

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri B. V. Borhade, Joint Commissioner of State Tax (Member)

(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax (Member)

GSTIN Number, if any/ User-id		27AAJAS7455F124
Legal Name of Applicant		SIR J.J. COLLEGE OF ARCHITECTURE CONSULTANCY CELL
Registered Address/Address provided while obtaining user id		78/3 DR D N ROAD, FORT, MUMBAI - 400001
Details of application		GST-ARA, Application No. 54 Dated 16.07.2018
Concerned officer		State Tax Officer (C-602) Nodal division 1, Mumbai
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in brief)	Provide comprehensive Architecture service and project management service that includes architecture service and MEP design, reviewing tender document for inviting contractors, site supervision and certifying bills of contractors.
Issue/s on which advance ruling required		(v) Determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required		

PROCEEDINGS

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by SIR J. J. COLLEGE OF ARCHITECTURE CONSULTANCY CELL, the applicant, seeking an advance ruling in respect of the following issue:

Whether applicant shall charge GST on the consultancy services rendered to Municipal Corporation of Greater Mumbai (MCGM) for an upcoming project of establishment & development of textile museum in Mumbai.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST 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 MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

02. FACTS AND CONTENTION - AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus-

Statement of relevant facts having a bearing on the questions raised

- a. J. J. College of Architecture consultancy cell was formed as per the guidelines of the council of Architecture which is statutory body under the act of Parliament and University of Mumbai. The Government of Maharashtra has permitted JJ to render services of Architecture.
- b. JJ provides services to only to Government bodies, State corporations and PSUs in relation to comprehensive architecture services that include project design, structural design, MEP design, drawings, study reports, etc.
- c. Currently, JJ has entered into an agreement with Municipal Corporation of Greater Mumbai (MCGM) for an upcoming project of establishment & development of 'textile Museum' in Mumbai where JJ has to provide

comprehensive Architecture service and project management service that includes architecture service and MEP design, reviewing tender document for inviting contractors, site supervision and certifying bills of contractors paid by MCGM. This project involves heritage restoration and adoptive reuse of various structures such as Textile Museum, Library bldg., back office for support staff, shopping area which would be leased out to various state government authorities for showcase of textiles, Auditorium, underground parking, Public Plaza - Landscape area, etc.

- d. As per notification no TPB 4312/789/CR-27/2013/UD-11 of the urban land department, the textile museum is treated as part of the recreational ground area and ancillary facilities of recreation like exhibition of textile related activities, fabrics machinery, processes, fashion show, souvenir shops, cafeteria, spill out zones, light & sound shows, etc. have been allowed to developed in the said area.

Statement containing the applicant's interpretation of law and or facts as the case may be, in respect of the aforesaid question(s)

- a. Applicability of GST on provision of consultancy service to MCGM - As per the provision of GST law, the GST is applicable on supply of goods/services. The consultancy services provided to MCGM is a supply for consideration. However, there is exemption provided via notification no. 12/2017- Central tax (rate) dated 28th June, 2017 in respect of services provided to central government, state government or union authority or local authority or a government authority.
The relevant entry is reproduced as below - Pure Service (excluding works contract service or other composite supplies involving supply of any goods) provided to central government, state government or union authority or local authority or a government 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.
- b. This entry provides exemption from payment of taxes on pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to central government, state government or union authority or local authority or a government 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.
- c. In order to claim above mentioned exemption, the service provided to MCGM must be pure service i.e. no involvement of works contract.

The agreement entered by JJ and MCGM has been registered after payment of stamp duty with government of Maharashtra under article 63/63 as work contact agreement as advised by MCGM.

Moreover establishment & development of museum and recreation ground is not considered as function entrusted to municipality under Article 243 W of the Constitution. Since establishment & development of museum and recreation ground is not a function listed in twelfth schedule to be read with article 243 W of the constitution.

Thus, in our view based on the above facts, JJ is required to charge GST on the consultancy services rendered to MCGM for the above project work under the GST laws.

03. **CONTENTION - AS PER THE CONCERNED OFFICER**

The submission, as reproduced verbatim, could be seen thus-

Please find required information of Advance Ruling Application No.54 in the case of M/s. Sir. J. J. College Of Architecture Consultancy Cell as under

Question : Whether applicant shall charge GST on the consultancy services rendered to Municipal Corporation of Greater Mumbai (MCGM) for an upcoming project of establishment and development of Textile museum in Mumbai.

Reply: YES

Comments: Exemption provided as per notification no. 12/2017- Central tax rate dt. 28-06-2017 -exemption provided for 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 Government 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.

Agreement made between JJ College of Architecture Consultancy cell and Municipal Corporation of Greater Mumbai (MCGM) is under Article 63/63 Works Contract, so GST is applicable.

Other information is enclosed herewith.(Annexure, Form no. ST-2)

Copy of Article 63/63 Works contract agreement

04. **HEARING**

The case was taken up for Preliminary hearing on dt. 08.08.2018 when Sh. Kushal Mehta, C.A. along with Sh. Sumesh Porwal, C.A. appeared and made written submissions and stated that they were



not carrying authorization today and would be submitting the same at the earliest . Sh. Sanjay Sawant , Executive Engineer, BMC was also present. Jurisdictional Officer, Sh. Shrikant Biwalkar, State Tax Officer (C-602), Nodal division - 1, Mumbai appeared and stated that they would be making submissions in due course.

The application was admitted and called for final hearing on 05.09.2018, Sh. Kushal Mehta, C.A. along with Sh. Sumesh Porwal, C.A. and Sh. Sneh Siyar, C.A. appeared on behalf of MCGM and Sh. Sneh Siyar, C.A. stated that he was not carrying authorization and would submit the same in two days. Jurisdictional Officer, Sh. Shrikant Biwalkar, State Tax Officer (C-602), Nodal division - 1, Mumbai appeared and stated that they have already made submissions.

05. OBSERVATIONS

We have gone through the facts of the case, written and oral submissions as made by the applicant as well as the concerned officer and the applicable legal provisions of the case.

We find that the applicant, Sir J. J. College of Architecture is an institution of repute, located in Mumbai.

We find that the Architecture Consultancy Cell of the applicant college has entered in to an agreement with the Municipal Corporation of Greater Mumbai (MCGM) to provide comprehensive architecture service and project management service that includes architecture service and MEP design, reviewing tender documents for inviting contractors, site supervision and certifying bills of contractors, paid by MCGM in respect of an upcoming project of establishment and Development of a 'Textile Museum' in Mumbai. The project involves heritage restoration and adoptive use of various structures such as textile museum, library building, back office for support staff, shopping area to be leased out to various State Government authorities for showcase of textiles, Auditorium, underground parking, public plaza, landscape area, etc.

We also find that the applicant has stated that the agreement entered into by JJ and MCGM has been registered after payment of stamp duty with the Government of Maharashtra under Article 63/63, as Works Contract Agreement as advised by MCGM.

We find that the applicant's main query is whether in view of the above facts the consultancy services as per details above would be exempt under Notification no. 12/2017-Central Tax (Rate) dated 28.06.2018.

We find that the above question of the applicant is in respect of the Serial No. 3 of the Notification as below:-

Sl. No	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
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

In continuation to the above, we also find that the applicant in their ARA have stated that Establishment and Development of a museum and recreation ground is not considered as a function entrusted to a Municipality under Article 243 of the Constitution. Since Establishment and Development of a museum and recreation ground is not a function listed in in the 12th Schedule to be read with Article 243 of the Constitution, the applicant has stated that in their view JJ is required to charge GST on consultancy services rendered to MCGM for the above project work, under GST laws.

Thus in view of the above facts we are required to ascertain if the applicant's services are eligible for exemption as per the Serial No 3 of the Notification referred above. For this we are required to ascertain the exact services being provided in the present case by the applicant and also if "Establishment and development of museum and recreation ground" is a function entrusted to a municipality under Article 243 W of the Constitution.

First of all we find that the functions entrusted to a municipality under Article 243 W are as under:-

Article 243W of the Constitution reads as under:

243W. Powers, authority and responsibilities of Municipalities, etc 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.

We further find that the Twelfth Schedule (Article 243W of the Constitution (Seventy-Fourth Amendment) Act, 1992) reads as under:

1. Urban planning including town planning.

2. Planning 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 up gradation.

11. Urban poverty alleviation.

12. **Provision of urban amenities and facilities such as parks, gardens, playgrounds.**

13. **Promotion of cultural, educational and aesthetic aspects.**

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

15. Cattie pounds; 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.



Thus in view of the above referred legal provisions that would require examination in respect of eligibility of the applicant in respect of exemption as referred in Notification No. 12/2017-CT(Rate) dated 28.06.2018, we first of all examine the exact nature of services being provided by the applicant to MCGM.

We find that the applicant in their submissions have details of the activities to be undertaken by them as under:-

“Currently, JJ has entered into an agreement with Municipal Corporation of Greater Mumbai (MCGM) for an upcoming project of establishment & development of 'textile Museum' in Mumbai where JJ has to provide comprehensive Architecture service and project management service that includes architecture service and MEP design, reviewing tender document for inviting contractors, site supervision and certifying bills of contractors paid by MCGM. This project involves heritage restoration and adoptive reuse of various structures such as Textile Museum, Library bldg., back office for support staff, shopping area which would be leased out to various state government authorities for showcase of textiles, Auditorium, underground parking, Public Plaza - Landscape area, etc.”

However we find that the applicant has not provided the copies of contract, entered into by them with MCGM which would in detail give the exact nature of activities being done by them and which would be very crucial in deciding whether the services being provided by the applicant are in the nature of Pure Services or Works Contract Services.

We find that the jurisdictional officer has submitted before us a copy of receipt of stamp duty paid for registration of contract between the applicant and MCGM wherein the contract is clearly shown to be as “Works Contract” and further, the applicant also in their submission have clearly stated that the subject agreement has been registered after payment of stamp duty with the Government of Maharashtra under Article 63/63 as Works Contract Agreement as advised by MCGM.

Thus in view of the facts and documentary evidences and submissions made by the applicant in respect of registration under Stamp Act as Works Contract Agreement, we are constrained to find that the services being provided by the applicant to MCGM are in the nature of Works Contract Services and therefore they would in no way be eligible for exemption under Sr. No. 3 of Notification No. 12/2017-CT (Rate) dated 28.06.2018, in respect of pure services.

In view of submissions made by the jurisdictional officer and registration of agreement between the applicant and MCGM as works Contract Agreement as per advice of MCGM and as a result themselves stating that of the services provided by the applicant to be of the nature of Works Contract Services, we do not find the need to go into their other agreements in respect of claims of exemption under Sr.No. 3 of Notification No. 12/2017-CT(Rate) dated 28.06.2018, as pure services.

05. In view of the extensive deliberations as held hereinabove, we pass an order as follows :

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

For reasons as discussed in the body of the order, the questions are answered thus -

Question :- Whether applicant shall charge GST on the consultancy services rendered to Municipal Corporation of Grater Mumbai (MCGM) for an upcoming project of establishment & development of textile museum in Mumbai.

Answer :- Answered in the affirmative in view of detailed discussions above.



sd
B. V. BORHADE
(MEMBER)

sd
PANKAJ KUMAR
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Jurisdictional Commissioner of Central Tax.
5. Joint commissioner of State tax , Mahavikas for Website.

CERTIFIED TRUE COPY

sd
MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai - 400021