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Pure Services to Govt

An analysis of the applicability of GST on pure services provided to the Central Government, State Government, Local Authority, Governmental Authority, and Government Entity in light of the notification no 12/2017- Central Tax (Rate):

Various queries and doubts have been observed in the area of pure services provided to the Central Government, State Government and Local Authority and the applicability of exemption notification in thereto.

Before going into the details of the instant notification, we are evaluating the various aspects of Goods and Services Tax on services provided by the Government or Local Authority.

Whether Services rendered by the Central Government, a State Government or a Local Authority is a business activity:

The definition of business is an inclusive one. The provision of section 2(17)(i) of CGST Act, 2017 includes any activity or transaction undertaken by Central Government, a State Government or any Local Authority in which they are engaged as public authority is a business. The activities of the Government or Local Authority as a public authority are a business in nature.

It is clear that services rendered by the Central Government or State Government or a Local Authority will be in the nature of business and under the ambit of GST unless specifically exempted.

Now, we are moving towards the moot question of the applicability of the notification as to the provision

of pure services to the Central Government, State Government, Local Authority, Governmental Authority or a Government Entity in light of the Exemption Notification No 12/2017 – Central Tax (Rate) Dated 28-06-2017:

SI No 3: Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government or State Government 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 to any function entrusted to a Municipality under article 243W of the Constitution.

On analysis of the above exemption notification, it is found that the said notification has the following ingredients:

- a) Services are in the nature of pure services;
- b) Services are to be supplied to the following entities –
 - (i) Central Government;
 - (ii) State Government;
 - (iii) Local Authority;
 - (iv) Governmental Authority;
 - (v) Government Entity.
- c) Service Activities thus provided must be in relation to the function entrusted to the Panchayat or Municipality under Article 243G/ 243W of the Constitution.

Each element of the notification is discussed hereinafter.

(a) Services are in the nature of pure services:

The services rendered to the said authorities will



be of the nature of pure services. If any goods are involved in the course of rendering of services then the same will not be covered under this serial number of the notification as this will not be a pure service. A composite supply of two or more pure services shall also be considered as these are pure services. However, the composite supply of goods and services will be discussed later.

(b) Services are to be supplied to the Central Government, a State Government, any Local Authority, a Governmental Authority or a Government Entity:

The definitions of the terms Central Government, State Government, Local Authority, Governmental Authority or Government Entity have not been defined under Central Goods and Services Tax Act, 2017, hereinafter referred to as CGST Act. However, CGST Act has defined the term Government by referring the meaning as the Central Government and a similar provision is in the respective State GST Law (SGST Act). The definition of Governmental Authority and Government Entity are provided in the definition part of Notification No 12/2017 – Central Tax (Rate). The definitions are as follows:

Clause no 2(zf) of Notification 12/2017 – Central Tax (Rate):

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 percent or more participation by way of equity or control, to carry out any function entrusted to a Municipality under Article 243W of the Constitution or

to a Panchayat under Article 243G of the Constitution.

Clause no 2(zfa) of Notification 12/2017 – Central Tax (Rate):

Government Entity means an authority or a board or any other body including a society, trust, corporation,-

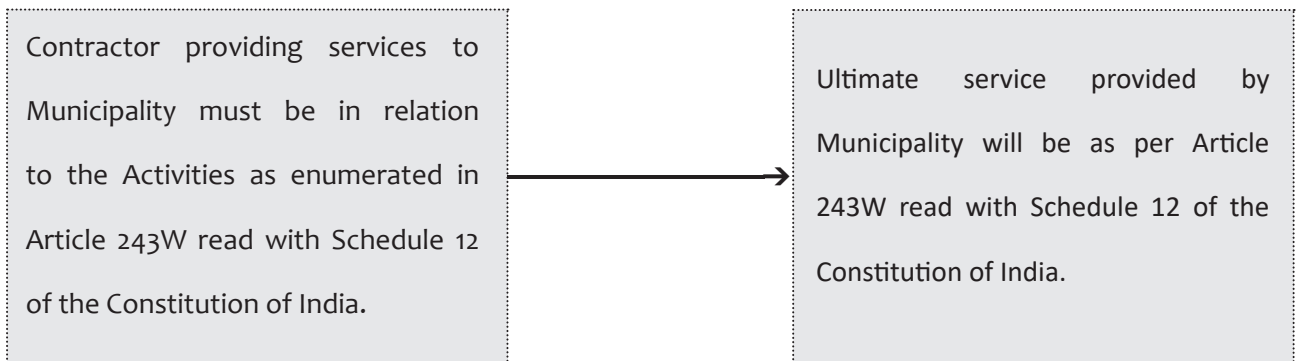
- (i) set up by an Act of Parliament or a State Legislature; or
- (ii) established by any Government,

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

- (c) Service Activities thus provided must be in relation to the function entrusted to the Panchayat or Municipality under Article 243G/ 243W of the Constitution:

The services rendered to the said authority shall be in relation to the statutory functions as entrusted to the Panchayat or Municipality. The nature of the service shall be in relation to the services provided as enumerated under Schedule 11 and 12 of the Constitution. In order to get the details of the service rendered to the aforesaid authority, one has to go into the details of the work order/ purchase order issued by the respective authorities for the supply of pure services. In addition to the work order, one has to check the Notice Inviting Tender (NIT) documents to understand the actual nature of the service and the purpose of the service rendered to the said authority.

Sometimes, Municipality provides the Marriage Hall/ Community Center to the General public under a specific consideration. The letting out of the marriage hall is not the function of the municipality as entrusted under Article 243W of the Constitution of India. The security services provided to the Marriage Hall of the Municipality are not for the function of the Municipality and hence the same is not exempted from GST.





Take another example. It has been observed that Municipality now a day sublet the work of garbage cleaning, drainage improvement, and sanitization work and the contractors are doing such work of sanitization, solid waste cleaning including garbage cleaning. These activities are in the nature of activities as entrusted to a Municipality. The contractors who are providing pure services to Municipality in relation to the above function are also exempted from the GST net.

The services rendered to the said authority shall be in relation to the function entrusted to the Municipality or Panchayat. One of the very important phrases used in the given notification is “*in relation to*” which needs to be further analyzed. The Apex Court in the matter of **State Of Karnataka vs Azad Coach Builders Pvt. Ltd. & Anr** has held that -

“The expression ‘in relation to’ are words of comprehensiveness, which might both have a direct significance as well as an indirect significance, depending on the context in which it is used and they are not words of restrictive content and ought not be so construed” (Para 24)

There may be an in-severable link between the services rendered to the above authority and the ultimate services for which such services are rendered. These shall be inextricably linked to each other. The ultimate services shall be the services that are entrusted to the Municipality or Panchayat.

If the ultimate services are not the services entrusted to the Municipality or Panchayat under Article 243W and 243G then the services provided to the said authorities shall not be exempted from GST.

Functions enumerated under Article 243G read with schedule 11 of the Constitution of India in relation to Panchayat are as follows:

ELEVENTH SCHEDULE (Article 243G)

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.
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.

Functions enumerated under Article 243W read with schedule 12 of the Constitution of India in relation to Municipality are as follows:

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.

Although exemption under serial no 3 is covering the pure services to the above authorities. However, very next serial no 3A is also covering the same situation in case of composite supply consisting of both goods and services. The exemption is provided for composite supply also to the said authorities only when the contents of materials shall not be more than 25% of the total value of the supply. Rests of the conditions as laid down in serial no 3 are similar.

In this regard we may put some light on this considering various orders of the Authority of Advance Ruling in the context of serial no 3 of the Notification no 12/2017 – Central Tax (Rate).

a. M/s Maharashtra Ex-Servicemen Corporation Ltd. –

Wherein the hon'ble authority has ruled that security services rendered to various sites of Municipal Corporations, only if such pure services are supplied to the Municipal Corporation, in relation to function entrusted to such Municipal Corporation under Article 243W of the Constitution will be exempted.

b. National Security Services –

Wherein it has been held that security services rendered to Pimpri Chinchwad Municipal Corporation in relation to functions entrusted to Municipality under Article 243W of the Constitution are exempted.

However, the order of the Advance Ruling is applicable to the Applicant and its Jurisdictional Assessing Authority only.