

order
No :- ZD271220013516W

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

**GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)**

BEFORE THE BENCH OF

- (1) Ms. P Vinitha Sekhar, Additional Commissioner of Central Tax, (Member)
(2) Mr. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id		27AABAJ9289LIZW
Legal Name of Applicant		M/s. JANKI SUSHIKSHIT BEROJGAR NAGRIK SEVA SAHAKARI SANSTHA MA AMRAVATI
Registered Address/Address provided while obtaining user id		46-250, Janki Sushikshit Berojgar Nagrik Seva Sahakari Sanstha MA Amravati, Bhuteshwar Chowk, Pannalal Garden, Amravati - 444605
Details of application		GST-ARA, Application No. 69 Dated 28.11.2019
Concerned officer		AMR-BCP-C-003, AMRAVATI Division
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in brief)	Applicant is providing labour to the municipal corporation, which include cleaning staff, data entry operators, helpers, teachers (Psychologist and Speech therapist) for Zilla Parishad schools and colleges.
Issue/s on which advance ruling required		(i) classification of goods and/or services or both (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” respectively] by JANKI SUSHIKSHIT BEROJGAR NAGRIK SEVA SAHAKARI SANSTHA MA AMRAVATI , the applicant, seeking an advance ruling in respect of the following questions.

- Whether the services provided by the Applicant are covered under Clause 1 & 2 of Twelfth Schedule of Article 243W?*

2. *Whether the meals provided to Government Ashrams for economically weaker class of students fall within Clause 1 & 2 of Twelfth Schedule of Article 243W?*
3. *Whether the services provided by the applicant fall under the Exemption Notification No. 12/2017 dated 28th June, 2017 (Entry No. 3 of Exemption Notification) as amended from time to time as the services are in the nature of pure labour services.*

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 made by the applicant is as under:-

- 2.1 Applicant, M/s. Janki Sushikshit Berojgar Nagrik Seva Sahakari Sanstha MA, Amravati - 444605, provides labour to the municipal corporation, which include cleaning staff, data entry operators, helpers, teachers (Psychologist and Speech therapist) for Zilla Parishad schools and colleges. These labour belong to the economically weaker sections of society.

2.2 **Following are the exact objectives of the society:-**

- a. Providing security guard to Municipal Corporation
 - b. Providing Computer and Data entry operator to Municipal Corporation
 - c. Providing cleaning and helper staff to Municipal Corporation and Local Authority for cleaning of roads, hospitals and other public places.
 - d. Providing Meals to economically weaker class students residing in the Government Ashrams.
 - e. Providing Psychologists and Audio and speech therapist in Government colleges for handicapped and special children.
 - f. Any other activity of Municipal Corporation that requires labour for the development of society in general.
- 2.3 All the above activities directly or indirectly help the Municipal Corporation achieve its objective as listed in the Maharashtra Municipal Corporation Act, 1966.
 - 2.4 As per Article 46 of the Indian Constitution, *The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in*

particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

2.4.1 Here, the word State shall have the meaning as described in Part III of the constitution. As per Article 12, Part III, *“the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.*

2.5 To fulfil the objectives of said Article 46, Article 243W of the Indian Constitution, stipulates the following:-

Powers, authority and responsibilities of Municipalities, etc.

Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to:

- I. *the preparation of plans for economic development and social justice;*
- II. *the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;*

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

Now, the 12th Schedule of the Indian Constitution enumerates the following activities, in which our society is engaged,

- a) *Public health, sanitation conservancy and solid waste management.*
- b) *Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.*
- c) *Public amenities including street lighting, parking lots, bus stops and public conveniences.*

2.6 As per Notification No. 12/2017- Central Tax (Rate), intra-State supply of services of description as specified are exempt from so much of the central tax leviable thereon

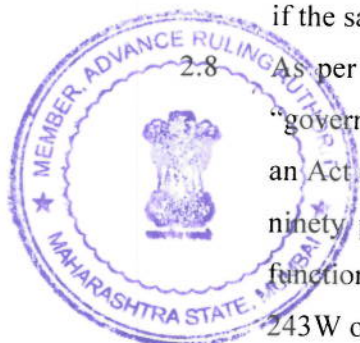


under sub-section (1) of Section 9 of the said Act, as is in excess of the said tax calculated at the rate unless specified otherwise, subject to the relevant conditions.

Sr. No.	Tariff	Description of Services	Rate (percent)
1.	Chapter 99	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority [or a Government Entity] 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

2.7 As per GST Act 2017, services provided to any government whether it is state or central government or local authority is exempted under Notification 12/2017 - for levy of GST if the said services provided are for the benefit to the public at large.

2.8 As per explanation to clause 16 of Section 2 of the IGST Act, 2017, 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 Panchayat under article 243G or to a municipality under article 243W of the Constitution.



03. CONTENTION – AS PER THE JURISDICTIONAL OFFICER:

3.1 The jurisdictional officer has referred to the decision given by the Advance Ruling Authority, Goa, State, in the case of M/s. Sewerage and Infrastructural Development Corporation of Goa Limited, wherein it was held that, services provided by Sewerage and Infrastructural Development Corporation of Goa Limited appears to fall in the list of services enumerated under Serial No. 6 of the 12th Schedule of Article 243 W of the Indian Constitution, thus qualifying for the admissibility criteria to get exemption from payment of GST.

04. HEARING

- 4.1 Preliminary hearing in the matter was held on 28.01.2020. Sh. Mayur Zanwar, C.A, along with Ms. Simran Pinjani and Ms. Muskan Chandwani, Assistants, appeared and requested for admission of the application. Jurisdictional Officer was not present.
- 4.2 The application was admitted and called for final hearing on 25.02.2020. Sh. Mayur Zanwar, C.A authorized Representative, appeared made oral and written submissions. Jurisdictional Officer was not present but made written submissions .We heard both the sides.
- 4.3 Further online e-hearing was held on 10.11.2020, wherein Shri. Mayur Zanwar CA of applicant and jurisdictional officer both, attended the hearing. Applicant was asked to submit contract copies in English.

05. OBSERVATIONS AND FINDINGS:

5.1 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.

5.2 Applicant, is running a society of labour belonging to the economically weaker sections of society, having certain objectives as cited supra in applicant's submission. As per the submissions, applicant is mainly engaged in providing labour to the Municipal Corporation, Government Offices, Government Ashrams, and Government Medical College and hospitals and all the activities carried out by them directly or indirectly, helps the Municipal Corporation to achieve its objective listed in Maharashtra Municipal Corporation Act, 1966.

5.3 From the submission and documents submitted before us we find that, the applicant has received various work orders for supply of services or goods from the Municipal Corporation, District Collector's Office, State Level Offices and Government Medical Colleges and treatment hospitals, which are listed as under:-

- (1) The Residential Deputy Collector and Collector office, Amravati, to provide labour for cleaning of office premises and security guard for security purposes vide their order dated 11.12.2019 for 11 months.
- (2) Work orders dated 06.12.2018 and 18.2.2019 from the officer for Department of District Mahila and Child Development, Amravati (State Govt.), for supply of staff to work in security offices for 11 months and till further order respectively.



- (3) Work order dated 16.8.2018 from the Divisional Commissioner, for Divisional Krida Sankul Sammittee, Amravati (State level) for providing of skilled and unskilled staff to the samiti office.
- (4) Work orders dated 23.8.2019 from the Dean, Government Medical college and treatment hospital, Akola for supply of data entry operators, medical technicians, dialysis attendants, assistants in operation theatres, Audiologist, speech therapist and clinical psychologist etc, for Government College and hospital, Akola.
- (5) Work order dated 20.12.2017 from Amravati Municipal Corporation, Amravati (AMC), to provide staff for computers.
- (6) Work order dated 06.08.2018 from Assistant Collector/Project Officer for Integrated Adivashi Development Project, Dharni, Dist. Amravati (State Project) for supply of vegetable and Mutton to the Government Ashram school, Amravati.



5.5 On the perusal of the work orders, it is seen that applicant is mainly supplying manpower and only in the case of Government Ashram school, applicant is providing goods in the form of vegetable and mutton as per the contract executed.

5.6 The first question raised by the applicant is whether the supply of impugned services like; supply of staff for cleaning the District Collector's office premises; providing manpower in the form of skilled assistants and technicians, to Hospitals and Dispensaries run by Government medical college, are covered under clause 1 & 2 of Twelfth Schedule of Article 243W.

5.6.1 The question asked by the applicant is very specific and limited in nature. For the purposes of the answers to the above said questions, we shall examine the Clause 1 & 2 of Twelfth Schedule of Article 243W which are reproduced as under:-

243W - Powers, authority and responsibility of Municipalities, etc.

Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow (a) *the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to*

- (i) *the preparation of plans for economic development and social justice;*

(ii) *the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;*

(b) *the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.."*

• **The Twelfth Schedule for Article 243W of the Constitution (Seventy-Fourth Amendment) Act, 1992 are as follows;**

1. Urban planning including town planning.
2. Planning of land- use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.
15. Cattle pounds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries.

5.6.2 From the above, it is seen that Clause 1 is related to Urban planning including town planning and Clause 2 is related to Planning of land- use and construction of buildings for municipalities. In the subject case, as per the submissions made, the applicant is providing manpower/staff (labour)/security guard to the Amravati Municipal Corporation, Amravati (AMC). Amravati Municipal Corporation is a



municipality, set up as per the provisions of Article 243 P of Constitution of India. The remaining supply of services/goods are to various departments of the Government but not to the municipality.

5.6.3 For the subject issue, we find that Clause No. 1 and 2 mentioned above are related to Urban planning including town planning and Planning of land - use and construction of buildings, which are totally different from the applicant's supply of services. The applicant is supplying manpower for specific purposes like computer work, cleaning of office premises, security, skilled and unskilled labour, etc. In our view, such supply of services and goods cannot be said to be related to functions specified under Clause 1 and 2 of the 12th Schedule. Applicant has not provided manpower in relation to any urban planning or planning of land-use and construction of building. Further, the applicant has not brought on record as to how their supply is in furtherance of functions specified in the above mentioned Clause 1 and 2. Hence it is felt that, such subject supply is out of purview of the scope of Clause 1 and 2 of 12th Schedule of Article 243 W of the Constitution, as functions entrusted to Municipality.

5.7 The second question raised by the applicant is whether the meals provided to Government Ashrams for economically weaker class of students fall within Clause 1 & 2 of Twelfth Schedule of Article 243W.

5.7.1 It is seen that Clause 1 & 2 of the 12th Schedule enumerates certain functions to be undertaken by a Municipality in relation to and including Urban planning including town planning and Planning of land - use and construction of buildings. First of all the applicant is not supplying any meals, in fact their submissions reveal that they are only supplying vegetables and mutton which cannot be considered as meals. Further such supply can in no way be correlated with the functions mentioned under Clause 1 & 2 of the 12th Schedule and therefore we hold that supply of vegetables and mutton are not covered under the said Clauses 1 & 2.

5.8 The third question raised by the applicant is whether the services provided by them fall under the Entry No. 3 of Exemption Notification No. 12/2017 dated 28th June, 2017, as amended, since the said services are in the nature of pure labour services. We therefore reproduce Sl No. 3 of Notification No. 12/2017- Central Tax (Rate) dated 28/06/2017, as under:-

Sl. No	Chapter, Section,	Description of Services	Rate (perc	Con ditio

	Heading, Group or Service Code (Tariff)		ent.)	n
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

5.8.1 For any supply to be covered under Sr. No. 3 mentioned in 5.6.1 firstly, the supply should be in respect of only Pure Services, secondly such Pure Services must be provided to the Central Government, State Government or Union territory or local authority or a Governmental authority [or a Government Entity] and finally such services should be provided 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.



5.8.1 Except supply of vegetables and mutton to Government Ashrams which are actually supply of goods, all the other activities are supply of services. We therefore discuss each of them as under:-

5.8.1.1 To the Residential Deputy Collector and Collector office, Amravati, applicant is providing labour for cleaning of office premises. Applicant is also providing security guard for security purposes. While the services of manpower supply as submitted by the applicant, can be considered as pure services and the Collector office can be considered as State Government office, the applicant has not made submissions to show that the functions being undertaken are activities carried out 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.

5.8.1.2 Similarly in the case of; supply of security guards to the Department of District Mahila and child development, Amravati (State Govt.); supply skilled and unskilled staff to the Divisional Commissioner, for Divisional Krida Sankul Samiti, Amravati (state level)

for the samiti office; the applicant has not made submissions to show that the functions being undertaken by them are activities 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.

5.8.1.3 For Government Medical college and treatment hospital, Akola, the applicant is supplying staff for data entry operation, medical Technicians, dialysis attendants, assistants in operation theatre, Audiologist and speech therapist and clinical psychologist etc. Here too, the nature of the exact activities performed by the applicant's manpower is not forthcoming. However, a study of the 11th and 12th Schedule make it clear that supply of manpower as mentioned above, to Government Colleges and Hospitals, as institutions of Central/State/District/Local authorities are not covered under either of the two Schedules.

5.8.1.4 Finally the applicant also provides manpower for computer working to the Amravati Municipal Corporation (AMC). The AMC is a Municipality and certain functions are entrusted to it under Article 243W of the Constitution. Municipal Corporations undertake a lot of work pertaining to their jurisdiction and are liable to pay GST wherever functions are undertaken which does not find mention under 11th Schedule. Hence in absence of such information we find that the applicant will not be eligible for exemption under Entry No. 3 of Exemption Notification No. 12/2017 dated 28th June, 2017.

5.9 The jurisdictional officer has referred to the decision given by the Advance Ruling Authority, Goa, State, in the case of M/s. Sewerage and Infrastructural Development Corporation of Goa Limited, wherein it was held that, services provided by Sewerage and Infrastructural Development Corporation of Goa Limited appears to fall in the list of services enumerated under Serial No. 6 of the 12th Schedule of Article 243 W of the Indian Constitution, thus qualifying for the admissibility criteria to get exemption from payment of GST.

5.9.1 In the said case, the applicant i.e. M/s Sewerage & Infrastructural Development Corporation of Goa. Ltd. has been held to be a Government Entity, which has been appointed as the State-level nodal agency to take up the sewerage projects and it was held that the applicant is a Government Entity and the services provided by the applicant apparently fell in the list of services enumerated under Sr No 6 of the 12th Schedule of Article 243W of the Constitution. In the subject case, the applicant is not a

Government Entity. Further, the subject matter before us is respect to supply of manpower services rendered by the applicant, which is not a Government Entity.

- 5.10 The applicant has not submitted the contract copies in English till the date of passing this order.
06. In view of the above discussions, 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- 69/2019-20/B- 61 Mumbai, dt. 15.12.2020

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

Question 1 :- Whether the services provided by the Applicant are covered under Clause 1 & 2 of Twelfth Schedule of Article 243W?

Answer:- Answered in the negative.

Question 2 :- Whether the meals provided to Government Ashrams for economically weaker class of students fall within Clause 1 & 2 of Twelfth Schedule of Article 243W?

Answer:- Answered in the negative.

Question 3 :- Whether the services provided by the applicant fall under the Exemption Notification No. 12/2017 dated 28th June, 2017 (Entry No. 3 of Exemption Notification) as amended from time to time as the services are in the nature of pure labour services.

Answer:- Answered in the negative.



T.R. Ramnani
15/12/2020
T.R.RAMNANI
(MEMBER)

P Vinitha Sekhar
15/12/2020
P VINITHA SEKHAR
(MEMBER)

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.

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.

