

Whether the 'Architectural Consultancy Service' provided by the applicant to Surat Municipal Corporation for construction of SMIMER Hospital & College Campus is covered under entry no. 3 of notification No. 12/2017-Central (Rate) dated 28.6.2017 & thus is exempt? HELD Answered in affirmative (2) If the exemption under entry no. 2 of the notification No. 12/2017-Central (Rate) dated 28.6.2017 is applicable to the applicant, accordingly will the 'pure services' provided by a sub contractor to the applicant also be covered under the said exemption? Or if the applicant provides sub contract of pure services to another contractor of the SMC will the exemption be available to the applicant provided that the exemption is available to the direct contractor of SMC? HELD (i) we refuse to answer the question as to whether the exemption under entry no. 3 of the notification No. 12/2017-Central (Rate) dated 28.6.2017 would be applicable to the sub-contractor of the applicant, if the same is available to the applicant. (ii) If the applicant provides sub contract of pure services to another contractor of the SMC the supply would not fall within the ambit of entry no. 3 of the notification No. 12/2017-Central (Rate) dated 28.6.2017 and would be leviable to GST.

ADVANCE RULING NO. GUJ/GAAR/R/2023/17, Dated 26th April, 2023

GUJARAT AUTHORITY FOR ADVANCE RULING

GOODS AND SERVICES TAX

D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,

AHMEDABAD - 380 009.

(IN APPLICATION NO. Advance Ruling/SGST&CGST/2022/AR/45)

Name and address of the applicant	:	Ajit Babubhai Jariwala (Trade Name : Tathastu Architects) Bungalow No. 12, Ashoknagar Cooperative Housing Society, Nr. Gokulam Dairy, Athwalines, Surat, Gujarat 395 002.
GSTIN of the applicant	:	24AAZPJ4554B1ZM
Date of application	:	03.09.2022
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(b)
Date of Personal Hearing	:	28.02.2023 and 09.02.2023
Present for the applicant	:	Vedraj Agarwal and Ajit Jariwala.

Brief facts:

Ajit Babubhai Jariwala (Trade Name : Tathastu Architects), Bungalow No. 12, Ashoknagar Cooperative Housing Society, Nr. Gokulam Dairy, Athwalines, Surat, Gujarat 395 002 [for short- applicant] is registered under GST and their GSTIN is 24AAZPJ4554B1ZM.

2. The applicant is engaged in providing a wide range of professional consulting services viz architecture, engineering (MEPF), planning, urban design, landscape, sustainability, research and art, building design, interior design, surveying, environmental sciences, project management and project economics.

3. The applicant has been granted work order no. 84/1.2.2022 and 172/22.1.2021 to provide architectural consultancy service to Surat Municipal Corporation [for short - SMC], regarding the project namely SMIMER Hospital & College Campus & further to prepare architectural and working drawings as required for the construction of the project.

4. It is the applicant's averment that SMC, the recipient of the service, has contended that SMIMER Hospital

and College is covered under the 12th Schedule of Article 243 W of the Constitution of India & is thus exempt, in terms of entry no. 3 of notification No. 12/2017-Central (Rate), it being a pure service. Contra- the applicant however states that according to them, their services would be covered under entry no. 21 of notification No. 11/2017-Central Tax(Rate) & is liable to GST @ 18%.

5. The applicant's next contention is that if the activity is exempt as contended by the SMC, then the same exemption should also be available to the sub-contractors of the said pure service. To substantiate this contention the appellant has also relied upon the below mentioned rulings viz,-^

- > Advance Ruling No. Raj/AAR/19-20/28 dtd 18.12.19 in the case of Sevak Ram Sahu.
- > Advance Ruling No. MAH/AAAR/SS-RJ/15/18-19 dtd 3.1.2019 in the case of M/s. Shree Construction.
- > Advance Ruling No. UP/AAR/61/2020-21 dtd 7.7.2020 in the case of M/s. Manpur Icon Technologies.
- > Advance Ruling No. GUJ/GAAR/R/94/2020 dtd 17.9.2020 in the case of M/s. INI Design Studio P Ltd..~

6. During the course of personal hearing held on 9.2.2023 the applicant sought one more hearing. Thereafter, he submitted additional submission dated 27.2.2023, wherein he raised the following averments viz,-^

- > that they have sub contracted the main contract to the following two parties [a] M/s. Sai Consultants, for structural design consultancy service for extension of existing hospital and health care consultancy at SMIMER Hospital & College campus for SMC; [b] M/s. Shreeji Consultants, for designing of MEPF services with medical gas services design consultancy for extension of existing hospital at SMIMER Hospital & College Campus for SMC;
- > that the aforementioned services are in relation to main services to complete the main contract of medical college for SMC;
- > they also provided the copies of the work order issued to the above mentioned sub-contractors;
- > they also relied upon Advance Ruling No. UP/ADRG/07/2022 dtd. 1.7.2022 in the case of M/s. KDS Services P Ltd..~

7. In view of the foregoing, the applicant has filed this application seeking advance ruling on the below mentioned questions viz

1. Whether the 'Architectural Consultancy Service' provided by the applicant to Surat Municipal Corporation for construction of SMIMER Hospital & College Campus is covered under entry no. 3 of notification No. 12/2017-Central (Rate) dated 28.6.2017 & thus is exempt?

2. If the exemption under entry no. 2 of the notification No. 12/2017-Central (Rate) dated 28.6.2017 is applicable to the applicant, accordingly will the 'pure services' provided by a sub contractor to the applicant also be covered under the said exemption? Or if the applicant provides sub contract of pure services to another contractor of the SMC will the exemption be available to the applicant provided that the exemption is available to the direct contractor of SMC?

3. If the entry number 3 of the notification No. 12/2017-Central (Rate) dated 28.6.2017 is not applicable to the applicant then accordingly the services provided by the applicant will be taxed under which HSN/SAC code and the rate of tax thereof?

8. Personal hearing was granted on 28.2.2023 wherein Shri Vedraj Agarwal and Shri Ajit B Jariwala appeared on behalf of the applicant and reiterated the facts as stated in the application. During the course of personal hearing the applicant sought time to file additional submission. In the additional submission dated 1.3.2023, the applicant further stated viz,-^

- > that in terms of paragraph f of the work order, the GST is payable as per prevailing government rate;
- > that the work allotted is a comprehensive work looking to the terminology and words used in the said clauses (A) All inclusive consultancy fee for Architectural & Structural designing + Area development & landscaping;
- > that it is very difficult to conclude that it pertains purely to services only; that the work order does not appear to be a supply of pure service but also includes supply of goods along with supply of services in the form of providing of various physical models of the medical college block, hospital block and residential campus.

> that various samples of the hardware materials, sanitary items, electrical items, various knobs, handles and all sample of ELV system, all arc required to supply in the form of samples.~

Discussion and findings

9. 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.

10. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made during the course of personal hearing. We have also considered the issue involved, the relevant facts & the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

11. Before advertng to the submissions made by the applicant, we would like to reproduce the relevant provisions for ease of reference:

> Notification No. 11/2017-Central Tax(Rate) dtd 28th June, 2017

In exercise of the powers conferred by sub-section (1) of section 9, sub-section (1) of section 11 sub-section (5) of section 15 and sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby notifies that the central tax, on the intraState supply of services of description as specified in column (3) of the Table below, falling under Chapter, Section or Heading of scheme of classification of services as specified in column (2), shall be levied at the rate as specified in the corresponding entry in column (4), subject to the conditions as specified in the corresponding entry in column (5) of the said Table:-

Table

SI No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
21	Heading 9983 (Other professional, technical and business services)	(i) Selling of space for advertisement in print media	2.5	-
		(ii) Other professional, technical and business services other than (i) above	9	-

> Notification No. 12/2017-Central Tax(Rate) dated 28th June, 2017

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 subsection (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

SI No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
3	Chapter 99	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government.	Nil	Nil

		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 243 W of the Constitution.		
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> Notification No. 16/2021-CT. (Rate), dated 18-11-2021

Exemption from CGST on intra-State supply of specified services (Nil Rated) Amendment to Notification No. 12/2017-C.T. (Rate)

In exercise of the powers conferred by sub-sections (3) and (4) of section 9. sub-section (1) of section 11 of section 15 and section 148 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 makes the following amendments further to amend the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 12/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary. Part II, Section 3, Sub-section (i), vide number G.S.R. 691(E), dated the 28th June, 2017, namely

In the said notification, in the TABLE, -

(i) against serial number 3, in column (3), in the heading "Description of Services", the words "or a Governmental authority or a Government Entity " shall be omitted:

2. This notification shall come into force with effect from 1st day of January, 2022.

2(69) "local authority" means-

(a)

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

(c)

(d)

(e)

(f): or

(g)

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

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

(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.

TWELFTH SCHEDULE (Article 243W)

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.]

12. We find that the applicant has been awarded work order nos. 172 dated 22.1.2021 & 84 dated 1.2.2022 by SMC. On going through the work order no. 172, we find that the (i) scope of work (ii) professional charges and (iii) other conditions, states as follows, viz

B. Scope of Work:

- (1) Development of Master Plan for SMIMER Hospital & College Campus as per the prevailing norms of National Medical Counsels (NMC)
- (2) To prepare the sketch plans for various buildings as per approval.
- (3) To prepare micro to macro level detailed Architectural Drawings (including Architectural. Structural. Electrical. HVAC, Interior. Fire Fighting, Plumbing and others)
- (4) To Prepare detailed working drawings for actual execution on site.
- (5) To prepare detailed item wise estimate and tender documents for respective projects.
- (6) Time to lime site visit (including visit by various Experts / Consultants) during construction works as and when required.

C. Professional Charges:

S. No.	Fees Description
1	Project Design Consultancy Fees as per Standing Committee Res No. 111/2013 dt. 11/1/2013 3.6% of Estimated project cost [for planning estimation Architectural + Structural design and all type of supporting designs (incl. interior Electrification fire fighting and sanitation etc)]
2	GST to be reimbursed separately

F Other Conditions

- (1) Service Tax/GST will be paid as per the prevailing rates decided by the Govt. It is bound to change with time.
- (2) Consultant has to make an agreement with SMC on stamp paper as per the conditions for the above said work.
- (3) Consultant has to appoint a Structural Engineer and fire Expert (anyone from empanelment list of SMC) and make an agreement with the same. A copy of the agreement shall be submitted to SMC within 10 days of agreement.
- (4) Consultant has to provide continuous technical support on site for any design execution of work as and when required by SMC.
- (5) Consultant will be free to independently appoint any expert for project work. However, prior permission of SMC should be taken for such appointments.
- (6) It should be strictly noted that, SMC will not make any kind of payments to the structural engineer or other experts appointed by the Consultant.

On going through the work order no. 84 dated 1.2.2022., we find that the (i) scope of work (ii) professional charges and (iii) other conditions, states as follows, viz

B. Scope of Work:

- (7) Development of Master Plan for SMIMER Hospital <£ College Campus as per the prevailing norms of National Medical Counsels (NMC)
- (8) To prepare the sketch plans for various buildings as per approval.
- (9) To prepare micro to macro level detailed Architectural Drawings (including Architectural, Structural, Electrical, HVAC, Interior, Fire Fighting, Plumbing and others)
- (10) To Prepare detailed working drawings for actual execution on site.
- (11) To prepare detailed item wise estimate and tender documents for respective projects.
- (12) Time to time site visit (including visit by various Experts / Consultants) during construction works as and when required.

C. Professional Charges:

S. No.	Description of Works	Consultancy Fees
A	AU Inclusive consultancy Fee for Architectural & Structural Designing + Area Development & Land Scaping + MEPF (Mechanical, Electrical, ELV, HVAC, Plumbing, Fire) + Interior Designing + Health Care (incl. Hospital Expert Consultancy Fees)	3.66%
B.	Architectural Designing, Area development & Land Scaping, Health Care	1.00%
C.	Structural Designing	1.00%,
D.	MEPF (Mechanical, Electrical, ELV, HVAC, Plumbing, Fire)	1.66%,
E.	Interior Designing	2.90%,
*	GST to be reimbursed separately, if applicable	

F Other Conditions

- (1) Service Tax/GST will be paid as per the prevailing rates decided by the Govt. It is bound to change with time.

(2) Consultant has to submit all the required drawings, details, material selection etc. within stipulated time period allotted by SMC/ If the specific deliverables are not submitted as per schedule, the consultant shall be liable to pay the penalty as decided by the competent authority of SMC.

(3) Consultant has to make an agreement with SMC on stamp paper as per the conditions for the above said work.

(4) Consultant has to appoint a Structural Engineer and fire Expert (anyone from empanelment list of SMC) and make an agreement with the same. A copy of the agreement shall be submitted to SMC within 10 days of agreement.

(5) Consultant has to provide continuous technical support on site for any design execution of work as and when required by SMC.

(6) Consultant will be free to independently appoint any expert for project work. However, prior permission of SMC should be taken for such appointments.

(7) It should be strictly noted that, SMC will not make any kind of payments to the structural engineer or other experts appointed by the Consultant.

13. The applicant has stated that according to them the services rendered to SMC would fall within entry no. 21 of notification No. 11/2017-CT(Rate), reproduced supra and would be taxable @ 18%. However, the SMC is of the view that the project to build the SMIMER Hospital and College being covered under the 12th schedule of Article 243 W of the Constitution of India, would be exempted in terms of entry no 3 of notification No. 12/2017-CT (Rate). The competing relevant entries are reproduced in paragraph supra.

14. A careful reading of the said entry no. 3 of notification No. 12/2017, ibid, clearly shows that three conditions need to be satisfied for a service to be covered under this entry of the notification viz,-^

[a] It must be a pure service not involving any supply of goods;

[b] It must be provided to the Central Government, State Government or Union Territory or Local authority.

[c] It must be an activity in relation to any function entrusted to a,-^

[i] Panchayat under Article 243G of the Constitution of India; or

[ii] Municipality under Article 243 W of the Constitution of India.~~

15. Further, in the FAQs issued by the Government on sectoral series on Government Services, it was clarified as follows:

Question 25: What is the scope of pure services ' mentioned in the exemption notification No. 12/2017-Central Tax (Rate), dated 28.06.2017?

Answer: In the context of the language used in the notification, supply of services without involving any supply of goods would be treated as supply of 'pure services'. For example, supply of man power for cleanliness of roads, public places, architect services, consulting engineer services, advisory services, and like services provided by business entities not involving any supply of goods would be treated as supply of pure services. On the other hand, let us take the example of a governmental authority awarding the work of maintenance of street lights in a Municipal area to an agency which involves apart from maintenance, replacement of defunct lights and other spares. In this case, the scope of the service involves maintenance work and supply of goods, which falls under the works contract services. The exemption is provided to services involves only supply of services and not for works contract services.

16. On going through the two work orders, relevant portions of which have been reproduced supra, we find that the task entrusted as enumerated therein clearly depicts that it is a pure service that the applicant is supposed to render. The applicant's argument in the additional submission dated 1.3.2023 that they also supply goods along with services in the form of providing of various physical models of the medical college block, hospital block and residential campus; that various samples of the hardware materials, sanitary items, electrical items, various knobs, handles and all sample of ELV system, all are required to be supplied in the form of samples; that they also supply series of drawings in form of hard copy (print outs) and multiple tender books/documents and hence it is not a pure service to say the least - does not hold merit. Our finding is based on the fact that the scope of work as mentioned in work order dated 22.1.2021 and work order dated 1.2.2022, belies the above assertion. Secondly an important question that arises is whether the said supply of drawings,

samples, physical models can be termed as a supply of goods to take the applicant's service out of the ambit of pure services. We are of the clear view that the supply of drawings, samples, physical models etc can by no stretch of imagination be termed as supply of goods. Thus, we hold that the service rendered by the applicant is a 'pure service' not involving any supply of goods thus satisfying the first condition [a].

17. Section 2(69) of the CGST Act, 2017 defines 'local authority'. Article 243W of the Constitution of India, deals with powers, authority and responsibilities of Municipalities, etc.. Municipalities have been further entrusted 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. The SMC has awarded the work order to the applicant and the work so awarded i.e. providing consultancy services as campus architect for various works at SMIMER Hospital & College Campus for SMC clearly falls within the ambit of 12th schedule, thus satisfying both the conditions [b] and [c].

18. In view of the foregoing, we find that the pure services [excluding works contract service or other composite supplies involving supply of any goods] provided to the local authority [i.e. in this case to the SMC] by way of any activity in relation to a function entrusted to a Municipality under article 243 W of the Constitution of India is exempt from GST. Having said so we hold that supply by the applicant to SMC being a pure service meets the criterion set out vide Sr. No. 3 of notification No. 12/2017-CT(Rate), dated 28.6.2017, and hence, the supply is exempt from GST.

19. The applicant has relied upon the Advance Ruling No. GUJ/GAAR/R/94/2020 dated 17.9.2020 in the case of M/s. INI Design Studio P Ltd., to substantiate his plea that their supply is also leviable to GST. In the said advance ruling order vide paragraph 20.3, the then Advance Ruling authority on going through the contract felt that it did not appear to be a supply of pure service only but also included supply of goods along with supply of services. A bare perusal of the terms of the work order, which is reproduced in paragraph 12 supra, it is amply clear that as far as this contract in respect of which the applicant before us as sought an advance ruling is concerned, is a contract encompassing pure services only without any supply of goods and therefore the reliance on this ruling would not help the applicant.

20. The applicant we find has raised two issues in the second question, we would like to deal with the issues separately. Moving on to the first part of the second question, ie whether the exemption under entry no. 3 of notification No. 12/2017-Central (Rate) dated 28.6.2017 is applicable to 'pure services' provided by a sub contractor of the applicant.

21. We find that a conjoint reading of the sections 95(a) and (c), 97 and 103 of the CGST Act, 2017, shows that advance ruling means a decision by the AAR to an applicant on matters or on questions specified under 97(2) in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant; that an applicant, means any person registered or desirous of obtaining registration under this Act; that such an applicant, may make an application in the prescribed form with appropriate fee, stating the question on which the said ruling is sought. The questions on which the ruling is sought is however, restricted to the 7[seven] issues listed in section 97(2), *ibid*. Further, in terms of section 103, such a ruling shall be binding only on the applicant and on the concerned officer or the jurisdictional officer, in respect of the applicant. The question posed before us seeking a ruling is whether the sub-contractor providing services to the applicant is exempted or otherwise. We find that [a] the applicant before us is seeking a ruling on behalf of his sub-contractor and is hence is not the supplier of the service in the case wherein the supply is provided by the subcontractor and [b] that the ruling sought by the applicant is not for admissibility of input tax credit in respect of supply received by the applicant from his subcontractor. This being the factual matrix, we find that the applicant before us has no locus standi in seeking a ruling in the facts of the present case. In view of the foregoing, we refuse to answer this portion of the second question.

22. The second part of the second question for ruling is that if the applicant provides sub contract of pure services to another contractor of the SMC whether he as a sub-contractor can avail the exemption provided the exemption is available to the direct contractor of SMC? There are diverse rulings in this regard. We find that the main contractor if exempt would not lead automatically to a subcontractor providing service to the main contractor being exempt as has been held by the AAR in the case of M V Infra Services P Ltd [KAR ADRG 04/2020 dated 17.2.2020].

23. The question of the interpretation/applicability of exemption is no longer res-integra having been decided by the Constitution Bench of the Hon'ble Supreme Court of India in the case of Dilip Kumar & Company [2018 (361) E.L.T. 577 (SC)]. The Hon'ble Supreme Court in the said case held as follows [relevant extracts]

52. To sum up, we answer the reference holding as under, -^

(1) 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.

(2) 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.

(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export case (supra) stands overruled.~

24. The question posed by the applicant is a hypothetical question as no such contract seems to have been awarded. Whether a sub-contractor who is engaged in supplying the services to the main contractor would fall within the ambit of Sr. No. 3 of the notification No. 12/2017-CT(Rate) since the services of the main contractor to SMC is exempted is the question posed before us. The Apex Court in Dilip Kumar and Company, *ibid*, has already held that exemption notifications are to be interpreted strictly & the burden of proving applicability would be on the assessee to show that his case comes within the ambit of the conditions specified in the exemption notification. In the preceding paragraphs, while examining the applicability of the GST on the supply by the applicant we have already held that 3 conditions need to be satisfied [refer paragraph 14 above].

The fact that in the hypothetical situation of the applicant being a sub- contractor when he has provided the services/supply to the main contractor and not to the Central Government, State Government or Union Territory or Local authority or a Governmental authority or a Governmental entity directly would clearly take him out from the ambit of exemption provided vide Sr. No. 3 of the notification No. 12/2017-CT(Rate).

25. To substantiate the contention that a sub-contractor is also exempted from GST if the main contractor is exempted from the levy, the appellant has relied upon the below mentioned Advance ruling/Appellate rulings. We would like to take it up one after the other viz,-

> Advance Ruling No. Raj/AAR/19-20/28 dated 18.12.19 in the case of Sevak Ram Sahu. On going through the said ruling, we find that in this dispute, the said applicant had sought exemption in terms of Sl. No. 10 of notification No. 12/2017-CT (Rate). The description of the services, qua the said Sl. No. states as follows viz

Services provided by way of pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana

The aforementioned Sl. No. nowhere states that the service has to be rendered to the Central Government, State Government,local authority, etc.. The description of the services being different, the facts not being similar to the present dispute, the reliance on the said advance ruling by the applicant to substantiate the plea that a sub-contractor would be eligible for exemption is not legally tenable.

> Advance Ruling No. MAH/AAAR/SS-RJ/15/18-19 dtd 3.1.2019 in the case of M/s. Shree Construction. On going through the advance ruling it is observed as follows:

> M/s. Shree Construction was providing composite supply of works contract as defined under clause 2(119) of the CGST Act. 2017 as a sub-contractor to the main contractor;

> Maharashtra Advance Ruling Authority held that the tax rate to be charged by the sub-contractor to the main contractor would be @ 12% GST;

> The Jurisdictional Officer feeling aggrieved, challenged the ruling before the Appellate Authority contending that the activities carried out by the sub contractor will not fall under Sr. No. 3(v) of notification No. 11/2017-CT (Rate) dtd 28.6.2017. as amended by notification No. 1/2018- dtd 25.1.2018 as there is no specific inclusion of WCS services provided by sub contractor to main contractor;

> The Appellate authority ruled that any supply of works contract pertaining to railways is subject to concessional rate @ 12%; that Shree Construction has entered into works contract with the main contractor who has entered into a works contract with railways; that the composite supply of works contract being carried out by Shree Construction is ultimately going to the use of railways without being subjected to any change or modification; that thus the said works contract though undertaken by the subcontractor is undoubtedly pertaining to the railways and no one else; that the condition specified under Sr. No. 3(v) is fulfilled & the sub contractor is liable to pay GST at the concessional rate of 12%.

It is clearly evident that the facts of the case are not similar to the dispute before us. Further the Appellate authority held that the works contract undertaken by the sub-contractor is undoubtedly pertaining to the railways. In the present dispute of the applicant before us, we find that the wordings used for becoming eligible

for the benefit of the notification are that the pure services should be provided to the Central Government, State Government or Union territory or local authority. The applicant as a sub-contractor would be providing the supply to the main contractor and not to the local authority and hence would not be eligible for the benefit of the exemption notification.

> Advance Ruling No. UP/AAR/61/2020-21 dtd 7.7.2020 in the case of M/s. Manpur Icon Technologies. The Advance Ruling Authority, Uttar Pradesh vide this ruling held that the service of providing preparation of detailed project report and providing project management consultancy service under Pradhan Mantri Awas Yojana by the applicant i.e. M/s. Manpur Icon Technologies in terms of the contract entered between main contractor and the State Urban Development Authority [SUDA] & sub letting, the same contract by the main contractor to the applicant is exempt from GST.

In the hypothetical question posed before us, seeking a ruling, it is nowhere mentioned that the applicant as a sub contractor to the main contractor was awarded back to back the same work by the main contractor. Facts being incomplete, the reliance of the applicant on this judgement is not legally tenable.

26. The third question seeking a ruling is as follows - If the entry number 3 of the notification No. 12/2017-Central (Rate) dated 28.6.2017 is not applicable to the applicant then accordingly the services provided by the applicant will be taxed under which HSN/SAC code and the rate of tax thereof. Since we have already held that the supply made by the applicant would fall within the ambit of Sr. No. 3 of notification No. 12/2017-CT (Rate), this question becomes infructuous.

27. In the light of the above, we rule as under:

RULING

1 . The 'Architectural Consultancy Service' provided by the applicant to Surat Municipal Corporation [SMC] for construction of SMIMER Hospital & College Campus is covered under entry no. 3 of notification No. 12/2017-Central (Rate) dated 28.6.2017 & thus is exempt from GST.

2 .(i) In view of the findings listed in para 21 supra, we refuse to answer the question as to whether the exemption under entry no. 3 of the notification No. 12/2017-Central (Rate) dated 28.6.2017 would be applicable to the sub-contractor of the applicant, if the same is available to the applicant.

2(ii) If the applicant provides sub contract of pure services to another contractor of the SMC the supply would not fall within the ambit of entry no. 3 of the notification No. 12/2017-Central (Rate) dated 28.6.2017 and would be leviable to GST.

3. Since the first question is answered in affirmative, the third question becomes infructuous.

(MILIND KAVATKAR)
MEMBER (SGST)

(AMIT KUMAR MISHRA)
MEMBER (CGST)

Place: Ahmedabad

Date: 26.04.2023