

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		27AAECS3538A1ZN
Legal Name of Applicant		SECURITY AND INTELLIGENCE SERVICES (INDIA) LTD
Registered Address/Address provided while obtaining user id Corresponding Address		Office No 701, Jaising Commospace , 7th floor, Western Express Highway, Vile Parle, Mumbai – 400057, A-28/29,SIS India Ltd., Okhla Industrial Area, Okhla Phase-1, New Delhi-110020
Details of application		GST-ARA, Application No. 125 Dated 25.02.2019
Concerned officer		Division -VI, Commr. of CGST, Mumbai West.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in brief)	We Security and Intelligence Services (India) Ltd, are providers of security services to Visvesvaraya National Institute of Technology, Nagpur. The Institute is not in agreement with us on paying GST amount being charged on the invoices raised by us on them for our services rendered by us, and asking us to give exemptions to them either under the provision of Serial no 3 of Notification No 12/2017 - Central Tax (Rate) dated 28th June 2017 and/ or Serial No. 66 of Notification No. 12/2017 –Central Tax (Rate) dated 28 th June 2017.
Issue/s on which advance ruling is required		(ii) Applicability of a notification issued under the provisions of this Act (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 **SECURITY AND INTELLIGENCE SERVICES (INDIA) LTD**, the applicant, seeking an advance ruling in respect of the following questions.

1. Whether the services provided to Visvesvaraya National Institute of Technology, Nagpur will qualify for exemption under Serial No. 66 of Notification No. 12/2017 – Central Tax (Rate) dated 28th June 2017, considering it to be an educational Institution.
2. Whether rate of tax on services provided to Visvesvaraya National Institute of Technology, Nagpur (VNIT) is nil as per Serial no 3 of Notification No 12/2017-Central Tax (Rate) dated 28th June 2017.

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-

A. Statement of relevant facts having a bearing on the question(s) raised.

Facts and Contentions

We Security and Intelligence Services (India) Ltd, (SIS) are providers of security services to various entities all over India and have different type of customers included educational bodies and higher educational Institutions like IITs etc. We are providing services to Visvesvaraya National Institute of Technology, Nagpur (VNIT).

VNIT as an institute was established in the year 1960 under the scheme sponsored by Govt. of India and Govt. of Maharashtra. The college was started in June, 1960 by amalgamating the State Govt. Engineering College functioning at Nagpur since July 1956. VNIT, Nagpur is one of the thirty National Institutes of Technology in the country. The Govt. of India conferred on the Institute, the Deemed University status (under University Grants Commission Act, 1956 with effect from 26th June, 2002. Subsequently, the Central Govt. by Act of Parliament (National Institutes of Technology Act, 2007) declared VNIT Nagpur as an Institute of National Importance along with all other NITs. The Act was brought into force from 15th August 2007. The institute awards bachelors, masters and doctoral degrees in engineering, technology & architecture. The institute runs nine Under-graduate & twenty one Post-graduate courses apart from Ph. D programs in the field of engineering, architecture and science.

In view of the aforesaid, since VNIT has been conferred the Deemed University status and declared as an Institute of National Importance by an Act of Parliament, it would qualify as a Governmental authority.

Whereas Serial No. 66 of Notification No. 12/2017 *inter alia* provides for exemption in relation to certain service availed by educational institution as under:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
66	Heading 9992	<p>Services provided –</p> <p>(a) by an educational institution to its students, faculty and staff;</p> <p>(b) to an educational institution, by way of-</p> <p>(i) transportation of students, faculty and staff;</p> <p>(ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;</p> <p>(iii) <u>security</u> or cleaning or housekeeping services performed in such educational institution;</p> <p>(iv) services relating to admission to, or conduct of examination by, such institution; up to higher secondary;</p> <p>Provided that nothing contained in entry (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent.</p>	Nil	Nil

The term “**educational institution**” is defined under clause (y) of Part 2 of the notification to mean “*an institution providing services by way of,-*

- (i) *pre-school education and education up to higher secondary school or equivalent;*
- (ii) *education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;*
- (iii) *education as a part of an approved vocational education course”*

In terms of the aforesaid entry, exemption is only provided *inter alia* in relation to security services provided by a supplier of service to an educational institution providing services by way of pre-school education and education up to higher secondary school or equivalent. Therefore, the said exemption is not available to any and every kind of educational institution. Thus, in terms of the aforesaid exemption entry, there is no exception carved out in relation to an educational institution which qualifies as a Governmental authority. On perusal of Sr. No. 3 of Notification No. 12/2017, it would be seen that the same exempts ‘pure services’ provided to 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. Thus, the aforesaid entry seeks to exempt pure services provided by a supplier of service, which are in the nature of functions entrusted to a Panchayat or a Municipality under the Constitution. Therefore, not all services supplied to Governmental authority are exempt from the provisions of goods and services tax. The services supplied should be in nature of or confirm to the function entrusted to the aforesaid bodies under the Constitution.

Further, the nature of functions entrusted to a Panchayat or a Municipality under the Constitution of India (“Constitution”), respectively. Article 243G of the Constitution provides for powers, authority and responsibilities of Panchayats. The said article is reproduced hereunder for ready reference:

“Art. 243G. Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats 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 Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to—

- (a) *the preparation of plans for economic development and social justice;*
- (b) *the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule”.*

On perusal of the aforesaid article, it would be seen that the same provides for powers, authority and responsibilities of Panchayats. The said powers, it would be seen, are endowed with respect to matters concerning *inter alia* economic development and social justice,

implementation of schemes for economic development and social justice including matters listed in the Eleventh Schedule to the Constitution. The Eleventh Schedule to the Constitution *inter alia* covers (a) poverty alleviation programme, (b) education, including primary and secondary schools, (c) family welfare, (d) women and child development, (e) public distribution system, (f) maintenance of community assets, etc.

Article 243W, on the other hand provides for powers, authority and responsibilities of Municipalities. The said article is reproduced hereunder for ready reference:

"Art. 243W. 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".

3.B. Legal interpretation of a term:

On perusal of the article & notifications mentioned in point 15, it would be seen that the same provides for similar powers, authority & responsibilities to a Municipality that have been endowed upon the Panchayat by the Constitution. In addition to the above, the Municipality is also conferred with the responsibilities listed under the Twelfth Schedule of the Constitution.

The Twelfth Schedule of the Constitution *inter alia* provides for (a) urban planning including town planning, (b) regulation of land-use and construction of buildings, (c) planning for economic and social development, (d) roads and bridges, (e) public health, sanitation conservancy and solid waste management, etc. Thus, when a supplier of services supplies services of the aforesaid description to the Central Government, State Government or Union territory or local authority or a Governmental authority, which are in relation to any function that have been entrusted upon the Panchayat or Municipality under the Constitution, only then such services supplied would be exempt from payment of tax. It is not the case that any and every services supplied to the Central Government, State Government or Union territory or local authority or a Governmental authority would be exempt from payment of GST.

Further, Bare perusal of the relevant article and Schedules appended to the Constitution, it would be seen that security of an educational institution is not a function endowed upon the



Panchayat or Municipality. The security of one's own premises cannot be said to be one of the various functions endowed by the Constitution upon the Panchayat or Municipality. Therefore, even if VNIT may qualify as a Governmental authority, the security services supplied by the querist in relation to the property belonging to VNIT would not be entitled to exemption in terms of the Sr. No. 3 of the exemption notification.

Whereas, Sr. No. 66 of the exemption notfn. specifically provides that the exemption thereunder would not apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent. VNIT as an institute would get covered under the definition of "educational institution", since it is engaged in imparting education as a part of a curriculum for obtaining a qualification recognized by law for the time being in force. However, VNIT as an educational institution is not engaged in providing pre-school education & education up to higher secondary school or equivalent (i.e. junior college). Since VNIT, as a technical institute is engaged in imparting under-graduate courses, post-graduate courses & Ph. D programs in the field of engineering, architecture and science, it would not be entitled to exemption provided under Sr. No. 66 of the exemption notfn. & hence, it would be liable to pay applicable GST.

LEGAL OPINION

1.1 Security and Intelligence Services (India) Ltd. (hereinafter "the querist") is a company having its office at A - 28 & 29, Okhla Industrial Area, Phase - I, New Delhi, and is engaged in the business of providing security related services. The querist has obtained GST registration in various States from where it supplies service.

1.2 The querist has entered into an Agreement dated 29th Sep, 2017, with VNIT for providing security services in relation to various premises owned by it.

1.3 VNIT, it is informed has objected to the payment of applicable GST in relation to the security services provided by the querist on the premise that it qualifies as a "governmental authority" & hence, is not liable to pay tax. We have been provided with a copy of legal opinion dated 28.09.2017, sought by VNIT from their Chartered Acctt. In terms of the said opinion, it has been advised/ opined that since VNIT qualifies as a "governmental authority", then in terms of exemption Notfn. No. 12/2017- Central Tax (Rate) dated 28.06.2017, the pure services provided by the querist would not be liable to tax. It is pertinent to mention that the security service supplied by the querist has been interpreted by the Ld. Chartered Acctt to comprise "pure service" since the same does not involve works contract service or other composite supplies involving supply of any goods. In addition to the aforesaid, the Ld. Chartered Accountant has opined that the



services provided by the querist appears to be covered under two separate contradictory entries and hence, has advised VNIT to seek advance ruling on the issue.

- 1.4 Basis the aforesaid opinion, VNIT has refrained from paying tax on the services supplied by the querist. The querist on the other hand is desirous of recovering the GST from VNIT on the understanding that since it is not an educational institution providing services by way of pre-school education and education up to higher secondary school or equivalent, it is liable to pay tax on the security services supplied by it.

In light of the aforesaid factual background, the querist has raised the following query for our opinion.

2.0 QUERY:

1. Whether the services provided by the querist to VNIT would be liable to tax despite VNIT qualifying as a “governmental authority” in terms of the provisions of the Goods and Service Tax Act, 2017?

3.0 REPLY TO QUERY:

- 3.1 Before the query raised herein is specifically replied to, we would discuss the legal provisions that are relevant and thereafter apply the same to the facts at hand. Notification No. 12/2017- C.T. (Rate) dated 28.06.2017, provides for exemption in relation to intra-State supply of services with respect to specified description of supply of services mentioned thereunder. Serial No. 3 of the Table appended to the exemption notification provides as under:

(Intentionally left blank)

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent)	Condition
	Chapter 99	<u>Pure services</u> (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

- 3.2 Clause (zf) appended to Part 2 of the aforesaid notification provides for the definition of “governmental authority” to have the same meaning as assigned to it in the Explanation to clause (16) of Section 2 of the Integrated Goods and Services Tax Act, 2017 (“IGST Act”). Explanation appended to Sec 2(16) of the IGST Act provides for the meaning of the term “governmental authority” as under:

“2(16) “non-taxable online recipient” means

Explanation.- For the purposes of this clause, the expression "governmental authority" means an authority or a board or any other body, (i) set up by an Act of Parliament or a State Legislature; or (ii) established by any Government, with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution"

- 3.3 VNIT as an institute was established in the year 1960 under the scheme sponsored by Govt. of India and Govt. of Maharashtra. The college was started in June, 1960 by amalgamating the State Govt. Engineering College functioning at Nagpur since July 1956. VNIT, Nagpur is one of the thirty National Institutes of Technology in the country. The Govt. of India conferred on the Institute, the Deemed University status (under University Grants Commission Act, 1956 with effect from 26th June, 2002. Subsequently, the Central Govt. by Act of Parliament (National Institutes of Technology Act, 2007) declared VNIT Nagpur as an Institute of National Importance along with all other NITs. The Act was brought into force from 15th August 2007. The institute awards bachelors, masters and doctoral degrees in engineering, technology and architecture. The institute runs nine Under-graduate and twenty one Post-graduate courses apart from Ph.D programs in the field of engineering, architecture and science.
- 3.4 In view of the aforesaid, since VNIT has been conferred the Deemed University status and declared as an Institute of National Importance by an Act of Parliament, it would qualify as a Governmental authority.
- 3.5 Whereas Serial No. 66 of Notification No. 12/2017 *inter alia* provides for exemption in relation to certain service availed by educational institution as under:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tarrif)	Description of Services	Rate (per cent)	Condition
66	Chapter 9992	<p>Services provided –</p> <p>(a) by an educational institution to its students, faculty and staff;</p> <p>(b) to an educational institution, by way of,</p> <p>(i) transportation of students, faculty and staff,</p> <p>(ii) catering, including any mid-day meals</p> <p>Corporate, Tax and Business Advisory Law Firm New Delhi scheme sponsored by the Central Government, State Government or Union territory;</p> <p>(iii) security or cleaning or housekeeping services performed in such educational institution;</p> <p>(iv) services relating to admission to, or conduct of examination by, such institution; up to higher secondary;</p> <p>Provided that nothing contained in entry (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent.</p>	Nil	Nil



The term “**educational institution**” is defined under clause (y) of Part 2 of the notification to mean “*an institution providing services by way of,*

(i) pre-school education and education up to higher secondary school or equivalent;

(ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;

(iii) education as a part of an approved vocational education course”

3.3 In terms of the aforesaid entry, exemption is only provided *inter alia* in relation to security services provided by a supplier of service to an educational institution providing services by way of pre-school education and education up to higher secondary school or equivalent. Therefore, the said exemption is not available to any and every kind of educational institution. Thus, in terms of the aforesaid exemption entry, there is no exception carved out in relation to an educational institution which qualifies as a Governmental authority.

(Intentionally left blank)

4.0 APPLICATION OF LEGAL PROVISIONS TO THE FACTS OF THE PRESENT CASE:

4.1 On perusal of Sr. No. 3 of Notification No. 12/2017, it would be seen that the same exempts “pure services provided to 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. Thus, the aforesaid entry seeks to exempt pure services provided by a supplier of service, which are in the nature of functions entrusted to a Panchayat or a Municipality under the Constitution. Therefore, not all services supplied to Governmental authority are exempt from the provisions of goods and services tax. The services supplied should be in the nature of, or confirm to the function entrusted to the aforesaid bodies under the Constitution.

We would now analyze the nature of functions entrusted to a Panchayat or a Municipality under the Constitution of India (“Constitution’), respectively. Article 243G of the Constitution provides for powers, authority and responsibilities of Panchayats. The said article is reproduced hereunder for ready reference:

”Art. 243G. Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats 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 Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to
(a) the preparation of plans for economic development and social justice;



(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule”.

4.3 On perusal of the aforesaid article, it would be seen that the same provides for powers, authority & responsibilities of Panchayats. The said powers, it would be seen, are endowed with respect to matters concerning *inter alia* economic development and social justice, implementation of schemes for economic development & social justice including matters listed in the Eleventh Schedule to the Constitution. The Eleventh Schedule to the Constitution *inter alia* covers (a) poverty alleviation program, (b) education, including primary and secondary schools, (c) family welfare, (d) women and child development, (e) public distribution system, (f) maintenance of community assets, etc.

4.4 Article 243W, on the other hand provides for powers, authority and responsibilities of Municipalities. The said article is reproduced hereunder for ready reference:

"Art. 243W. 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”.

4.5 On perusal of the aforesaid article, it would be seen that the same provides for similar powers, authority and responsibilities to a Municipality that have been endowed upon the Panchayat by the Constitution. In addition to the above, the Municipality is also conferred with the responsibilities listed under the Twelfth Schedule of the Constitution. The Twelfth Schedule of the Constitution *inter alia* provides for (a) urban planning including town planning, (b) regulation of land-use and construction of buildings, (c) planning for economic and social development, (d) roads and bridges, (e) public health, sanitation conservancy and solid waste management, etc.

4.6 Thus, when a supplier of services supplies services of the aforesaid description to the Central Government, State Government or Union territory or local authority or a Governmental authority, which are in relation to any function that have been entrusted



upon the Panchayat or Municipality under the Constitution, only then such services supplied would be exempt from payment of tax. It is not the case that any and every services supplied to the Central Government, State Government or Union territory or local authority or a Governmental authority would be exempt from payment of GST.

4.7 Bare perusal of the relevant article & Schedules appended to the Constitution, it would be seen that security of an educational institution is not a function endowed upon the Panchayat or Municipality. Security of one's own premises cannot be said to be one of the various functions endowed by the Constitution upon the Panchayat or Municipality. Therefore, even if VNIT may qualify as a Governmental authority, the security services supplied by the querist in relation to the property belonging to VNIT would not be entitled to exemption in terms of the Sr. No. 3 of the exemption notification.

4.8 Whereas, Sr. No. 66 of the exemption notification specifically provides that the exemption thereunder would not apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent. VNIT as an institute would get covered under the definition of "educational institution", since it is engaged in imparting education as a part of a curriculum for obtaining a qualification recognised by law for the time being in force. However, VNIT as an educational institution is not engaged in providing pre school education and education up to higher secondary school or equivalent (i.e. junior college). Since VNIT as a technical institute is engaged in imparting under-graduate courses, post-graduate courses and Ph. D programs in the field of engineering, architecture & science, it would not be entitled to the exemption provided under Sr. No. 66 of the exemption notification & hence, would be liable to pay applicable goods & services tax to the querist.

4.9 Without prejudice, in our opinion, the reliance placed by VNIT on the Ld. Chartered Accountant's view is incorrect and is totally misplaced. Since the Ld. consultant has misinterpreted the scope of exemption provided at Sr. No. 3 of Notification No. 12/2017, the entries at Sr. Nos. 3 and 66 and not contradictory in nature and hence, in our considered view, there is no scope for seeking Advance Ruling on the issue.

3.C. Additional submission on 10.05.2019

We have represented our case before your good office on May 02, 2019 wherein your good office has directed us to provide the detailed note on various terms used in the Entry no. 3 of the Exemption Notification no. 12/2017-Central Tax (Rate) dated 28/06/2017 and also, the remarks on the Advance Ruling given by Maharashtra Authority of Advance Ruling in the case of National Security Services dated 24.10.2018

The para-wise comments on the said requirement are as follows:

Para A: Entry no. 3 of the Exemption Notification no. 12/2017-Central Tax (Rate) dated 28/06/2017

Notfn no. 12/2017-C.T. (Rate) dt 28/06/2017 provides for exemption in relation to inter-state supply of services with respect to specified description of supply of services mentioned there under. Serial no. 3 of the Table appended to the exemption notification provides as under:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent)	Condition
3.	Chapter 99	<u>Pure services</u> (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

Para B: Definition of "Government"

- B.1. As per section 2(53) of the CGST Act, 2017, "Government means the Central Government.
- B.2. As per section 3(23) of the General Clauses Act, 1897 the 'Government includes both the Central Government and any State Government.
- B.3. As per section 3(8) of the General Clauses Act, 1897, the Central Government, in relation to anything done or to be done after the commencement of the Constitution, means the President.
- B.4. 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.
- B.6. Similarly, as per section 3(60) 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.
- B.7. 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.
- B.8. Further, as per Art. 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.



Para C: Definition of "Local Authority

C.1. 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;
- Development Board constituted under article 371 of the Constitution; or
- a Regional Council constituted under article 371) of the Constitution;

Para D: Definition of "Governmental Authority"

D.1. Governmental Authority is defined in Notification no. 31/2017-Central Tax (Rate) dated 13 October 2017 as "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.

Para E: Article 243W of the Constitution

E.1. Article 243W of the constitution provides for powers, authority and responsibilities of Municipalities. The said article is reproduced hereunder as follows:

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 & 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

E2. The functions entrusted to a municipality under the Twelfth Schedule to Article 243W of the Constitution are as under:

- (a) Urban planning including town planning.
- (b) Regulation of land-use and construction of buildings.
- (c) Planning for economic and social development.
- (d) Roads and bridges.
- (e) Water supply for domestic, industrial and commercial purposes.
- (f) Public health, sanitation conservancy and solid waste management,
- (g) Fire services,
- (h) Urban forestry, protection of the environment and promotion of ecological aspects.
- (i) Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
- (j) Slum improvement and upgradation.
- (k) Urban poverty alleviation.
- (l) Provision of urban amenities and facilities such as parks; gardens, playgrounds,
- (m) Promotion of cultural, educational and aesthetic aspects,
- (n) Burials and burial grounds; cremations, cremation grounds; and electric crematoriums,
- (o) Cattle pounds; prevention of cruelty to animals,
- (p) Vital statistics including registration of births and deaths.
- (q) Public amenities including street lighting, parking lots, bus stops and public conveniences.
- (r) Regulation of slaughter houses and tanneries.

Para F: Article 243G of the Constitution

F.1. Article 243G of the constitution provides for powers, authority and responsibilities of Municipalities. The said article is reproduced hereunder as follows:

Powers, authority and responsibilities of Panchayats Subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority and 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 Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to

- (a) the preparation of plans for economic development and social justice;
- (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule,

F.2. The functions entrusted to a Panchayat under the Eleventh Schedule to Article 243G of the Constitution are as under:

- (i) Agriculture, including agricultural extension.



- (ii) Land improvement, implementation of land reforms, land consolidation and soil conservation.
- (iii) Minor irrigation, water management and watershed development.
- (iv) Animal husbandry, dairying and poultry.
- (v) Fisheries
- (vi) Social forestry and farm forestry.
- (vii) Minor forest produce,
- (viii) Small scale industries, including food processing industries.
- (ix) Khadi, village and cottage industries.
- (x) Rural housing
- (xi) Drinking water.
- (xii) Fuel and fodder.
- (xiii) Roads, culverts, bridges, ferries, waterways and other means of communication.
- (xiv) Rural electrification, including distribution of electricity.
- (xv) Non-conventional energy sources.
- (xvi) Poverty alleviation programme,
- (xvii) Education, including primary and secondary schools.
- (xviii) Technical training and vocational education.
- (xix) Adult and non-formal education.
- (xx). Libraries.
- (xxi) Cultural activities.
- (xxii) Markets and fairs.
- (xxii) Health and sanitation, including hospitals, primary health centres and dispensaries.
- (xxiv) Family welfare.
- (xxv) Women and child development.
- (xxvi) Social welfare, including welfare of the handicapped and mentally retarded:
- (xxvii) Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
- (xxviii) Public distribution system.
- (xxix) Maintenance of community assets.

Para G: A statutory body, corporation or an authority created by the Parliament or a State Legislature is neither 'Government' nor a local authority'

G.1. FAQs on Government Services under GST issued by CBEC (question number 6) has provides that 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.

G.2 Further, question number 10 of FAQs on Government Services under GST issued by CBEC provides that a regulatory body, also called regulatory agency, is a public authority or a governmental body which exercises functions assigned to them in a regulatory or supervisory capacity. These bodies do not fall under the definition of Government. Examples of regulatory bodies are –

- * Competition Commission of India,
- * Press Council of India,
- * Directorate General of Civil Aviation,
- * Forward Market Commission,
- * Inland Water Supply Authority of India,
- * Central Pollution Control Board,
- * Securities and Exchange Board of India.

Para H: Maharashtra Authority of Advance Ruling in the case of National Security Services dated 24.10.2018

H.1. In the subject case, applicant is providing manpower to assist Security Guards who are employed by PCMC, to assist for security to water pumps, purification plants run by PCMC for supply to city, Hospitals Dispensaries, run by PCMC, solid waste management, slum improvement undertaken by PCMC, which is for public at large.

Hon'ble Maharashtra Authority of Advance Ruling found 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. Hence, Hon'ble Maharashtra Authority of Advance Ruling find that the applicant is entitled to the benefit of Notification no. 1:2/2017-CT(Rate) dated 28.06.2017

Para I: Assessee contention

- 1.1. The Applicant is providing Security Services to VNIT.
- 1.2. VNIT has been conferred the Deemed university status and declared as an institute of National importance by an Act of Parliament, it would not be qualified as a Governmental authority as mentioned in Para G supra.



- 1.3. Pure service is not defined in the GST Act. However, it appears from the context that services involving no supply of goods are considered as pure service.
- 1.4. Serial no. 3 of Notification No. 12/2017, exempts only pure service provided to 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.
- 1.5. A study of the two lists, as given above (Para E.2 & Para F.2.), makes it clear that "Security Services" provided to Governmental Authority, as institutions of Central State/District/Local authorities, are clearly not covered under the either list.
- 1.6. In view of the above, as the services provided by the applicant to VNIT does not appear to be the "pure services", as mandated under article 243G & 243W of the Constitution and also VNIT would not be qualifies as a Governmental authority, applicant is on the view that VNIT would not be entitled to the exemption in terms of the serial no. 3 of the exemption notification number 12/2017 - Central Tax (Rate) dated 28.06.2017,

We requested you to take above submission on records. Should you require any other information, we shall be glad to provide you with the same."

04. CONTENTION – AS PER THE CONCERNED OFFICER

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

“Para 15:- Statement of Relevant facts having bearing on the questions raised, as submitted by the applicant:-

(i) In respect of 1st Question Raised (in Para 14):

Whether the service provided to Visvesvaraya National Institute of Technology (VNIT), Nagpur will qualify for Exemption under Serial No.66 of Notification No.12/2017-Central Tax (rate) dated 28-06-2017, considering it to be an educational institution.

Departments contention:-

- a) 'Government Authority', as per clause (zf) of Part-2 of Notfn No. 12/2017 C.Tax (Rate) dated 28-6-2017, has the same meaning as assigned to it in the *Explanation* to clause (16) of section 2 of the IGST Act, 2017 (13 of 2017); according to which, " for the purpose of this clause , the expression " Governmental Authority" means an authority or a Board or any other body, -(i) Set up by an Act of Parliament or State Legislature:- or (ii) established by any Government, with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under Article 243W of the Constitution;
- (b) Vide Sr. No.66 (b)(iii) of Notfn No. 12/2017 C.T.(Rate) dtd 28-6-2017, exemption has been provided for intra-State supply of security or cleaning or housekeeping

services, performed in such educational institution subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table

- (c) however, as per the proviso to Sr. No.66 of Notification No. 12/2017 C.T.(Rate) dated 28-6-2017 " Provided that nothing contained in entry (b) shall apply to an educational institution other than an institution providing services by way of pre-school education & education up to higher secondary school or equivalent.

In view of the above, *since VNIT is an educational institution, other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent, the contention of the applicant, that VNIT Nagpur, would not be entitled to the exemption provided under Sr.No. 66 of the exemption notification, appears to be correct.*

Para 15:- Statement of Relevant facts having bearing on the questions raised, as submitted by the applicant:-

- (i) In respect of 2nd Question Raised (in Para 14):

Whether rate of tax on services provided to Visvesvaraya National Institute of Technology, Nagpur, (VNIT) is nil as per Serial No.3, of Notification No.12/2017-Central Tax (rate) dated 28-06-2017

- (ii) **Departments contention:-**

- a) that since VNIT has been conferred the Deemed University status and declared as an Institute of National Importance by an Act of Parliament, it would qualify as a Governmental authority.

that Sr. No. 3 of Notification No. 12/2017, exempts 'pure services' provided to 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. The aforesaid entry seeks to exempt pure services provided by a supplier of service, which are in the nature of functions entrusted to a Panchayat or a Municipality under the Constitution.

- c) that not all services supplied to Governmental authority are exempt from the provisions of GST. Services supplied should be in the nature of, or confirm to the function entrusted to the aforesaid bodies under the Constitution.
- d) *On perusal of the Art. 243G & Art. 243W and Schedules appended to the Constitution, it would be seen that security of an educational institution is not a function endowed upon the Panchayat or Municipality. The security of one's own premises cannot be said to be one of the various functions endowed by the Constitution upon the Panchayat or Municipality.*

In view of the above, *since VNIT is an educational institution, other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent, the contention of the applicant, that even if VNIT may qualify as a Governmental*



authority, the security services supplied by the Appellant in relation to the property belonging to VNIT would not be entitled to exemption in terms of the Sr. No. 3 of the exemption Notification No.12/2017- Central Tax (Rate) dated 28-06-2017, *appears to be correct.*

16. The Appellant itself is of view that VNIT would not be entitled to exemption in terms of Sr.No. 3 and Sr.No.66 of the exemption notification No. 12/2017-Central Tax (Rate) dated 28-06-2017. Hence, nothing is there to comment.

04. HEARING

Preliminary hearing in the matter was held on 19.03.2019. Sh. Rastogi, C.A., appeared and requested for admission of application as per details in their application. Jurisdictional Officer Sh. Deepak Kumar, Inspector, Mumbai West Commissionerate, also appeared.

The application was admitted and called for final hearing on 02.05.2019. Sh. Rastogi, C.A. appeared made oral and written submissions. Jurisdictional Officer Sh. Mahale Suptt., Mumbai West Commissionerate, appeared and made written submissions.

05. OBSERVATIONS

We have gone through the facts of the case, documents on record and submissions made by both, the applicant as well as the jurisdictional office.

The applicant has submitted that they are providing security services to Visvesvarayya National Institute of Technology, Nagpur (VNIT), an institute established under the scheme sponsored by Govt. of India and Govt. of Maharashtra and is one of the thirty National Institutes of Technology (NIT) in the country. VNIT has Deemed University status (under University Grants Commission Act, 1956). VNIT awards bachelors, masters and doctoral degrees in engineering, technology and architecture and runs nine Under-graduate and twenty one Post-graduate courses apart from Ph. D programs in the field of engineering, architecture and science. Hence it is submitted that VNIT should qualify as a Governmental authority.

In view of the above submissions they have raised two questions which are taken up for discussion as follows:-

Question No. 1: Whether the services provided to Visvesvarayya National Institute of Technology, Nagpur will qualify for exemption under Serial No. 66 of Notification No. 12/2017 – Central Tax (Rate) dated 28th June 2017, considering it to be an educational Institution.

We find from their submissions that the applicant is of the opinion that the said Sr.No. 66 is not applicable in their case but VNIT has informed them that GST is not applicable on security services provided by the applicant to them. As per Sr.No.66 (b) (iii) **security services** or cleaning services or housekeeping services supplied to an educational institution attracts NIL rate of GST. Hence to avail of the benefit of Sr. No.66 mentioned above in the subject case,



since the security services are provided by the applicant to VNIT, the latter must fall under the definition of an 'educational institution'.

The term "educational institution" is defined under clause (y) of Part 2 of the notification to mean "*an institution providing services by way of,-*

- (i) *pre-school education and education up to higher secondary school or equivalent;*
- (ii) *education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;*
- (iii) *education as a part of an approved vocational education course"*

VNIT as per the submissions made by the applicant is not engaged in providing pre-school education and education up to higher secondary school or equivalent. Since VNIT as a technical institute is engaged in imparting under-graduate courses, post-graduate courses and Ph. D programs in the field of engineering, architecture and science thereby being engaged in imparting education as a part of a curriculum for obtaining a qualification recognised by law for the time being in force, it would get covered under the definition of "educational institution" vide clause (ii) mentioned above and therefore it is seen that the security services as in the subject case are provided to an educational institution i.e. VNIT.

Within the term "educational institution", sub-clause (ii) covers institutions providing services by way of education as a part of curriculum for obtaining a qualification recognised by any law for the time being in force. GST on services being a legacy carried forward from the Services Tax regime, the explanation given in the Education guide of 2012 can be referred to understand the meaning of the term which reads as under;

What is the meaning of 'education as a part of curriculum for obtaining a qualification recognized by law'?

It means that only such educational services are in the negative list as are related to delivery of education as 'a part' of the curriculum that has been prescribed for obtaining a qualification prescribed by law. It is important to understand that to be in the negative list the service should be delivered as part of curriculum. Conduct of degree courses by colleges, universities or institutions which lead grant of qualifications recognized by law would be covered. Training given by private coaching institutes would not be covered as such training does not lead to grant of a recognized qualification.

We find that the applicant has been given the status of a Deemed University by the University Grants Commission. The UGC was formally established 1956 as a statutory body of the Government of India through an Act of Parliament for the coordination, determination and maintenance of standards of university education in India. Since the VNIT has been recognized by the UGC, this would imply that the courses conducted by the applicant are recognized by



law. We find that the education provided by VNIT is a part of a curriculum for obtaining a qualification recognised by any law for the time being in force.

We now reproduce Serial No. 66 of Notification No. 12/2017 which provides for exemption in relation to certain service availed by educational institution as under:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (%)	Condition
66	Heading 9992	<p>Services provided –</p> <p>(a) by an educational institution to its students, faculty and staff;</p> <p>(b) to an educational institution, by way of,-</p> <p>(i) transportation of students, faculty and staff;</p> <p>(ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;</p> <p>(iii) <u>security</u> or cleaning or housekeeping services performed in such educational institution;</p> <p>(iv) services relating to admission to, or conduct of examination by, such institution; up to higher secondary;</p> <p>Provided that nothing contained in entry (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent.</p>	Nil	Nil

The proviso to Sr. No. 66 mentioned above very clearly states that only services provided to an educational institution which provides services by way of pre-school education and education up to higher secondary school or equivalent, will be exempt. In the subject case the applicant is not providing services, as an educational institution, by way of pre-school education and education up to higher secondary school or equivalent. Hence Security services provided in the instant case will not be exempt from payment of GST.

We now proceed to discuss the second question raised by the applicant which is as under:

Question No. 2: Whether rate of tax on services provided to Visvesvaraya National Institute of Technology, Nagpur (VNIT) is nil as per Serial no 3 of Notification No 12/2017-Central Tax (Rate) dated 28th June 2017.

Sr. No. 3 of Notification No. 12/2017, exempts 'pure services' provided to 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. Thus it is seen that not all services supplied to Governmental authority are exempt from the provisions of goods and services tax. The services supplied should be in nature of, or conform to the function entrusted to them under the Constitution.

Clause (zf) to Part 2 of the above mentioned Notfn. defines governmental authority as :

"Governmental Authority" means an authority or a board or any other body,

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government, with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution or to a Panchayat under Article 243G of the Constitution.

We find, from the submissions made by the applicant, that VNIT has neither been set up by an Act of Parliament or a State Legislature; nor has been established by any Government, with ninety percent or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution or to a Panchayat under Article 243G of the Constitution. Hence they cannot be considered as a "Governmental Authority". Therefore Sr. No. 3 of Notification No. 12/2017 is also not applicable in the subject case.

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- 125/2018-19/B- 58 Mumbai, dt. 24/05/2019

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

Question 1:-Whether the services provided to Visvesvaraya National Institute of Technology, Nagpur will qualify for exemption under Serial No. 66 of Notification No. 12/2017 – Central Tax (Rate) dated 28th June 2017, considering it to be an educational Institution.

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

Question 2:- Whether rate of tax on services provided to Visvesvaraya National Institute of Technology, Nagpur (VNIT) is nil as per Serial no 3 of Notification No 12/2017- Central Tax (Rate) dated 28th June 2017

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



—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.