

**PUNJAB AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICE TAX, BHUPINDRA ROAD,
PATIALA - 147001 (PUNJAB)**

ORDER NO. AAR/GST/PB/ 011

DATED: 06/09/2019

(An Appeal against this order lies with the Appellate Authority in terms of Section 99 and Section 100 of the CGST Act, 2017 and Section 99 and Section 100 of the PGST Act, 2017 within a period of thirty days from the date of communication of this order.)

I. DETAILS OF THE APPLICANT:

GSTIN	03AGNPP9409P1ZN
Legal Name	PUSHPA RANI PABBI
Trade Name	PUSHPA RANI PABBI H.No. 6, Near Gauri Shanker Mandir, Guru Amar Dass Nagar Colony, Jalandhar - 144008
Issue(s) on which advance ruling is sought	Whether the parking lot services provided by the Contractor appointed by the Market Committee, which is a Government Authority is exempt under Notification No. 12 of 2017 as the parking lot activity is covered under Article 243 of the Constitution.
Personal Hearing Date	02.08.2019
Present for applicant	Sh. Amit Bajaj, Advocate Sh. Sunil Dutt, CA Sh. Parvinder Kumar Pabbi, Husband of Prop.
Order Date	06/09/2019

II. BRIEF FACTS OF THE CASE:

Pushpa Rani Pabbi (Applicant) is a registered Proprietorship concern registered under the CGST Act, 2017 and Punjab SGST Act, 2017 with GSTIN No. 03AGNPP9409P1ZN. The applicant has been appointed as a contractor for providing parking lot services at the place of the market committee at Jalandhar. The applicant is of the view that the Market Committee is a Government Authority as per the definition of Government Authority provided in the clause (zf) of the notes appended to Notification No. 12/2017 as it is established by the State Government and the services provided by the Governmental Authority by way of any activity in relation to any function entrusted to a municipality under Article 243W of the Constitution is NIL rated service notified under Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 (as amended)

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III. QUESTION(S) ON WHICH ADVANCE RULING IS SOUGHT:

Whether the parking lot services provided by the Contractor appointed by the Market Committee, which is a Government Authority is exempt under Notification No. 12 / 2017 as the parking lot activity is covered under Article 243 of the Constitution.

IV. ELIGIBILITY OF THE APPLICATION FOR ADVANCE RULING:

The Section 97(2) of the Central Goods and Services Tax Act, 2017, read with Section 97(2) of the Punjab Goods And Services Tax Act, 2017, provides for the issues on which advance ruling can be sought.

97 (2) *The question on which the advance ruling is sought under this Act, shall be in respect of,-*

- (a) classification of any goods or services or both;*
- (b) applicability of a notification issued under the provisions of this Act;*
- (c) determination of time and value of supply of goods or services or both;*
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;*
- (e) determination of the liability to pay tax on any goods or services or both;*
- (f) whether applicant is required to be registered;*
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.*

It is observed that the queries of the applicant in para III is related to the question 'whether the parking lot services provided by the Contractor appointed by the Market Committee is exempt under Notification No. 12/2017', falls under the ambit of Section 97(2) (a) - *classification of any goods or services or both and applicability of a notification issued under the provisions of this Act.* Hence, the application of the applicant is eligible for a ruling by the Punjab State Advance Ruling Authority.

V. SUBMISSIONS BY THE APPLICANT:

The applicant has, inter-alia, stated that

1. That they have been appointed as a contractor for providing parking lot services at the place of the market committee (Mandi Board) at Jalandhar.
2. That the Market Committee is a Government Authority as per the definition of Government Authority provided in the clause 1(zf) of the notes appended to Notification No. 12/2017 as it is established by the State Government.
3. That the services provided by the Governmental Authority by way of any activity in relation to any function entrusted to a municipality under Article 243W of the

Constitution is NIL rated service notified under Notification No. 12/2017 CGST (Rate) Dated 28.06.2017 as amended upto date. Article 243W of the Constitution read with twelfth schedule covers the parking lot services provided by the Market Committee.

4. That the activities of market committee relating to maintenance of parking lots is taxable at NIL rate. The purpose behind it seems to provide tax free environment for the local bodies in the matter of their administration and the people getting services from the local authorities are not burdened by the GST. In many cases the Governmental authorities outsource their functions to private contractors, as is the case in hand where they have been given a contract for the maintenance of parking lot.
5. That since they are providing Parking lot services as a part of the functions entrusted to the market committee under Article 243W read with Twelfth schedule of the Constitution, therefore, the activity of maintenance of parking lot services provided by the applicant as a contractor of the market committee is covered under Notification No. 12/2017 and is therefore NIL rated.
6. That they have been employed by the market committee to provide services of parking lot at the place of market committee on their behalf. Thus in a way they act as an agent of the market committee. In the context of the peculiar facts of the case it is clear that they are providing parking lot services as a representative or agent of the market committee.
7. Reliance has been placed on the decision of the Hon'ble Supreme court though in different context in Larsen And Toubro Limited and Anr. vs State of Andhra Pradesh And Ors.
8. In view of the above facts it would be irrational to say that whenever the market committee provides parking lot services directly the same is exempt and whenever it provides through an agent the same is taxable and such an interpretation would not only defeat the very purpose of exempting market committee services but would also be violative of Article 14 of the Constitution of India.
9. That the market Committee (Mandi Board) primarily deals with the activities relating to agricultural produce. The maintenance of parking lots at Market Committee's place to facilitate the agriculture should also be considered as part of other support services related to agriculture covered under SAC code 998619, which is also taxable at NIL rate under Notification No. 12/2017.

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VI. HEARING:

The case was taken up for hearing on 02.08.2019. Sh. Amit Bajaj, Advocate, Sh. Sunil Dutt, CA and Sh. Parvinder Kumar Pabbi, Husband of Prop. appeared for Personal Hearing on behalf of the applicant. They submitted their side of the argument in the form of a written submissions relying on Notification No. 12/2017 dated 28.06.2017, copy of tender, copy of Argument (Ikrarnama) and case laws in their favour. They requested to examine and consider their submissions and to pass a suitable ruling. They have nothing more to add.

VII. DISCUSSIONS AND FINDINGS:

1. From the analysis of the applicant's submissions and statements, the following issue merit careful consideration for the favour of the final decision :

"Whether the parking lot services provided by the Contractor appointed by the Market Committee, which is a Government Authority is exempt under Notification No. 12 of 2017 as the parking lot activity is covered under Article 243 of the Constitution."

2. The Applicant is a registered Proprietorship concern registered under the CGST Act, 2017 and Punjab SGST Act, 2017. The applicant has been appointed as a contractor for providing parking lot services at the place of the Market Committee at Jalandhar. As per applicant's contention, the Market Committee is a Government Authority as per the definition of Government Authority provided in the clause (zf) of the notes appended to Notification No. 12 of 2017 as it is established by the State Government. The services provided by the Governmental Authority by way of any activity in relation to any function entrusted to a municipality under Article 243W of the Constitution is NIL rated service notified under Notification No. 12/2017- Central Tax(Rate) Dated 28.06.2017 (as amended)

3. The first aspect to be examined is whether the Market Committee is a Government Authority or not as per the definition of Government Authority provided in the clause (zf) of the notes appended to Notification No. 12/2017. Punjab State Agricultural Marketing Board (PSAMB) was established under the Punjab Agricultural Produce Markets Act, 1961 with an objective to control and supervise the marketing network of sale, purchase, storage and processing of processed or non processed agricultural produce so notified from agricultural, horticulture, animal husbandry and forest produce. The Punjab Agriculture produce is being regulated under the Punjab Agriculture Produce Markets Act, 1961. The preamble of the act is "An act to consolidate and amend the law relating to the better regulation of the purchase,

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sale, storage and processing of Agricultural produce and the establishment of the markets for Agricultural produces in the state of Punjab". The primary object of Punjab Mandi Board and Market Committees is to establish modern Markets for efficient marketing of agricultural produce by providing modern facilities in the mandis and to enforce the provisions of the Act, Rules Bye-laws framed there under. Punjab State Agricultural Marketing Board is a body corporate as well as a local authority by the name of the State Agricultural Marketing Board, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire and hold property and shall by the said name sue and be sued. The Board may from time to time direct these market committees to control and regulate the admission to the markets. Market Committees are service rendering agencies and their main source of income is market fee.

4. Before arriving at conclusion as to whether the Market Committee is a Government Authority or not, it is important to look at various legal position.

i) As per Section 2(69) of CGST Act "local authority" means—

- (a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution;
- (b) a "Municipality" as defined in clause (e) of article 243P of the Constitution;
- (c) 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;
- (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;
- (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
- (f) a Development Board constituted under article 371 and article 371J of the Constitution; or
- (g) a Regional Council constituted under article 371A of the Constitution;

ii) The term 'Government Authority' has also been defined in the Notification No. 12/2017-Central Tax (Rate) and the same is reproduced below:

"2(zf) "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 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."

iii) The FAQ's on 'Government services' issued by the CBEC (now CBIC) has clarified as under:

"2. Are Government or local authority or governmental authority liable to pay tax?"

Ans: Yes. The Government or a local authority or a governmental authority is liable to pay tax on supply of services other than the services notified as exempt or notified as neither a supply of goods nor a supply of services under clause (b) of sub-section (2) of section 7 of the CGST Act, 2017. In

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respect of services other than – (i) renting of immovable property; (ii) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government; and (iii) services in relation to an aircraft or a vessel, inside or outside the precincts of an airport or a port, the service recipients are required to pay the tax under reverse charge mechanism.

3. What is the meaning of 'Government' ?

Ans: As per section 2(53) of the CGST Act, 2017, 'Government' means the Central Government. As per clause (23) of section 3 of the General Clauses Act, 1897 the 'Government' includes both the Central Government and any State 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. 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.

4 Who is a local authority?

Ans: 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;

5. Are all local bodies constituted by a State or Central Law regarded as local authorities for the purposes of the GST Acts?

Ans: No. 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. It would not include other bodies which are merely described as a 'local body' by virtue of a local law. For example, State Governments have setup local developmental authorities to undertake developmental works like infrastructure, housing, residential & commercial development, construction of houses, etc. The Governments setup these authorities under the Town and Planning Act. Examples of such developmental authorities are Delhi Development Authority, Ahmedabad Development Authority, Bangalore Development Authority, Chennai Metropolitan Development Authority, Bihar Industrial

Area Development Authority, etc. Such developmental authorities formed under the Town and Planning Act are not qualified as local authorities for the purposes of the GST Acts.

6: Would a statutory body, corporation or an authority constituted under an Act passed by the Parliament or any of the State Legislatures be regarded as 'Government' or "local authority" for the purposes of the GST Acts?

Ans: A statutory body, corporation or an authority created by the Parliament or a State Legislature is neither 'Government' nor a 'local authority'. Such statutory bodies, corporations or authorities are normally created by the Parliament or a State Legislature in exercise of the powers conferred under article 53(3)(b) and article 154(2)(b) of the Constitution respectively. It is a settled position of law (Agarwal Vs. Hindustan Steel AIR 1970 Supreme Court 1150) that the manpower of such statutory authorities or bodies do not become officers subordinate to the President under article 53(1) of the Constitution and similarly to the Governor under article 154(1). Such a statutory body, corporation or an authority as a juridical entity is separate from the State and cannot be regarded as the Central or a State Government and also do not fall in the definition of 'local authority'. Thus, regulatory bodies and other autonomous entities would not be regarded as the government or local authorities for the purposes of the GST Acts.

9: Are various corporations formed under the Central Acts or State Acts or various government companies registered under the Companies Act, 1956/2013 or autonomous institutions set up by special Acts covered under the definition of 'Government'?

Ans: No. The corporations formed under the Central or a State Act or various companies registered under the Companies Act, 1956/2013 or autonomous institutions set up by the State Acts will not be covered under the definition of 'Government' and therefore, services provided by them will be taxable unless exempted by a notification."

iv) Article 243Q of the Constitution of India reads as under:

"243Q. Constitution of Municipalities

(1) There shall be constituted in every State,

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part: Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township"

v) Article 243W of the Constitution of India 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;

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(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

5. Hence according to 243Q of the Constitution of India, only Nagar Panchayats, Municipal Councils and Municipal Corporations are considered as Municipalities. However, in certain urban areas, called industrial townships, an industrial establishment may provide municipal services and a municipality may not be constituted in that urban area. Further, in view of the above legal provisions and as clarified by the FAQ's issued in respect of government services, the Mandi Board does not fall under the definition of local authority. A definition has to be read in its fulfilment and not in parts or out of context to suit a particular purpose.

6. The functions of Mandi Board is to establish markets for efficient marketing of agricultural produce by providing modern facilities in the mandis and to enforce the provisions of the Act, Rules Bye-laws framed there under. It also includes to establish a market therein providing such facilities for persons visiting it in connection with the purchase, sale, storage, weighing and processing of Agricultural produce concerned. The Board may from time to time direct these market committees to control and regulate the admission to the markets. Market Committees are service rendering agencies and their main source of income is market fee. Mandi Board has not been established by the State Government for providing Parking Lot services to the people. It is purely discretionary and optional of the part of Mandi Board depending on their business requirements. It is pertinent to mention that functions entrusted to Mandi Board are not the functions entrusted to a Municipality. The functions entrusted to Municipality are listed in the Twelfth Schedule to Article 243W of the Constitution and the same are 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.

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10. Slum improvement and upgradation.
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. Cattle 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.

7. Further, on perusal of agreement between the applicant and Mandi Board, it is established that the applicant has been appointed as Contractor for providing parking lot services at the place of Market Committee at Jalandhar for an amount of Rs. 2,72,97,000/- and the applicant is to recover the said amount by charging the vehicles entering the Market Committee area on rates ranging from Rs. 10/- for a two wheeler to Rs. 150/- for a Trolly, as fixed by the Market Committee. Thus, the Market Committee is earning revenue from the persons entering the parking area.

8. Moreover, it has been consistently held that any statutory authority which works on business principals, the fees collected by it cannot be considered as statutory fee. Only in case where the fee is collected towards sovereign functions and deposited with the Government revenue qualify to be outside the levy of any tax. Collection of parking fees by the Market Committee from the people entering their premises or area does not fall under the definition of sovereign functions. Sovereign functions of the State are those functions for which it is not answerable to any Court of Law. What is approved to be "Sovereign" is defence of the country, raising armed forces, making peace or war, foreign affairs, power to acquire and retain territory. These are not amenable to the jurisdiction of ordinary civil courts. The other functions of the State including welfare activity of State could not be construed as "sovereign" exercise of power. Hence, every governmental function need not be "sovereign". State activities are multifarious. From the primal sovereign power, which exclusively inalienably could be exercised by the Sovereign alone, which is not subject to challenge in any civil court to all the welfare activities, which would be undertaken by any private person.

9. In the present case, although the Punjab State Agricultural Marketing Board was established on 26th May, 1961 under the Punjab Agricultural Produce Markets Act, 1961, its function cannot be considered as sovereign functions and accordingly the parking fees collected by them through the applicant does not acquire the nature of statutory fee so as to

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be outside the scope of any tax. Thus, the parking fees collected by the applicant are not in nature of statutory fees.

10. In view of above, it is held that the parking lot services provided by the Contractor appointed by the Market Committee, are not exempt under Notification No. 12/2017 as the Market Committee is not a Government Authority as per the definition provided in the clause 2(zf) of the notes appended to Notification No. 12/2017

11. Now, as regards to classification of Parking Services provided by the applicant, a reference to the Annexure about Scheme of Classification of Services as appended to the Notification No. 11/2017 – Central Tax (Rate) reveals thus:

S.No.	Chapter, Section, Heading, Group	Service (Tariff)	Code	Service Description
125	Heading 9967			Supporting services in transport
138	Group 99674			Supporting services for road transport
141		996743		Parking lot services

In view of the above, following schedule entry under the Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 (as amended) for the taxable services would cover the above services:

Sl. No.	Chapter, Section or Heading	Description of services	Rate (percent)	Condition
11	Heading 9967 (Supporting services in transport)	(i) Services of goods transport agency (GTA) in relation to transportation of goods (including used household goods for personal use). Explanation.- "goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.	2.5	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken
		(ii) Supporting services in transport other than (i) above	9	

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

RULING

Question: Whether the parking lot services provided by the Contractor appointed by the Market Committee, which is a Government Authority is exempt under Notification No. 12 of 2017 as the parking lot activity is covered under Article 243 of the Constitution.

Answer: The parking services provided by the Contractor appointed by the Market Committee, are not exempt under Notification No. 12/2017 as the Market Committee is not a Government Authority. Marketing Committee (Mandi Board) does not qualify under the definition as provided in clause 2(zf) of the notes appended to Notification No. 12/2017. The activity / services of parking provided by the applicant falls under heading 9967 and attracts GST @ 18% (CGST 9 % + SGST 9 %).

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15. Bhinder
Navdeep Bhinder
Member, SGST 4/9/2019

4/9/19
Parul Garg
Member, CGST

Through Registered Post

PB/AAR/19/

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Dated:

09/9/2019

To

PUSHPA RANI PABBI
H.No. 6, Near Gauri Shanker Mandir,
Guru Amar Dass Nagar Colony,
Jalandhar - 144008

PB/AAR/19/

420-25

Dated:

09/9/19

Copy to:-

1. The Special Secretary, Goods and Service Tax Council, 5th floor, Tower-II, Jeevan Bharti Bldg., Connaught Place, New Delhi w.r.t. F. No. 193/Advance Ruling/GSTC/2017 dated 01.05.2018.
2. The Chief Commissioner, CX & CGST, Chandigarh Zone, Central Revenue Building, Plot NO. 19, Sector 17-C, Chandigarh - 160017
3. The Commissioner of State Taxes, Punjab.
4. The Commissioner, CGST, Jalandhar, Camp at GST Bhawan, F-Block, Rishi Nagar, Ludhiana.
5. The Assistant Commissioner of State Tax, Jalandhar
6. The Assistant Commissioner CGST Division-II, Jalandhar, C.R. Building, Model Town Road, Jalandhar

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