

AUTHORITY FOR ADVANCE RULING – CHHATTISGARH
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PROCEEDING OF THE AUTHORITY FOR ADVANCE RULING
U/s. 98 OF THE CHHATTISGARH GOODS AND SERVICES TAX ACT, 2017

Members Present are

Smt. Sonal K. Mishra
 Joint Commissioner
 O/o Commissioner, State Tax
 (CGGST), Raipur, Chhattisgarh.

Shri Rajesh Kumar Singh,
 Additional Commissioner,
 O/o Principal Commissioner,
 CGST & Central Excise, Raipur (C.G)

Subject :-Chhattisgarh GST Act, 2017 – Advance Ruling U/s 98 Chhattisgarh GST Act, 2017 –

Advance Ruling U/s 98 sought by M/s Chhattisgarh Anusandhan & Vikas Firm, JMIG 42, Sector 3, Pandit Din Dayal Upadhyay Nagar, Raipur, Chhattisgarh, the applicant, a registered Service provider, GSTIN- 22AAFFC0616D2ZA engaged in the business of providing man power service which includes providing of technical personal, data operator, housekeeping service etc. to different State Government and Central Government Department. The applicant seeks clarification on the amount of GST and the rate of GST if any applicable on the services provided by them.

Read:-Application dated 19.07.2021 from M/s Chhattisgarh Anusandhan & Vikas Firm, JMIG 42, Sector 3, Pandit Din Dayal Upadhyay Nagar, Raipur, Chhattisgarh, GSTIN- 22AAFFC0616D2ZA.

PROCEEDINGS

[U/s 98 of the Chhattisgarh Goods & Services Tax Act, 2017 (herein- after referred to as CGGST Act, 2017)]

No.STC/AAR/05/2021

Raipur Dated 25/11/2021

M/s Chhattisgarh Anusandhan & Vikas Firm, JMIG 42, Sector 3, Pandit Din Dayal Upadhyay Nagar, Raipur, Chhattisgarh, [hereinafter also referred to as the applicant] has filed an application U/s 97 of the Chhattisgarh Goods & Services Tax Act, 2017 seeking advance ruling regarding the GST liability and tax rate on the services of provision of technical personal, data operator, housekeeping service etc. to different State and Central Government Departments.

2. Facts of the case: -

2.1 That the applicant is engaged in the business of providing Man Power service which includes providing of Technical personal, Data Operator, House Keeping



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Service etc. to different State Government and Central Government Department Such as: -

S.No.	Particulars	Category	Nature of Service
1	CHHATTISGARH RAJYA BEEJ EVAM KRISHI VIKAS NIGAM LIMITED	State Government Undertaking	To Provide Accountant
2	Social Welfare Department	State Government Department	To Provide Computer Operator, Peon, Driver Etc.
3	C.G. State Road Development Department	State Government Department	To Provide Computer Operator, Peon, Driver Etc.
4	Labour Department	State Government Department	To Provide Computer Operator
5	C.G. Samvad	State Government Department	To Provide Computer Operator, Peon, Driver Etc.

2.2 That applicant is paying GST on whole amount which is received from department which includes salary, PF, ESIC to be paid for the man power being provided by him to the different State Government and Central Government Department and also the administrative Cost/Commission received by the applicant as a whole.

2.3 That the applicant seeks clarification that as per the Entry Number 3 of the Notification Number 12/2017 Central Tax (Rate) issued on 28/06/2017 which reads asunder: -

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
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3. Contentions of the applicant: -

3.1 That entry number 3 of the Notification Number 12/2017 Central Tax (Rate) issued on 28/06/2017 specifically excludes work contract service and other composite supply involving supply of Goods but service providing by applicant does not involve any composite supply of goods or does not fall under the definition of work contract as defined under Goods and Service Tax Act 2017.

3.2 that, as per the above notification and definition of pure service, service provided by applicant falls under the Entry Number 3 of the Notification Number 12/2017 Central Tax (Rate) issued on 28/06/2017.

4. Personal Hearing:-

Keeping with the established principles of natural justice, personal hearing in the matter was extended to the applicant, as requested by them and accordingly, Shri Brahmesh Kumar Srivastava, partner along with Shri Harsh Jain CA and authorized representative of the applicant appeared before us for hearing on 24.09.2021 in person. It was reiterated that the applicant is engaged in the business of providing Man Power Service which includes providing of Technical personal, Data Operator, House Keeping Service etc. to different State Government and Central Government Department. Citing reference to Sr. No. 3 of Notification No. 12/2017-CT dated 28.06.2017, they were of the opinion that they are eligible for exemption provided therein. Copy of agreement dated 27.07.2019 with Chhattisgarh State Civil Supplies Corporation Ltd. Raipur, copy of agreement dated 25.04.2017 with Chhattisgarh Rajya Beej evam krishi vikas nigam Ltd., copy of agreement dated 26.08.2016 with Regional office NHAI Ltd. Raipur and copy of contract agreement dated 28.08.2017 with PIU-Dwarka of NHAI were also submitted during the course of personal hearing, which has been taken on record. They reiterated their earlier contention in the matter as made in their ARA01. Shri Harsh Jain also furnished a written submission dated 24.09.2021, which has also been taken on record.

5.The legal position, analysis and discussion:-At the very outset, we would like to make it clear that the provisions for implementing the CGST Act and the Chhattisgarh GST Act, 2017 [hereinafter referred to as "the CGST Act and the CGGST Act"] are similar and thus, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the CGGST Act, 2017. Now we sequentially proceed to discuss the issues involved in the ruling so sought by the applicant and the law as applicable in the present case.

5.1 The applicant is engaged in the service of providing man power supplies to different government department and undertaking such as the services of providing accountant, computer operator, peon, driver etc.



5.2 The applicant contends that the services provided by them falls under the Entry Number 3 of the Notification Number 12/2017 Central Tax (Rate) dated 28/06/2017 which stipulates Nil rate of tax for 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.

5.3 In the aforesaid context, it is seen that the relevant clauses of Notification No. 12/2017-CT(R) dated 28-06-2017, read as under:-

In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below 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 as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-

TABLE

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
1	...			
2				
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
				



5.4 Thus, above Notification at sr. no. 3 provides for Nil rate of GST for 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.

5.5 To have a better appreciation of the issues involved, definitions of the above terms as provided under the CGST Act, 2017 are reproduced herein below:

(i) As per Section-2(53) of the CGST, Act, 2017, "Government" means the Central Government.

(ii) As per Section-2(53) of the CGGST, Act, 2017, "Government" means the State Government.

(iii) As per Section-2(69) of the CGGST, Act, 2017, "local authority" means—

(a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution;

(b) a "Municipality" as defined in clause (e) of article 243P of the Constitution;

(c) 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;

(d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;

(e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;

(f) a Development Board constituted under article 371 of the Constitution; or

(g) a Regional Council constituted under article 371A of the Constitution;

(iv) As per clause(zf) of paragraph-2 of **Notification No.12/2017-Central Tax (Rate) dated 28.06.2017**, "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 Act, 2017 (13 of 2017). Clause (16) of section 2 of the Integrated Goods and Services Act, 2017 (13 of 2017) reads 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;

Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 was further amended by **Notification No.32/2017-Central Tax (Rate) dated 13.10.2017** wherein it is mentioned as under:

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



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(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 243 W of the Constitution or to a Panchayat under article 243 G of the Constitution.

(v) (zfa) "Government Entity" means an authority or a board or any other body including a society, trust, corporation,

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

(ii) established by any Government,

with 90per cent. or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority."

5.6 The other decisive condition to be verified is whether the services provided by the applicant are services 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

For better appreciation, the functions entrusted to the panchayats under Article 243G of the Constitution of India are reproduced herein below:

1. Agriculture, including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi, village and cottage industries.
10. Rural housing.
11. Drinking water.
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.



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15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centres and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
28. Public distribution system.
29. Maintenance of community assets.

5.7 The functions entrusted to the municipalities under 243W of the Constitution of India are reproduced hereunder:

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 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.

5.8 The applicant is of the view that they are exempt from the liability of GST in terms of clause 3 of the Notification No 12/2017 supra, being in the nature of pure service covered under the article 243G and 243W of the Constitution being functions entrusted to the Municipality and Panchayat.

5.9 To avail the benefit of the aforesaid exemption, three conditions should be satisfied. Firstly, pure services (excluding works contract service or other composite supplies involving any goods) should be provided, secondly, it should be provided to the Central Government, State Government or Union territory or local authority or a Governmental authority and thirdly it should be 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. Supply of man power as discussed above provided by business entities like the applicant, not involving any supply of goods would be treated as supply of pure services also the applicant has submitted that they are providing the same to Central / State Government. Now the decisive part is as to whether the said activity is 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.

5.10 The interpretation by the applicant that their activity / services of providing Man Power Service involving providing of Technical personal, Data Operator, House Keeping Service etc. to different State Government and Central Government Department in the nature of pure service are functions entrusted to the Municipality and Panchayat, covered under article 243G and 243W of the Constitution is misplaced and devoid of merit. The act of providing man power to Central / State Government by the applicant can by no stretch of imagination be linked to an act of discharging any sovereign functions as envisaged and covered under the functions entrusted and as specified to municipalities / panchayats under 243G/243W of the Constitution of India. Nothing is in record to establish that the activity / provision of service of manpower which includes



providing of technical personal, data operator, housekeeping service etc. by the applicant to different State Government and Central Government Department have any direct and proximate relationship with any of the activities listed in Article 243G or Article 243W read with Eleventh Schedule and Twelfth Schedule of the Constitution of India. No evidence to relate the aforesaid activities or relate the same to functions as envisaged under covered under the functions entrusted and as specified to municipalities / panchayats under 243G/243W of the Constitution of India is forthcoming. In the present case the applicant, a business entity performing the business activity of provision of service of manpower viz. providing of technical personal, data operator, housekeeping service etc. to different State Government and Central Government Department can in no way be termed or equated to performing a sovereign function as envisaged under Article 243G or Article 243W of the Constitution as discussed supra.

5.11 Constitution Bench of the Hon'ble Supreme Court in the case of *Commissioner of Customs (Import) Mumbai v. M/s. Dillip Kumar And Co. & Others* in C.A. No. 3327 of 2007 [2018 (361) E.L.T. 577 (S.C.)], has dealt with the question -

What is the interpretative rule to be applied while interpreting a tax exemption provision/notification, when there is an ambiguity as to its applicability with reference to the entitlement of the assessee or the rate of tax to be applied?

The Hon'ble Apex Court after a detailed analysis of various decisions of the Apex Court in the context of interpretation of exemption has held that -

(i) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(ii) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue.

In *Commissioner of Central Excise, Trichy v. Rukmani Pakkwell Traders* [(2004) 11 SCC 801 = 2004 (165) E.L.T. 481 (S.C.)], the Apex Court held :

"It is settled law that exemption notifications have to be strictly construed. They must be interpreted on their own wording. Wordings of some other notification are of no benefit in construing a particular notification"

In *Hari Khemu Gawali v. Deputy Commissioner of Police, Bombay and Another* [AIR 1956 SC 559], a Constitution Bench of the Apex Court observed as under:

"It has been repeatedly said by this Court that it is not safe to pronounce on the provisions of one Act with reference to decisions dealing with other Acts which may not be in pari materia."

5.12 Thus in view of the above discussions and judicial pronouncements and on the grounds as put forth by the applicant, we come to the considered conclusion that the



activity of provision of service of manpower viz. providing of technical personal, data operator, housekeeping service etc. to different State Government and Central Government Department by the applicant though being a "pure service", is not any sovereign function as envisaged under Article 243G or Article 243W of the Constitution.

Accordingly it is held that the aforesaid activity of provision of service of manpower is not eligible for NIL rate of GST, provided under Sr. no. 3 of Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017. The aforesaid activity of manpower supply attracts CGST@ 9% and CCGST@ 9%, classifiable under SAC 998513.

6. Having regard to the facts and circumstances of the case and discussions as above, we pass the following order:-

ORDER

(Under section 98 of the Chhattisgarh Goods and Services Tax Act, 2017)

No.STC/AAR/05/2021

Raipur Dated 25/11/2021

The ruling so sought by the Applicant is accordingly answered as under:

Man power services provided by the applicant to the various Central and State Government departments is liable for GST at the applicable rate and is not eligible to "Nil" rate of tax provided under sr. no. 3 of the Notification No 12/2017-Central (Rate), dated 28-6-2017 on the grounds put forth by the applicant being not covered under the functions envisaged under article 243G and 243W of the Constitution of India. The said service falls under the SAC 998513 attracting 18% GST (9% CGST and 9% CCGST)

-sd-
Sonal K. Mishra
(Member)

-sd-
Rajesh Kumar Singh
(Member)



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