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Authority for Advance Ruling — Haryana

Advance Ruling No. HAR/HAAR/R/2019-20/11 (In Application No. 11/2019… Dated **11.10.2019**

Q Questions Before the Authority

- Whether the Independent Consultancy Services provided or to be provided to the Public Works Department, Gurgaon under the RFP for design, engineering, finance, construction, operation and maintenance of the Gurgaon-Faridabad and Ballabhgarh-Sohna Roads on BOT basis are an activity in relation to a function entrusted to a Panchayat under Article 243G or a Municipality under Article 243W of the Constitution.
- Whether these services are pure services qualifying for exemption under Serial No. 3 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and the corresponding notifications under the HGST Act, 2017.
- If the answer to the second question is negative, whether the Applicant is within its rights under the CGST and HGST Acts to charge GST on the service value to the service recipient.

F Facts

The Applicant is a foreign company providing independent engineering consultancy services, including detailed project reports, city development plans, designs, drawings and supervision, for projects across India in roads, water supply, solid waste, urban development and related sectors. The Public Works Department (Executive Engineer, Provincial Division No. I, PWD B&R Branch), Gurugram, invited expressions of interest for independent consultancy for operation and maintenance supervision and construction supervision of balance work on the Gurgaon-Faridabad and Ballabhgarh-Sohna Roads, a BOT project. The Applicant's role covers review, inspection and monitoring of construction and O&M, completion testing and certificates, divestment review, cost and period determinations, and dispute assistance.

H Ruling

Whether the consultancy services for the Gurgaon-Faridabad and Ballabhgarh-Sohna Roads on BOT basis are an activity in relation to a function entrusted to a Panchayat (Art. 243G) or Municipality (Art. 243W)	**No. The services are **not** an activity in relation to a function entrusted to a Panchayat under Art. 243G or a Municipality under Art. 243W.**	The roads lie beyond the territorial limits of any Panchayat or Municipality, and neither body exercises extra-territorial jurisdiction.
Whether the services are pure services exempt under Serial No. 3 of Notification 12/2017-CT(Rate) and the HGST counterpart	**No. The services are **not exempt** from levy of CGST and SGST.**	The order accepts that the services are pure services within the definition cited as 2(zfp) in para 5.2, but the exemption fails at the third requirement. The order's discussion at para 4.1.2 cites 2(zfa) for the definition of Government Entity.

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

Whether the Applicant may charge GST on the service value if the exemption is unavailable	**Yes. The Applicant is within its right and **legally bound to charge tax** under the CGST and HGST Acts, 2017.**	The answer follows from the negative answer to the second question.

The Authority held that the consultancy services are not an activity in relation to a function entrusted to a Panchayat under Article 243G or a Municipality under Article 243W. The services are pure services and the PWD is a Government Entity, but the services are not exempt from tax under Serial No. 3 of Notification No. 12/2017-CT(Rate). The Applicant is within its right, and legally bound, to charge tax under the CGST and HGST Acts.

R Reasoning

The Authority first held that the services are pure services because they involve no supply of goods, and that the PWD is a Government Entity under the definition in the Notification. It then held that the exemption under Serial No. 3 requires the service to relate to a function entrusted to a Panchayat under Art. 243G or a Municipality under Art. 243W. Because the roads are outside the territorial limits of any Panchayat or Municipality, the Authority found the third requirement unmet, and the services fall outside the exemption. The order also notes that the RFP was issued by the PWD and not by any local body. The Authority therefore concluded that GST is payable.

P Provisions Relied On

- Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, Serial No. 3 (Chapter 99), read with the corresponding HGST…
- Section 11 of the CGST Act, 2017, under which the Notification was issued (as stated in para 3.1)
- Section 2(zfa) of Notification No. 12/2017-CT(Rate) (definition of Government Entity, as cited in para 4.1.2)
- Section 2(zfp) of the Notification (definition of pure services, as cited in para 5.2)
- Section 2(30) of the CGST Act, 2017 (definition of composite supply, as cited in para 3.3)
- Article 243G of the Constitution (Panchayat functions, Eleventh Schedule)
- Article 243W of the Constitution (Municipality functions, Twelfth Schedule)

! For the Practitioner

This ruling helps engineering consultants to state PWD or other government departments who engage them on road projects outside municipal or panchayat limits. It settles that such services are not exempt, even when they are pure services and the recipient is a Government Entity. It does not decide whether consultancy for works within a Panchayat or Municipality's territorial limits would qualify under Serial No. 3. The ruling binds only the Applicant. The citation of 2(zfp) in para 5.2 differs from the 2(zfa) reference in para 4.1.2, so the full order should be checked before the provisions are relied on.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> har_aar_11_2019-20_11.10.2019_msvii.pdf

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