

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		27AEHPM7276H1Z2
Legal Name of Applicant		NATIONAL SECURITY SERVICES
Registered Address/Address provided while obtaining user id		DATTA NIWAS NEXT TO MITRA CO.OP.HSG.SOC., DEEP BUNGLOW CHOWK,SHIVAJI NAGAR, PUNE - 411016
Details of application		GST-ARA, Application No. 58 Dated 27.07.2018
Concerned officer		Dy. Commissioner , Division - III, (Deccan), CGST, Pune - II, Commissionerate.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in brief)	The applicant M/s National Security Services are providing Security services inter alia to Pimpri Chinchwad Municipal Corporation.
Issue/s on which advance ruling required		(ii) applicability of a notification Issued under the provisions of the Act (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 NATIONAL SECURITY SERVICES, the applicant, seeking an advance ruling in respect of the following issue.

Whether the Exemption Notification No.12/2017- Central Tax (Rate) dated 28/06/2017 (Entry No. 3 of the Notfn.) is applicable to the applicant for the Pure services i.e. Security Services rendered to Pimpri Chinchwad Municipal Corporation in relation to functions entrusted to Municipality under Article 243 W of the Constitution thereby exempting the applicant service provider from the whole of GST.

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".

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 question(s) raised

The applicant M/s National Security Services are providing Security services inter alia to Pimpri Chinchwad Municipal Corporation. The Security Services are provided in form of providing Security guards to the sites of PCMC from where Water Supply is made to the city by PCMC, in other words we provide Security Services to Water Pump

Houses, Purification Plants run by PCMC from where water supply is made to the city. Moreover, the Security Services are provided to Hospitals and Dispensaries run by PCMC. Also the Security Services are provided for Solid Waste Management, Slum Improvement undertaken by PCMC. Moreover the Security Services are also provided to PCMC in relation to Urban Planning including Town Planning, which is for Public Safety at large. All these Services are covered in article 243 W of the Constitution as functions entrusted to Municipality. Consequently Sl. No. 3 of the Notification No. 12/2017 - Central Tax (Rate) dated 28/06/2017 as amended squarely applies in the case of applicant and the Security Services provided to PCMC in relation to afore said functions entrusted to PCMC are exempt from GST.

Moreover it is to mention that PCMC have also advised not to charge GST on Security Services provided to them in relation to aforesaid functions as being Security Services are exempt under Notification No. 12/2017 dated 28/06/2017 since these services are provided to Municipality in relation to the function entrusted to Municipality under Article 243 W of the Constitution, thereby the applicant is not recovering any GST thereon.

The applicant is providing Security Persons to PCMC as per the agreement between applicant and PCMC.

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

In view of the aforesaid facts the applicant is of the opinion that the Security Services provided by the applicant to PCMC are exempt from GST , in view of Notification No. 12/2017 - Central Tax (Rate) dated 28/06/2017 (Sl. No.3). As the said Security Services are Pure Services and are being provided to Municipalities in relation to the functions entrusted to them under Article 243 W of the Constitution of India.

The aforesaid Services being provided by the applicant are without any material and thereby the said Services are the Pure Services as contemplated by the aforesaid exemption notification.

The condition of the notification that Services should be provided to the Municipality is also satisfied by the applicant. The next condition i.e.the Services should be in relation to the functions entrusted to the Municipalities under Article 243 W of the Constitution is also satisfied by the applicant.

In view of the aforesaid, the applicant is of the view that Security Services provided by them to PCMC are exempt from GST.

Additional submissions by applicant.

In this context our written submissions given during preliminary hearing held on 23/08/2018 may please be referred. The written submissions dated 21/08/2018 filed by the Deputy Commissioner, Div. III (Deccan) CGST Pune-II Commissionerate filed under F.No. VGN (30)87/ Dn.III/ GSTII/ N-Security/ Adv. Ruling/ 2018-19, copy of which was also served on us, may also be referred to.

In this connection, our submissions for final hearing are as under:

The department in their aforesaid submissions dated 21/08/2018 has given their opinion that the Exemption Notification No. 12/2017 - Central Tax (Rate) dated 28/06/2017 (Entry No.3 of the notification) is not applicable to us on the grounds that we are providing 'Assistants' to the Security Guards and the services provided by us pertains to providing assistants to Security Guards of PCMC (Pimpri Chinchwad Municipal Corporation) cannot be termed as services in relation to any activity in relation to any function entrusted to Municipality under Article 243 W of the Indian Constitution but can be termed as providing manpower services for the work of security arrangements to various properties of PCMC.

We do not agree with the aforesaid contention and opinion of the department. In this regard, as opined by the department that we are providing Assistants to the Security Guards of PCMC for the security arrangements. Therefore the question/ issue involved is that, what are the exact duties being performed by the persons provided by us.

In this context we would like to clarify that, even though the concerned documents refer to the word 'Assistant, in fact what we are providing are the Security Guards. The reason behind using the word assistant (Madatnis) in the contract and other relevant documents is that the security guards provided by us are working under the overall supervision of the Security Guards , who are on the establishment of the PCMC . However the persons provided by us are performing the duties of Security Guards only and carry out the entire function of the security and also responsible for the same . These facts are also evident from the duty list and functions which have been mentioned in 1 Annexure- A to the agreement between us and PCMC. The said 6:4 annexure-A specifies and elaborates the duties to be discharged by the persons provided by us as security guards(In the contract termed as 'Assistant/ Madatnis"). The said duties as specified in Annexure-A are as mentioned below:

- 1) That the guards provided by us should work under the supervision of the security guards who are on the establishment of PCMC.
- 2) Further, as per the said annexure-A, the guards provided by us are supposed to prevent any untoward incident in the premises, look after the security of furniture, computers and other valuables etc. in the premises.
- 3) They are also supposed to look after the premises after closure of the office, keep vigil on parking arrangements and not to allow any unknown vehicles during night hours and on public holidays.
- 4) They are also supposed to protect the premises from explosives and also should look after and maintain fire extinguishing equipments. They should have knowledge of first aid and also should be ready to tackle the situation like fire etc.
- 5) They are supposed to wear proper uniform and display their IDs on their shirts. In case of emergency they should be able to coordinate with Police, Fire Brigade and Hospitals by having updated telephone numbers of these organizations. In case of any untoward incident like theft etc. they are supposed to coordinate with the security department and also coordinate with police under the guidance of security department
- 6) They are supposed to work in three shifts or as and when required.

All these duties and responsibilities cast by PCMC by way of agreement on the guards provided by us indicate that the security guards provided by us are not mere assistants / helpers (Madatnis) because they are fully responsible for the security of the entire premises and also supposed to handle the emergency situation like fire, theft etc. and are to coordinate with important organization like police , fire brigade , hospitals etc. Only the thing is that they are supposed to work under the supervision of security guards of the PCMC does not make them helpers but they themselves discharge the duties of security guard. The term "Madatnis" used in the relevant documents is only a convenience term used by PCMC only to indicate that the Security Guards provided by us should work under their direction and supervision. This is obvious because PCMC has outsourced their security functions as per the prevalent commercial practice due to insufficient number of security personnel on the establishment of PCMC and in this sense the word Madatnis (Assistant) has been used. The security guards on the establishment of the PCMC are not sufficient to discharge the security functions and therefore without the assistance of the security persons provided by us, the entire security functions and duties cannot be discharged. The entire security functions and duties are being discharged jointly by the security guards on the establishment of PCMC and by the security guards provided by us. The aforesaid facts are also evident from the clarification issued by PCMC in this regard. The said clarification is enclosed herewith for your ready reference. (E:1)

From the gist of the said clarification, it can be seen that the competent authority that is Assistant Commissioner (Security) PCMC, Pune-411018 has clarified that, as per Annexure -A of the agreement (Duty list Sl.No.02 to 12) even though the persons provided by us are working under the supervision and directions of the security guards who are on the establishment of PCMC, the persons provided by us are doing the security work in relation to urban planning and public safety at large.

Moreover in support of our contention that the persons provided by us are discharging the duties of security guards only, we hereby submit the photo copy of ID cards of 5.3/6.6 security guards issued by us being used by the persons provided by us for security work. These ID cards are displayed on the uniforms of the persons working as security guards provided by us. The Honorable Member may kindly go through the same. (8.348:47)

In view of the above, it is evident that the persons being provided by us to PCMC are performing the duties of security guards only and also responsible for the entire security arrangements. Therefore they are not mere assistant to the security guards even though they are termed as assistant in the relevant documents. Therefore the department's contention that by using the term as provider of assistants to the security guards in the concerned documents disentitles us from the benefit of GST exemption, is not tenable as factually the persons provided by us are discharging the duties of security guards and totally responsible for the security of PCMC establishments as well as responsible for public safety. Therefore department's contention that we are providing manpower services and that providing such assistant to security guards of PCMC cannot be termed as services in relation to urban planning including town planning or any activity in relation to any function entrusted to Municipality under Article 243W of the constitution, is not tenable, as it is evident that the persons provided by us and security guards on the establishment of the PCMC forms an entire security team and that the role of the persons provided by us is inseparable from entire security team as also can be seen from duty list and responsibilities cast on the persons provided by us by way of agreement (Annexure -A to the agreement). Therefore persons provided by us clearly provide the services in relation to activities in relation to the functions entrusted to Municipality under Article 243W of the Constitution and thereby entitled for the benefit of Exemption Notification No.12/ 2017- Central Tax (Rate) dated 28/06/2017 (Entry No. 03 of the Notfn.). We are thus providing security services which are pure services in relation to the functions entrusted to Municipality (PCMC in this case) under article 243 W of the Constitution and thereby entitled for the benefit of Nil rate of GST under the exemption Notification No. 12/2017 Central Tax (Rate) dated 28/06/2017 (Entry no. 3 of the Notfn.), w.e.f. 01/07/2017.

Further, without prejudice to the aforesaid contention on our part we further submit that even assuming that as per departments contention our services are termed as manpower services for the work of security arrangements to various properties of PCMC, still we are of the view that the services provided by us fall in the ambit of the Exemption Notification No. 12/2017- Central Tax (Rate) dated 28/06/2017 9 Entry No. 03 of the Notfn.) . It is evident from the wording of the said notification that pure services provided by way of any activity which are in relation to any function entrusted to Municipality under Article 243W of the Constitution are fully exempt from GST, unconditionally. Therefore security services provided by us, be it called by any name either providing security guards or manpower services as contended by the department are exempt from GST under the aforesaid notification, since they are used in relation to functions entrusted to Municipality (PCMC) under article 243 W of the Constitution. We therefore request your honor to give the Advance Ruling accordingly.

We also request your honor that, in case any additional point is raised by the department to oppose the said application, we may be given opportunity to present our say on the points raised by the department.

03. CONTENTION - AS PER THE CONCERNED OFFICER

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

Question on which advance ruling is required:

Whether Exemption Notification 12/2017 Central Tax (Rate) dt.28.06.2017 (Entry No. 3 of the Notification) is applicable to the applicant for the pure services i.e. Security Services rendered to Pimpri Chinchwad Municipal Corporation in relation to functions entrusted to Municipality under Article 243 W of the constitution thereby exempting the applicant service provider from the whole of GST?

Ans- The applicant has submitted that "In the present case the applicant is providing Security Services to the said municipality (Pimpri Chinchwad Municipal Corporation) in relation to water supply for domestic industrial and

commercial purposes. As per the invoice No. 31946 dated 13.07.2018, the service description has been given as " Being round the clock helper to security service provided to coming under (A, B, C, D) Prabhag PCMX Pimpri for the work of Health center, Water Supply, {Purification & STP plant as per given list No. of Security Guard for the month of May 2018".

Whereas as per letter dated 14.02.2018 from Security Department of PCMC, the contract is for

विषय २ इ निविदा सूचना क्रमांक :/२०१६ रखवालदारांचे ७९५ अन्वये २०१७-मदतनीस । कर्मचारी पुरवणे कामीचा आदेश देणे बाबत मनपा मिळकतीवर रखवालदार | पिंपरी चिंचवड महानगर पालिकेच्या मनपाच्या विविध मिळकती कर .उदा / संकलन विभागीय कार्यालय , पाणी पुरवठा कार्यशाळा , इत्यादी ठिकाणी सुरक्षा व्यवस्थेचे कामकाज ठेकेदारी पद्धतीने देण्यासाठी

Thus, the contract is for providing "Assistants" to the Security Guards for the security arrangements of various properties of PCMC eg. Tax Collection, Ward Officers, Water Supply & Workshop etc..

The gist of the exemption Notification (Sr. No. of Notification No.12/2017 Central Tax (Rate) 28.06.2017) is as under:

Sl. No	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (percent.)	Condition
1	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

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.

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. 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.

In the opinion of this office, the services provided by M/s National Security Services pertains to providing assistant to Security Guards of PCMC cannot be termed as Services in relation to Urban Planning including Town Planning or any activity in relation to any function entrusted to a Municipality under article 243W of the Constitution but can be termed as providing manpower services for the work of Security arrangements to various properties of PCMC. Therefore, the Exemption Notification 12/2017 Central Tax (Rate) dt.28.06.2017 (Entry No. 3 of the Notification) is not applicable to th Security Services rendered to Pimpri Chinchwad Municipal Corporation.

04. **HEARING**

The case was taken up for Preliminary hearing on dt. 23.08.2018 when Sh. Nilesh Mapari, the applicant appeared and requested for admission of application. Jurisdictional Officer, Sh. S.A.S.Y. Hakim, Supdt., Division - III, Pune -II, CGST Commissionerate appeared and made written submissions.

The application was admitted and called for final hearing on 18.09.2018, Sh. Sunil Singh Gahlod, Consultant along with Sh. Nilesh Mapari, the applicant appeared and made contentions as per details given in their application. Jurisdictional Officer, Ms. Himani Dhamija Bhang Patil, Asstt. Commissioner, Division - III, Pune -II, CGST Commissionerate appeared and stated that they have already made written submissions.

05. **OBSERVATIONS**

We have gone through the facts of the case, documents on record and the submissions made by the applicant

The applicant has submitted that they have entered into an agreement with Pimpri Chinchwad Municipal Corporation (PCMC) to provide Security services to them. The Security Services are provided in form of providing Security guards; to Water Pump Houses, Purification Plants run by PCMC from where water supply is made to the city; to Hospitals and Dispensaries run by PCMC; for Solid Waste Management, Slum Improvement undertaken by PCMC; in relation to Urban Planning including Town Planning, which is for Public Safety at large. According to their submissions all these Services are covered in article 243 W of the Constitution, as functions entrusted to Municipality. Hence the provisions as per Section 11 of the Notification No. 12/2017 - Central Tax (Rate) dated 28/06/2017 as amended applies in their case and therefore, the Security Services being Pure Services, provided by the applicant to PCMC in relation to afore said functions entrusted to PCMC are exempt from GST.

The department has submitted that as per the invoice No. 31946 dated 13.07.2018 of the applicant, the service description has been given as "Being round the clock helper to security service provided to coming under (A, B, C, D) Prabhag PCMX Pimpri for the work of Health center, Water Supply, {Purification & STP plant as per given list No. of Security Guard for the month of May 2018". The department has also submitted that as per letter dated 14.02.2018 from Security Department of PCMC, the contract is for providing "Assistants" to the Security Guards for the security arrangements of various properties of PCMC eg. Tax Collection, Ward Offices, Water Supply & Workshop etc. Hence the services provided by the applicant pertaining to providing assistants to Security Guards of PCMC cannot be termed as Services in relation to Urban Planning including Town Planning or any activity in relation to any function entrusted to a Municipality under article 243W of the Constitution but can be termed as providing manpower services for the work of Security arrangements to various properties of PCMC. Therefore, the Exemption Notification 12/2017 Central Tax (Rate) dt.28.06.2017 (Entry No. 3 of the Notification) is not applicable to the Security Services rendered to Pimpri Chinchwad Municipal Corporation.

Vide further detailed submissions the applicant has stated that the security guards provided by them are working under the overall supervision of the Security Guards, who are on the establishment of the PCMC and they are carrying carry out the entire function of the security. They have also cited the duties which are performed by their personnel when on duty under the PCMC. They have submitted that

the security guards provided by them are not mere assistants/helpers) because they are fully responsible for the security of the entire premises and are also supposed to handle the emergency situation like fire, theft etc. and are to coordinate with important organization like police , fire brigade , hospitals etc, albeit under the supervision of security guards of the PCMC and therefore it does not make them helpers but they themselves discharge the duties of security guard. According to them the term "Madatnis" i.e. assistant/helper, used in the agreement is only a convenience term used by PCMC only to indicate that the Security Guards provided by them should work under their direction and supervision. They have submitted a clarification from the Assistant Commissioner (Security) PCMC, Pune-411018 stating that even though the persons provided by the applicant are working under the supervision and directions of the security guards who are on the establishment of PCMC, such persons are doing the security work in relation to urban planning and public safety at large. Further they have submitted that even assuming that their services are termed as manpower services for the work of security arrangements to various properties of PCMC, still the services provided by them fell under the ambit of the Exemption Notification No. 12/2017- Central Tax (Rate) dated 28/06/2017 (Entry No. 03 of the Notfn.).

We find that there is no doubt in anyone's mind that the personnel provided by the applicant to the PCMC are actually aiding and helping the security guards of PCMC. The only question that needs to be looked into is whether the activities of the applicant's personnel who are there to assist/help the security guards of PCMC can be equated with as being in relation to any function entrusted to a Municipality under article 243W of the Constitution?. If the answer is yes then it is clear that they would be eligible for exemption since in that case it would be seen that the personnel provided by the applicant are performing duties in relation to functions entrusted to Municipality (PCMC) under article 243 W of the Constitution.

We now reproduce Sl No. 3 of Notification No. 12/2017- Central Tax (Rate) dated 28/06/2017, under which the applicant is claiming exemption, as follows:-

Sl. No	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (percent.)	Condition
1	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

It is clearly seen from a reading of the said clause that exemption is extended to *"Pure servicesprovided to or local authority by way of any activity in relation to any function entrusted to a Municipality under article 243W of the Constitution."*

In the subject case the applicant is providing pure services (without the supply of goods), as submitted by them, to PCMC. We find that the said services are in relation to any functions entrusted to a Municipality under article 243W of the Constitution. The agreement between the applicant and PCMC very clearly states that the applicant shall provide assistants to the Security Guards of PCMC. The invoice raised by the applicant mentions services rendered as, "Being round the clock helper to security service". Providing assistance to the Security Guards of PCMC is an activity in relation to various functions as enumerated above which have been entrusted to a Municipality under article 243W of the Constitution. Hence we find that the applicant is entitled to the benefit of Notification No. 12/2007-CT(Rate) dated 28.06.2017.

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)

NO.GST-ARA- 58/2018-19/B- 132 Mumbai, dt. 24/10/2018

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

Question 1:- Whether the Exemption Notification No.12/2017- Central Tax (Rate) dated 28/06/2017 (Entry No. 3 of the Notfn.) is applicable to the applicant for the Pure services i.e. Security Services rendered to Pimpri Chinch wad Municipal Corporation in relation to functions entrusted to Municipality under Article 243 W of the Constitution thereby exempting the applicant service provider from the whole of GST.

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




B. V. BORHADE
(MEMBER)


PANKAJ KUMAR
(MEMBER)

CERTIFIED TRUE COPY

Copy to:-

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


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.