

**AUTHORITY FOR ADVANCE RULING
TAMILNADU ADVANCE RULING AUTHORITY
PAPJM Buildings, II Floor, No.1, Greams Road, Chennai-600 006.**

**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.**

Members present are:

1. Ms. Manasa Gangotri Kata, IRS Joint Commissioner/Member,
Office of the Commissioner of GST & Central Excise, Chennai.
2. Thiru S. Vijayakumar, M.Sc., Joint Commissioner (CT) / Member (FAC),
Enforcement / Inter-State Investigation Cell, Chennai-6.

ORDER No.21 /AAR/2018 DATED 28.11.2018.

GSTIN Number, if any / User id		33AABCT8153B1ZP
Legal Name of Applicant		M/s. Tamil Nadu Water Investment Company Limited
Registered Address/Address provided while obtaining user id		Polyhouse Towers, (SPIC Annex Building) Ist Floor, No.86, Mount Road, Guindy, Chennai-600032
Details of Application		Form GST ARA – 001 Application Sl. No 7/2018/ARA dated 08.03.2018.
Concerned Officer		State : The Assistant Commissioner (ST) Saidapet Assessment Circle, Chennai. Centre: Chennai South Commissionerate- Guindy Division
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in Brief)	The Company provides Management Consultancy and Consulting Engineering Services besides investment and other incidental activity.
Issue/s on which advance ruling required		Applicability of Notification issued under GST Act 2017.
Question(s) on which advance ruling is required		Whether Sl.No.3 of Notification No. 12/2017-Central Tax (Rate) dated 28 th June 2017 is applicable for the services rendered by Tamil Nadu Water Investment Corporation to Chennai Metro Water Supply and Sewerage Board.

Note : Any appeal against the advance ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-

section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

M/s Tamil Nadu Water Investment Company Limited, Polyhose Towers (SPIC Annex Building), 1st Floor, No. 86, Mount Road, Guindy, Chennai 600032 (hereinafter called the Applicant or TWIC) is imparting Management Consultant and DPR services to Chennai Metro Water Supply and Sewerage Board (CMWSSB) for the water related projects at Chennai. They are also rendering Consultancy Services to others and pay CGST and SGST taxes duly, besides carrying on services to Common Effluent Treatment Plant. They are Registered vide GSTIN: 33AABCT8153B1ZP. They have sought advance ruling on

“Whether the services rendered by them to CMWSSB is exempted under Sl.No. 3 of Notification No. 12/2017-CT (Rate) dated 28th June 2017”.

The Applicant has submitted the Advance Ruling in Form GST ARA – 01 and had enclosed challan for payment of fees of Rs 5,000/- each under sub-rule (1) of Rule 104 of CGST Rules 2017 and SGST Rules 2017.

2.1 The Applicant has stated that they have entered into agreement with CMWSSB for

- Project Management Consultancy for the work Construction Management and Supervision including off-site inspection for the proposed design, Build and Commissioning of 45 MLD capacity Tertiary Treatment Reverse Osmosis(TTRO) Plant at Kodungaiyur & Koyambedu, Chennai City
- Consultancy Services for preparation of Detailed Project Report for providing Smart Water Supply and Sewerage Services in T.Nagar, Chennai City, under Smart City Mission

2.2. The Applicant has stated that in the pre-GST regime and as per the Special Conditions of the agreement entered into by Applicant with CMWSSB, the Service Tax paid by the Applicant was reimbursed by CMWSSB up to February 2017 and

with the introduction of GST from 01.07.2017, the Applicant charged GST on the Invoices raised by it on CMWSSB. However, CMWSSB is of the view that Project Management Consultancy Services (PMC) rendered by the Applicant is exempted as per Sl.No.3 of Notification of 12/2017 CT(R) dated 28.06.2017, as the Project Management Consultancy (PMC) is within the ambit of "Pure Services" viz. is an activity in relation to any function entrusted to a Municipality under Article 243W of the Constitution, the function being Water Supply for domestic, industrial and commercial purposes. The CMWSSB denied to reimburse the GST component of the Invoice to the Applicant, even if they raise the same in the monthly invoice and remit the same to the Government. In view of abundant caution and in the absence of clarity, the Applicant had paid the CGST tax and SGST tax on the services rendered to CMWSSB. In light of aforementioned, the Applicant has sought Advance Ruling on whether the services rendered by them to CMWSSB are exempt or taxable?

3. The Applicant was heard in person. Based on the hearing, they have submitted the 3 project contracts viz Tertiary Treatment Reverse Osmosis plants (TTRO) at Koyambedu and Kodungaiyur and for Smart City Mission of T.Nagar Chennai with CMWSSB, which are ongoing for Consultancy Services for Design and Supervision, including Supply of Manpower for the same. They undertook to submit Invoices, Payment Advice and Certificate from CMWSSB on Ownership, so as to be eligible for exemption under Sl.No.3 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017, as it involved Governmental Authority involving Water Treatment Plant (Tertiary Treatment Reverse Osmosis (TTRO)). The Applicant has furnished copy of Invoices raised on CMWSSB in respect of Project Management Consultancy Services (PMC) to the proposed Tertiary Treatment Reverse Osmosis (TTRO) plants at Koyambedu and Kodungaiyur and for Smart City Mission of T.Nagar Chennai; Letter dated 25th May 2018 from CMWSSB on ownership along with enclosures and Copy of Agreement entered into with CMWSSB for Project Management Consultancy Services of Chennai T.Nagar under Smart City Mission.

4.0 Submissions of the Applicant were verified with reference to the connected documents and copy of contracts submitted by the Applicant. It is seen that the Applicant has entered into Contracts for Project Management Consultancy Services with CMWSSB for Construction, Management and Supervision including Off-site Inspection for the proposed Design, Build and commissioning of 45 MLD capacity Tertiary Treatment Reverse Osmosis (TTRO) Plant at Kodungaiyur and Koyambedu.

The project at Kodungaiyur, for recycling and re-using of waste water for the uses other than drinking purposes for various industries at Manali-Minjur and Manali-Ennore corridor, North Chennai for their industrial use. The project at Koyambedu, for recycling and re-using of waste water for the uses other than drinking purposes for SIPCOT industries at Irungattukottai, Sriperumbudur and Oragadam for their industrial use. The Applicant will provide supervision of the Construction Works including Design, Testing Quality Assurance, carry out 3rd party inspection of equipment and materials required for construction and commissioning, be responsible for Environmental and social management and sign-off on the expenditure by the project executing authority. As per the contract, the Applicant will be paid for all staff costs, Sub-consultants costs, printing, communications, travel, accommodation and all other costs incurred in carrying out the services. The payment will be on actual cost of deployment of man-power who are specified in the contract. It is seen from the invoices already raised that the Applicant is being paid for "Consultancy Fee towards Project Management Consultancy (PMC) for setting up of 45MLD capacity Tertiary Treatment Reverse Osmosis (TTRO) Plant at Kodungaiyur and Koyambedu.

4.1 The Applicant has also entered into contract with CMWSSB for Consultancy Services for preparation of detailed project report for providing smart water supply and sewerage services in T Nagar under Smart City Mission. The project is to Design, Develop and improved Water Supply and Sewerage System in T-Nagar. The Applicant will carry out preliminary investigation including Surveys, GIS mapping, Audit and Analysis and Design Distribution Systems, for water supply and Sewers Pipe condition assessment, Energy Audit and Geo-Technical Investigation. The Applicant has to submit various reports based on their investigations, Design Report and prepare bid document and submit to CMWSSB. As per the contract, the Applicant will be paid for all staff costs, Sub-consultants costs, printing, communications, travel, accommodation and all other costs incurred in carrying out the services. The payment will be based on the areas of investigation and also on the manpower used for carrying out these services. It is seen from the invoices already raised that the applicant is being paid for "Consultancy Fee towards providing Smart Consultancy Services for preparing detailed project report for improvement of Water Supply and Sewerage Services in T Nagar under Smart City Mission".

4.2 The Applicant has also submitted a letter from Managing Director, CMWSSB to the Applicant stating that CMWSSB is a Governmental Authority as per Section 2(16) of IGST Act. It is a Board constituted by an Act of Tamil Nadu State Legislature called "Chennai Metropolitan Water Supply and Sewerage Act, 1978" with 100% contribution by way of Government (by way of takeover of Assets and Liabilities from Chennai Municipal Corporation and Tamil Nadu Water Supply and Drainage Board) and controlled by the Government by way of appointing Directors of the CWSSB Board to carry out the functions of supplying water for Domestic, Industrial and Commercial purposes as well as Sanitation Conservancy by way of disposal, which is entrusted to a municipality under Article 243W of the Constitution. The related copies of the Act and Annual Report were enclosed which supports the statement made in the letter of CMWSSB. It is seen that the Minister and Secretary in charge of "Water Supply" are on the Board and on setting up of CMWSSB, the Local Authority was required to transfer all assets, liabilities, legal proceedings and properties relating to water and sewerage works to CMWSSB. It is seen from the Annual report that CMWSSB gets income from sale of water and charges on sewerage water by way of Water Tax and Sewerage Tax, grants from the government etc.

5. The Advance Ruling is sought on the applicability of exemption under Sl.No. 3 of Notification No. 12/2017 Central Tax (Rate) dated 28th June 2017 to the three contracts entered into by the Applicant with CMWSSB i.e. Project Management Consultancy services in connection with setting up of TTRO Plant at Kodungaiyur & Koyambedu and for Consultancy Services for preparation of detailed project report for providing Smart Water Supply and Sewerage Services in T.Nagar. The Applicant has also stated that CMWSSB is of the view that PMC services rendered by them could be brought within the ambit of "Pure Services", as it is an activity in relation to any function entrusted to a Municipality under Article 243W of the Constitution and not reimbursed the GST component of the invoice. The issue to be decided is whether the Applicant is rendering 'Pure Services' and whether CMWSSB is a 'Governmental authority' as defined in the Notification No. 12/2017.

6.1 The relevant extract of Sl.No. 3 of Notification No. 12/2017-Central Tax (Rate) dated 28th June 2017 and the relevant definitions are extracted below for ease of reference:

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	Nil	Nil
		relation to any function entrusted to a Municipality under article 243W of the Constitution.		

(zf) "governmental authority" has 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 (13 of 2017);

Explanation to Clause (16) of Section 2 of the Integrated Goods and Service Tax Act (IGST) is given as under:

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;

This definition was later modified vide Notification No 32/2017- Central Tax (Rate) dt. 13.10.2017

"(ii) in paragraph 2, for clause (zf), the following shall be substituted, namely: -
"(zf) "**Governmental Authority**" means an Authority or a Board or any other Body, -

(i) set up by an Act of Parliament or a State Legislature; or (ii) established by any Government, with 90per cent. or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243 W of the Constitution or to a Panchayat under article 243 G of the Constitution."

From the above, it is evident that if any "Pure Services" are provided to a Governmental Authority by way of any activity in relation to any function entrusted to a municipality under Article 243 W of the Constitution and that 'Governmental Authority' is an Authority or a Board set up by an Act of Parliament or a State Legislature or established by the Government with 90 percent 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, then the same is exempted vide Sl.No. 3 of the Notification No. 12/2017-Central Tax (Rate) referred above.

6.2 In the case at hand, from the documents furnished by the Applicant, we find that CMWSSB is a Board constituted by an act of Tamil Nadu State Legislature called Chennai Metropolitan Water Supply and Sewerage Act, 1978 (Tamil Nadu Act 28 of 1978) with 100% contribution by way of Government (i.e. by way of takeover of Assets and Liabilities from Chennai Municipal Corporation and Tamil Nadu Water Supply and Drainage Board) and controlled by the Government by way of appointing Directors of the CMWSS Board, to carry out the functions of supplying water for domestic, industrial and commercial purposes as well as Sanitation Conservancy by way of disposal of Sewer. The Twelfth Schedule or Article 243W of the Constitution list the functions of the municipality at Sl No 5 as "Water Supply for domestic, industrial and commercial purposes" and at Sl No 6 as "Public health, sanitation conservancy and solid waste management". Thus it is clear that CMWSSB is a 'Governmental authority' as defined under 2(zf) of the Notification No. 12/2017-Central Tax (Rate) 28th June 2017.

6.3 On perusal of the agreements furnished by the Applicant, we find that the Applicant provides Project Management Consultancy Services, including Supervision of the Construction Works including Design, Testing Quality Assurance, carry out 3rd party inspection of equipment and materials required for construction and commissioning, be responsible for Environmental and social management and sign-off on the expenditure by the project Executing Authority, to CMWSSB for Construction Management and Supervision including off-site inspection for the proposed Design, Build, Commission of 45 MLD capacity Tertiary Treatment Reverse Osmosis (TTRO) Plant at Kodungaiyur and Koyambedu, for recycling and reusing of waste water for the uses other than drinking purposes to various industries. The Applicant will be paid for all staff costs, Sub-consultants costs, printing, communications, travel, accommodation and all other costs incurred in carrying out the services on actual cost of deployment of man-power specified in the contract. Under the Third contract, the Applicant will prepare a detailed project report for design and develop an improved water supply and sewerage system in T.Nagar under Smart City Mission including carrying out preliminary investigation, surveys, GIS Mapping, Audit and Analysis and Design Distribution Systems, for Water Supply and Sewers pipe condition assessment, Energy Audit and Geo-Technical Investigation and finally submit various

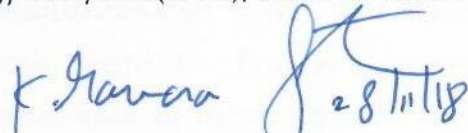
Investigation, Design Report and prepare bid document. The Applicant will be paid for all staff costs, Sub-consultants costs, Printing, Communications, Travel, Accommodation and all other costs incurred in carrying out the services based on the areas of investigation and manpower used.

6.4 The above clearly shows that the activity of the Applicant envisaged by the three agreements furnished by the applicant is supply of 'Pure Services' to CMWSSB which is a 'Governmental Authority' relating to water supply for industrial use and sanitation conservancy which are covered under Twelfth Schedule of Article 243 W of the Constitution. Therefore, the services rendered by the Applicant are exempted from CGST under Sl.No. 3 of the Notification No. 12/2017-Central Tax (Rate) dated 28th June 2017 as amended and exempted from SGST under Sl.No. 3 of the G.O. (Ms) No. 73 dated 29.06.2017 No.II (2)/CTR/532(d-15)/2017 as amended.

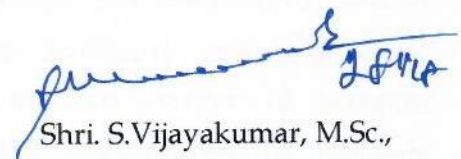
7. In view of the foregoing, we rule as under:

RULING

The activity of the Applicant as per the three contracts entered into with Chennai Metro Water Supply and Sewerage Board i.e. for Project Management Consultancy (PMC) Services entered by Applicant with CMWSSB for construction management and supervision including off-site inspection for the proposed design, build, commission of 45 MLD capacity Tertiary Treatment Reverse Osmosis (TTRO) Plant at Kodungaiyur and Koyambedu and for Consultancy Services for preparation of detailed project report for providing smart water supply and sewerage services in T.Nagar under Smart City Mission are exempted from CGST under Sl.No. 3 of the Notification No. 12/2017-Central Tax (Rate) dated 28th June 2017 as amended and exempted from SGST under Sl.No. 3 of the G.O. (Ms) No. 73 dated 29.06.2017 No.II (2)/CTR/532(d-15)/2017 as amended.



Ms. Manasa Gangotri Kata, IRS
Member



Shri. S.Vijayakumar, M.Sc.,
Member (FAC)

To

M/s. Tamilnadu Water Investment Company Limited,
PolyHose Towers, 1st Floor, 86, Mount Road,
Guindy, Chennai- 600 032

/By SPAD/



Copy Submitted to:

1. The Additional Chief Secretary / Commissioner of Commercial Taxes,
II Floor, Ezhilagam, Chepauk, Chennai-600 005.
2. The Principal Chief Commissioner of GST & Central Excise,
No 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.

Copy to:

3. The Commissioner of GST & C.Ex.,
Chennai South Commissionerate
4. The Assistant Commissioner (ST)
Saidapet Assessment Circle,
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