

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

4, Vibhuti Khand, Gomti Nagar, Lucknow

ADVANCE RULING NO. UP ADRG 72 /2021

DATED 21-01-2021

PRESENT:

1. Shri Abhishek Chauhan

Additional Commissioner, Central Goods and Service Tax

Audit Commissionerate, Lucknow

.....Member (Central Tax)

2. Shri Dinesh Kumar Verma

Joint Commissioner, State Goods and Service TaxMember (State Tax)

1.	Name of the Applicant	M/s Jayesh A Dalal Shop No. 4, J.S.Market, Suhag Nagar, Firozabad, Uttar Pradesh, 283203
2.	GSTIN or User ID	09AAVPD9061B1ZK
3.	Date of filing of Form GST ARA-01	06.11.2020
4.	Represented by	Shri Narendra Kumar (CA & Authorized representative)
5.	Jurisdictional Authority- Centre	Range-Firozabad-1, Division-Firozabad
6.	Jurisdictional Authority- State	Firozabad Sector-1
7.	Whether the payment of fees discharged and if yes, the amount CIN	Yes BKID20100900512743

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

1) M/s Jayesh A Dalal, Shop No. 4, J.S.Market, Suhag Nagar, Firozabad, Uttar Pradesh-283203, (here in after referred to as the applicant) is a registered assessee under GST having GSTN: 09AAVPD9061B1ZK.

2) The Applicant has submitted application for Advance Ruling dated 06.11.2020 enclosing duly filled Form ARA-01(the application form for Advance Ruling) along with certain annexure and attachments.

3) The Applicant in his application sought Advance Ruling as follows : –

- i. Whether the Project Development Service (i.e. Detailed Project Report Service) and Project Management Consultancy services ('PMCS') provided by the applicant to recipient under the Contract for 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?
 - ii. If answer to question i is in affirmative, would such services provided by the applicant 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/XI-9 (47) / 17-U.P. Act-1 - 2017 - Order - (10) - 2017 Lucknow: Dated June 30, 2017 issued under Uttar Pradesh Goods and Services 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 ACT.
- 5)** The applicant has submitted that there is an agreement between Director -State Urban Development Agency (SUDA), 7/23, Sector-7, Gomtinagar Extension, Sahid Path, Near Dial 100, Lucknow and M/s Jayesh A Dalal, address Jalaram Shakti beside Dhavalgiri Apartments, Near Lourdes Convent School, Athwalines, Surat – 395007, Gujarat. The agreement is for-
- (I)** Preparation of Detailed Project Report (DPR) for Ghaziabad NN ULB (District - Ghaziabad) in Meerut Cluster No. 14 and providing Project Management Consultancy (PMC) for Project under Beneficiary Led Construction in 18

Clusters vide work order no. 1190/01/29/HFA/2018-19 dated 16/01/2019. The Client accepted the proposal submitted by M/s Jayesh A Dalal for DPR and PMC services for Beneficiary Led Construction (BLC) component of Pradhan Mantri Awas Yojana – Urban (PMAY-U).

6) GST exemption under Notification No. 12/2017 Central Tax (Rate) dated 28th June, 2017 & Notification No. 2/2018 Central Tax (Rate) dated 25th January,2017 are as under:-

Notification No. 12/2017 Central Tax (Rate) dated 28th June,2017:

Table

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
1	2	3	4	5
3	Chapter99	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
10	Heading 9954	Services provided by way of pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana.	NIL	NIL

Notification No. 2/2018 Central Tax (Rate) dated 25th January,2017:

Sl.	Description of Services	Rate	Condition
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No.	Chapter, Section, Heading, Group or Service Code (Tariff)		(per cent.)	
1	2	3	4	5
3A	Chapter99	Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article243G of the Constitution or in relation to any function entrusted to a Municipality under article243W of the Constitution.	NIL	NIL

7) The applicant further submitted that based on the Notification No. 12/2017 & 02/2018 issued under Central Tax (Rate) and Notification No. 843 dated 30.06.2019 issued by UP Government, GST is exempt in case of DPR and PMCs. They also submitted copy of Order No. 22 dated 25.01.2019, in the case of M/S Rudhrabhishek Enterprises Ltd, Noida, Uttar Pradesh wherein full exemption was granted by the Authority for Advance Ruling Uttar Pradesh.

8) The application for advance ruling was forwarded to the Jurisdictional GST Officer (Assistant Commissioner, CGST & CEX, Division-Firozabad) to offer his comments/views/verification report on the matter. The Assistant Commissioner, Central GST & Central Excise, Division-Firozabad vide his letter C.No. V(30)11/Tech/Misc/FZD/2019/1289 dated 03.12.2020 has informed that as per provisions laid in Notification No. 12/2017 dated 28.06.2017, 02/2018 dated 25.01.2018 and order No. 22 dated 25.01.2019 of the Authority for Advance Ruling Uttar Pradesh, the activity of DPRS and PMCS services appears to be exempted. The Assistant Commissioner, Central GST & Central Excise, Division-Firozabad has simply forwarded his views without discussing the facts leading to the said conclusion.

9) The applicant was granted a personal hearing in the matter. In compliance, Shri Narendra Kumar, Chartered Accountant & Authorized representative, appeared on 19.01.2021 for hearing on behalf of the applicant. During the personal hearing he reiterated the submissions already made in the application of advance ruling.

DISCUSSION AND FINDING

10) 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'.

11) 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.

12) 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 whether the Project Development Service (i.e. Detailed Project Report Service) and Project Management Consultancy services ('PMCS') provided by the applicant to 'SUDA' and the Project Management Consultancy Services (PMCS) for 'PMAY' would qualify as an activity in relation to functions entrusted to Panchayat or Municipality under Article 243G or Article 243W respectively, of the Constitution of India, and if so, 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 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.

13) We have also examined the Notification No. 12/2017-Central Tax, dated 28.06.2017 as amended vide Notification No. 2/2018-Central Tax dated 25.01.2018 issued by the Central Government and corresponding Notification No.- KA.N.I.-2-843/X1- 9 (47) / 17-UP. Act-1 -2017 - Order - (10) - 2017 Lucknow, dated June 30, 2017 issued by the State Government, Uttar Pradesh.

14) We find that Sl. No. 3 of the 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. Similarly Sl no. 3A of the Notification No. 12/2017-CT (Rate) dated 28.06.2017 {inserted by notification no. 02/2018 CT (Rate) dated 25.01.2018} exempts Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution. We observe that in the question no. 2, the applicant has sought the opinion about the services provided by them 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 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. The sl no. 3 of the Notification No. 12/2017-Central Tax (Rate) exempts only pure services and there is no mention of reimbursement of cost of goods for rendering such services in the said notification. The Sl. No. 3A of the said notification exempts composite supply of goods and services in which the value of supply of goods shall constitute not more than 25% of the value of the said composite supply. As such in the Sl no. 3A also, there is restriction of 25% of value of supply of goods.

15) We find that Central Government, State Government, local authority , Governmental Authority and Government Entity has been defined as under-

Central Government

As per clause (8) of section 3 of the said Act, the '**Central Government**', in relation to anything done or to be done after the commencement of the Constitution, means the President. As per Article 53 of the Constitution, the executive power of the Union shall be vested in the President and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution. Further, in terms of Article 77 of the Constitution, all executive actions of the Government of India shall be expressed to be taken in the name of the President. Therefore, the **Central Government means the President and the officers subordinate to him while exercising the executive powers of the Union vested in the President and in the name of the President.**

State Government

Similarly, as per clause (60) of section 3 of the General Clauses Act, 1897, the '**State Government**', as respects anything done after the commencement of the Constitution, shall be in a State the Governor, and in an Union Territory the Central Government. As per Article 154 of the Constitution, the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or indirectly through officers subordinate to him in

accordance with the Constitution. Further, as per article 166 of the Constitution, all executive actions of the Government of State shall be expressed to be taken in the name of Governor. Therefore, State Government means the Governor or the officers subordinate to him who exercise the executive powers of the State vested in the Governor and in the name of the Governor.

Governmental Authority

“Governmental Authority” means an authority or a board or any other body, – (i) set up by an Act of Parliament or a State Legislature; or (ii) established by any Government, with 90 per cent. or more participation by way of equity or control, to carry out any function entrusted to a Municipality under Article 243 W of the Constitution or to a Panchayat under Article 243 G of the Constitution.

Government Entity

“Government Entity” means an authority or a board or any other body including a society, trust, corporation, (i) set up by an Act of Parliament or State Legislature; or (ii) established by any Government, with 90 per cent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.” {inserted by notification no. 31/2017-CT(Rate) dated 13.10.2017}

Local Authority

Local authority is defined in clause (69) of section 2 of the CGST Act, 2017 and means the following:

- a “Panchayat” as defined in clause (d) of article 243 of the Constitution;
- a “Municipality” as defined in clause (e) of article 243P of the Constitution;
- a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;

- a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;
 - a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
 - a Development Board constituted under article 371 of the Constitution;
- or
- a Regional Council constituted under article 371A of the Constitution;

16) As per the work order produced by the applicant, it is clear that the Project Development Service (i.e. Detailed Project Report Service) and Project Management Consultancy services ('PMCS') have been provided by the applicant to SUDA (State Urban Development Agency). SUDA has been established as a state level nodal agency, under the department for Urban Employment and Poverty Alleviation by Uttar Pradesh Government. This authority is registered under the 'Registration of Societies Act' since 20th November' 1990. As per the "Memorandum of Association of State Urban Development Agency", its main objective shall be for "betterment of urban population" through comprehensive approach.

17) We find that SUDA is neither covered in the definition of Central Govt. nor State Govt. Moreover, SUDA is also not covered in Local Authority as the definition of local authority is very specific and means only those bodies which are mentioned as local authorities in clause (69) of section 2 of the CGST Act, 2017.

The applicant has not produced any document to establish whether;-

- (i) SUDA has been set up by an Act of Parliament or a State Legislature; or
- (ii) established by any Government, with 90per cent. or more participation by way of equity or control, to carry out any function entrusted to a Municipality under Article 243 W of the Constitution or to a Panchayat under Article 243 G of the Constitution; or

- (iii) established by any Government, with 90 per cent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.”

The information available on the website of SUDA has also no mention of the same. So it is clear that the SUDA is not covered in the definition of Central Govt., State Govt., Local Authority, Governmental Authority and Govt. Entity as such the exemption contained in Sl No. 3 & 3A of the Notification No. 12/2017-Central Tax (Rate) are not available to services provided to SUDA.

18) Further, as the name suggests, the SUDA i.e. State Urban Development Agency is engaged in Urban development as such the services provided to SUDA would not qualify as an activity in relation to function entrusted to Panchayat under article 243G of the Constitution as the Panchayat is an institution of self-government of the rural area constituted under article 243B. Further, the functions entrusted to a municipality under the twelfth Schedule to Article 243W of the Constitution are as under-

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and, commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry protection of the environment. and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.

11. Urban poverty alleviation.

12. Provision of urban amenities and facilities such as parks, gardens, play-grounds.

13. Promotion of cultural, educational and aesthetic aspects.

14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.

15. Cattle ponds; prevention of cruelty to animals.

16. Vital statistics including registration of births and deaths.

17. Public amenities including street lighting, parking lots, bus stops and public conveniences.

18. Regulation of slaughter houses and tanneries.

19) Now, we come to examine the scope of work under work order No. 1190/01/29/HFA/2018-19 dated 16.01.2019, as provided by the applicant—

A. Scope of work under Preparation of DPR:-

- Preparation of detailed Project under vertical IV of PMAY (U). 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):-

- 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.

20) We observe that the applicant has not submitted any relevant document to establish the coverage of services provided by them in particular functions entrusted to a municipality under the twelfth Schedule to Article 243W of the Constitution. The nature of services mentioned in the Work Order dated 16.01.2019 (attached by the applicant in the application of advance ruling on sample basis) i.e. preparation of DPR and Project Management Consultancy are not covered in the functions entrusted to a municipality under Article 243W of the Constitution in our view.

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) and Project Management Consultancy services ('PMCS') provided by the applicant to recipient under the Contract for 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?

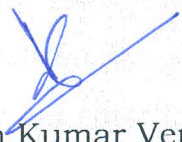
Answer 1 No

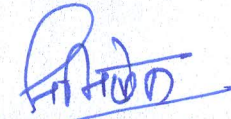
Question 2. If answer to question i is in affirmative, would such services provided by the applicant qualify as "Pure services (excluding works contract service or other composite supplies involving supply of any goods)" as provided in serial number 3 of

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/XI-9 (47) / 17-U.P. Act-1 - 2017 - Order - (10) - 2017 Lucknow: Dated June 30, 2017 issued under Uttar Pradesh Goods and Services 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- Not applicable.

21) 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.


(Dinesh Kumar Verma)
Member of Authority for
Advance Ruling


(Abhishek Chauhan)
Member of Authority for
Advance Ruling

To,
M/s Jayesh A Dalal,
Shop No. 4, J.S. Market, Suhag Nagar,
Firozabad, Uttar Pradesh, 283203

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, 113/4, Sanjay Place, Agra 282002.
4. The Deputy/Assistant Commissioner, CGST & Central Excise, Division Firozabad, Aman Motors Building, Surya Nagar, Firozabad, 283203.

5. Through the Additional Commissioner, Gr-I, Commercial Tax, Etaawah..... 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.