

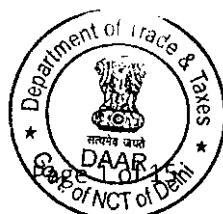
**DELHI AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
DEPARTMENT OF STATE TAXES
7TH FLOOR, VYAPAR BHAWAN, IP ESTATE, NEW DELHI -110002**

ADVANCE RULING NO. 06/DAAR/2018 dated 23.04.2018

(In Application No: 06/DAAR/2018 dated 24.01.2018)

| | | |
|--|---|---|
| Name and Address of the Applicant | : | VPSSR Facilities, 124, 1 st Floor, Jaina Tower-1, District Centre, Janakpuri, New Delhi-110058 |
| GSTIN of the Applicant | : | 07AAKFV8046K1ZK |
| Date of Application | : | 24.01.2018 |
| Clause(s) of Section 97(2) of CGST/DGST Act, 2017, under which the question raised | : | (g) Whether any particular thing done by the applicant with respect to any goods and / or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term. |
| Date of hearing(s) for admission | : | 09.02.2018, 23.02.2018 |
| Date of Final Hearing(s) | : | 09.03.2018, 16.03.2018, 06.04.2018 |
| Date of receipt of comments from (Centre) | : | 21.02.2018 |
| Date of receipt of comments from (State) | : | 22.02.2018 |
| Present for the Applicant | : | Shri Deepak Gulati, Advocate Shri Satish Kumar Dixit, Advocate Shri Rajeev Sharma, Advocate |
| Present for the Revenue (Centre) | : | Ms. Jyoti Virdi, Assistant Commissioner, CGST, Division Janakpuri, Delhi West |
| Present for the Revenue (State) | : | Ms. Poonam, Assistant Commissioner (W-09), DGST Shri Isharam Pal, AVATO, DGST |

Order No: 213 | DAAR/2018 dt 23/4/2018



Statement of Facts as per the Applicant:

The applicant has started the business of executing service contract, i.e. cleaning, sanitation, manpower supply, washing, housekeeping, etc. in Delhi and outside Delhi.

2. The instances of scope of contractor are as under:

(a) Mechanized/ Comprehensive cleaning at Railway Stations.

Station Building Cleaning, Platform Cleaning, Track Cleaning, Office & Waiting hall cleaning, Toilet cleaning, Circulating area cleaning etc.

(b) Mechanized cleaning of sheds

Shed floor, pits, urinals, desilting of manholes, underground drains and open drains, disposal of Industrial waste to Dumping ground, Loading of Ferrous Scrap, Cutting of grass and shrubs and removal of cobwebs etc.

(c) Providing On-Board Housekeeping Services in Trains

Cleaning of toilets, compartments, seats etc.

(d) Railway Building & Office cleaning.

Cleaning and upkeep of Office Chambers, rooms, cabins, corridors, Halls, roofing, circulating areas, toilets, metalled road and lawns etc.

(e) Mechanized Cleaning of Trains

Coaches of Trains, and Housekeeping of depot premises etc.

(f) Comprehensive Mechanized cleaning of railway colonies.

Cleaning of road and desilting of surface drains, manhole, gully trap and latrine system of various size and depth and maintenance of the same in the running condition of colony area, and removal of accumulated garbage silt muck etc to the nominated railway dustbin.

(g) Removal and disposal Garbage etc from railway colonies.

Conservancy contract for daily removal of solid waste/ rubbish/ refuse / hedge cuttings etc. from the dustbins/ heaps or nominated sites of Railway Colony and other Railway premises.

(h) Removal and disposal of Garbage etc from railway stations.

Conservancy contract for daily removal of solid waste/ rubbish/ refuse / hedge cuttings etc. from the dustbins/ heaps or nominated sites of Railway Station.



3. The applicant has applied for and has been awarded a contract from Northern Railway, New Delhi for providing services in relation to housekeeping, cleaning, sanitation, waste management, locomotives cleaning and washing at Delhi. The Service contract of Northern Railway is to be performed in Northern Railway, Delhi and outside Delhi.

4. The scope of work as per tender document is as under:

| No. | Description of activity |
|-----|--|
| 1 | Whether the contract for Railway station sanitation and / or cleaning, Railway line sanitation and / or cleaning, Train and Engine Sanitation and / or cleaning and involving other sanitation work would be exempt from GST, what would be the impact of GST exemption, if the above contract is pure service contract or work contract (Involving sanitation labour and material). |

5. The Northern Railway has refused to pay GST to the applicant and copy of letter of same is attached with the application. The Northern Railway has refused to pay GST to them on the basis of S. No. 3 of Notification No. 9/ 2017 - Integrated Tax (Rate) dated 28.06.2017.

6. Pure services (excluding works contract service or other composite supplies involving supply of any goods) 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 234W of the Constitution.

7. Further, the Article 234W of the Constitution includes following services as municipality services.

- (a) Urban Planning including town Planning.
- (b) Regulation of land-use and construction of buildings
- (c) Planning for economic and social development.
- (d) Roads and bridges.
- (e) Water supply for domestic, industrial and commercial purposes.
- (f) Public health, sanitation conservancy and solid waste management.
- (g) Fire services
- (h) Urban forestry, protection of the environment and promotion of ecological aspects.
- (i) Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
- (j) Slum improvement and upgradation.
- (k) Urban poverty alleviation.
- (l) Provision of urban amenities and facilities such as parks, gardens, playgrounds.
- (m) Promotion of cultural, educational and aesthetic aspects.



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- (n) Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
- (o) Cattle pounds, prevention of cruelty to animals.
- (p) Vital statistics including registration of births and deaths.
- (q) Public amenities including street lighting, parking lots, bus stops and public conveniences.
- (r) Regulation of slaughter houses and tanneries.

Details of Question(s) on which Advance Ruling is requested:

8. Whether the contract for Railway station sanitation and / or cleaning, Train cleaning & Railway Premises cleaning involving:

(a) Mechanized/ Comprehensive cleaning at Railway Stations.

Station Building Cleaning, Platform Cleaning, Track Cleaning, Office & Waiting hall cleaning, Toilet cleaning, Circulating area cleaning etc.

(b) Mechanized cleaning of sheds

Shed floor, pits, urinals, desilting of manholes, underground drains and open drains, disposal of Industrial waste to Dumping ground, Loading of Ferrous Scrap, Cutting of grass and shrubs and removal of cobwebs etc.

(c) Providing On-Board Housekeeping Services in Trains

Cleaning of toilets, compartments, seats etc.

(d) Railway Building & Office cleaning.

Cleaning and upkeep of Office Chambers, rooms, cabins, corridors, Halls, roofing, circulating areas, toilets, metalled road and lawns etc.

(e) Mechanized Cleaning of Trains

Coaches of Trains, and Housekeeping of depot premises etc.

(f) Comprehensive Mechanized cleaning of railway colonies.

Cleaning of road and desilting of surface drains, manhole, gully trap and latrine system of various size and depth and maintenance of the same in the running condition of colony area, and removal of accumulated garbage silt muck etc to the nominated railway dustbin.

(g) Removal and disposal Garbage etc from railway colonies.



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Conservancy contract for daily removal of solid waste/ rubbish/ refuse / hedge cuttings etc. from the dustbins/ heaps or nominated sites of Railway Colony and other Railway premises.

(h) Removal and disposal of Garbage etc from railway stations.

Conservancy contract for daily removal of solid waste/ rubbish/ refuse / hedge cuttings etc. from the dustbins/ heaps or nominated sites of Railway Station.

Would be exempt from GST vide S. No. 3 of Notification No. 9/2017 – Integrated Tax (Rate) dated 28.06.2017 (as intimated by Northern Railway vide its letter dated 20.11.2017), what would be the impact of GST exemption, if the above contract is pure service contract or work contract (involving sanitation labour and material).

Views of the Applicant:

9. Their business is to execute service contract, i.e. cleaning, sanitation, manpower supply, washing, housekeeping, etc. in Delhi and outside Delhi, station, building cleaning, platform cleaning, track cleaning, office and waiting hall cleaning, toilet cleaning, circulating area cleaning, shed floor, pits, urinals, desilting of manholes, underground drains and open drains, disposal of industrial waste to dumping ground, loading of ferrous scrap, cutting of grass and shrubs and removal of cobwebs. So the same shall be classified under the levies and GST @ NIL taxable.

10. Further, as per the FAQ of CBEC in Q.No. 16, it is clearly specified in this answer that the functions entrusted to a municipality under the Twelfth Schedule to Article 243W of the Constitution. In point no. (f) public health, sanitation conservancy and solid waste management.

11. As per the above explanation, applicant services as mentioned above, are covered in heading no. 9994 – Sewage and waste collection, treatment and disposal and other environmental protection services. Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets.

Comments of Jurisdictional Officers (Centre & State):

12. The following aspects need to be looked at:

- i. Whether activities carried out by M/s VPSSR Facilities relating to mechanized cleaning of station, rail wagon, railway office, sheds etc. is covered by the taxable entry –“cleaning activity”?



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ii. Whether cleaning and sanitation services provided to railway stations, trains, sheds, railway colonies and railway offices are in relation to any function entrusted to a Municipality under Article 243W of the Constitution of India?

13. Under the Finance Act, "Cleaning Activity" is defined as:

"Cleaning activity" means cleaning, including specialised cleaning services such as disinfecting, exterminating or sterilising of objects or premises, of

(a) Commercial or industrial buildings and premises thereof; or

(ii) Factory, plant or machinery, tank or reservoir of such commercial or industrial buildings and premises thereof, but does not include such services in relation to agriculture, horticulture, animal husbandry or dairying;

"Taxable Service" mean any service provided or to be provided to any person, by any other person, in relation to cleaning activity; (Section 65(105) (zzd) of the Finance Act, 1994)

Thus, cleaning activity is a taxable service when provided to commercial organization.

14. Hon'ble Central Excise and Service Tax Appellate Tribunal (CESTAT) vide Service Tax Appeal no. ST/50007/2014-[DB] in the matter of M/s Mukesh Kalway V/s C.C.E. Bhopal, has held that

"To hold railways or airport authority as non-commercial organizations only on the ground that they are public utility organizations has no legal basis. Incidentally, it may be noted that the freight revenue of railways is more than double of the activity of passenger revenue. It only shows that substantial railways is in commercial freight transport. Even, with reference to the status of the railway stations, we note that the same cannot be considered as non-commercial building or premises. The commercial nature of the railway stations and its premises is very apparent. Having examined the scope of activities of railways and the premises of railway stations we are of the opinion that the activities carried out by the appellant relating to mechanical cleaning of station, rail wagon, railway office is covered by the taxable entry – "cleaning activity".

Thus, being a public utility by itself does not provide any immunity from service tax and service tax is leviable on cleaning services provided to Railways towards cleaning of railway station, railway shed or office premises of the general manager as Railways is a commercial organization.

15. S. No. 3 of Notification No. 9/2017 – Integrated Tax (Rate) dated 28.06.2017, exempts the following services from GST:



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| Sl.No. | Chapter Heading | Service Description | GST Rate (%) | Condition |
|--------|-----------------|--|--------------|-----------|
| 3 | Chapter 99 | Pure Services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central 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 | Nil | NIL |

16. Thus, as per S. No. 3, the services are exempt from GST only if services offered are:

- (a) Pure services without any supply of material; and
- (b) Are in relation to any functions which are entrusted to the Municipality as per Article 243W of the Constitution of India.

17. Services relating to public health, sanitation conservancy and solid waste management fall under Schedule – XII of the Constitution of India under Article 243W and relate to the functions which are entrusted to the Municipality.

18. Paragraph 301 of Chapter III of Indian Railways Works Manual suggests that for sanitary arrangements in stations and colonies, the allocation of responsibilities lies with operating, medical and engineering departments. Thus, there is no entrustment and responsibility of Municipality towards cleaning of Railway premises/ properties.

19. Hence, in the light of above provisions, this office is of the view that railway station sanitation and/ or cleaning, train cleaning and Railway premises cleaning are not entrusted to Municipality and thus does not fall under the purview of S. No. 3 of Notification No. 9/2017 – Integrated Tax (Rate) dated 28.06.2017.

20. **Conclusion:** This office is of the view that services in question are not exempt from GST. Thus, the services provided by M/s VPSSR Facilities are taxable and will attract GST @ 18% under the Service Classification code Chapter heading 9994.

RELEVANT NOTIFICATIONS:

21. S. No. 3 of Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 2/2018 – Central Tax (Rate) dated 25.01.2018; S. No. 3 of




Notification No. 9/2017 – Integrated Tax (Rate) dated 28.06.2017, as amended by Notification No. 2/2018 – Integrated Tax (Rate) dated 25.01.2018 and parallel SGST notifications:

| Sl. No. | Chapter, Section, Heading, Group or Service Code (Tariff) | Description of Services | Rate (%) | Condition |
|---------|---|---|----------|-----------|
| (1) | (2) | (3) | (4) | (5) |
| 3 | Chapter 99 | Pure Services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union Territory 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 in relation to any function entrusted to a Municipality under Article 243W of the Constitution | Nil | Nil |

22. The following entry has been inserted at S. No. 3A in the Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 by Notification No. 2/2018 – Central Tax (Rate) dated 25.01.2018; at S. No. 3A of Notification No. 09/2017 – Integrated Tax (Rate) dated 28.06.2017 by Notification No. 2/2018 – Integrated Tax (Rate) dated 25.01.2018 and parallel SGST Notifications:

| Sl. No. | Chapter, Section, Heading, Group or Service Code (Tariff) | Description of Services | Rate (%) | Condition |
|---------|---|---|----------|-----------|
| (1) | (2) | (3) | (4) | (5) |
| 3A | Chapter 99 | Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any | Nil | Nil |



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| | | 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. | | |
|--|--|---|--|--|

Relevant Constitutional Provisions:

23. Article 243P of the Constitution of India defines that 'Municipality' means an institution of self government constituted under Article 243Q.

24. Article 243Q of the Constitution of India read as follows:

243Q: Constitution of Municipalities:-

(1) *There shall be constituted in every State,—*

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

25. Hence, according to the Article 243Q of the Constitution of India, only Nagar Panchayats, Municipal Councils and Municipal Corporations are considered as Municipalities. However, in certain urban areas, called industrial townships, an industrial establishment may provide municipal services and a Municipality may not be constituted in that urban area. However, it appears that 'Railways' is not covered in Article 243Q either as a Municipality or as an industrial establishment for a notified industrial township in place of a Municipality.

26. The article 243W of the Constitution of India reads as under:

243W Powers, authority and responsibilities of Municipalities, etc.

Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow—



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(a) the Municipalities 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 Municipalities, subject to such conditions as may be specified therein, with respect to—

- (i) the preparation of plans for economic development and social justice;
- (ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

27. The "Twelfth Schedule" of the Constitution of India reads as under:

1. Urban planning including town planning.
2. Regulation of land-use and construction of building.
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, cremation, 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.*

28. Hence, according to the Article 243W and Twelfth Schedule of the Constitution of India, the Municipalities have powers and responsibilities only with respect to the:

(i) preparation of plans for economic development and social justice and

(ii) performance of only those functions which may be entrusted to them by the Legislature of a State including those in relation to the matters listed in the Twelfth Schedule.

29. Hence, Municipalities do not have any responsibility or functions in relation to the Railways, which is exclusively the responsibility of the Central Government under Article 246 of the Constitution of India. The S. No. 22 of List I (Union List) of Seventh Schedule of the Constitution of India specifically mention 'Railways' whereas Local Government, that is to say, the Constitution and powers of Municipal Corporation are covered in S. No. 5 of List-II (State List) of Seventh Schedule of Constitution of India.

Discussion:

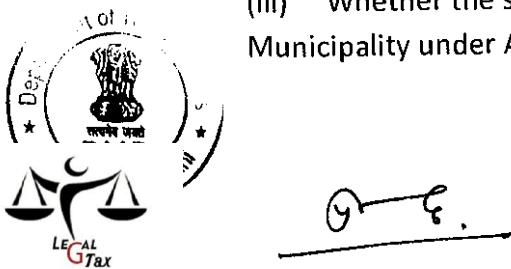
30. The issue for decision in this case is whether the cleaning services rendered by the applicant to Northern Railways are exempted from payment of GST under S. No. 3 of the Notification No. 09/2017 – Integrated Tax (Rate) dated 28.06.2017, and parallel notifications of CGST and SGST, which covers Pure Services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government, Union Territory, local authority, Governmental authority or Government entity by way of any activity in relation to any function entrusted to a Municipality under Article 243W of the Constitution.

31. For the impugned services to be covered under the said exemption notification, the following aspects need to be examined:

(i) Whether the said cleaning services can be considered as "pure services" or the same are works contract services/ composite services involving supply of goods also.

(ii) Whether the service receiver i.e. Northern Railways is covered in any of the categories i.e. 'Central Government' or 'State Government' or 'Union Territory' or 'Local Authority' or a 'Governmental Authority' or a 'Government Entity'.

(iii) Whether the said cleaning activity is in relation to any function entrusted to a Municipality under Article 243W of the Constitution of India.



32. As far as the first aspect mentioned above is concerned i.e. whether the cleaning services supplied by the applicant to the Northern Railways are 'pure services' or the same also involve supply of any goods, it is observed that in the applicant's own case in Writ Petition (C) No. 7843/2014, the Hon'ble High Court of Delhi has delivered a judgment on 15.02.2017 in which it is mentioned that the petitioner had been awarded a contract by the Northern Railways in relation to the management, cleaning, washing, housekeeping, waste management etc. The Trade & Taxes Department held a view that chemicals/ solvent used in the process of cleaning amounted to sale of goods.

33. It was contended by the applicant that being a pure service contract, they were paying service tax @ 12.36% on the entire consideration received by them. There is no separate payment made for the use of consumables. For the purpose of providing the service of cleaning, they were required to use soap/detergent/chemical of a very minimal quantity and of a very nominal value. The soap/detergent/chemical was used for removing the muck/ grime and the same got completely 'consumed' in the process and were not transferred to the Railways.

34. The Department of Trade & Taxes contended that the contract between the petitioner and the Railways is not just a service contract but the same is a works contract of a composite nature. The property in goods i.e. chemical is transferred by the petitioner to the Railways. The petitioner is required to calculate chemical/solvent per month and the same has to be delivered by the petitioner to the Railways. The contract stipulates that cost of chemicals and machines is included in activities mentioned in the schedule of unit rates.

35. However, the Hon'ble High Court held that the soaps, detergent, chemicals and solvent used purely for the purpose of cleaning and which are completely consumed, in the process of the execution of the above referred tasks, cannot be said to goods in which property could pass to the Railways. Hence, the same were held to be pure Service Contracts.

36. The FAQ : Government Services issued by CBEC clarified as follows:

Question 25: What is the scope of 'pure services' mentioned in the exemption notification No. 12/2017-Central Tax (Rate), dated 28.06.2017?

Answer: In the context of the language used in the notification, supply of services without involving any supply of goods would be treated as supply of 'pure services'. For example, supply of man power for cleanliness of roads, public places, architect services, consulting engineer services, advisory services, and like services provided by business entities not involving any supply of goods would be treated as supply of pure services. On the other hand, let us take the example of a governmental authority awarding the work of maintenance of street lights in a Municipal area to an agency which involves apart from maintenance,



replacement of defunct lights and other spares. In this case, the scope of the service involves maintenance work and supply of goods, which falls under the works contract services. The exemption is provided to services involves only supply of services and not for works contract services.

37. Accordingly, it is held that in the present case, the cleaning contracts of the applicant with the Northern Railways, which may involve use of consumables such as soap/detergent/ chemicals of a minimal quantity and of a very nominal value are "pure service" contracts, in terms of S. No. 3 of Notification No. 9/2017 – Integrated Tax (Rate) dated 28.06.2017 as amended by Notification No. 2/2018 – Integrated Tax (Rate) dated 25.01.2018 and parallel CGST and SGST notifications.

38. As far as the second aspect is concerned i.e. whether the service receiver i.e. Northern Railways is covered in 'Central Government' or 'State Government' or 'Union Territory' or 'Local Authority' or a 'Governmental Authority' or a 'Government Entity' or not, it is observed that as per Section 3(8) of the General Clauses Act, 1897, the 'Central Government' means the President. Therefore, the officers subordinate to him while exercising the executive powers of the Union vested in the President and in the name of President are also covered in 'Central Government'. It is observed that contracts by Northern Railway to the applicant have been awarded in the name of the President of India. Hence, it is held that Northern Railway is covered in the said Notification as 'Central Government'.

39. Regarding the third aspect i.e. whether the cleaning services rendered by the applicant are in relation to any function entrusted to a Municipality under Article 243W of the Constitution, it is observed that the function of the Railways is to transport goods and passengers which are excluded from exemption under S. No. 6(C) of Notification No. 9/2017 – Integrated Tax (Rate) dated 28.06.2017 and parallel Notifications of CGST and SGST. On the other hand, the functions of the Municipalities under Article 243W of the Constitution are exempted under S. No. 4 of Notification No. 9/2017 – Integrated Tax (Rate) dated 28.06.2017 and parallel CGST and SGST Notifications.

40. In the CESTAT Final Order No. ST/A/50646/2017-CU (DB) dated 06.02.2017, in the case of Mukesh Kalway V/s Commissioner of Central Excise, Bhopal (reported in 2017 (3) TMI-615), mentioned by both the Jurisdictional Officers (Centre and State), the issue was whether mechanised cleaning service provided for railways, diesel locomotives, railway station premises, General Manager's Office were taxable under the category of 'cleaning services' during the period July 2005 to March 2010. In the said case, the Hon'ble Tribunal after examining the scope of activities of railways and the premises of railway stations came to the conclusion that the Railways is a commercial organisation and cleaning services rendered to railways were taxable during the relevant period. However, the issue in the present case is different as the Notification No. 09/2017 – Integrated Tax (Rate) dated 28.06.2017, grant exemption from GST to the services provided to Government if the



services are in relation to any function entrusted to a Municipality under Article 243W of the Constitution. Further, in the said CESTAT order, it was not discussed whether Railways has been entrusted with the responsibility of a Municipality under Article 243W r/w Schedule XII of the Constitution. Hence, the said CESTAT order does not appear to be applicable in the present case.

41. It has been observed from the CESTAT Final Order No. A/89050-89051/2017-WZB/STB, dated 18.07.2017 (reported in 2017 (9) TMI – 786) in the case of Commissioner of Central Excise, Goa V/s Mormugao Municipal Council (MMC) that MMC, who was engaged in collecting rent contested payment of Service Tax and argued that certain markets were made by them as per their duty under the Constitution of India. They had argued that the renting of immovable property service in such markets cannot be considered as taxable service as the said markets were developed in discharge of Constitution responsibility under Article 243W of the Constitution of India and the 12th Schedule thereunder. They argued that they were not engaged in the trade or commerce and the shop rent out are not in the course of furtherance of business or commerce but are statutory responsibility under the Goa Municipality Act and are for discharge of Constitutional obligation.

42. However, Hon'ble CESTAT held that perusal of Entries 12 and 17 of Schedule XII clearly shows that what has been mentioned thereunder is provisions of urban amenities and facilities, such as parks, gardens, playgrounds. The market cannot be considered to be similar in nature and therefore provision of markets cannot be considered to be, the responsibility under Sr. No. 12 of the 12th Schedule. Similarly Sr. No. 17 relates to street lighting, parking lots, bus stops and public convenience. These amenities do not include market by any stretch of imagination. Thus to state that construction of market is a constitutional responsibility cast upon the MMC is misplaced.

43. The Railways cannot be called a Municipality under Articles 243P and 243Q of the Constitution of India. Further, the functions of Railways i.e. transport of goods or passengers are not covered in Schedule XII of the Constitution which covers the constitutional functions of Municipalities. The cleaning services supplied to Railways i.e. cleaning of locomotives, railway stations, railway lines provided by the applicant cannot be said to be covered in Clause (6) of Schedule XII of the Constitution which covers 'public health, sanitation conservancy and solid waste management' functions of the Municipalities. The Municipalities are constitutionally entrusted with such functions in relation to urban areas but they are not entrusted with such functions in relation to Railway properties.

44. It is observed that Northern Railway has informed their sanitation contractors vide No. C-12/San/Misc/2017 dated 20.11.2017 that contracts for station sanitation would be exempt from GST, provided it is a pure service contract and no supply of goods are involved. Since, under Section 103 of the CGST Act, 2017, this ruling is binding only on the applicant and the jurisdictional officers, the Northern Railways is free to contest the same. However, the applicant is required to deposit GST as per this Ruling.



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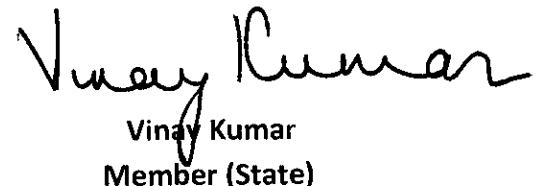
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Ruling

45. It is held that the cleaning services supplied by the applicant to the Northern Railways are not exempted under S. No. 3 of the Notification No. 09/2017 – Integrated Tax (Rate) dated 28.06.2017, as amended by Notification No. 2/2018 – Integrated Tax (Rate) dated 25.01.2018 and parallel Notifications of CGST and SGST.



Pankaj Jain
Member (Centre)



Vinay Kumar
Member (State)

