


GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/RULING/2019/02
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2017-18/AR/15)

Date : 22.2.2019

Name and address of the applicant	:	M/s. National Dairy Development Board Post Box No. 40, Near Jagnath Mahadev, Anand – 388 001.
GSTIN of the applicant	:	24AADCN2029C1Z5
Date of application	:	13.09.2017
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(e) determination of the liability to pay tax on any goods or services or both;
Date of Personal Hearing	:	7.11.2017
Present for the applicant	:	Shri Hardik Shah, CA

As per the submission of the applicant, NDDDB is a statutory body constituted by an Act of Parliament, namely the National Dairy Development Board Act, 1987 (NDDDB Act). Besides providing technical assistance and administrative & managerial services to promote, plan and organize programmes for the purpose of development of dairy and other agricultural industries and biological industries on a nationwide basis. It has allowed the 'Anandalaya Educational Society', an education institution created by NDDDB by way of trust, to occupy and use the building and premise owned by NDDDB within its campus through a lease deed at very nominal amount for enabling the institute to grow and prosper which eventually would encourage the activity of education.

1.1 The applicant further submitted that Service Tax did not envisage any kind of fair value concept and therefore the trust did not have to suffer the burden of service tax on the receipt of renting of immovable property. With the introduction of GST regime, related party transactions are brought to the net of tax by imposing tax on the fair value when the transaction has been carried out for free of cost or for lower consideration. The applicant believes that since the Anandalaya trust is indirectly controlled by NDDDB, it would fall within the definition of 'related party' as provided in the GST legislation and the applicant apprehends that there may arise GST liability on the fair value of rent of the immovable property given on lease to Anandalaya Educational Society.

1.2 The applicant then by citing the definition of 'Governmental Authority' given under Section 2(16) of IGST Act, 2017 submitted that a question may arise as to whether the condition of holding ninety percent control and to carry out function mentioned under Article 243W is applicable to the body set up by an Act of Parliament. The applicant then stated that the words used in the definition is 'or' between (i) & (ii) which means that the condition of 90% or more participation by way of equity or control, to carry out any

function entrusted to municipality under Article 243W would be applicable to body which is established by the Government and the board/body set up by an act of Parliament or a State Legislature is independent and is not bound by this condition. The applicant then referred to the judgment of Hon'ble High Court in the case of Shapoorji Paloonji & Company Ltd Vs. CCE, Patna (2016-TIOL-556-HC-Patna-ST) and submitted that vide this decision, the Court held that the condition attached to the definition of the 'governmental authority' given in the erstwhile Service Tax legislation viz. participation of government by way of 90% or more of equity and control to carry out the functions of municipality under article 243W of the Constitution, is relevant only for the board established by the Government.

1.3 The applicant then submitted that as it qualifies as a 'governmental authority' under the GST legislature, the service of renting or leasing of its property to encourage the education institute within its campus provided by the applicant to the Anandalaya Educational Society would qualify for exemption under SR. No. 4 of Notification No. 12/2017-Central Tax (Rate).

2. The applicant National Dairy Development Board, has raised following questions for advance ruling in its application:-

(i) Whether NDDDB would be qualified as 'Governmental Authority' from GST perspective ?; and

(ii) Whether renting of immovable property service provided by NDDDB to an educational institute would be exempted under Sl. No. 4 of Notification No. 12/2017-Central Tax (Rate)?

3. With the above background, we heard Shri Hardik Shah, Chartered Accountant, for the appellant on 07.11.2017. We have considered the submissions made by the applicant in the application for advance ruling and submissions made at the time of personal hearing. We have also considered the comments offered by the department vide letter F.No. IV/16-13/GST/AAR-NDDDB/T/2017-18 dated 15.11.2017.

4. Firstly we deal with the question as to whether NDDDB would be qualified as governmental authority from GST perspective or otherwise. We observe that the phrase 'governmental authority' has not been defined in CGST Act. However, the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 wherein exemption from payment of tax is notified, defines the 'governmental authority' in para 2(zf) as having the same meaning as assigned to it in the Explanation to clause (16) of Section 2 of the Integrated Goods and Services Tax Act, 2017, relevant extracts of which are as under-

"Explanation: The expression "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 ninety per cent or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution."

5. However, it is stated by the CGST proper officer in its submission that the judgement relied upon by the applicant is already under challenge before the Hon'ble Supreme Court and therefore the judgement of Hon'ble Patna High Court may not be considered as final.

6. The judgement of the Hon'ble Patna High Court is having a referential value while deciding the similar issue in Gujarat. The interpretation of Hon'ble Patna High Court that the words "with ninety per cent or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution" are attached only to clause (ii) of the explanation is therefore not binding.

7. We therefore observe that the exemption shall be available to the applicant if the applicant fulfils the common condition namely "with ninety per cent or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution". As it is not submitted by the applicant as to whether it fulfills the said condition, if in the case of the applicant, this condition is fulfilled, then it attract the benefit of the exemption, otherwise not.

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

RULING

- (i) National Dairy Development Board (24AADCN2029C1Z5) would be qualified as 'government authority' from Goods and Services Tax perspective, if it fulfils the condition namely 'with ninety percent or more participation by way of equity or control to carry out any function entrusted to a municipality under article 243W of the Constitution'.
- (ii) Renting of immovable property service provided by National Dairy Development Board (24AADCN2029C1Z5) to an educational institute would be exempted under Sr. No. 4 of Notification No. 12/2017-Central Tax (Rate) and corresponding State Tax Notification, if it qualifies as 'governmental authority'.

(R.B. Mankodi)
Member

(G.C. Jain)
Member

Place : Ahmedabad

Date : 20.02.2019.