



HARYANA AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,
HARYANA VANIJYA BHAWAN, PLOT NO 1-3, SECTOR 5,
PANCHKULA-134151 (HARYANA)



ADVANCE RULING NO. HAR/HAAR/R/2019-20/25
(In Application No.:25/2019-20, dated 16.01.2020)

Name & Address of the Applicant	:	Om Parkash Contractor, Vill. Berla, Distt. Charkhi Dadri, Haryana
GSTIN of Applicant	:	06APEPP0766P1ZD
Date of Application	:	16.01.2020
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised.	:	(b) Applicability of a notification issued under the provisions of this Act. (e) Determination of the liability to pay tax on any goods or services or both.
Date of Personal hearing	:	12.06.2020
Present for the applicant	:	Sh. Ram Kishan, Authorized Representative.

Memo No. 1065

Date 28.08.2020

1.1 Brief facts of the case:

1.1 As per the details & facts submitted to our office in the application, Om Parkash Contractor, is registered under the provisions of the Central Goods and Services Tax Act, 2017 read with the provisions of the Haryana State Goods and Services Tax Act 2017 (hereinafter known as the "Assessee/Applicant).

1.2 That the applicant is a civil contractor engaged in executing government works which include construction of civil structure, repair, maintenance and renovation of such works.

1.3 The applicant has applied for seeking advance ruling under section 97(1) of the CGST Act, 2017 for a Work Contract allotted by Public Health Department, Government of Haryana as per the terms in their tender as annexed with the application.

1.4 That further it has been detailed by the applicant in the contract and appurtenant to other supporting documents that there are 2 contracts:

- a) Contract for Water Supply Scheme at Samalkha Town, Distt. Panipat (Haryana)
- Work has been allotted vide Tender Acceptance Memo No. 6971 dated 24.07.2019 issued by the Executive Engineer, Public Health Engineering Division No. 2, Panipat (Haryana).



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- The various activities to be undertaken under this work are Operation & Maintenance of structures/components, Staff Quarters, Pump Chamber, Boundary Wall, Distribution System, Tube wells, Pumping Machinery, OHSR etc.
- As per Tender Acceptance Memo No. 6971 dated 24.07.2019, the total cost of the work is 376.95 lacs. Costs allocated under different heads, as shown in the sheet enclosed with the Tender Acceptance Memo, are as under:

Sl. No.	Component establishment	Amount
1	Repair of civil structures, Pumping machinery	38,22,690
2	Consumables	37,42,920
3	Establishment	3,01,27,044
Total		3,76,92,654 (Say Rs. 376.95 lacs)

- Costs towards 'Repair of civil structures, Pumping machinery and Consumables' represent expenses on account of supply of goods and cost towards Establishment is towards supply of service.

The cost of supply of goods (Repair of civil structures, pumping machinery and consumables) comes to Rs. 75,65,610/- and the balance amount of Rs. 3,01,27,044 lacs is towards supply of services i.e. Establishment expenditures. In % terms, supply of goods accounts for 20.07% of the total cost of the works and supply of services accounts for 79.93%. Thus, the cost of supply of goods (20.07%) is less than 25% of the total cost of composite supply of goods and services. 25% of the total cost of composite supply of goods and services is Rs. 94.24% [376.95 (x) 25%].

b) Contract for Sewerage Scheme at Samalkha Town, Distt., Panipat (Haryana)

- Work has been allotted vide Tender Acceptance Memo No. 6966 dated 24.07.2019 issued by the Executive Engineer, Public Health Engineering Division No. 2, Panipat(Haryana).

- The various activities to be undertaken under this work are Operation & Maintenance of various sizes of sewer lines of 200mm to 800mm i/d S.W.



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pipe, RCC pipe, Brick Circular Sewer open drain, Sullage carrier and all other works contingent thereto.

- As per Tender Acceptance Memo No. 6966 dated 24.07.2019, the total cost of the work is 66.35 lacs . Costs allocated under different heads, as shown in the sheet enclosed with the Tender Acceptance Memo, are as under:

Sl. No.	Component establishment	Amount
1	Repair of civil structures, Pumping machinery	72,222
2	Consumables	63,000
3	Establishment	64,97,308
Total		66,32,610 (Say Rs. 66.35 lacs)

- Costs towards 'Repair of civil structures, Pumping machinery and Consumables' represent expenses on account of supply of goods and cost towards Establishment is towards supply of service.

The cost of supply of goods (Repair of civil structures, pumping machinery and consumables) comes to Rs. 1,35,222/- and the balance amount of Rs. 64,97,308/- lacs is towards supply of services i.e. Establishment expenditures. In % terms, supply of goods accounts for 2.04% of the total cost of the works and supply of services accounts for 97.92%. Thus, the cost of supply of goods (2.04%) is less than 25% of the total cost of composite supply of goods and services. 25% of the total cost of composite supply of goods and services is Rs. 16.59% [66.35 (x) 25%].

1.5 That the work contract allotted as discussed above is in the nature of 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 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.



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Applicant's interpretation of Law/or Facts

1.6 That Sl. No. 3A of Notification No. 12/2017-CT (Rate), dated 28.06.2017 as amended by Notification No. 2/2018-CT, dated 25.01.2018 [Corresponding State Notification No. 47/ST-2, dated 30.06.2017 as amended by Notification No. 22/ST-2, dt. 25-01-2018] exempts from payment of GST any "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 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution. The relevant entry No. 3A of the aforesaid Notification prescribing Nil rate of tax reads as under:

(1) Sl. No.	(2) Ch. Head	(3) Description of service	(4) Rate (%)	(5) 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 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.	Nil	Nil

1.7 That the two contracts awarded to the applicant by the Public Health Department, Government of Haryana, as mentioned above involve supply of both goods and services. Hence, the activities undertaken under the said contracts qualify to be a composite supply as defined under clause (30) of Section 2 of the CGST ACT, 2017/HSGST Act, 2017.



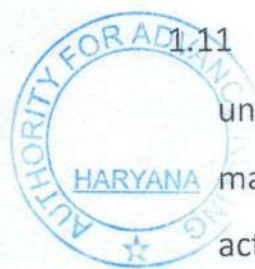
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1.8 That as per the Estimate Sheet enclosed with the Tender Acceptance Letter No. 6971 dated 24.07.2019, which has been certified by the Executive Engineer of the concerned Public Health Department of the Government of Haryana, the cost of supply of services accounts for more than 75% of the total cost of the composite supply, and the cost of supply of goods accounts for not more than 25% of the total cost of the composite supply. In other words, as per the Estimate Sheet, the total cost of supply is Rs. 376.95 lacs out of which the cost of supply of services is Rs. 301.27 lacs (79.93%) and that of goods is Rs. 75.65 lakhs (20.07%).

1.9 That similarly, as per the Estimate Sheet enclosed with the Tender Acceptance Letter No. 6966 dated 24.07.2019, which has also been certified by the Executive Engineer of the concerned Public Health Department of the Government of Haryana, the cost of supply of services accounts for more than 75% of the total cost of the composite supply, and the cost of supply of goods accounts for not more than 25% of the total cost of the composite supply. In other words, as per the Estimate Sheet, the total cost of supply is Rs. 66.35 lacs out of which the cost of supply of services is Rs. 64.97 lacs (97.92%) and that of goods is Rs. 1.35 lakhs (2.04%).

1.10 That indisputably, Public Health Department is under the Ministry of Health of the Government of Haryana and hence, it is a State Government within the meaning of and for the purpose of Entry No. 3A of Notification No. 12/2017-CT(Rate), dated 28.06.2017 as amended by Notification No. 2/2018-CT, dated 25.01.2018 [Corresponding State Notification No. 47/ST-2, dated 30.06.2017 as amended by Notification No. 22/ST-2, dt. 25-01-2018].

1.11 That it is also not in dispute that the activities undertaken by the applicant under Tender Acceptance Letter No. 6971 dated 24.07.2019 are in relation to management, maintenance and repair of **Water Supply Scheme**. The said activities are covered under the function listed at Sl. No. 11 and 29 of the Eleventh Schedule of Article 243G of the Constitution, i.e. functions entrusted to a Panchayat for making available drinking water to the people at large and



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maintenance of community assets. Further, the applicant's activities are also covered under the function listed at Sl. No. 5 of the Twelfth Schedule of Article 243W of the Constitution i.e. functions entrusted to a Municipality for supply of water for domestic purpose.

1.12 That it is further not in dispute that the activities undertaken by the applicant under Tender Acceptance Letter No. 6966 dated 24.07.2019 are in relation to operation and maintenance of **Sewerage Scheme**. The said activities are in relation to the function listed at Sl. No. 29 of the Eleventh Schedule of Article 243G of the Constitution ,i.e. functions entrusted to a Panchayat for maintenance of community assets. Further, the State Government has devolved powers and responsibilities to the Municipalities with respect to implementation of Sewerage Schemes. The applicant's job under the aforesaid Tender is to operate & maintain the sewer lines and other works contingent thereto. Thus, applicant's activities are also covered under Article 243W(a)(ii) of the Constitution i.e. functions entrusted to a Municipality for provision and maintenance of sewerage system in towns and cities .

1.13 That, therefore, when all the pre-requisites of entry No. 3A of Notification No. 12/2017-CT (R), dated 28.06.2017 as amended by Notification No. 2/2018-CT, dated 25.01.2018 are satisfied, the applicant is of the view that his services are exempt from levy of GST.

1.14 That the applicant's view-point as above also gets support from C.B.I.C. Circular No. 51/25/2018-GST, dated 31-7-2018. Vide the said Circular, it has been clarified that the service tax exemption under Sl. No. 25(a) of Notification No. 25/2012-ST, dated 20-6-2012 has been substantially, although not in the same form, continued under GST vide Sl. No. 3 and 3A of the Exemption Notification No. 12/2017-CT (R), dated 28.06.2017. Sl. No. 25(a) of Notification No. 25/2012-ST exempts "services provided to the Government, a local authority or a governmental authority by way of water supply, public health, sanitation, conservancy, solid waste management or slum improvement and upgradation. The Circular further explains in relation to the specific issue of ambulance service to the Government by a Private Service



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Provider (PSP) that such service is a function of 'public health' entrusted to municipalities under Art. 243W of the Constitution, and, therefore, eligible for exemption under Sl. No. 3 or 3A of the Exemption Notification.

1.15 That as also observed by the Authority for Advance Ruling, under GST West Bengal in Re: Arihant Dredging Developers Pvt. Ltd [2019 (25) G.S.T.L 582 (A.A. R.-GST), " 3.2 The above Circular leaves no doubt that the phrase 'in relation to any function', as applied to Sl. No. 3 or 3A above, makes no substantial difference between Sl. No. 25(a) of the ST Notification and Sl. No. 3 or 3A of the Exemption Notification. Under the previous service tax regime, the exemption was limited to certain functions specified in Sl. No. 25(a) of the ST Notification, whereas, under the GST the ambit has been broadened to include any such functions that are performed by a panchayat or a municipality under specific provisions of the Constitution. These functions are in the nature of public welfare service that the governments on their own, and sometimes through governmental authorities/entities, do provide to the citizens. When the activity is in relation to any such function, the supply to the governments or governmental authorities/entities or local authorities is exempt from paying GST under Sl. No. 3 or 3A of the Exemption Notification, provided it is a pure service or a composite supply where supply of goods does not constitute more than 25% of the value.

1.16 That as per Point No. 4(c) of the Standard Operating Procedure (SOP) issued by the GST Council in its meeting held on 28.09.2018, the recipient of service, i.e., the Public Health Department, is not required to deduct TDS on services exempted under Notification No. 12/2017-CT (R), dated 28.06.2017 as amended by Notification No. 2/2018-CT, dated 25.01.2018.

2. Question(s) on which advance ruling is required

The question on which advance ruling has been sought falls under clause (b) of Section 97(2) of CGST/HGST Act, 2017 i.e. Applicability of a notification issued under the provisions of this Act and clause (e) of Section 97(2) of CGST/HGST Act, 2017 i.e. Determination of the liability to pay tax on any goods or services or both.



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- 1) Whether applicant's activities, as briefly mentioned at sl. No. 12(B) of Form ARA-01 i.e. i). Operation & maintenance of structures/components, Staff Quarters, Pump Chamber, Boundary Wall, Distribution System, Tube wells, Pumping Machinery, OHSR etc under Water Supply Scheme, Samalkha Town, Haryana & ii) Operation & maintenance of various sizes of sewer lines, repair of civil structures, supply of consumables etc., qualify to be a composite supply of goods and services and exempt from GST under entry No. 3A of Notification No. 12/2017-CT(R), dated 28.06.2017 as amended by Notification No. 2/2018-CT(R), dated 25.01.2018.
- 2) Whether the service recipient, Public Health Department, State of Haryana, is required to deduct TDS under Section 51 of the CGST Act, 2017 given the fact that as per applicant's version his aforementioned services are exempt from GST under Notification No. 12/2017-CT(R), dated 28.06.2017 as amended Notification No. 2/2018-CT(R), dated 25.01.2018.

3. Record of Personal Hearing

Personal hearing in the case was conducted on 12.06.2020 via video conferencing which was attended by Sh. Ram Kishan, (POA). The applicant had reiterated the submissions made in their application which were taken on record. After detailed discussions, the application was admitted being covered by clause (b) & (e) of section 97(2) of the CGST/HGST Act 2017. As regard merits, the decision was reserved.

4. Discussion and finding of the authority

4.1 As per the documents placed on record it is understood that the applicant has entered into a contract agreement with Public Health Department, Government of Haryana for Water Supply Scheme and Sewarage Scheme at Samalkha Town, Distt. Panipat (Haryana).

4.2 The Public Health Department is under the Ministry of Health of the Government of Haryana and hence, it is a State Government within the meaning of and for the purpose of Entry No. 3A of Notification No.



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12/2017-CT(Rate), dated 28.06.2017 as amended by Notification No. 2/2018-CT, dated 25.01.2018 [Corresponding State Notification No. 47/ST-2, dated 30.06.2017 as amended by Notification No. 22/ST-2, dt. 25-01-2018].

4.3 In order to ascertain the applicability of the notification no. 12/2017 on the present contract of the applicant, the nature of work needs to be examined and for claiming exemption under Sl. No. 3A above, following conditions are required to be fulfilled:

- a) It exempts Composite supply of goods and services;
- b) The value of supply of goods should not be more than 25 per cent. of the value of the said composite supply;
- c) Exemption to such composite supply is when it is made to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity; and
- d) Such composite supply 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.

4.4 It is evident that the said work order is in the nature of composite supply of work contract providing both goods and services. Supply of goods includes consumables such as diesel, petrol, grease, transformer oil, copper wires, nut bolts, rubber sheets etc. for repair/maintenance of water supply system. For sewerage system, consumables are kits and masks for sewer men, diesel & Mobil oil used in engines for cleaning of sewer lines, appliances for cleaning of blocked sewer lines, dewatering pumps etc. These goods are primarily for upkeep, repair and maintenance of the civil structures already in existence such as tube wells, pump chambers, boundary walls, repair and reconstruction of manholes on sewer lines, replacement and repair of defective sewer lines etc. The Service portion includes deployment of manpower such as tubewell operators, fitters, electricians, helpers, key men, valve operators, supervisors, bill clerks, bill distributors, bill collectors etc. for water supply system, and sewer men,



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daily wagers, machine operators, supervisors, tractor drivers, electricians, fitters, fitter- helpers for operating sewerage system.

4.5 That as per the certificate issued by the Executive Engineer, Div. No. 2 Panipat, the percentage of material to be consumed in execution of works contracts are 20.05% in the first contract and 2% in second contract. Thus, the major part of the contract involves services i.e. more than 75% of the work involves services which is required for fulfilment of this notification, we hold the same.

4.6 The activities undertaken by the applicant are in relation to management, maintenance and repair of Water Supply Scheme and operation and maintenance of Sewerage Scheme. The said activities are covered under the function listed at Sl. No. 11 and 29 of the Eleventh Schedule of Article 243G of the Constitution, i.e. functions entrusted to a Panchayat for making available drinking water to the people at large and maintenance of community assets. Further, the applicant's activities are also covered under the function listed at Sl. No. 5 of the Twelfth Schedule of Article 243W and under Article 243W(a)(ii) of the Constitution i.e. functions entrusted to a Municipality for supply of water for domestic purpose and for provision and maintenance of sewerage system in towns and cities respectively.

4.7 Since the major part of the contract, i.e. more than 75% is "Services", we find that the said contract qualifies for the benefit of Serial No. 3A of Notification 12/2017-CT(R), dated 28.06.2017 as amended by Notification No. 2/2018-CT(R), dated 25.01.2018 issued under GST Act, being 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 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution. Therefore, the above supply is exempt from GST.



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4.8 As per Section 51 of the CGST Act, 2017, a government entity is entitled to deduct tax at source under GST at the rate of 1% on payments made to the supplier of taxable goods and/or services or both, under a contract if it exceeds Rs. 2,50,000. In the present case, Public Health Department being a government entity and applicant being a contractor in terms of work contract allotted to them, TDS in terms of Goods & service tax is liable to be deducted but as the services are exempt from GST, hence there is no requirement to deduct tax at source in this case.

5. Advance Ruling under section 98 of the CGST/HGST Act 2017

In the backdrop of above discussions and findings, the advance ruling on the question is pronounced as under:-

5.1 As per Serial No. 3A Chapter 99 of the Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 as amended by Notification No. 2/2018-CT(R), dated 25.01.2018 under the CGST Act, 2017 and the corresponding State Tax notification under HGST Act, 2017, The work carried by the applicant is a 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 State Government by way of an activity in relation to the function entrusted to a Panchayat under article 243G of the Constitution or in relation to the function entrusted to a Municipality under article 243W of the Constitution and thus exempt under GST. Thus, the Serial No. 3A of Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 as amended by Notification No. 2/2018-CT(R), dated 25.01.2018 under the CGST Act, 2017 is applicable to the applicant.

5.2 As per the Standard Operating Procedure issued by Law Committee of GST Council on 28.09.2018, if the services received by deductor from deductee are exempt, then there is no requirement for tax deduction under GST. Therefore, the service recipient being Public Health Department (Deductor), State of Haryana is not required to deduct TDS under section 51



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of the CGST Act, 2017 as question above clarifies that applicant services are exempt from GST under Notification No. 12/2017-CT(R), dated 28.06.2017 as amended vide Notification No. 2/2018-CT(R), dated 25.01.2018.

Ordered accordingly.

To be communicated.

25.06.2020

Panchkula.

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(Sangeeta Karmakar)

Member CGST



(Madhubala)

Member SGST

Regd. AD/Speed Post

✓ Om Parkash Contractor,

Vill. Berla, Distt. Charkhi Dadri, Haryana.

Copy to:

1. The Commissioner of Central Goods & Services Tax, Pacific City Centre, Near Jaat Bhawan, Rohtak, Haryana.
2. Deputy/Assistant Commissioner, CGST Division Bhiwani, SCO-1, Huda City Centre, Near Basia Bhawan, Bhiwani, Haryana.
3. Deputy Excise and Taxation Commissioner (ST), Gurugram (South).