

**GUJARAT AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/19/2021
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2021/AR/09)

Date: 30.06.2021

Name and address of the applicant	:	M/s. Tirupati Construction 240, Laxmi Enclave , 2 nd Floor Gajera School Road, Katargam, Surat-395004.
GSTIN of the applicant	:	24AAHFM7064K1ZO
Date of application	:	12.03.2021
Clause(s) of Section 97(2) of CGST/ GGST Act, 2017, vide which the Question raised.	:	(a) classification of any goods or services or both;
Date of Personal Hearing	:	15.06.2021(Through Online Hearing)
Present for the applicant	:	Shri Purvin Shah, CA.

A. BRIEF FACTS

M/s. Tirupati Construction (hereinafter referred to as the applicant)have entered into a construction contract i.e. ‘Agreement Number B-1/2 2020-21, Matsya Udhog Yojna, 2020-21’ with Panchayat Vibhag (Marg and Makan and Road and Building), Valsad, District Panchayat which is for construction of ‘Fish Market Building’ at Village:Maroli, Taluka: Umargam, District:Valsad and the said construction is labour plus material basis and the tender value contracted thereof is Rs.49,39,834.28/- (copy of tender submitted). The construction of the said fish market involves the following stages such as: (i) Excavation (ii) Plain and RCC work (iii) Masonary work (iv) Rubble masonary work (v) Centering and form work (vi) Wood work for doors and windows (vii) Providing and fixing steel shutters, windows and ventilators (viii) Glazing (ix) Paving and floor finishes. (x) Roof covering. (xi) Ceiling and lining. (xii) Plastering and painting (xiii) White washing and distempering. (xiv) Painting and polishing. (xv) Plumbing and sanitary fittings. (xvi) Drainage and sewerage. The applicant has stated that the principal, after completion of the construction of the said Fish market, shall allot space to the farmers to sell their fish produce in the said market.

2. The applicant submits as follows:

- (i) The activity of Construction of Fish Market at Umargam Taluka of Valsad District, Gujarat for the Panchayat Vibhag-Road and Building, Valsad District Panchayat, Gujarat for a consideration of Rs.49,39,834.28/-, is a supply of service within the meaning of Section 7(1)(a) of the CGST Act, 2017 read with Section 2(102) of the said Act.
- (ii) There is a charge of CGST and SGST on the said supply of service under Section 9 of the CGST Act, 2017 and Section 9 of the SGST Act, 2017 since the said supply is an intra state supply within the meaning of Section 8(2) of the IGST Act, 2017.
- (iii) Section 2(119) of the CGST Act, 2017 defines ‘Works Contract’ as under:

(119) “works contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;

- (iv) The Central Government, in exercise of the powers conferred under Section 9(1) of the CGST Act, 2017 has issued Notification No.11/2017-Central Tax(Rate) dated 28-6-17, specifying and notifying the rates of CGST on various services. Similar notification has also been issued by the State Government for levying SGST on the said services. Entry at Sr.No.3(vi) of the said Notification reads as under:

“(vi) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than items covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above, provided to the Central Government, State Government, Union Territory, a local authority, a governmental authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or

(c) a residential complex meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.

“Explanation. - For the purposes of this item, the term ‘business’ shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.”

- (v) The service of Composite Supply of Works Contract as defined in Section 2(119) of the CGST Act, 2017, by way of construction of a civil structure meant pre-dominantly for use other than for commerce, industry, or any other business or profession, provided to the Central Government, State Government, Union Territory, a local authority or Governmental Authority or a Government Entity, shall be subjected to CGST @ 6% & 6% SGST.
- (vi) The said activity of ‘Construction of Fish Market at Village: Umargam, District: Valsad for the Road and Building Department, Village Panchayat Division, Valsad District Panchayat’ is being provided to the State Government i.e. Government of Gujarat.
- (vii) The said contract for the construction of fish market involves supply of goods along with labour on the part of the applicant and is thus a works contract within the meaning of Section 2(119) of the CGST Act, 2017.
- (viii) Since, (a) the said fish market is proposed to be constructed under the Matsya Udhayog Yojana, of the Government of Gujarat and also (b) the recipient of service i.e. the Panchayat(Road and Building Division), Valsad District Panchayat, Government of Gujarat has given a written clarification as to the no profit motive in respect of the said fish market, the applicant firm is of the opinion that the said fish market cannot be deemed to be meant pre-dominantly for business or profession. A copy of the said clarification has been submitted. Also as per entry number 5 of the eleventh schedule to the Constitution of India read with Article 243G thereto, the implementation of schemes for economic development for ‘Fisheries’ is entrusted to a Panchayat. Thus, the Panchayat is a public authority in this regard, within the meaning of explanation to the said Entry No. 3(vi) of the said Notification.

3. The applicant has submitted that in their opinion, the said service of 'Construction of Fish Market' for the Government of Gujarat (Valsad District Panchayat), merits classification under the said Entry at Sr.No.3(vi) of the said Notification and the applicable GST rate is 12%(6%CGST + 6% SGST).

B. Question on which Advance Ruling sought:

Whether the activity of composite supply of works contract service by way of construction of fish market for the Panchayat(Road and Building) Division, Valsad District Panchayat merits classification at Serial Number 3(vi)(a) of Notification No.11/2017-Central Tax(Rate) dated 28-6-17(hereinafter referred to as said NT)?"

C. Personal Hearing:

4. Personal hearing was accorded to the applicant through Virtual Platform (Video conferencing) on 15-6-21. Shri Purvin Shah, C.A. appeared for the hearing and reiterated the contents of the application.

D. Findings:

5. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and GGST Act, 2017 are in pari materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the GGST Act.

6. We have carefully considered all the submissions made by the applicant

7. We hold that for being eligible to be covered vide 3(vi)(a) of said NT, the following criteria is to be satisfied. :

- (i) *Supply shall be composite supply of works contract.*
- (iii) *Supply to the Central Government, the State Government, the Union Territory, a local authority, a Government Authority or a Government Entity.*
- (iv) *The civil structure or original works must be predominantly meant for use other than for commerce, industry, or any other business or profession.*

8. We find that the subject contract is for the construction of immovable property wherein transfer of property in goods is involved in the execution of subject contract. We hold that subject supply is a composite supply of works contract service. The service recipient is Panchayat Vibhag-Road and Building, Valsad District. We hold that 'Panchayat' is a Local Authority as defined vide Section 2(69)(a) of CGST Act, 2017.

9. Now in order to be eligible to avail entry 3(vi)(a) of said NT, the Fish Market *must predominantly be meant for use other than for commerce, industry, or any other business or profession.* The word 'Business' has a wide inclusive definition vide section 2(17) of CGST Act including, inter alia, *any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit.* We note that an explanation is inserted w.e.f. 27-7-18 to Serial No.3(vi) of said NT, said explanation reads as **'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities'**.

10. The applicant submits that the Valsad Panchayat is 'public authority'. We agree with the applicant that Valsad Panchayat is a Public Authority. [Vide Section 2(h) of the Right to Information Act, Public authority is defined as - "Public authority" means any authority or body or institution of self-government established or constituted— (a) by or under the Constitution; (b) by any other law made by Parliament; (c) by

any other law made by State Legislature; (d) by notification issued or order made by the appropriate Government, and includes any— (i) body owned, controlled or substantially financed;
(ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government].

11. The applicant submits that the fish market purpose is covered under the Entry ‘Fisheries’ appearing at Sr.No.5 to the list of functions entrusted to a Panchayat under Article 243G of the Constitution of India. ‘Fisheries’ as per Mirriam Webster dictionary is defined as *‘the occupation, industry, or season of taking fish or other sea animals (such as sponges, shrimp, or seals). We hold that a ‘Fish market is ‘a market where fish is sold’ and therefore cannot be covered under ‘Fisheries’.*

12. We, suo moto, draw our attention to the Article 243 G of our Constitution and we note that ‘Markets and Fairs’ is a function entrusted and placed within the purview of the Panchayats. Article 243G in The Constitution of India (Powers authority and responsibilities of Panchayats) reads as follows: “Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats 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 Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to— (a) the preparation of plans for economic development and social justice; (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule”. The Eleventh schedule of our Constitution contains the following functional items placed within the purview of the Panchayats:

(entry 5) Fisheries.....

(entry 22) M arkets and Fairs....

13. Now we are of the opinion that Fish Market being a market is covered under said entry 22 of ‘Markets and Fairs’. To further convey our thought process, we state that ‘Markets and Fairs’ can also be read as *‘Markets or Fairs’*. To enunciate, we quote the following: *Justice G.P.Singh in the principles of Statutory Interpretation (Thirteenth Edition) Chapter 7 page 485 has stated as follows:*

“The word ‘or’ is normally disjunctive and ‘and’ is normally conjunctive but at times they are read as vice versa to give effect to the manifest intention of the Legislature as disclosed from the context. As stated by Scrutton L.J. “You do sometimes read ‘or’ as ‘and’ in a statute. But you do not do it unless you are obliged because ‘or’ does not generally mean ‘and’ and ‘and’ does not generally mean ‘or’. Further, as pointed out by Lord Halsbury, the reading of ‘or’ as ‘and’ is not to be resorted to, “unless some other part of the same statute or the clear intention of it requires that to be done”. Where provision is clear and unambiguous the word ‘or’ cannot be read as ‘and’ by applying the principle of reading down. But if the literal reading of the words produces an unintelligible or absurd result ‘and’ may be read for ‘or’ and ‘or’ for ‘and’ even though the result of so modifying the words is less favourable to the subject provided that the intention of the Legislature is otherwise quite clear. Conversely if reading of ‘and’ and ‘or’ produces grammatical distortion and makes no sense of the portion following ‘and’, ‘or’ cannot be read in place of ‘and’. The alternatives joined by ‘or’ need not always be mutually exclusive.”

14. Thus we find merit to classify the subject supply of Fish Market(a composite works contract) to the Valsad Panchayat(a local authority) and this activity is undertaken by the Valsad Panchayat engaged as public authority and the activity squarely falls under the entry no 22- ‘Markets and Fairs’ of the Eleventh Schedule of our Constitution. In light of the explanation inserted w.e.f 27-7-18 to Serial No.3(vi) of said NT, which reads: ‘business’ shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities’, we hold that subject matter falls within the ambit of *‘predominantly meant for use other than for commerce, industry, or any other business or profession’*.

15. We pass the Ruling:

RULING

The subject Supply is eligible for 12% GST (6% CGST; 6% SGST) vide Serial Number 3(vi) (a) of said NT (as amended from time to time).

(SANJAY SAXENA)

(ARUN RICHARD)

MEMBER (S)

(MEMBER (C))

Place: Ahmedabad

Date: 30.06.2021.