu and function & role of institutions involved. For better understanding extracted as below:

- *“The object of hospital services organised in India during the early years of British rule was to cater mainly to the needs of the British army and the British Civilian population. Indian Medical Department was organised on a regular basis in 1786.*
- *In 1922 Public Health and Medical Services were separated at all levels.*
- *In the year 1875 a Medical Rule was set up and Department of Sanitation and Vaccination was brought under the Control of Medical Department. The Medical Department was then headed by Surgeon General.*
- *In 1919 the post of Director of Public Health has been created and the department has been bifurcated.*
- *The Public Health Department was formed in the year 1923 for the prevention and control of communicable diseases and for the improvement of General Health Conditions in the State.*
- *After the year 1947 the post of Surgeon General who was fully in charge of Indian Medical Department was re-designated as Director of Medical Services for Madras State.*
- *The ESI Scheme was framed in according with the provision of the ESI act 1948 and was first inaugurated in Tamil Nadu in 1955.*
- *In 1956 Family Welfare Programme was taken up by this Department to promote the Health of the People particularly Mothers and Children.*
- *In 1966 a new department was created to attend Medical Education.*
- *In the Year 1970 the Directorate of Indian Medicine was formed which was under the control of Director of Medical Services.*
- *During 1982 the Drug Control Administration has become an independent Department.*
- *During 1983 the Directorate of Family Welfare was disintegrated from the Directorate of Medical Services and Family Welfare for better co-ordination and implementation of Family Welfare Programme*
- *In the year 1999 the Directorate of Medical Services was bifurcated and a separate Directorate to look after the implementation of the ESI Scheme was formed on 1.1.1999*

- *time of inception has decade by decade paved way for organisation of various separate Departments for better administration and from 1.1.99 onwards, this Department namely the Department of Medical and Rural Health Services is being entrusted with the responsibility of rendering Medical Care services to the public through the Non-Teaching Medical Institutions.”*

In view of the above said position, it is clearly evident that Directorate of Medical & Rural Health Services, and Directorate Medical & Rural Health Services (ESI) are Directorates under Health & Family welfare Department, Government of Tamil Nadu. In the case at hand, the tender issuing and accepting authority, alone is the TNMSC. The role of the Tamil Nadu Medical Service Corporation Ltd., (TNMSC), a Government of Tamil Nadu Undertaking is to be understood in the backdrop of the tender offer document of Tamil Nadu Medical Services Corporation Bid Reference 697/Outsourcing/DMS/TNMSC/ENGG/2021 dt 05.07.2021. The Tamil Nadu Medical Service Corporation Ltd., (TNMSC) was set up with the primary objective of ensuring ready availability of all essential drugs and medicines in the Government Medical Institutions throughout the State by adopting a streamlined procedure for their procurement, storage and distribution was incorporated under the Companies Act, 1956. As discussed above, upon perusing the tender document Clause 2.1.2 of the Interpretation of Terminologies in Part II – Conditions of Contract role of Tamil Nadu Medical services Corporation is specified as The Tender inviting authority and Tender Accepting Authority and they act as facilitator and the actual contract is between the Directorate of Medical & Rural Health Services, and Directorate Medical & Rural Health Services (ESI) and the successful bidder only and the services are to be provided to Directorate of Medical & Rural Health Services, and Directorate Medical & Rural Health Services (ESI). In view of the above discussion it is clear that DMS &MS(ESI) are State Government Department and the successful bidder makes the supply to the State Government, the identified class under the said entry and second limb of the said Notification is fulfilled.

8.4 The final limb of Entry No.3 Chapter 99 of Notification No.12/2017-C.T.(Rate) dated 28.06.2017 which is to be examined is whether the activities are **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. The scope of work proposed in the tender is ‘comprehensive facility management services’ of the Hospitals under DM & RHS. Under article 243G of the Constitution, activities in relation to any function entrusted to Panchayat is

clearly listed out in the Eleventh schedule and Serial No.23 covers 'Health and sanitation, including hospitals, primary health centers and dispensaries'; under Article 243W of the Constitution, activities in relation to any function entrusted to the Municipality is listed in the Twelfth Schedule and Entry No.No. 6 covers 'Public Health'. Public Health and hospitals being State subject, State Governments are primarily responsible for up-keeping of the hospitals and any services rendered for up keeping of the hospitals, are done in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution. In the case at hand, the tender is called for to provide 'Comprehensive facility management services' and in view of the above discussion, it is clear that third limb of said entry of the exemption notification is also satisfied.

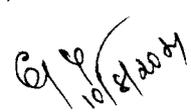
8.5 To summarize, the scope of work in the tender document as furnished to us is 'Comprehensive facility management services' which are 'Pure Services' of House-keeping, cleaning including pest control services, Security services, assistance in the form of Electrician, Plumber, etc for effective maintenance of the hospital facility; the supply is proposed for the hospitals under DM&RHS, which is a Directorate under Ministry of Health & Family Welfare, State of Tamil Nadu, i.e., State Government; the activities being in relation to the up-keeping/running of the Hospital facility, is in relation to the activities entrusted to a Panchayat or a Municipality under Article 243G/W of the Constitution and therefore, the exemption at Entry No. 3 of Notification no. 12/2017-C.T.(Rate) dated 28.06.2017 as amended is applicable in respect of the scope of work tendered by TNMSC for the supply to be made to hospitals under DMS.

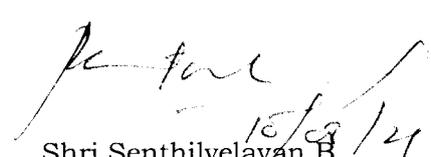
9. The applicant has stated that they are rendering similar services in the State of Andhra Pradesh and has furnished the Tender document, agreement and sample invoices. On perusal, it is seen that in the said case, the Tender is for 'Providing Sanitation Services for the Hospitals and Medical/nursing colleges in DME Institutions in Chittoor, Kadapa, Anantapur, Kurnool Districts in the State of Andhra Pradesh. It is evident that in this case the supply is made not only to the Hospitals but also to the educational institutions and the facts in this count are not similar to that in the case at hand, wherein the supply tendered is towards 'Comprehensive facility management' of the Hospital facility only, which is to be maintained by the State Government as per the dictum of the Constitution under Article 243G/243W.

10. In view of the above, we rule as under:

RULING

1. The proposed supply as per the Tender for housekeeping, Security Services and Assistance in Electrical, Plumbing, laundering, Cooking, Catering, Gardening & Carpentry Services in 93 Government Hospitals under the Control of Directorate of Medical & Rural Health Services, -86 Institutions, Directorate Medical & Rural Health Services (ESI)-7 Institutions is exempt under Entry No.3 of Notification No.12/2017-C.T.(Rate) dated 28.06.2017 read with Entry No. 3 of Notification No.II(2)/CTR/532(d-14)/2017 vide G.O. (Ms) No. 73 dated 29.06.2017 as brought out in para 8 above.
2. The applicant's question on the supply tendered for Medical Hospitals, Medical Colleges and Nursing Colleges under Directorate of Medical Education (DME) is not answered as not admitted, under sub-section (2) of Section 98 of the CGST Act and TNGST Act read with Section 95(a) of the CGST/TNGST Act 2017.


Tmt Padmavathi. T
Member, SGST


Shri Senthilvelavan B
Member, CGST

To

M/s Padmavathi Hospitality & Facilities Management Service
New No.51, Old No.117, JVL Towers,
2nd Floor, Nelson Manickam Road,
Aminjikarai, Chennai-600029

/By Speed Post/

Copy submitted to :-

1. The Principal Chief Commissioner of CGST & Central Excise,
No. 26/1, Uthamar Mahatma Gandhi Road, Nungambakkam,
Chennai – 600 034.
2. The Principal Secretary / Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai – 600 005.

Copy to:

1. The Commissioner of GST & C.Ex., North Commissionerate.
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai- 600 034.
2. The Assistant Commissioner (ST),
Koyembedu Assessment Circle,
CMDA Administration Building,
2nd Floor, Koyambedu, Chennai -107.
3. Master File/ Spare – 2.