

INDIRECT TAX

Weekly Digest

16 February 2022
www.bdo.in



GOODS & SERVICES TAX

JUDICIAL UPDATES

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

[Comprehensive architectural services provided to Municipal Corporation of Greater Mumbai eligible for exemption](#)

Facts of the Case

- M/s. Sir JJ College of Architecture Consultancy Cell, ('Taxpayer') is engaged in providing services to government bodies, state corporations and Public Sector Undertakings (PSUs) in relation to comprehensive architecture including architectural design, structural design, MEP design, HVAC design, preparation of drawings;
- The taxpayer has entered into an agreement with the Municipal Corporation of Greater Mumbai, (MCGM), the service receiver in the subject case, to provide comprehensive architectural services for repairs/restoration, reconstruction for development of recreation ground cum textile museum;
- Taxpayer is of the view that pure services provided to the central government, 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 of India or in relation to any function entrusted to a municipality under Article 243W of the Constitution of India.

Questions raised before AAR

Whether exemption is applicable on comprehensive architectural services that includes architectural design, structural design, MEP design, HVAC services design, preparation of drawings etc to MCGM?

Contention of the Taxpayer

- Article 243W of the Constitution of India empowers the state government to enact such laws to confer powers and responsibilities upon the municipalities for the preparation of plans for economic development and social justice and the performance of functions and the implementation of schemes as may be entrusted to them;
- Further, the said article refers to the matters listed in the Twelfth Schedule of the Constitution of India by use of the term 'includes'. In accordance with the general rules of interpretation, reference to matters listed in the Twelfth Schedule will thus be an 'inclusive clause' in Article 243W;
- Hence, the Twelfth Schedule is not exhaustive and the state legislature can confer powers upon the local authority of municipality by enacting a law to fulfil the responsibilities entrusted on such local authority. The same is envisaged in Article 243W of the Constitution of India;
- Accordingly, the government of Maharashtra has enacted the Brihan Mumbai Municipal Corporation Act, 1888 in which there are two types of responsibilities entrusted on the municipality given as 'obligatory duties' and 'discretionary duties';
- Hence the discretionary function of the municipality also includes 'aiding or maintaining museums'. The comprehensive architectural services are within the purview of the functions entrusted to the Municipality as per Article 243W.

Contention of the Tax Authority

- MCGM which is a local authority is governed as per Brihan Mumbai Municipal Corporation Act, 1888;
- The impugned activity i.e. pure service is rendered for repairs/restoration, reconstruction for development of recreation ground cum textile museum which does not find direct mention in Twelfth Schedule of Article 243W of Constitution of India;
- Hence, the taxpayer is not eligible for GST exemption as per notification no:12/2017-CT(R) dated 28 June 2017. This service would be covered by SAC 9983 and would be subject to 18% GST.

Observations and ruling by the by AAR

- The AAR noted that, for the supply to be covered under exemption notification, the supply should be in respect of only pure services, secondly such pure services must be provided to the central government, state government or union territory or local authority and finally such services should be provided 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 the Constitution of India;
- Further it was observed that, during the course of personal hearing, it was informed that the taxpayer is supplying pure services to MCGM. Also, such services were supplied to the central government, state government or union territory or local authority. It was noted that the taxpayer is supplying pure services to MCGM, which is a local authority under the GST laws;
- Further, the Government of Maharashtra has enacted Brihan Mumbai Municipal Corporation Act, 1888 vide which certain functions and powers are entrusted to the MCGM. As per the provisions of Mumbai Municipal Corporation Act 1888, it is the duty of the MCGM to provide services to the citizens of Mumbai City and suburbs;
- The obligatory duties of MCGM are mentioned in section 61 of MMC Act and the voluntary duties of MCGM are mentioned in section 63 of MMC Act. MCGM performs its duties and functions only as per these clauses. The provisions, object and purpose of the said Act clearly suggest that it is incorporated to provide powers and entrust functions to the MCGM. Further, section 63 of the Brihan Mumbai Municipal Corporation Act, 1888 clearly states that MCGM, may, in their discretion, provide from time to time, either wholly or partly, "(c) for the establishment, aiding or maintaining ..., museums, ; (d) the laying out or the maintenance of public parks, gardens or recreation grounds.";
- The MCGM cannot perform any activity which it is not empowered to do so by the Mumbai Municipal Corporation Act 1888, an Act which has been promulgated by the state government. Thus, all activities, obligatory or voluntary, which are required to be performed by MCGM under the Mumbai Municipal Corporation Act 1888 will be considered as activities performed by MCGM as entrusted to it, by the state government under the Mumbai Municipal Corporation Act 1888;
- Based on the above observations the AAR held that GST exemption under entry no:3 of notification no:12/2017-CT(R) dated 28 June 2017, is applicable on comprehensive

architectural services that includes architectural design, structural design, MEP design, HVAC services design, preparation of drawings etc for repairs/restoration, reconstruction for development of recreation ground cum textile museum.

[AAR-Maharashtra, M/s. Sir J J College of Architecture Consultancy Cell, Ruling No:GST-ARA-13/2020-21/B-15, dated 01 February 2022]

Services rendered within the country for foreign recipients liable to GST

Facts of the case

M/s. International Inspection Services Private limited ("Taxpayer") provides inspection and expediting services during the manufacturing and packing of equipments. They provide inspection services in India to their foreign clients in respect of equipments intended to be exported for which they receive inspection charges in foreign currency.

Questions before the AAR

Whether services rendered for foreign companies which do not have any place of business in India and in respect of goods to be exported is considered as an export of services?

Contention of the Taxpayer

The taxpayer contended that since it provides inspection services on goods intended to be exported, clarification is required with respect to classification of services.

Observations and Ruling by the AAR

The recipient of services provided by the taxpayer is a foreign buyer of Indian goods. The taxpayer performs services in relation to goods located or under manufacture in the territory of India on behalf of the foreign buyer. The liability to tax in this situation is governed by the place of supply rules as enumerated under Section 13 of the IGST Act, 2017. This Section deals with place of supply of services where location of supplier or location of recipient is outside India. Sub section 3 of Section 13 reads as follows:

"3. The place of supply of the following services shall be the location where the services are actually performed, namely:

(a) Services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services."

In the instant case, the location of the recipient is outside India. However, the location where the services are actually performed in respect of goods is in the Country. Therefore, the place of supply of services provided by the taxpayer are within the Country and hence liable to SGST & CGST in the State of Telangana.

Based on the findings, AAR ruled that the services provided will not be considered under export as the place of supply of services provided by the taxpayer is within the country and hence liable to GST;

[AAR-Telangana, M/s. International Inspection Services Private Limited, Advance Ruling no:A.R. Com/06/2020 dated 29 December 2021]

FOREIGN TRADE POLICY (FTP)

NOTIFICATION

Notification of ITC (HS), 2022- Schedule-1 (Import Policy)

ITC(HS) 2022 Schedule-1 (Import Policy) is notified in line with the Finance Act, 2021. Import policy of drones in CBU/CKD/SKD form under HS code 8806 is 'Prohibited' with exceptions provided for R&D, defense and security purposes. Import of drone components shall be 'Free'. This shall come into force with immediate effect.

[Notification no:54/2015-2020 dated 9 February 2022]

PUBLIC NOTICE

Procedure for allocation of quota, for year 2022-2023, for import of calcined pet coke for aluminum industry and raw Pet coke for CPC manufacturing industry

The Director-General of Foreign Trade (DGFT) has notified the procedure for allocation of quota for import of

- Calcined pet coke for use in aluminum industry; and
- Raw pet coke for CPC manufacturing industry for the year 2022-2023.

The following are the conditions and modalities of application for import of Pet coke

- Imports will be subject to guidelines laid down by MoEF&CC issued vide OM no:Q-18011/54/2018-CPA and para wise compliance may be submitted with the application for consideration of release of quota;
- The annual quantity limitation in import will be operated on fiscal year basis. Accordingly, the total quantity permitted for import per annum by the Hon'ble Supreme Court and available for import is (i) calcined pet coke for use as calcined pet coke in aluminum industry is 0.5Mn MT and (ii) raw pet coke for CPC manufacturing industry is 1.4 Mn MT. This is available for all industrial units in these two sectors;
- All eligible entities desiring to avail quota as mentioned above, may apply for import license as per procedure mentioned in trade notice no:49 dated 15 March 2019 along with State Pollution Control Board Certificate (SPCB)/ Pollution Control Committee (PCC) indicating capacity of the unit as on 09 October 2018 (Hon'ble Supreme Court Order in Writ Petition no:13029/1985) and also valid consent certificate from SPCB/ PCC, in the name of user industrial units indicating the quantity permitted for import and its usage on a monthly and yearly basis;
- Completed online application along with the required documents mentioned must be submitted on or before 28 February 2022. Further, applicants are also required to submit undertaking along with the online application regarding utilization of import license issued to them for FY 2021-22 and surrender any unutilized quantity by 28 February 2022. Failure to do so would result in deduction of such quantity from their allocation for the year 2022-23;
- If documents received are found in order, the online application will be considered by Exim Facilitation Committee (EFC) in DGFT(HQ) for grant of import authorization. The import authorization shall be valid till 31 March 2023 only;

- If, after obtaining permission/license for the year 2022-23, importer cannot utilize/ import the entire quantity for which the license has been issued, the applicant shall intimate the same to DGFT through email at import-dgft@nic.in on or before 31 December 2022 in order to facilitate distribution of the unutilized quota to other applicants who had applied initially. Failure to utilize allotted quantity and non-surrender will disqualify the applicant for future quota and the unutilized quantity will be deducted from their entitlement;
- Further, the quantity allocated during FY 2022-23 to the user applicants, if not utilized or surrendered to DGFT; the quantity left unutilized will be deducted from the quota for which applicant would be eligible in FY 2023-24, for better resource utilization;
- Holders of the license for import of pet coke would keep the DGFT (HQ) informed of the details of his import consignments i.e., the quantity of import, source and date of import along with details of bill of entry in respect of each consignment on clearance of goods from Customs. Subsequently, a consolidated report within 30 days of the expiry of import authorization period must be submitted to the DGFT (HQ), giving consolidated details of all imports made during the period;
- EFC in DGFT will evaluate and allocate quota among applicants and licenses will be issued by the DGFT(HQ);
- Import consignments of such consignments may be cleared given that the 'Out of charge' has been authorised by the Customs authorities on or before 31 March 2023.

[Public notice no:48/2015-20 dated 10 February 2022]

NEWS FLASH

1. “Tax on digital assets could go up, govt mulling GST on crypto mining, supply”
<https://economictimes.indiatimes.com/news/economy/policy/tax-on-digital-assets-could-go-up-govt-mulling-gst-on-crypto-mining-supply/articleshow/89465542.cms>
[Source: Economic Times, 11 February 2022]
2. “Will focus on scrutiny, audit of GST returns in coming year: Vivek Johri, CBIC chairman”
<https://economictimes.indiatimes.com/news/economy/finance/will-focus-on-scrutiny-audit-of-gst-returns-in-coming-year-vivek-johri-cbic-chairman/articleshow/89466069.cms>
[Source: Economic Times, 11 February 2022]
3. “Government Open To Consider Restaurant Owners' Demand For Higher GST Levy”
<https://www.ndtv.com/business/government-open-to-consider-restaurant-owners-demand-for-higher-gst-levy-2758429>
[Source: NDTV, 9 February 2022]
4. “Centre ignoring call for GST rate cut on health insurance premiums: MP”
<https://www.thehindu.com/news/national/tamil-nadu/centre-ignoring-call-for-gst-rate-cut-on-health-insurance-premiums-mp/article38410005.ece>
[Source: The Hindu, 11 February 2022]
5. “India Post Payments Bank to charge Rs 150+GST for closing saving account if this is not done”
<https://economictimes.indiatimes.com/wealth/save/india-post-payments-bank-to-charge-rs-150gst-for-closing-saving-account-if-this-is-not-done/articleshow/89423527.cms>
[Source: Economic Times, 8 February 2022]



Contact Us

For any content related queries, you may please write to the service line experts at:
taxadvisory@bdo.in

For any other queries, kindly write to:
marketing@bdo.in

BDO Offices

Ahmedabad
The First, Block C - 907
Behind ITC Narmada, Keshavbaug
Vastrapur, Ahmedabad 380015, INDIA

Bengaluru
SV Tower, No. 27, Floor 4
80 Feet Road, 6th Block, Koramangala
Bengaluru 560095, INDIA

Chennai
No. 443 & 445, Floor 5, Main Building
Guna Complex, Anna Salai, Teynampet
Chennai 600018, INDIA

Delhi NCR - Office 1
The Palm Springs Plaza
Office No. 1501-10, Sector-54
Golf Course Road
Gurugram 122001, INDIA

Delhi NCR - Office 2
Windsor IT Park
Plot No: A-1, Floor 2
Tower-B, Sector-125
Noida 201301, INDIA

Goa
701, Kamat Towers
9, EDC Complex, Patto
Panaji, Goa 403001, INDIA

Hyderabad
1101/B, Manjeera Trinity Corporate
JNTU-Hitech City Road, Kukatpally
Hyderabad 500072, INDIA

Kochi
XL/215 A, Krishna Kripa
Layam Road, Ernakulam
Kochi 682011, INDIA

Kolkata
Floor 4, Duckback House
41, Shakespeare Sarani
Kolkata 700017, INDIA

Mumbai - Office 1
The Ruby, Level 9, North West Wing
Senapati Bapat Marg, Dadar (W)
Mumbai 400028, INDIA

Mumbai - Office 2
601, Floor 6, Raheja Titanium
Western Express Highway
Geetanjali Railway Colony, Ram Nagar
Goregaon (E), Mumbai 400063, INDIA

Pune - Office 1
Floor 6, Building # 1
Cerebrum IT Park, Kalyani Nagar
Pune 411014, INDIA

Pune - Office 2
Floor 2 & 4, Mantri Sterling, Deep
Bungalow Chowk, Model Colony,
Shivaji Nagar, Pune 411016, INDIA

Note: This publication has been carefully prepared, but it has been written in general terms and should be seen as broad guidance only. The publication cannot be relied upon to cover specific situations and you should not act, or refrain from acting, upon the information contained therein without obtaining specific professional advice. Please contact BDO India LLP to discuss these matters in the context of your particular circumstances. BDO India LLP and each BDO member firm in India, their partners and/or directors, employees and agents do not accept or assume any liability or duty of care for any loss arising from any action taken or not taken by anyone in reliance on the information in this publication or for any decision based on it.

BDO India LLP, a limited liability partnership, is a member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms.

BDO is the brand name for the international BDO network and for each of the BDO Member Firms.
Copyright ©2022 BDO India LLP. All rights reserved.

Visit us at www.bdo.in

