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| GUJARAT AUTHORITY FOR ADVANCE RULING, GOODS AND SERVICES TAX, D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009. |  |
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ADVANCE RULING NO. GUJ/GAAR/R/95/2020
 (IN APPLICATION NO. Advance Ruling/SGST&CGST/2019/AR/51)
 Date: 24.09.2020

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| Name and address of the applicant | : | M/s Vishv Enterprise, 58A, Siddhi Vinayak Complex, Second Floor, Near Sarvodaya Bank, T.B. Road, Mehsana-384002(Gujarat) |
| GSTIN of the applicant | : | 24AAEFV8227G1Z4 |
| Date of application | : | 17.09.2019 |
| Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised. | : | (a) Classification of any goods or services or both. |
| Date of Personal Hearing | : | 17.08.2020 (through Video Conferencing) |
| Present for the applicant | : | Shri Pradip Prajapati |

BRIEF FACTS

The applicant is engaged in the business of contract work services of Man Power Recruitment & Supply by outsourcing in Government Department. There is a matter which need to clarification regarding applicability of GST on supply of contract work service of Man Power and House Keeping in Government Municipal Corporation, Government Hospital and any other Government Department.

2. The applicant further submitted that there is an issue regarding payment of GST amount with Ahmedabad Municipal Corporation Seth L.G. Hospital, Maninagar, Ahmedabad. They regularly place their contract service bill with 9%CGST & 9% SGST but they are not ready to pay and respond that they are not in category to pay GST. There is exemption to service to Municipality under Article 243W & Panchayat under Article 243G. Now, they are confused that either said services are exempted or not? Therefore, they requested to provide them some evidence so they can give Seth L.G. Hospital and ask for their pending payment which has not been released from April, 2019. They have also submitted copy of the letter dated 16.08.2019 given by Seth L.G. Hospital.

3. They have started Service Contract from October, 2018 to March, 2019. They have paid them GST with Bill but from April, 2019 onwards, they have refused to pay GST and further they are demanding and recovering that GST amount from their Service Bill, which have been paid in last year to them. The

applicant further declared that they have collected GST with bills and paid that GST in their GSTR 3B Returns of 2018-19, now, how can they charged or demand that amount of GST from them? From April, 2019 onwards, their service bills payment has not been released by them. They have also submitted the copy of the Work Orders issued for providing Para-medical Administrative, Technical and other Staff on Outsource basis to L.G. Seth Hospital.

4. In above backdrops, the applicant has sought for an advance ruling in respect of the following question:

Whether services of providing Para-medical Administrative, Technical and other Staff on Outsource basis to Seth L.G. General Municipal Hospital are exempted or not?

5. At the time of personal hearing held through Video Conferencing on 17.08.2020, the Authorised Representative of the applicant, Shri Pradip Prajapati reiterated the facts as stated in the Application and as mentioned herein above.

DISCUSSION & FINDINGS:

6. We have considered the submissions made by the applicant in their application for advance ruling as well as at the time of personal hearing. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law.

6.1 At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, 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 GGST Act.

7. In this case, a moot point is to be decided regarding tax liability on providing of Para-medical Administrative, Technical and other Staff on Outsource basis to Seth L.G. General Municipal Hospital, Maninagar, Ahmedabad.

8. We note that the applicant has submitted the copy of 12 Work Orders, awarded for providing of Para-medical Administrative, Technical and other Staff on Outsource basis by Seth L.G. General Municipal Hospital, Maninagar, Ahmedabad, run by Ahmedabad Municipal Corporation, as detailed below:

| Sl. No. | Date of Work Order | Valid Period | Scope of work |
|---------|--------------------|--------------------------|---|
| 1. | 23.09.2017 | 01.10.2017 to 30.09.2019 | providing of Para-medical Administrative, Technical and other |

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| | | | Staff on Outsource basis for L.G. Hospital. (Autoclave Attendant and Staff Nurse) |
| 2. | 03.11.2017 | 01.10.2017 to 30.09.2018 | providing of Para-medical Administrative, Technical and other Staff on Outsource basis for L.G. Hospital. (Staff Nurse) |
| 3. | 18.12.2018 | 18.12.2018 to 30.09.2019 | providing of Para-medical Administrative, Technical and other Staff on Outsource basis for L.G. Hospital (Staff Nurse) |
| 4. | 16.01.2019 | 01.10.2018 to 30.09.2019 | providing of Para-medical Administrative, Technical and other Staff on Outsource basis for L.G. Hospital (Staff Nurse) |
| 5. | 20.02.2019 | 01.03.2019 to 31.07.2019 | providing of Para-medical Administrative, Technical and other Staff on Outsource basis for L.G. Hospital (Staff Nurse) |
| 6. | 25.07.2019 | 01.08.2019 to 30.09.2019 | providing of Para-medical Administrative, Technical and other Staff on Outsource basis for L.G. Hospital (Staff Nurse) |
| 7. | 31.07.2019 | Till 30.09.2019 | providing of Para-medical Administrative, Technical and other Staff on Outsource basis for L.G. Hospital (Clinical Psychologist) |
| 8. | 30.03.2019 | 01.04.2019 to 30.06.2019 | providing of Para-medical Administrative, Technical and other Staff on Outsource basis for L.G. Hospital (Clinical Psychologist) |
| 9. | 24.10.2019 | 01.10.2019 to 31.12.2019 or till new tender process completed | providing of Para-medical Administrative, Technical and other Staff on Outsource basis for L.G. Hospital (Clinical Psychologist) |
| 10. | 23.10.2019 | 01.10.2019 to 31.12.2019 or till new tender process completed | providing of Para-medical Administrative, Technical and other Staff on Outsource basis for L.G. Hospital (OBST ICUS-Staff Nurse). |
| 11. | 23.10.2019 | 01.10.2019 to 31.12.2019 or till new tender process completed | providing of Para-medical Administrative, Technical and other Staff on Outsource basis for L.G. Hospital (SNCU-Staff Nurse) |
| 12. | 23.10.2019 | 01.10.2019 to 31.12.2019 or till new tender process completed | providing of Para-medical Administrative, Technical and other Staff on Outsource basis for L.G. Hospital (Autoclave attendant and Staff Nurse) |

9. Accordingly, the applicant has provided Man Power Supply Agency Services to Seth L.G. General Municipal Hospital. The applicant regularly places their contract service bill with 9% CGST & 9% SGST. However, Seth L.G. General Municipal Hospital are not ready to pay GST and responded that they are not in category to pay GST. There is exemption to service to Municipality under Article 243W & Panchayat under Article 243G.

10. We note that as per Serial No 3 of the Notification No. 12/2017- Central Tax (Rate) dated 28/06/2017, GST is exempted for Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to 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, which reads as under:

| Sl. No. | Chapter | Description of Service | Rate | 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 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 | NIL |

From the above, it is seen that the following three conditions are to be fulfilled to be eligible for taking the benefit of the exemption from GST under the above notification:

- (i) Pure services are to be provided.
- (ii) Such services provided should be **by way of any activity in relation to any function entrusted** to a Panchayat under Article 243G of the Constitution of India or in relation to any function entrusted to a Municipality under Article 243W of the Constitution of India; and
- (iii) Service recipient should either be Central Government or State Government or Union territory or Local authority or Governmental authority or Government entity:

10.1 So, the first condition to be discussed is as to what is meant by pure service? Since '**pure service**' has not been defined under GST, the same can be construed in general terms as any supply, which is either deemed as services under Schedule II of CGST Act or which are not covered under the definition of goods shall be categorized as pure services. However, as per the notification, works contract services or other composite supplies involving supply of any goods are not covered in serial no.3. In other words, if a person provides only service to any person without involvement of supply of goods along with supply

of services, then the same would be termed as supply of pure service. On going through the work orders submitted by the applicant with regard to services provided to the Seth L.G. General Municipal Hospital, it is seen that the services provided are of only manpower supply and, since there is no involvement of supply of goods in these services, the services would be called 'pure services'. Hence, the first condition is fulfilled.

10.2 Now, we come to second condition. The exemption is granted only when pure services are related 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. We find that the hospital services are listed in Article 243G (Health and sanitation, including hospitals, primary health centres and dispensaries) and in Article 243W of the constitution (Public health, sanitation conservancy and solid waste management). Under the aforesaid work orders, the applicant has provided manpower services viz. Para-medical Administrative, Technical and other Staff on Outsource basis, to Seth L.G. General Municipal Hospital. We find that the Para-medical Administrative, Technical and other Staff members are required to provide health services in hospital. In view of the above, we conclude that the supply of man power services by the applicant are in relation to function of 'Public health' entrusted to a municipality under Article 243W of the constitution. Thus, the second condition is also fulfilled in respect of above work orders only. Since no other work order has been provided by the applicant, fulfilment of such condition would be determined by the facts of respective agreement/ work order.

10.3 The last condition to be verified is as to whether recipient of the service viz. Seth L.G. General Municipal Hospital, Maninagar, Ahmedabad is Central Government or State Government or Local authority or Governmental authority or Government entity.

10.3.1 For the ease of understanding, the definitions of 'Central Government' or 'State Government' or 'Local authority' or 'Governmental authority' or 'Government entity' 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 Gujarat GST, Act, 2017, "Government" means the State Government.
- (iii) **"Local authority"** is defined in clause (69) of section 2 of the CGST Act, 2017 and means the following:

(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;

Further, Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 was 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
- (ii) established by any Government,

with 90 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 90 per 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.”

10.3.2 We further find that no evidence has been provided by applicant to establish that Seth L.G. General Hospital falls under definition of ‘Central Government’ or ‘State Government’ or ‘Local authority’ or ‘Governmental authority’ or ‘Government entity. Entry 3 of the Notification No. 12/2017-Central Tax (Rate) dated 28/06/2017 exempts the Pure services provided to Central Government, State Government or Union Territory or Local Authority. In absence of any evidence in support of above, the exemption provided under the Entry 3 of the said Notification cannot be extended to them.

11. In light of the above, we hold that the exemption is not available to the applicant in respect of supply of manpower services viz. Para-medical Administrative, Technical and other Staff on Outsource basis made to Seth L.G. General Municipal Hospital in terms of Serial No 3 of the Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017.

12. In the light of the aforesaid circumstances, we rule as under.

R U L I N G

Question 1: Whether services of providing Para-medical Administrative, Technical and other Staff on Outsource basis to Seth L.G. General Municipal Hospital are exempted or not?

Answer: Answered in Negative.

(SANJAY SAXENA)

MEMBER

(MOHIT AGRAWAL)

MEMBER

Place: Ahmedabad

Date: 24.09.2020