

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, 1st floor, B-Wing, Mazgaon, Mumbai - 400010.
 (Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)
BEFORE THE BENCH OF

- (1) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)
 (2) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id		27AAALC0296J1Z4
Legal Name of Applicant		Navi Mumbai Municipal Corporation
Registered Address/Address provided while obtaining user id		Ground Floor, Plot No. 1, Navi Mumbai Municipal Corporation Head Office, Sector15-A, Palm Beach Junction, Belapur, Maharashtra Thane - 400614.
Details of application		GST-ARA, Application No. 122 Dated 20.02.2019
Concerned officer		Dy. Commissioner of S.T.(RAI-VAT-E-002), LTU-1, Raigad division, Navi Mumbai
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Service Provision, Office/Sale Office
B	Description (in brief)	The assessee M/s. Navi Mumbai Municipal Corporation is Municipal Corporation is formed & governed by Bombay Provincial Municipal Corporation Act, 1949. There is no special statute for formation of any Municipal Corporation. The Corporation is headed by the-IAS cadre person deputed by Government of Maharashtra. It caters to the civic services to the residents of city which are specified by Clause 243W of Constitution of India, such as activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and up gradation Health services, etc. These activities are included activity in Capital & Revenue nature. These activities are carried out by the Corporation without any commercial motive. It works under Urban Development Department of Government of Maharashtra being Local Authority.
Issue/s on which advance ruling required		(i) Classification of any goods or services or both (v) determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.



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 Navi Mumbai Municipal Corporation, the applicant, seeking an advance ruling in respect of the following questions.

1. Whether online tendering to be considered as Supply of Goods or Supply of Services.
2. Whether offline tendering to be considered as Supply of Goods or Supply of Services.

3. Under which tariff head the Online Tendering should get taxed.
4. Under which tariff head the Offline Tendering should get taxed.
5. If tendering is service then whether it will be considered as administrative service or specific service.

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 any 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, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

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

“ Brief Facts of Case

The Applicant, M/s. Navi Mumbai Municipal Corporation, a Municipal Corporation is formed & governed by Bombay Provincial Municipal Corporation Act, 1949. There is no special statute for formation of any Municipal Corporation. The Corporation is headed by an IAS cadre person deputed by Govt. of Maharashtra. It caters to the civic services to the residents of city which are specified by Clause 243W of Constitution of India, such as activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement & upgradation Health services, etc. These activities are included activity in Capital & Revenue nature. These activities are carried out by the Corporation without any commercial motive. It works under Urban Development Department of Government of Maharashtra being Local Authority:

While developing various facilities & providing various services to the residents of city we have come across various issues on applicability of GST, the said services are elaborated below.

While developing various facilities or to run useful activities for public at large the NMMC. procures various services, goods from various contractors & vendor, The of procurement of goods and services were awarded through tendering process which include Online Tendering & Offline Tendering (Manual Tendering):

Online Tendering means requirement for procurement of goods or services will be raised on website of Municipal Corporation (www.nmmc.gov.in) or on common portal of government of Maharashtra (www.mahatender.gov.in) or on any other authorized website. All the process related to tendering (application, payment of fees, submission of technical & financial bid, etc) is done online (using computer & internet), and after tendering process successful bidder need to comply for additional documentation requirement manually.

Offline Tendering means requirement for procurement of goods or services will be raised by manual process. Firstly the applicant needs to purchase Tender Form from the office of NMMC. Thereafter all the process related to tendering (application, payment of fees, submission



of technical & financial bid, etc) along with submission copies of technical & financial bid will be done by manually at office of NMMC by submitting hard copies,

Grounds of Appeal

1. Whether online tendering to be considered as Supply of Goods or Supply of Services.
2. Whether offline tendering to be considered as Supply of Goods or Supply of Services,
3. Under which tariff head the Online Tendering should get taxed.
4. Under which tariff head the Offline Tendering should get taxed.
5. If tendering is service then whether it will be considered as administrative service or spec Services

3a. Statement containing Applicant's interpretation of law in respect of the aforesaid questions

1. Online tendering should be considered as Supply of Service
2. Offline tendering should be considered as Supply of Goods
3. HSN 4911 rate should be 12%
4. Rate of Service should be 18% if Administrative Service or Nil/18% if specific service
5. Tendering is specific service

03. CONTENTION – AS PER THE CONCERNED OFFICER

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

“Opinion of this office :-

- 1) Online tendering – The Navi Mumbai Municipal Corporation procured online tenders on website of municipal corporation. All the process is done online. This online activity will be covered under supply of services. GST applicable 18%.
2. Offline tendering - The Navi Mumbai Municipal Corporation sold tender forms thereafter all the process related to the tendering (applicable /payment of fees) along with copies submission of technical and financial bid by manually. In this case sales of manual tender form is supply of goods. And tender fees while submission of tender is a supply of services. Applicable GST 18%.
3. Tariff head of online tendering – Residual rate of tax 18%
4. Tariff head of Offline tendering – Residual rate of tax 12% for sales of tender forms and 18% for tender fees.
5. Tender fees is covered under specific service (financial Services)

04. HEARING

Preliminary hearing in the matter was held on 13.03.2019. Sh. Rututraj S. Chingale, C.A, appeared and requested for admission of their application. Jurisdictional Officer Sh. Thombre, Dy. Commr. of S.T.(RAI-VAT-E-002), LTU-1, Raigad division, Navi Mumbai, appeared & made written submissions.

The application was admitted and called for final hearing on 06.06.2019. Sh. Rututraj S. Chingale, C.A along with Sh. Nalawade Ajit V. Account clerk appeared, made oral and written



submissions. Jurisdictional Officer Sh. Thombre, Dy. Commissioner of S.T.(RAI-VAT-E-002), LTU-1, Raigad division, Navi Mumbai also appeared and made oral submissions.

05. OBSERVATIONS

5.1 We have gone through the facts of the case, documents on record and submissions made by both, the assessee as well as the jurisdictional office. There are five questions raised in the subject application which are taken up for discussion as under:-

Q.No. 1. Whether online tendering to be considered as Supply of Goods or Supply of Services.

The applicant has submitted that in case of online tendering, requirement for procurement of goods or services will be raised on their website (www.nmmc.gov.in) or on common portal of the Government of Maharashtra (www.mahatender.gov.in) or on any other authorized website. The entire process related to tendering (application, payment of fees, submission of technical & financial bid, etc) is done online (using computer & internet), and after tendering process successful bidder need to manually comply for additional documentation requirement.

5.2 Goods are defined under Section 2(56) of the CGST Act, 2017 and as per the said section “*‘goods’ means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.*”

5.3 As per the Business Dictionary, online tendering is “an internet based process wherein the complete tendering process; from advertising to receiving and submitting tender-related information are done online. This enables firms to be more efficient as paper-based transactions are reduced or eliminated, facilitating for a more speedy exchange of information. In common parlance also it is understood to be a process to procure goods or services where the entire process is online.

5.4 As per Section 2(12) of the CGST Act, 2017, “*‘services’*”, means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

5.5 From the above it is clear that Online Tendering does not satisfy the definition of ‘goods’. The definition of ‘services’ as mentioned in the Business Dictionary: “Intangible products such as accounting, banking, cleaning, consultancy, education, insurance, expertise, medical treatment, or transportation. Sometimes services are difficult to identify because they are closely associated with a good; such as the combination of a diagnosis with the administration of a medicine. No transfer of possession or ownership takes place when services are sold, and they (1) cannot be stored or transported, (2) are instantly perishable, and (3) come into existence at the time they are bought and consumed.

5.6 Further we find that the IGST Act has defined Online Information and Data Access or Retrieval Services to include different services, for the sake of better understanding we may

now refer to Online Information and Data Access Services mentioned in Section 2 (17) of the IGST Act which is reproduced as under:-

“online information and database access or retrieval services” means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as,-

- (i) advertising on the internet;*
- (ii) providing cloud services;*
- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;*
- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;*
- (v) online supplies of digital content (movies, television shows, music and the like);*
- (vi) digital data storage; and*
- (vii) online gaming*

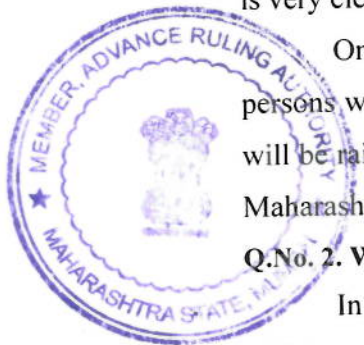
In the present case at hand, we find that the provisions of e-tender, which is intangible is delivered through telecommunication network or internet. Thus, the intention of the legislature is very clear, to treat such activities as supply of services.

Online tendering is a type of service which are rendered by NMMC to the various persons who are willing to fulfill their requirement for procurement of goods or services which will be raised on their website (www.nmmc.gov.in) or on common portal of the Government of Maharashtra (www.mahatender.gov.in) or on any other authorized website.

Q.No. 2. Whether offline tendering to be considered as Supply of Goods or Supply of Services.

In the case of offline tendering, the requirement for procurement of goods or services will be raised by manual process i.e. manual tender. Firstly the applicant who wishes to supply the goods or services or both, needs to purchase Tender Form from the office of NMMC. Thereafter all the process related to tendering (application, payment of fees, submission of technical & financial bid, etc) along with submission copies of technical & financial bid will be done by manually at office of NMMC by way of submission of hard copies.

We find that the difference between online and offline tendering is only that in the case of the former, the tender forms are sold on line and in the case of the latter, the tender forms are sold as printed matter. NMMC is not involved in the business of buying or selling tender forms and the sale of tender forms does not appear to be incidental or ancillary to their business. In offline tendering too, there are intangible products such as application, payment of fees, submission of technical & financial bid, etc. These services are difficult to be identified individually. In both cases NMMC by floating the tender not only sells the form but collects them from the applicant and processes them and finally after the entire process of



documentation, verification of the applicant's position to perform the contract, proceeds to give the tender to a particular person to the exclusion of others. In the process they also collect processing fees and other deposits from the various persons who are willing to fulfill their requirement for procurement of goods or services.

As per Section 2(12) of the CGST Act, 2017, "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

From the above it is clear that Offline Tendering does not satisfy the definition of 'goods', in its entirety. The definition of 'services' as mentioned in the Business Dictionary: "Intangible products such as accounting, banking, cleaning, consultancy, education, insurance, expertise, medical treatment, or transportation. Sometimes services are difficult to identify because they are closely associated with a good; such as the combination of a diagnosis with the administration of a medicine. No transfer of possession or ownership takes place when services are sold. Hence offline tendering, in our opinion will also be considered as rendering of services.

Q.No. 3. Under which tariff head the Online Tendering should get taxed.

The GST Tariff for services comprises of Chapter 99 Headings 9954 to 9999. It is seen that online tendering is not specifically mentioned in any of the Headings and therefore it is felt that the appropriate Heading in this case would be Heading 9997 since the said heading covers "other services (washing, cleaning; and **other miscellaneous services including services nowhere else specified**). Since Online Tendering as a service is not specified anywhere, the same should get taxed under Service Heading 9997.

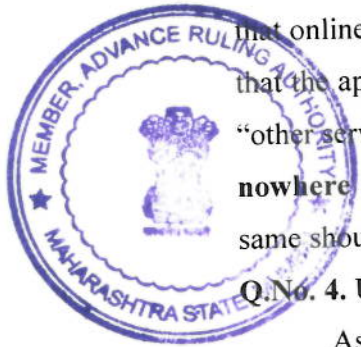
Q.No. 4. Under which tariff head the Offline Tendering should get taxed.

As per the discussions made in respect of Q. No. 2 above, we have already found that the process of offline tendering is also a supply of services.

The GST Tariff for services comprises of Chapter 99 Headings 9954 to 9999. It is seen that offline tendering is not specifically mentioned in any of the Headings and therefore it is felt that the appropriate Heading in this case would be Heading 9997 since the said heading covers "other services (washing, cleaning; and **other miscellaneous services including services nowhere else specified**). Since Offline Tendering as a service is not specified anywhere, the same should get taxed under Service Heading 9997.

Q.No. 4. If tendering is service then whether it will be considered as administrative service or specific Services

In view of the discussions made above we find that tendering will be covered under the residual Services Heading 9997.



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- 122/2018-19/B-

68 Mumbai, dt. 10/06/2019

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

Q. 1. Whether online tendering to be considered as Supply of Goods or Supply of Services.

Ans: **Online tendering will be considered as Supply of Services.**

Q. 2. Whether offline tendering to be considered as Supply of Goods or Supply of Services.

Ans: **Offline tendering in its entirety involving sale of form, payment of tender fees and submission of bids etc. will be considered as Supply of Services.**

Q. 3. Under which tariff head the Online Tendering should get taxed.

Ans: **Online Tendering should get taxed under services heading 9997.**

Q. 4. Under which tariff head the Offline Tendering should get taxed.

Ans: **In view of the above discussions Offline Tendering will be treated as supply of service under services heading 9997.**

Q. 5. If tendering is service then whether it will be considered as administrative service or specific service.

Ans : **In view of the discussions made above we find that tendering will be covered under the residual Services Heading 9997.**



—sd—
B. TIMOTHY
(MEMBER)

—sd—
B. V. BORHADE
(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, Churchgate, Mumbai
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.