

## **A.) NOTIFICATIONS**

1. The Government of Maharashtra has issued notification u/s. 96 of MGST Act dated 29.04.2021 whereby Mr. Rajiv Magoo, Joint Commissioner of Central Tax is appointed as member of Authority for Advance Ruling in place of Ms. P. Vinitha Sekhar.
2. The Government of Maharashtra has issued notification u/s. 20(6) of MVAT Act dated 03.06.2021. By this notification late fee in relation to filing of returns for the months from March, 2021 to May, 2021 is waived, if the said returns are filed up to 30th June, 2021.

## **B) CIRCULARS**

- (i) The Commissioner of State Tax has issued Circular no.9T of 2021 dated 31.05.2021 by which clarifications are given about return filing under MVAT Act. The time limit to file returns for the years 2019-20 and 2020-21 is extended up to 30th June, 2021 without late fees.
- (ii) The Commissioner of State Tax has issued Circular no.10T of 2021 dated 31.05.2021 by which relaxation is given in relation to grant of administrative relief to unregistered dealers.

## **Case: M/s NEPRA RESOURCES MANAGEMENT PVT LTD [2021-TIOL-75] (GUJARAT AAR)**

### Facts of the Case:

1. The applicant are engaged in providing the services of Solid Waste Management and Recycling services. That Notified Area Authority, Vapi floated a tender and invited applications for a Request for Proposal (RFP) for providing service of collection, sorting and recovery of waste, and set up Material Recovery Facility (MRF) in accordance with the Rules, Norms and Regulations of Standards of Weights & Measures Rules, 2016, Plastics Waste Management Rules, 2016, The Ministry of Environment, Forest and Climate Change (MoEFCC), Central Pollution Control Board, Gujarat Pollution Control Board etc.
2. The Applicant was granted this tender for providing the said services to Notified Area Authority, Vapi for an amount of Rs. 1,71,10,000/- for a period of 05 years & consequently an agreement was entered into between the applicant and Notified Area Authority, Vapi wherein, the applicant has to provide services for collection, sorting, recovery of solid waste and establish/set up Material Recovery facility for sustainable waste management in Vapi Notified Area on DBFOOM (Design, Build, Finance, Own, Operate & Maintain) model for 5 years.
3. The applicant has to provide door to door collection of waste in Notified Area Authority, Vapi area, segregation and transportation thereof to Material Recovery Facility and thereafter the applicant has to convert such waste into compost at Material Recovery Facility established by it.
4. The waste collected by the applicant & also the recycled compost belongs to Notified Area Authority, which shall be taken back by Notified Area Authority, Vapi for sale

### Questions before AAR:

1. Whether the solid waste management service provided by the applicant to Notified Area Authority, Vapi is exempted under Notification No. 12/2017-Central Tax(Rate) dated 28.06.2017?

Arguments by Applicant:

1. That Sr. No. 3 of Notification No. 12/2017-CTR provides that pure services (excluding works contract service or other composite supplies involving supply of any goods), covered under Chapter 99, while 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 or in relation to any function entrusted to a Municipality under Article 243W of the Constitution are exempted from GST.
2. That waste management services provided by the applicant to Notified Area Authority, Vapi under the said agreement is nothing but a pure service because there is no supply of goods. The applicant have submitted that they satisfy all the 3 conditions of the said exemption notification as under :
  - a. The waste management services include door to door collection of garbage/waste, sorting and recovery of waste which is pure service as there is no supply of goods involved in this activity, that setting up of material recovery facility and Food Compost Facility operation and maintenance does not involve any transfer in goods and these are not the activities for which consideration is given by Notified Area Authority, Vapi to the applicant and therefore, as per the agreement, the activities undertaken by the applicant are pure services.
  - b. That the services provided by them are in the nature of services which are required to be provided by the municipality under Article 243W of the Constitution.
  - c. That Notified Area Authority, Vapi is a wing of municipal corporation which is basically a local body established by the State Government to function as a Self- Government under Part-IX of the Constitution of India and that Notified Area Authority, Vapi like any other local body provides municipal service in the industrial area of GIDC, Vapi like infrastructure development, improvement of roads, Fire safety services, water supply, street lighting, night patrolling, cleaning services, door to door garbage collection, public health measures, Birth and Death registration and such other services. Therefore it is a Local Authority and the applicant provides pure services to Local Authority.
  - d. The applicant further states that even if Notified Area Authority, Vapi is not considered as Local Authority, it is Governmental Authority as it is constituted under Section 16 of the Gujarat Industrial Development Act, 1962 and is therefore a Governmental Authority set up by an Act of State Legislature.

Decision of AAR

1. That entry 32 of Notification 11/2017-CTR covers services of Sewage and waste collection, treatment and disposal and other environmental protection services classifiable under SAC 9994 and the applicable rate of GST is 18%.
2. Further to get covered under entry 3 of notification 12/2017-CTR following 3 conditions are required to be satisfied :
  - a. It must be pure service not involving any supply of goods

- b. It must be provided to the Central Government or State Government or Union Territory or Local Authority or a Governmental Authority or a Government Entity.
  - c. It must be an activity in relation to any function entrusted to
    - i. Panchayat under Article 243G of the Constitution; or
    - ii. Municipality under Article 243W of the Constitution.
3. The term "pure service" has not been defined under GST, & the same can be construed in general terms as any supply which is either deemed as services under Schedule II of CGST Act or which are not covered under the definition of goods shall be categorized as pure services. However, as per the notification, works contract services or other composite supplies involving supply of any goods are not covered in said entry 3 supra.
4. On going through the work order/agreement of the applicant with Notified Area Authority, Vapi, we find that it is for the purpose of collection, sorting and recovery of waste and setting up of Material Recovery Facility under DBFOOM model as per Rules, Norms and Regulations of SWM Rules-2016, PWM Rules-2016, MoEFCC, CPCB, GPCB etc.
5. That, as per the agreement, the rate of supply of services includes the cost of the Collection vehicle with licensed holder driver, fuel, oil, pick axes, tools, plants, suction machine, machinery, gumboots, hand gloves, raincoat in the monsoon period etc. Thus, from a plain reading of the aforementioned clause, it appears that the services provided by the applicant includes supply of goods also, hence it cannot be considered as Pure Services.
6. One of the clauses specifically mentions that the rate should be filled inclusive of all taxes which means that as per the agreement, rate should be inclusive of all taxes which would also include GST. This clause itself nullifies the contention of the applicant that they are providing pure services to Notified Area Authority, Vapi which they claim, are exempt from GST by virtue of Sr.No. 3 of Notification No. 12/2017-CTR.
7. Since the applicant have failed to satisfy the very first condition in order to be eligible for the exemption, there is no need for us to discuss other conditions at all. The exemption under Entry No. 3 of Notification No. 12/2017-CTR is not available to the applicant.

**Case: M/s VALLALAR BOREWELLS [2021-TIOL-54] (TAMILNADU AAR)**

**Facts of the Case:**

1. The applicant carries on the borewell drilling for Individual houses, Commercial and Industrial buildings and for agricultural purpose. They also let out compressor for agricultural purpose on lease
2. They provide drilling of borewell services mainly to agriculturists engaged in raising of agricultural crops. Water is a part and parcel of essential requirements in cultivation and raising of agricultural crops. Likewise, compressors which are let out by them to agriculturists enable the motor to function and discharge water as required for cultivation and allied agricultural uses. They also obtain a confirmation letter from the agriculturist that the borewell drilled in their land is used only for the agricultural purpose.

**Questions before AAR:**

1. Whether the following supply of services provided by the applicant are in relation to agricultural operations directly in connection with raising of agricultural produce :
  - a. Drilling of Borewells for supply of water for agricultural operations like cultivation including seeding, planting and ploughing.
  - b. Letting out of compressors for pumping of water from the borewells to the agricultural fields.
2. If the answer to the above question is in the affirmative, whether the said services are covered by the entry SI.No. 54 of Notification 12/2017 CT (Rate) dated 28.06.2017?

Arguments by Applicant:

1. In their case the borewells drilled provides the required quantity of water for cultivation of agricultural crops. The supply of compressors which becomes a part of the motor, which pumps water from the borewells /wells for agricultural operations is inseparable from the activity of cultivation and therefore is a Support service for agriculture.
2. Hence the said supply of service is squarely covered by the entry 54 of notification 12/2017-CTR i.e. under sub clause (a) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing.

Arguments by Department:

1. Drilling of bore- well is a one-time process and supply of water is another process. Further, water drawn from the bore-well may be used for agriculture purpose or also for any other means. So, it cannot be construed that it is exclusively used only for agriculture purpose.
2. With reference to supply of water for cultivation, seeding, planting and ploughing, bore-well are being used when there is water scarcity otherwise, when water is released from the dam, the use of bore well is minimum or may not be used. So there is 50:50 chances for use of such borewell
3. In respect of letting out of compressors for pumping of water from the bore-wells to the agricultural fields they have stated that there are two types of services.
  - a) Selling of suitable motor (compressor) along with bore well and
  - b) Letting out of compressors for the bore-well at the time when the compressor is needed.
4. Compressors may be used in two ways. One way it is used to draw water from the bore well and another for some other purpose. So, it cannot be stated for which purpose, the compressor is being used unless it is specified.
5. It seems that it not a naturally bundled composite service, but an artificially bundled composite service. The inference of the applicant is to obtain an Advance Ruling on such artificially bundled composite service.

Decision of AAR

1. From the documents furnished, it is seen that they raise invoice as 'Exempted sales' when the drilling is made for 'Agriculture' and in such cases, the invoice is raised classifying the services under SAC 9986 and no tax is charged. When the drilling is undertaken for Industries (other than agriculture), the invoice is raised as 'Tax Invoice', classifying the service under SAC 995434 and appropriate tax (CGST & SGST) is collected

2. To be eligible for exemption under entry 54, the activity is to be classifiable under SAC 9986. SAC 9986 as per the Explanatory Notes to the Scheme of Classification of Services is as follows:

9986 Support services to agriculture, hunting, forestry, fishing, mining and utilities

99861 Support services to agriculture, hunting, forestry, and fishing

998611 Support services to crop production

This service code includes

- i. services to improve the propagation quality of the seed, including treatment of genetically modified seeds; removal of non-seed materials, undersized, mechanically or insect-damaged and immature seeds; removal of seed moisture to a safe level for seed storage; drying, cleaning, grading and treating of seeds to be marketed;
- ii. post-harvest crop services such as preparation of crops for primary markets, cotton ginning services;
- iii. Other support services to crop production like tilling of fields preparatory to planting; planting, cultivation and fertilization of crops; spraying, including from the air;
- iv. pest control for agriculture; trimming of fruit trees and vines; transplanting and thinning of crops; harvesting;
- v. provision of agricultural machinery with crew and operators; operation of irrigation systems for agricultural purposes;
- vi. other services necessary for agricultural production; Crop production services on inputs owned by others like operation of a crop production unit on a fee or contract basis

This service code does not include:

- i. formation and clearance of agricultural land, cf. 995432
- ii. services provided by agronomists and agricultural economists, cf. 998311
- iii. other pest control services, cf. 998531
- iv. water distribution services through mains (on a fee or contract basis), cf. 998633

3. It is evident that Provision of agricultural machinery with crew and operators' and 'operation of irrigation systems for agricultural purposes' are listed as 'Support services to crop production'. In the case at hand the applicant does not undertake the 'operation of irrigation system for agricultural purposes' and also 'compressors' are not agricultural machinery. They undertake the activity of drilling of borewells in the agricultural land and let out compressors. The said activity is not classifiable under SAC 9986.

4. It is pertinent to note that even setting up of an irrigation system with pipe lines are classifiable only under SAC 9983 and the activity of 'operation' of such irrigation system alone is coded as 'Support service to agriculture'. In the case at hand, the applicant undertakes only drilling of bore wells in the agricultural land and are letting out compressors. The applicant are classifying the same under SAC 995434, when the said activity is undertaken in places other than agricultural land and under SAC 995434 "Water well drilling and septic system installation services" when the drilling is done in other than agricultural land.

5. Water-well drilling services are specifically covered under 995434 and the said category includes all Water-well drilling services without any exceptions. Therefore, it is evident that the drilling of borewell without exceptions (even in the agricultural land) is a construction service involving drilling water well and not a support service for agriculture. As the

activity do not merit classification under SAC 9986, the applicant is not eligible for exemption as per Sl. No. 54 of Notification No. 12/2017-C.T.(Rate) dated 28.06.2017.

6. In respect of letting of Compressor, the applicant claims that the same is let out for pumping water from the borewells drilled by them in the agricultural land, on drilling of the said wells and therefore is a 'Support service for agriculture'. Their contention is that water is essential for cultivation and the compressor are let out to pump water. Compressor is not an agricultural machinery and is a General-Purpose Machinery. Also, only provision of agricultural machinery with crew and operators are stated as 'Support service for agriculture'. Therefore, letting out of the same is also not a 'Support service for agriculture' classifiable under SAC 9986 and the applicant is not eligible for exemption as per Sl. No. 54 of Notification No.12/2017-C.T.(Rate) dated 28.06.2017.

**Case: DR. H B GOVARDHAN [2021-TIOL-66] (KARNATAKA AAR)**

**Facts of the Case:**

1. The applicant, a proprietary concern & s a Medical Doctor specialised in Cancer and other General Health Care Services and presently working in KIDWAI HOSPITAL as Salaried Employee and also is rendering Consulting Services to Hospitals/ Laboratories / Biobanks registered in United States of America (USA) and other countries through phone calls, Video Conference, Mails and other Electronic devices
2. He is living in India and rendering all medical consultancy services from India to Hospitals/ laboratories / biobanks and receives monthly/ quarterly remuneration from USA and other countries in dollars / foreign currency. He desires to practice in India part time and receive consultancy income in India from Indian Hospitals/ Laboratories and health care services

**Questions before AAR:**

1. Whether he is liable to be registered under GST Act?
2. Is there any tax liability on services rendered to the Hospitals / Laboratories/ Biobanks registered in USA and other countries includes export of intellectuals like clinical data completions, analysis, clinical opinion advisory consultation through Phone calls, Video Conference, Mails and other Electronic devices and the applicant is living in India and services rendered from the place of India?
3. Is there any tax liability on Health Care Services – Medical Services and Paramedical Services (Part-time practicing in Clinic) rendered in India to the recipient from India?

**Decision of AAR**

1. The applicant has also submitted a copy of the consulting agreement entered by him with M/s Cureline, Inc., USA, which reveals that the applicant, during the term of the agreement, shall provide his medical expertise in organising collaborative projects between Cureline Inc and clinical centres located in India, histopathological consulting and business development to Cureline.
2. Thus from the agreement, it could be seen that the applicant is providing two types of services - (1) Consultation Services in diagnosis and treatment of illness to the Hospitals, Laboratories and Biobank companies, and (2) Business Promotion Services like organising collaborative projects between the foreign company and the clinical centres located in India and business development for the foreign companies.
3. The first type of services, i.e. Consultation Services in diagnosis and treatment of illness are covered under entry 74 of notification 12/2017-CTR and hence are exempt from tax under the CGST Act.
4. Regarding the second type of services, i.e. Business Promotion Services provided by the applicant to the foreign companies, it is seen that the applicant is a registered person in India and the recipient of services is the foreign

company. The applicant is getting the consideration in foreign currency from the foreign company to which he is providing services.

5. The nature of the services, described in Schedule A' attached to the Consulting Agreement, have been examined and found that the applicant is agreed to supply the following services.
  - a. Develop new clinical centres within the Cureline clinical network for collection, processing and analysis of the human biospecimens.
  - b. Manage standard and custom tissue procurement Projects as requested by Cureline.
  - c. Manage processing and analyses of human tissues, as needed for Cureline's projects.
  - d. Participate in establishing the clinical trial oriented Tissue Procurement and Management Services
  - e. Participate in development of Cureline Bio-Pathology's business.
6. That the services to be provided by the applicant are in the nature of management activities and hence merit classification under Business Promotion Services. The applicant is involved in the setting up of operations in India and managing them as per the directions of the foreign company and these are not Health Care services. The services that the foreign company provides to the ultimate customers would be health care services but not the services provided by the applicant to the foreign company.
7. The applicant is providing business promotion services on behalf of the foreign company, as an agent, by utilizing his medical expertise in organising collaborative projects, histopathological consulting and business development. Thus the applicant indubitably is committed through the agreement to facilitate the supply of services, in relation to establishment of Indian clinical centres in India, on behalf of the foreign company, as an agent, but not on his own account. Hence the impugned services squarely get covered under intermediary services. The place of supply in this case is location of the applicant i.e. India in view of section 13(8) of IGST Act. Hence the impugned services are taxable under GST Law.
8. The nature of services provided by the applicant are business promotion and management services, covered under SAC 9983 and are liable to GST @ 18% under entry no. 21 (ii) of the Notification No. 11/2017- CTR. The applicant being a service provider, as an intermediary, becomes a taxable person and hence is liable for registration in terms of Section 22(1) of CGST Act 2017. Therefore the applicant is liable for registration subject to threshold limit of turnover