



सत्यमेव जयते

**RAJASTHAN AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX**

**KAR BHAWAN, AMBEDKAR CIRCLE, NEAR
RAJASTHAN HIGH COURT
JAIPUR - 302005 (RAJASTHAN)**



ADVANCE RULING NO. RAJ/AAR/2018-19/37



J.P.Meena Additional Commissioner	:	Member (Central Tax)
Hemant Jain Joint Commissioner	:	Member (State Tax)
Name and address of the applicant	:	Municipal Corporation Pratapgarh, Nagar Parishad office, Near Bus Stand, District-Pratapgarh, Rajasthan 312605.
GSTIN of the applicant	:	08AAALM1891K1DY
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	a. classification of goods and/or services or both; e. determination of the liability to pay tax on any goods or services or both; g. whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
Date of Personal Hearing	:	01.03.2019
Present for the applicant	:	Shri Pradeep Patidar and Shri Mukesh Mohil (Authorised Representative)
Date of Ruling	:	14.03.2019

Note: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.

The issue raised by Municipal Corporation Pratapgarh, situated at Nagar Parishad office, Near Bus Stand, District-Pratapgarh, Rajasthan 312605, (hereinafter the applicant) is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2)(a),(e) and (g), given as under :

- a. classification of goods and/or services or both;
- e. determination of the liability to pay tax on any goods or services or both;
- g. whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

Further, the applicant being a registered person (GSTIN is 08AAALM1891K1DY, as per the declaration given by him in Form ARA-01) the issue raised by the applicant is neither pending for proceedings nor proceedings were passed by any authority.

Based on the above observations, the applicant is admitted to pronounce advance ruling.



1. SUBMISSION AND INTERPRETATION OF THE APPLICANT:

- a. The applicant is Municipal Corporation of Pratapgarh district i.e. constituted as a local authority as mentioned in article 243W of Constitution of India.
- b. The applicant is receiving various services from various contractors for cleaning of road, garden, toilets and waste collection. As most of the services received are under article 243W of Constitution of India but these services are on rate basis. The applicant is not able to clarify whether the above mentioned services received on rate basis mentioned in article 243W are taxable or exempted.
- c. The applicant is registered under the provisions of the Central Goods and Services Tax Act, 2017 read with the provisions of the Rajasthan State Goods and Services Tax Act, 2017 in Division-G of CGST Udaipur Commissionerate.

2. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT

- नगर परिषद द्वारा ठेके में कराए गए सड़क, शौचालय, एवं उद्यानों के सफाई कार्यों से संबंधित प्राप्त सेवाओं पर GST TDS के प्रावधान किस प्रकार लागू होंगे ?
- घर घर कचरा संग्रहण कार्य तथा ठोस अपशिष्ट प्रबंधन कार्य से संबंधित प्राप्त सेवाओं पर GST TDS के प्रावधान किस प्रकार लागू रहेंगे.
- नगर परिषद की आवश्यकता अनुसार कुशल, अकुशल श्रमिक, वाहन चालक भिन्न ठेकेदारों द्वारा उपलब्ध कराए जाते हैं इन पर GST TDS के प्रावधान किस प्रकार लागू रहेंगे ?
- नगर परिषद द्वारा विभिन्न पार्कों के रख-रखाव के कार्य संबंधी सेवाओं पर GST TDS के प्रावधान किस प्रकार लागू होंगे ?

उपरोक्त सभी कार्य RATE BASIS पर कराए जाते हैं । क्या उपरोक्त कार्यों पर टीडीएस की कटौती करना होगा और यदि करना है तो किस दर से जमा कराया जाएगा ।

3. PERSONAL HEARING

In the matter personal hearing was granted to the applicant on 01.03.2019 at Room no. 2.29 NCRB, Statue Circle, Jaipur. Shri Pradeep Patidar and Shri Mukesh Mohil (Authorised Representative) of applicant appeared for PH. during the PH, he reiterated the submissions already made in the application. He further requested that the case may be decided at the earliest.

4. COMMENTS OF THE JURISDICTIONAL OFFICER

The jurisdiction officer (Assistant Commissioner, CGST Division-G, Plot Number 168-172, Sector-4, Gandhinagar, District-Chittorgarh 312001) has submitted his comments vide letter dated 22.02.2019 which can be summarized as, the supply of pure services to Central Government, State Government or Union territory or local authority or a Governmental Authority by 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 are chargeable to Nil rate of GST as mentioned in Notification No. 12/2017-Central Tax(Rate) dated 28.06.2017.

5. FINDINGS, ANALYSIS & CONCLUSION:

- a. We observe that, the applicant is a local authority constituted under the provisions of Article 243W of Constitution of India. It provides various civic services directly or indirectly to citizens residing in Pratapgarh viz. cleaning of roads, gardens, toilets and waste collection etc. It at times also hires various contractors and receives the services from contractors on rate basis.
- b. The services received by the applicant are not only pure services but also involves supply of goods viz. construction of toilets involves supply of manpower services along with goods like bricks, pipes etc.
- c. The activities entrusted to the Municipality under Article 243W of the Constitution of India and listed under Twelfth Schedule are enumerated as under;



[Article 243-W]

1. *Urban planning including town planning.*
2. *Regulation 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 ponds; 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.*



On perusal of said Schedule it is evident that services received by the applicant viz. cleaning of road, garden, toilets and waste collection are mentioned under point number 4,10,12,13 and 17. Thus, it is easily ascertained that the applicant being a local Authority is providing services to citizens.

- d. The serial no. 3 of Notification No. 12/2017 Central tax(Rate) dated 28.06.2017 emphasize on pure services received by the local authority which is reproduced as under:

Sl. No.	Chapter,Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
3	Chapter 99	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.	Nil	Nil

- e. Now, under Notification No 12/2017-CT (Rate) dated 28.06.2017, under entry number 3A an exemption from GST has been provided for composite supplies which is reproduced as under:-

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
3A	Chapter 99	Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent, of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243 G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.	Nil	Nil

Thus according to said entry in the notification, in case of composite supply of goods or services if the value of supply of goods does not exceeds 25% of the total value of supply and service if provided to State Government or a local authority and the supply is by way of an activity in relation to functions entrusted to Municipality under Article 243W of the Constitution then no GST is applicable.

- f. The services received by the applicant from various contractors is a supply of both i.e. supply of goods and services and therefore may not exempted under serial no. 3 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 if supply of goods crosses threshold limit of 25%.
- g. It is quite difficult to ascertain the quantum of supply of goods and its value through the submissions made by the applicant as quantum of supply of goods or services in a supply depends on a particular activity to

activity. Further, if in duration of agreement/contract the applicant crosses 25% value of goods benchmarks then the nature of taxation may shift from Nil.

- h. Section 51 of CGST/SGST Act, 2017 has made provision in relation to Tax Deduction at Source(TDS) which is as below:-

51. (1) Notwithstanding anything to the contrary contained in this Act, the Government may mandate,—

- (a) a department or establishment of the Central Government or State Government; or*
- (b) local authority; or*
- (c) Governmental agencies; or*
- (d) such persons or category of persons as may be notified by the Government on the recommendations of the Council,*

(hereafter in this section referred to as “the deductor”), to deduct tax at the rate of one per cent. from the payment made or credited to the supplier (hereafter in this section referred to as “the deductee”) of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees:

Provided that no deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.

Explanation.—For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice.

Further, the Central Government by way of Notification No. 50/2018 (Central Tax) dated 13.09.2018 appointed the 1st day of October, 2018, as the date on which the provisions of section 51 of the said Act shall come into force with respect to persons specified under clauses (a), (b) and (c) of sub-section (1) of section 51 of the said Act and the persons specified below under clause (d) of sub-section (1) of section 51 of the said Act, namely:-

- (a) 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 fifty-one per cent. or more participation by way of equity or control, to carry out any function;
- (b) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);
 - (c) public sector undertakings.

On examination of submissions of the applicant, it is found that the applicant is a local authority, thus falls under of Section 51 of the CGST/RGST Act, 2017 and is thus eligible to become a TDS deductor, provided that, the activities undertaken by the applicant are taxable and not exempted by way of any Notification.



i. It is therefore, for the activities undertaken by the applicant in which if there is only 'pure services' then it will attracts nil rate of tax. In other activities where there is composite supply and supply of goods is less than 25% out of total supply then also it attracts nil rate of duty. As for these activities, there is Nil rate of GST so provisions of TDS will also not be applicable on the applicant.

If the activity undertaken by the applicant where there is Works Contract of Composite Supply composite supply of goods and services and quantum of supply of goods is more than 25% then rate of GST will be applicable as mentioned in respective Notification. As the activities attracts GST and are not Nil rated therefore, provisions of TDS will be applicable.


6. In view of the foregoing, we rule as follows:-

RULING


Applicant being a local authority is engaged in receipt of various kinds of services provided by different contractors on which applicability of GST and GST TDS will be -:

- a. Pure Services will attract Nil rate of duty and provisions of GST TDS will not be applicable.

- b. In Composite supply of goods and services where supply of goods is not more than 25% of the total value of supply, will attract Nil rate of duty and provisions of GST TDS will not be applicable.
- c. In Composite supply of goods and services where supply of goods is more than 25% of the total value of supply, will attracts GST @ 12% (SGST 6% +CGST6%) if the activity fall under purview of Serial No. 3 of Notification 11/2017 (CT-rate) dated 28.06.2017 as amended from time to time and if not, then GST @ 18% (SGST 9% +CGST 9%) will be applicable. Provisions of GST TDS will apply as the activity in this case is taxable.


J.P. MEENA 14/3/19
Member
(Central Tax)




HEMANT JAIN 14.3.19
Member
(State Tax)

SPEED POST

Municipal Corporation Pratapgarh,
Nagar Parishad office, Near Bus Stand,
District-Pratapgarh, Rajasthan 312001

F.No. AAR/14/MCP/2018-19/

91-94 o/c
(CGST)

Dated: 15.03.2019

Copy to:-

1. Commissioner, SGST & Commercial Taxes, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005.
2. Commissioner, CGST and Central Excise Udaipur Commissionerate, 142-B, Sector-11, Hiran Magri, Udaipur 313002.
3. Deputy/Assistant Commissioner, CGST Division-G, Plot Number 168-172, Sector-4, Gandhinagar, District-Chittorgarh 312001.


Superintendent

