

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH
4, Vibhuti Khand, Gomti Nagar, Lucknow

ADVANCE RULING NO. UP ADRG-07/2022

DATED 01/07/2022

PRESENT:

- 1. Shri Rajendra Kumar**
Additional Commissioner, Central Goods and Service Tax
.....Member (Central Tax)
- 2. Shri Vivek Arya**
Joint Commissioner, State Goods and Service Tax .Member (State Tax)

1.	Name of the Applicant	M/s KDS Services (P) Ltd 2 nd Floor, 011 & 012, Parshvanatha Planet Plaza, Vibhuti Khand, Gomti Nagar, Lucknow-226010
2.	GSTIN or User ID	09AADCK2144H2ZN
3.	Date of filing of Form GST ARA-01	05-04-2022
4.	Represented by	Shri Pankaj Shukla (CA & Authorized representative)
5.	Jurisdictional Authority-Centre	Range-II, Division-Lucknow-I
6.	Jurisdictional Authority-State	Lucknow Sector-20, Range- Lucknow (C)
7.	Whether the payment of fees discharged and if yes, the amount CIN	Yes SBIN22020900398802

ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 & UNDER SECTION 98 (4) OF THE UPGST ACT, 2017

1. M/s KDS Services (P) Ltd, 2nd Floor, 011 & 012, Parshvanatha Planet Plaza, Vibhuti Khand, Gomti Nagar, Lucknow-226010, (here in after referred to as the applicant) is a registered assessee under GST having GSTN: 09AADCK2144H2ZN.
2. The Applicant has submitted application for Advance Ruling dated 05-04-2022 enclosing duly filled Form ARA-01(the application form for Advance Ruling).
3. The Applicant in his application sought Advance Ruling as follows : –
 - (1) Whether the Project Development Service (i.e. Detailed Project Report Service/Beneficiary Document Preparation) and Project Management Consultancy services ('PMCS')/Supervision Services provided by the applicant to the recipient under the Contract from State Urban Development Authority (herein after referred as "SUDA") and the Project Management Consultancy services ('PMC') under the Contract for PMAY would qualify as an activity in relation to function entrusted to

Panchayat or Municipality under Article 243G or Article 243W respectively, of the Constitution of India?

- (2) If answer to first question is in affirmative then, whether such services provided by the applicant would qualify as Pure services (excluding works contract service or composite supplies involving supply of any goods) as provided in serial number 3 of Notification No. 12/2017- Central Tax (Rate) dated 28 June, 2017, as amended (S. No. 3A) by Notification No. 2/2018- Central Tax (Rate) dated 25 January, 2018 issued under Central Goods and Services Tax Act, 2017 (CGST) and corresponding Notifications No. KA.N.I.-2-843/XI- 9 (47) / 17-UP. Act-1 - 2017 - Order - (10) - 2017 Lucknow, dated June 30, 2017 issued under Uttar Pradesh Goods and Service Tax Act, 2017 ('UPGST Act'), where the Project cost includes the cost of service rendered along with reimbursement of cost of procurement of goods for rendering such service, and, thus, be eligible for exemption from levy of CGST and UPGST, respectively.

4. As per the declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending in any proceedings nor decided in any proceedings in the applicant's case under any of the provisions of the CGST Act, 2017/UPGST Act, 2017.

5. The applicant has submitted following facts-

(1) State Urban Development Authority (SUDA), Lucknow invited technical and financial proposals from eligible Consultancy Firms / Agencies/ Companies for Preparation of Detailed Project Report (DPR) and providing Project Management Consultancy Service (PMC) services under Pradhan Mantri Awas Yojna (PMAY) for Projects under Beneficiary Led Construction in 635 ULBs in Uttar Pradesh by its Request for Proposal (RFP) vide Invitation No. 708/01/29/HFA/2016-17 dated 01-06-2017.

(2) The Housing for All (HFA) Mission seeks to address the housing requirement of urban poor including slum dwellers and non slum dwellers of Economic Weaker Section (EWS) of annual income up to Rs. 300000 and Lower Income Group (LIG) of Annual Income up to Rs. 300001 to Rs. 600000 through following programme verticals by 2022:

- Slum rehabilitations of slum dwellers with participation of private developers using land as a resource
- Promotion of affordable housing for weaker section through credit linked subsidy
- Affordable housing in partnership with Public and Private sectors
- Subsidy for Beneficiary- Led individual house construction

(3) "M/s Wapcos Limited" (a Govt. of India undertaking), among others qualified the terms and conditions of above RFP and shortlisted by SUDA as an agency for "Preparation of Detailed Project Report" and providing "Project Management Consultancy Service" under Pradhan Mantri Awas Yojna (PMAY).

(4) SUDA Lucknow entered into an **agreement** with "M/s Wapcos Limited" (main contractors) for provisioning of above services as per scope of work mentioned in section-5 of above RFP.

(5) Applicant was back to back awarded with same work i.e. Preparation of Detailed Project Report (DPR) and providing Project Management Consultancy Service (PMC) as per scope of work mentioned in section-5 of above RFP by the main contractor. The work order no. is WAP/INFRA/SUDA-LPR/2019 dated 21.01.2019. This work was allotted against the Bid Quotation No.2 of the applicant dated 09.01.2019 wherein applicant committed to follow the terms and conditions as per

tender allotted by SUDA's RFP No. 708/01/29/HFA/2016-17 dated 01-06-2017 in which main contractor participated and qualified.

(6) The applicant is providing no other services to the main contractors other than the services mentioned in scope of work mentioned in section-5 of RFP No. 708/01/29/HFA/2016-17 for preparation of DPR and providing Project Management Consultancy (PMC) Service with the main contractors.

(7) **SUDA** has been established as a state level nodal agency, under the department for Urban Employment and Poverty Alleviation by Uttar Pradesh Government to carry out any function entrusted to a municipality under article 243W of the Constitution. This agency is registered under the 'Registration of Societies Act since 20th November 1990. As per the "Memorandum of Association of State Urban Development Agency", it's main objectives shall be-

(a) To identify the urban poor in the state.

(b) To draw up plans and formulate schemes for the upliftment of the urban poor in the state.

(c) To implement schemes for the benefit of the urban poor either directly or through other agencies engaged in this direction, whether private, public or cooperative.

(d) To review the progress of the execution of these activities as well as effectiveness of the benefits directed towards the urban poor.

(e) To set up or establish any specific service such as training facilities, infrastructural etc. in furtherance of the economic interest of the urban poor.

(8) Further, Pradhan Mantri Awas Yojana, the PMAY is a Scheme to provide central assistance to Urban Local Bodies (ULBs) and other implementing agencies through States/UTs for Rehabilitation of existing slum dwellers using their land as a resource through private, participation, and affordable Housing in Partnership.

(9) The matters listed in the 11th and 12th schedule to the constitution (details 243G and 243W, respectively), as functions pertaining to Panchayats/Municipality, are inter alia: (a) Safe water for drinking, (b) Maintenance of community assets, (c) Family welfare, (d) Markets and Fairs, (e) Poverty Alleviation Programmes, (f) Regulation of land use and construction of land buildings, (g) Urban planning including the town planning, (h) Planning for economic and social development, (i) Urban poverty alleviation, (j) Slum improvement and up-gradation.

(10) The scope of work by the applicant with main contractor is as under-

A. Scope of work under Preparation of DPR/Beneficiary Document Preparation:

- 100% physical verification includes door survey, collection of land documents and consent letters from the beneficiaries as per HFAPOA (Housing for All by 2022- Plan of Action), data collection, data verification and data compilation.
- Inclusion of present status and proposed works of infrastructure details.
- MIS Entry.
- Key stakeholder consultations.
- Preparation of beneficiaries wise detailed Architectural/Engineering designs. Drawing and estimates for all sizes of plots, project structuring under appropriate development and funding mechanism. .
- Assistance in obtaining appropriate approvals from concerned agencies/departments. .
- Appropriating all necessary data in reference to Slum Free city Plan in the DPR.
- The DPR should be complete in all respect with all report drawings, statements and documents necessary for obtaining the grant from the Government of India.

B. Scope of Work under Project Management Consultancy (PMC)/Supervision Services:

- PMC will coordinate, execute and monitor the activities leading to the construction of

- approved DUS (Dwelling units) by Govt. of India.
- All the activities till the completion of DUS will be taken care of by PMC.
 - PMC shall also administer the works by the beneficiaries and ensure that the agreement between the ULBs and beneficiaries whether related to quality or quantities of work are executed in accordance with its provisions.
 - PMC shall attach Beneficiaries to the project in PMAY-MIS and also upload Annexure 7A & 7C.
 - PMC shall execute all MIS related work of PMAY (U).
 - PMC will supervise the construction work to ensure adherence to the drawings, prescribed high standards of quality and timely completion of the project and verify and certify the progress of the work.
 - Preparation of Physical and Financial progress and shall submit to respective ULBs and DUDA.
 - Preparation of individual files consist of application, copy of Aadhar Card, bank details, land documents, consent letters etc, stage wise photographs for every beneficiaries.
 - PMC will assist Beneficiaries at various stages such as Plinth Level, Lintel Level, roof level and final finishing works and assist to get timely installments.
 - PMC will make sure that the project/ DUs construction must complete as per the agreement made with the beneficiaries for the successful and timely implementation of the Project.
 - PMC will implement GEO tagging of constructions of all the stages.
 - Time extension will not be considered except in very exceptional cases without prejudice to levy of penalties. However any approval for extension of time of completion of the works stipulated in the construction, beneficiaries will be without any additional financial implication.
 - PMC shall be fully responsible for quality control and shall put in place such measures as are essential for ensuring regular on site quality check.
 - PMC shall submit the tentative organization chart for managing the project so that appropriate decisions are taken quickly. However, the actual number of technical and financial personnel to be deployed and the deployment schedule shall be prepared by the PMC and manually agreed upon after award of work.
 - Generate and submit to the ULBs time to time progress reports in the agreed formats and the agreed frequency.
 - PMC shall also apprise the beneficiaries of the progress or activities of the project on fortnightly/monthly basis.
 - Cash flow Chart —Actual and Scheduled & Bar Chart Actual and Scheduled Status of payments of beneficiaries. Photographs of various stages (Before excavation, Foundation, Plinth Level, Lintel Level & Completion) of DUs of each beneficiary, Geo tagging of constructions all the stages Visitors' Site Inspection, Settlement of all accounts of the beneficiaries with the ULBs.
 - Provide project completion report/closure report which shall contain all technical and financial information of the project.
 - Supervision and Monitoring : The Consultant will be required, during the construction phase to provide the field supervision and sufficient staff for check on quality control of the work at site. For this purpose, the Consultant shall have to supervise and exercise adequate and undertake constant day to day technical supervision over the construction including giving layout, its checking, conformity to approved specifications and accepted standards. Submission of weekly or fortnightly progress report as per the directions of Client, including maintaining necessary site records, containing data in support of the same, carrying out field tests on materials, structures etc. and obtaining

necessary approvals thereon and maintaining adequate records thereof on the forms prescribed by the Client.

6. The applicant has submitted statement containing the applicant's interpretation of law as under-

- (1) Issue raised in the application is squarely covered under Section 97(2) (b) of the CGST Act 2017 being a matter related to applicability of a notification issued under the provisions of this Act.
- (2) As per Constitution of India the text of Article 243G and 243W stands as follows-

Functions entrusted to Panchayats as laid down under section 243G of the Constitution of India are:-

“Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to-

- (a) the preparation of plans for economic development and social justice;
- (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.”

Functions of Municipality as laid down under section 243W of the Constitution of India are:-

“Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow,-

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to,-

- (i) the preparation of plans for economic development and social justice;
- (ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;
- (b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.”

- (3) According to foregoing discussions it may be construed that the Consultancy services rendered i.e. DPR/Beneficiary Document Preparation and PMC/Supervision Services under the contract with State Urban Development Agency, Uttar Pradesh (SUDA), and for PMAY are in relation to functions entrusted to Municipalities under Article 243G and to Panchayats under Article 243W of the Constitution of India.

- (4) The second part of the first question for consideration which is a corollary to the first part when answer to the first part is in affirmative. Since it may be established that answer to the first question is in affirmative, moving to decide as to whether such services provided would qualify as "Pure services (excluding works contract service or other composite supplies involving supply of any goods)" as provided in serial number 3 of Notification No. 12/2017- Central Tax (Rate) dated 28 June, 2017, as amended (S. No. 3A) by Notification No. 2/2018- Central Tax (Rate) dated 25 January, 2018 issued under Central Goods and Services Tax Act, 2017 ('CGST') and corresponding Notifications No. KA.N.I.-2-843/X1-9 (47) / 17-UP. Act-1 - 2017 - Order - (10) - 2017 Lucknow, dated June 30, 2017 issued under Uttar Pradesh Goods and Service Tax Act, 2017 ('UPGST Act'), where the Project cost includes the cost of service rendered along with reimbursement of cost of procurement of goods for rendering such service and, thus, be eligible for exemption from levy of CGST and UPGST, respectively.
- (5) The extracts of Notification No. 12/2017-Central Tax (Rate) dated 28 June, 2017 are as follows:

Table

S.No.	Chapter,Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
1	2	3	4	5
3	Chapter 99	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, 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

- (6) Going through the Scope of work under preparation of DPR/Beneficiary Document Preparation and scope of work under PMC/Supervision Services this may be clearly opined that services mentioned such services provided would qualify as "Pure services (excluding works contract service or other composite supplies involving supply of any goods)" as provided in serial number 3 of Notification No. 12/2017- Central Tax (Rate) dated 28 June, 2017, as amended (S. No. 3A) by Notification No. 2/2018- Central Tax (Rate) dated 25 January, 2018 issued under Central Goods and Services Tax Act, 2017 ('CGST') and corresponding Notifications No. KA.N.I.-

2-843/X1-9 (47) / 17-UP. Act-1 - 2017 - Order - (10) - 2017 Lucknow, dated June 30, 2017 issued under Uttar Pradesh Goods and Service Tax Act, 2017 ('UPGST Act'), where the Project cost includes the cost of service rendered along with reimbursement of cost of procurement of goods for rendering such service and, thus, be eligible for exemption from levy of CGST and UPGST, respectively.

- (7) Now coming to the second question that as the main contractor has awarded, back to back, i.e. same work to the applicant, in that case whether the services provided by the applicant would be exempted or not, in terms of Notification No. 12/2017-Central Tax (Rate) dated 28th June 2017, as amended.
- (8) In that regard have to submit that the main contractors have entered into an agreement with SUDA for providing "Preparation of Detailed Project Report" and providing "Project Management Consultancy Service" under Pradhan Mantri Awas Yojna, the service which was further sublet to the applicant by the main contractors. This has already been established in the above paras that the said services are in relation to functions entrusted to Municipalities under Article 243W and to Panchayats under Article 243G of the Constitution of India and accordingly exempt from levy of GST terms of entry no. 3 of notification No. 12/2017 Central Tax (Rate) dated 28 June, 2017, as amended. As per the said entry, the main conditions for the exemption are:
- a. It should be a pure service (excluding works contract service or other composite supplies involving supply of any goods).
 - b. Provided to the Central Government, State Government or Union Territory or Local Authority or a Governmental Authority,
 - c. 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.
- (9) From perusal of entry no. 03 of the Notification No. 12/2017, it may be observed that service should be pure service, supplied to specific class of recipient and should be in relation to any function entrusted to panchayat or municipality under article 243G or 243W of the constitution. Accordingly it may be established that the service of providing "Preparation of Detailed Project Report (DPR)/ Beneficiary Document Preparation" and providing "Project Management Consultancy Service (PMC)/Supervision Services" under Pradhan Mantri Awas Yojna, by the applicant, in terms of contract entered between main-contractor and SUDA and sub-letting of same contract by the main contractor to the applicant, is exempt from GST.
- (10) Circular No. 147/16/2011 – Service Tax Dated 21st October 2011 where in reference to Circular no. 138/07/2011-Service Tax Dated 06th May 2011 was also invited, wherein it was clarified that the services provided by the subcontractors / consultants and other service providers are classifiable as per Section 65 A of the Finance Act, 1994 under respective sub clauses (105) of Section 65 of the Finance Act and are chargeable to service tax accordingly. Clarification has been requested as to whether the exemption available to the Works Contract Service providers in respect of projects involving construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., is also available to the sub-contractors who provide Works Contract Service to these main contractors in relation to those very projects. The matter was examined and concluded that where services provided by the sub-contractors to the main contractor are independently classifiable under WCS, then they too will get the benefit of exemption so long as they are in relation to the infrastructure projects mentioned above. If the same concept of classification going to apply in GST regime then service provided by sub-contractor regarding DPR and PMS to main contractor shall be exempted because such services stands

exempted as long as they are provided to SUDA under PMAY either by main contractor or by subcontractor.

- (11) Similar views have been observed by the Rajasthan Authority for Advance Ruling, vide Advance Ruling No. RAJ/AAR/2019-20/28 dated 19.12.2019, in the case of Sevak Ram Sahu (M/S S.R.S. Enterprises). In the instant case the Authority has observed that "... The entry does not speak of contractor or sub-contractor but supply of pure service by way of construction under certain project. It clearly stipulates that whosoever is supplying the pure labour contract services for the construction of a civil structure or any other original work under PMAY is exempt from GST."
- (12) Similarly, in the case of M/s Shree Construction, regarding applicability of concessional rate of 12% on work contract service provided to the Railways, in terms of Notification No. 11/2017-C.T. (Rate) dated 28.06.2017, as amended, the Appellate Authority for Advance Ruling Under GST, Maharashtra, in its Order No. MAH/AAAR/SS-RJ/15/2018-19 dated 03.01.2019 has observed that "...In the instant case though the respondent i.e. M/s Shree Construction is providing works contract service to its main contractor who has entered into works contract agreement with Railways, the composite supply of works contract being carried out by M/s Shree Construction is ultimately going to the use of Railways without being subjected to any change or modification, thus the said work contract, though undertaken by the sub-contractor is undoubtedly pertaining to the Railways and no one else. Thus the condition specified under item (u) of the sr. 3 of the said Notification is completely fulfilled and therefore the service provided by the sub-contractor would attract concessional rate of 12% GST.there was no need to include such sub-contracts in the item (v) of the Notification as there was no confusion whether the sub-contractor will be eligible to such concessional rate of GST, since the activities described under item (v) of sr. no. 3 of the Notification are services specific. The service provider and the service recipient are immaterial for the determination of beneficiary of this concessional rate of GST..."
- (13) Supreme Court in case of G.P. Ceramics Private Limited v. Commissioner, Trade Tax, Uttar Pradesh, (2009) 2 SCC 90 has categorically mentioned that "It is now a well-established principle of law that whereas eligibility criteria laid down in an exemption notification are required to be construed strictly, once it is found that the applicant satisfies the same, the exemption notification should be construed liberally."

Exemption notification should be analysed word by word to understand whether it is project-centric or person-centric. Once it is project-centric then whole project exemption criteria must be matched with the terms of the contract; if it is person-centric then check whether the person in question is eligible for an exemption or not.

- (14) M/S Saryu Babu Engineer India Pvt. Ltd., Lucknow, Uttar Pradesh was providing Project Development Service (i.e. Detailed Project Report Service) and Project Management Consultancy services ('PMCS') under the Contract to State Urban Development Authority (herein after referred as "SUDA") under the Contract for Pradhan Mantri Awas Yojna "PMAY".

In this regard copy of AAR Order No. 53 dated 11.02.2020, in the case of M/S Saryu Babu Engineer India Pvt. Ltd., Lucknow; Uttar Pradesh is attached herewith where the same two questions as raised here in this application were raised before the Authority for advance ruling "AAR". Answers to both the questions were given in affirmative by the AAR.

- (15) There also in exactly similar case where State Urban Development Authority (SUDA in short), Lucknow has entered into an agreement with “M/s Creative Consortium, and M/s Rudrabhishek Enterprises Limited (herein after referred as main contractors) for “Preparation of Detailed Project Report” and providing “Project Management Consultancy Service” under Pradhan Mantri Awas Yojna (PMAY in short). The above two parties made an agreement and awarded, back to back, same work to M/S Manpar Icon Technologies, Lucknow, Uttar Pradesh.

The AAR Order No. 61 dated 07.07.2020, in the case of M/S Manpar Icon Technologies, Lucknow, Uttar Pradesh is referred where exactly the same two questions as raised here in this application were raised before the Authority for advance ruling “AAR”. Answers to both the questions were given in affirmative by the AAR.

- (16) Thus this has been established that based on the above Notification No. 12/2017 and 02/2018 issued under Central Tax (Rate), GST is exempt in the hands of applicant in case of DPR/Beneficiary Document Preparation and PMCs/Supervision Services.

7. The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer his comments/views/verification report on the matter. The Joint Commissioner, CGST & Central Excise Division-1, Lucknow vide his F.No. 19-CGST/LKO-I/AAR/R-II/2022/1461 dated 08.06.2022 has informed that no proceedings on the questions raised is pending or decided under any of the provisions of the Act. He, however, offered no comments on the questions raised by the applicant.

8. The applicant was granted a personal hearing in the matter. In compliance, Shri Pankaj Shukla, Chartered Accountant & Authorized representative, attended personal hearing on 27.06.2022 through virtual mode on behalf of the applicant. During the personal hearing, he reiterated the submissions already made in the application of advance ruling.

DISCUSSION AND FINDING

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

10. We have gone through the submissions made by the applicant and have examined the explanation submitted by them. At the outset, we find that the issue raised in the application is squarely covered under Section 97(2)(b) of the CGST Act 2017 being a matter related to applicability of a notification issued under the provisions of this Act. We therefore, admit the application for consideration on merits.

11. We have gone through the submissions made by the applicant and examined the detailed explanation submitted by them. We observe that the question sought by the applicant is as under-

- (1) *Whether the Project Development Service (i.e. Detailed Project Report Service/Beneficiary Document Preparation) and Project Management Consultancy services ('PMCS')/Supervision Services provided by the applicant to the recipient under*

the Contract from State Urban Development Authority (herein after referred as "SUDA") and the Project Management Consultancy services ("PMC") under the Contract for PMAY would qualify as an activity in relation to function entrusted to Panchayat or Municipality under Article 243G or Article 243W respectively, of the Constitution of India?

- (2) *If answer to first question is in affirmative then, whether such services provided by the applicant would qualify as Pure services (excluding works contract service or composite supplies involving supply of any goods) as provided in serial number 3 of Notification No. 12/2017- Central Tax (Rate) dated 28 June, 2017, as amended (S. No. 3A) by Notification No. 2/2018- Central Tax (Rate) dated 25 January, 2018 issued under Central Goods and Services Tax Act, 2017 (CGST) and corresponding Notifications No. KA.N.I.-2-843/XI- 9 (47) / 17-UP. Act-1 - 2017 - Order - (10) - 2017 Lucknow, dated June 30, 2017 issued under Uttar Pradesh Goods and Service Tax Act, 2017 ('UPGST Act'), where the Project cost includes the cost of service rendered along with reimbursement of cost of procurement of goods for rendering such service, and, thus, be eligible for exemption from levy of CGST and UPGST, respectively.*

12. We observe that as per Sl. No. 3 of Notification No. 12/2017-CT (Rate) dated 28.06.2017 *"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"* are exempt from tax.

13. We observe that SUDA has been established as a state level nodal agency, under the department for Urban Employment and Poverty Alleviation by Uttar Pradesh Government. As per the "Memorandum of Association of State Urban Development Agency", its main objectives shall be-

- (a) To identify the urban poor in the state.
- (b) To draw up plans and formulate schemes for the upliftment of the urban poor in the state.
- (c) To implement schemes for the benefit of the urban poor either directly or through other agencies engaged in this direction, whether private, public or cooperative.
- (d) To review the progress of the execution of these activities as well as effectiveness of the benefits directed towards the urban poor.
- (e) To set up or establish any specific service such as training facilities, infrastructural etc. in furtherance of the economic interest of the urban poor.

14. As per the Memorandum of Association, the Secretary, Urban Employment & Poverty alleviation Programme, will be the Chairman of the SUDA. Further, as per point no. 33 of Article of Association, the accounts of the SUDA shall be subject to an account audit by the Comptroller and Auditor General of India and as per point no. 43 *"Members to receive no profit upon dissolution of the society if after disposal and settlement of the property of the society and its claims and liabilities, there are any surplus assets, such asset shall not be paid to or distributed amongst the member of the society or any of them but shall be disposed off as directed by the Government of India or State Government"*.

15. As SUDA has been established as a state level nodal agency, under the department for Urban Employment and Poverty Alleviation by Uttar Pradesh Government and as per the

information contained in Memorandum of Association (in Para 14 above), it is clear that SUDA is a part of State Government of UP. The said observation is further supported by the following Government Orders which is addressed to the Director, SUDA UP, Department for Urban Employment and Poverty Alleviation (available on www.shasnadesh.up.nic.in)-

(i) No. 172/69-1-10-75(Sa)/97 dated 26.02.2010 and No. 123/2021/174/69-1-21-14(137)/12 dated 11.05.21 both regarding continuity of post in SUDA/DUDA UP.

(ii) No. 595/69-1-10-14(27)/10 dated 24.05.2010 regarding declaration of property by the employees of SUDA/DUDA UP.

In view of facts stated above, at least it can be established that SUDA falls under Government category.

16. Further, as per website of Pradhan Mantri Awas Yojana-Housing for All (Urban), Ministry of Housing and Urban Affairs, the PMAY is a Scheme to provide central assistance to Urban Local Bodies (ULBs) and other implementing agencies through States/UTs for Rehabilitation of existing slum dwellers using their land as a resource through private, participation, and affordable Housing in Partnership. As per the details available on website SUDA is the state level nodal agency for PMAY(U) in the state of Uttar Pradesh.

17. Now coming to the functions entrusted to Panchayats/Municipalities, the matters listed in the 11th and 12th schedule to the constitution (details 243G and 243W, respectively), are inter alia: (a) Safe water for drinking, (b) Maintenance of community assets, (c) Family welfare, (d) Markets and Fairs, (e) Poverty Alleviation Programmes, (f) Regulation of land use and construction of land buildings, (g) Urban planning including the town planning, (h) Planning for economic and social development, (i) Urban poverty alleviation, (j) Slum improvement and up-gradation etc. Further as per the preface to the PMAY, Housing for All (Urban) Scheme Guidelines:-

"The Mission seeks to address the affordable housing requirement in urban areas through following programme verticals:

- *Slum rehabilitation of Slum Dwellers with participation of private developers using land as a resource*
- *Promotion of Affordable Housing through Credit Linked Subsidy*
- *Affordable Housing in Partnership with Public & Private sectors*
- *Subsidy for Beneficiary-Led individual house construction /enhancement."*

18. In view of forgoing discussions, we are of the opinion that the Consultancy services rendered by the Applicant under the contract with SUDA, and for PMAY are in relation to functions entrusted to Municipalities / Panchayats under Article 243W / 243G of the Constitution of India.

19. Now coming to the second question that whether such services provided by the Applicant would qualify as Pure services, we come to examine the scope of work under agreement, as provided by the Applicant:-

- a. Identification and Validation of new beneficiaries/replacement of beneficiaries as and when required
- b. Scope of work under preparation of DPR:-
 - 100% Physical verification including Door to Door Survey,
 - Collection of land documents and consent letter from the beneficiaries
 - Data collection, Data verification and Data compilation
 - Inclusion of present status and proposed works of infrastructure details

- MIS Entry
 - Key Stakeholder consultations
 - Preparation of Beneficiaries wise detailed Architectural/ Engineering designs, Drawings & Estimates for all sizes of plots
 - Project structuring under appropriate development and funding mechanism
 - Assistance in obtaining approvals from concerned agencies / departments
 - The Consultant shall incorporate all necessary data in reference to Slum Free City Plan in the DPR.
 - The DPR should be complete in all respects with all reports drawings, statements and document necessary for obtaining the grant from the Government of India.
 - The DPR shall be computer typed and printed and drawing should be in Auto Cad.
- c. Scope of work under Project Management Consultancy (PMC):-
- PMC will coordinate, execute and monitor the activities leading to the construction of approved DUs by Govt. of India. All the activities till the completion of DUs will be taken care of by PMC.
 - PMC shall also administer the works by the beneficiaries and ensure that the agreement between the ULBs and Beneficiaries whether related to quality or quantities of works are executed in accordance with its provisions.
 - PMC shall attach Beneficiaries to the project in PMAYMIS and also upload Annexure 7C/7D/7E.
 - PMC shall execute all MIS related work of PMAY (U).
 - PMC will supervise the construction work to ensure adherence to the drawings, prescribed high standards of quality and timely completion of the project and verify and certify the progress of the work.
 - Preparation of Physical and Financial progress and shall submit to respective ULBs and DUDA
 - Preparation of individual files consist of application, copy of Aadhar card, bank details, land documents, consent letters etc, stage wise photographs for every beneficiaries.
 - PMC will assist Beneficiaries at various stages such as Plinth Level, Lintel Level, roof level and final finishing works and assist to get timely installments.
 - PMC will make sure that the project / DUs construction must complete as per the agreement made with the beneficiaries for the successful and timely implementation of the Project.
 - PMC will implement the Geo tagging of constructions of all the stages.
 - Time extension will not be considered except in very exceptional cases without prejudice to levy of penalties. However any approval for extension of time of completion of the works stipulated in the construction, beneficiaries will be without any additional financial implication.
 - PMC shall be fully responsible for quality control and shall put in place such measures as are essential for ensuring regular on site quality checks.
 - PMC shall submit the tentative organization chart for managing the project so that appropriate decisions are taken quickly.
 - However, the actual number of technical and financial personnel to be deployed and the deployment schedule shall be prepared by the PMC and mutually agreed upon after award of work.
 - Generate and submit to the ULBs time-to-time progress reports in the agreed formats and at the agreed frequency.

- PMC shall also apprise the beneficiaries of the progress and/or activities of the project on fortnightly/monthly basis.
- Cash Flow Chart – Actual and Scheduled & Bar Chart-Actual and Scheduled
- Status of Payment to beneficiaries
- Photographs of various stages (Before Excavation, Foundation, Plinth level, Lintel Level & Completion) of DUs of each beneficiary
- Geo tagging of constructions of all the stages
- Visitors' Site Inspection
- Settlement of all accounts of the beneficiaries with the ULBs
- Provide project completions report/closure report which shall contain all technical and financial Information of the project.

20. After examining the agreement and scope of work, we are of the opinion that services mentioned in the contract would qualify as Pure Service (excluding works contract service or other composite supplies involving supply of any goods)" as provided in serial number 3 of Notification No. 12/2017- Central Tax (Rate) dated 28 June, 2017 issued under Central Goods and Services Tax Act, 2017 ('CGST') and corresponding Notifications No. — K.A.N.I.-2-843/X1- 9 (47) / 17-UP. Act-1 - 2017 - Order - (10) - 2017 Lucknow, dated June 30, 2017 issued under Uttar Pradesh Goods and Service Tax Act, 2017 ('UPGST Act').

21. We find that in an identical matter, the Appellate Authority of Advance Ruling, Uttar Pradesh vide Appeal Order No. 17/AAAR/02/7/2021 dated 02.07.2021 has held as under-

In view of above discussion, we hold that the Services rendered by the appellant to the State Urban Development Agency, Uttar Pradesh (SUDA), and for PMAY are in relation to functions entrusted to Municipalities under Article 243W and to Panchayats under Article 243G of the Constitution of India and such services would qualify as Pure Service (excluding works contract service or other composite supplies involving supply of any goods)".

22. However, in the instant case, the applicant is providing services of *Project Development Service (i.e. Detailed Project Report Service/Beneficiary Document Preparation) and Project Management Consultancy services ('PMCS')/Supervision Services* to SUDA as a sub-contractor. SUDA Lucknow had entered into an agreement dated 31.07.2017 with "M/s Wapcos Limited" (main contractors) for provisioning of above services and Work Order No. 1172/01/29/HFA/2018-19 dated 16.01.2019 was issued by the SUDA to M/s WAPCOS Limited. The applicant was back to back awarded with same work i.e. Preparation of Detailed Project Report (DPR) and providing Project Management Consultancy Service (PMC) by M/s WAPCOS Limited vide work order no. is WAP/INFRA/SUDA-LPR/2019 dated 21.01.2019.

23. The applicant has submitted that service provided by sub-contractor regarding DPR and PMS to main contractor shall be exempted because such services stands exempted as long as they are provided to SUDA under PMAY either by main contractor or by subcontractor. They have cited following orders in their support-

- (1) Rajasthan Authority for Advance Ruling, vide Advance Ruling No. RAJ/AAR/2019-20/28 dated 19.12.2019, in the case of Sevak Ram Sahu (M/S S.R.S. Enterprises) wherein the Authority has observed that
".... The entry does not speak of contractor or sub-contractor but supply of pure service by way of construction under certain project. It clearly stipulates that whosoever is supplying the pure labour contract services for the construction of a civil structure or any other original work under PMAY is exempt from GST."

- (2) Appellate Authority for Advance Ruling, Maharashtra, Order No. MAH/AAAR/SS-RJ/15/2018-19 dated 03.01.2019 in the case of M/s Shree Construction wherein it was observed that-

"...In the instant case though the respondent i.e. M/s Shree Construction is providing works contract service to its main contractor who has entered into works contract agreement with Railways, the composite supply of works contract being carried out by M/s Shree Construction is ultimately going to the use of Railways without being subjected to any change or modification, thus the said work contract, though undertaken by the sub-contractor is undoubtedly pertaining to the Railways and no one else. Thus the condition specified under item (u) of the sr. 3 of the said Notification is completely fulfilled and therefore the service provided by the sub-contractor would attract concessional rate of 12% GST.there was no need to include such sub-contracts in the item (v) of the Notification as there was no confusion whether the sub-contractor will be eligible to such concessional rate of GST, since the activities described under item (v) of sr. no. 3 of the Notification are services specific. The service provider and the service recipient are immaterial for the determination of beneficiary of this concessional rate of GST..."

- (3) The Hon'ble Supreme Court in case of G.P. Ceramics Private Limited v. Commissioner, Trade Tax, Uttar Pradesh, (2009) 2 SCC 90 has observed-"The question of applying the principle of strict or liberal interpretation would arise only when the plain meaning attached thereto is found to be absurd or anomalous. If a plain meaning given to the provision for the purpose of considering as to whether the applicant had fulfilled the eligibility criteria as laid down in the notification or not is found to be clear, purpose and object the notification seeks to achieve must be given effect to."
- (4) Authority of Advance Ruling Order No. 61 dated 07.07.2020, in the case of M/S Manpar Icon Technologies, Lucknow, Uttar Pradesh wherein also SUDA Lucknow has entered into an agreement with "M/s Creative Consortium, and M/s Rudrabhishek Enterprises Limited for "Preparation of Detailed Project Report" and providing "Project Management Consultancy Service" under Pradhan Mantri Awas Yojna (PMAY in short). The above two parties made an agreement and awarded, back to back, same work to M/S Manpar Icon Technologies, Lucknow, Uttar Pradesh. In the said case, exactly the same two questions as raised in this application were raised before the Authority for advance ruling and answers to both the questions were given in affirmative by the AAR.

24. We observe that sl. No. 3 of Notification No. 12/2017-CT (Rate) dated 28.06.2017 exempts *"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"*. As such, for qualifying exemption under the said entry, it is essential that specified services are provided to the Central Government, State Government or Union territory or local authority or a Governmental authority and there is no condition in the notification that the said services are provided directly to the Central Government, State Government or Union territory or local authority or a Governmental authority. Accordingly, the applicant is entitled for exemption if the specified services are provided to SUDA under sub-contract with main contractor.

25. In view of the above, both the members unanimously rule as under;

RULING

Question 1. Whether the Project Development Service (i.e. Detailed Project Report Service/Beneficiary Document Preparation) and Project Management Consultancy services ('PMCS')/Supervision Services provided by the applicant to the recipient under the Contract from State Urban Development Authority (herein after referred as "SUDA") and the Project Management Consultancy services ('PMC') under the Contract for PMAY would qualify as an activity in relation to function entrusted to Panchayat or Municipality under Article 243G or Article 243W respectively, of the Constitution of India?

Answer 1- The Services rendered under the contract with State Urban Development Agency, Uttar Pradesh (SUDA), and for PMAY are in relation to functions entrusted to Municipalities under Article 243W and to Panchayats under Article 243G of the Constitution of India.

Question 2. If answer to first question is in affirmative then, whether such services provided by the applicant would qualify as Pure services (excluding works contract service or composite supplies involving supply of any goods) as provided in serial number 3 of Notification No. 12/2017- Central Tax (Rate) dated 28 June, 2017, as amended (S. No. 3A) by Notification No. 2/2018- Central Tax (Rate) dated 25 January, 2018 issued under Central Goods and Services Tax Act, 2017 (CGST) and corresponding Notifications No. KA.N.I.-2-843/X1- 9 (47) / 17-UP. Act-1 - 2017 - Order - (10) - 2017 Lucknow, dated June 30, 2017 issued under Uttar Pradesh Goods and Service Tax Act, 2017 ('UPGST Act'), where the Project cost includes the cost of service rendered along with reimbursement of cost of procurement of goods for rendering such service, and, thus, be eligible for exemption from levy of CGST and UPGST, respectively.

Answer 2- Such services would qualify as Pure Service (excluding works contract service or other composite supplies involving supply of any goods)" and accordingly exempt from the payment of GST duly covered in Sl. No 3 of Notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017 issued under Central Goods and Services Tax Act, 2017 (CGST/Act), and corresponding notifications issued under Uttar Pradesh Goods and Services Tax Act, 2017 (UPGST Act).

26. This ruling is valid only within the jurisdiction of Authority for Advance Ruling Uttar Pradesh and subject to the provisions under Section 103(2) of the CGST Act, 2017 until and unless declared void under Section 104(1) of the Act.


(Vivek Arya)

Member of Authority for Advance
Ruling


(Rajendra Kumar)

Member of Authority for Advance
Ruling

To,

M/s KDS Services (P) Ltd,
2nd Floor, 011 & 012,
Parshvanatha Planet Plaza, Vibhuti Khand,
Gomti Nagar, Lucknow-226010

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

Copy to –

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
- ✓ 2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Commissioner, CGST & C. Ex, 7-A, Ashok Marg, Lucknow, 226001
4. The Deputy/Assistant Commissioner, CGST & Central Excise, Division-Lucknow I, 12th Floor, Kendriya Bhawan, Aliganj, Lucknow 226024
5. Through the Additional Commissioner, Gr-I, Commercial Tax, *Zone-2, Lucknow*, Uttar Pradesh to jurisdictional tax assessing officers.

Note: An Appeal against this advance ruling order lies before the Uttar Pradesh Appellate Authority for Advance Ruling for Goods and Service Tax, 4, Vibhuti Khand, Gomti Nagar, Lucknow – 226010, within 30 days from the date of service of this order.