

TAMILNADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Constituted under Section 99 of Tamilnadu Goods and Services Tax Act 2017)

A.R.Appeal No.09/2021/AAAR

Date: 01.12.2021

BEFORE THE BENCH OF

- 1. Thiru M.V.S.CHOUDARY, MEMBER**
- 2. Thiru M. A. SIDDIQUE, MEMBER**

ORDER-in-Appeal No. AAAR/20/2021 (AR)

(Passed by Tamilnadu State Appellate Authority for Advance Ruling under Section 101(1) of the Tamilnadu Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 98 (5) of the Central Goods & Services Tax Act 2017/Tamilnadu Goods & Services Tax Act 2017("the Act", in Short), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the Order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the appellant has been given an opportunity of being heard.
2. Under Section 103(1) of the Act, this Advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only
 - (a). On the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling;
 - (b). On the concerned officer or the jurisdictional officer in respect of the applicant.
3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the said advance ruling have changed.
4. Under Section 104(1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

Name and address of the appellant	M/s. The Erode City Municipal Corporation, 246,Brough Road, Erode-638 001
GSTIN or User ID	33AAALT1781B1ZB
Advance Ruling Order against which appeal is filed	Order No. 14/ARA/2021 dated 28.04.2021
Date of filing appeal	09.08.2021
Represented by	Thiru.K.Sankaranarayanan, Advocate
Jurisdictional Authority-Centre	Coimbatore Commissionerate, Coimbatore I
Jurisdictional Authority-State	The Assistant Commissioner (ST) Brough Road Assessment Circle
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Payment of Rs. 20000/- made vide challan No.SBIN 21083300011638 dated 02.08.2021

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

1. The subject appeal has been filed under Section 98(5) of the Tamilnadu Goods & Services Tax Act, 2017/Central Goods & Services Tax Act 2017 by Tvl. The Erode City Municipal Corporation (hereinafter referred to as 'Appellant'). The appellant is registered under GST vide GSTIN 33AAALT1781B1ZB. The appeal is filed against the Order No. 14/ARA/2021 dated

28-04-2021 passed by the Tamil Nadu State Authority for Advance ruling on the application for advance ruling filed by the appellant.

2. The Appellant is a "Municipality" as defined in clause (c) of article 243P of the Constitution. They are rendering taxable services (viz) renting of immovable property service, mandap keeper service and are doing the functions entrusted to a municipality under Twelfth Schedule to Article 243W of the Constitution. They have stated to undertake the following services directly/ through contractors by tender process and have sought ruling on the application of Notifications specified in Column E below:

Sl. No	Description of the service	Direct service by the corporation	Service through contractor s by tender process	Advance ruling is required on the following .whether the services mentioned in Column B are exempted vide Notification No or Sl. No entry of the table to Notification as noted against each Sl. No in Column E.
A	B	C	D	E
1	Fee from parks	Some times in some months	Three years lease	Notification. No 14/2017 dated 28-06-2017(or) sl. no 4 of 12/2017 dt 28-06-2017
2	Market fee-daily	Some times in some months	Three years lease	Notification. No 14/2017 dated 28-06-2017(or) sl. no 4 of 12/2017 dated 28-06-2017(or) Sl. no 24 of the table to Notification No. 11/2017 C.T. (Rate), dated 28-6-2017
3	Market fee - weekly	Some times in some months	Three years lease	Notification. No 14/2017 dated 28-06-2017(or) sl. no 4 of 12/2017 dated 28-06-2017(or) Sl. no 24 of the table to Notification No. 11/2017 C.T. (Rate), dated 28-6-2017
4	Fees for bays in bus stand (bus stand entrance fee collection)	Some times in some months	Three years lease	Notification. No 14/2017 dt 28-06-2017 or sl. no 4 of 12/2017 dt 28-06-2017

5	Bus stand (others)	Some times in some months	Three years lease	A. Exempted vide Sl. No 7 of Notification No 12/2017 (or) payment of tax under reverse charge under sl. no 5 of Notification No 13/2017 Central Tax (Rate) dated the 28th June, 2017 B. Notification No 14/2017 dated 28-06-2017 or sl. no 4 of 12/2017 dated 28-06-2017. C. Notification / 14/2017 dt28-06-2017(or) sl. no 4 of 12/2017 dated 28-06-2017(or) Sl. no 24 of the table to <i>Notification No. 11/2017 C.T. (Rate)</i> , dated 28 6 2017 D. Notification 14/2017 dt28-06-2017(or) sl. no 4 of 12/2017 dt 28-06-2017 E. Notification 14/2017 dt28-06-2017(or) sl. no 4 of 12/2017 dated 28-06-2017 or Sl. no 14 of 12/2017 dated 28-06-2017
6	Slaughter house fees	Some times in some months	Three years lease	Notification No 14/2017 dated 28-06-2017 or sl. no 56 of Notification No 12/2017 dt 28-06-2017.
7	Bunk stalls		Three years lease	Sl. No 7 of Notification no 12/2017 subject to the satisfaction of condition since it is not covered under renting of immovable property.
8	Rent Travelers' bungalows & rest house (municipal lodge)	Some times in some months	Three years lease	Notification No 14/2017 dt28-06-2017 or sl. no 4 of Notification No 12/2017 dt 28-06-2017 & Sl no 14 of the same Notification /-since condition is satisfied.
9	Fees on pay use toilets	Some times in some months	Three years lease	Notification No 14/2017 dt28-06-2017(or) s. no 76 of Notification No 12/2017 dated 28-06-2017.

10	Avenue receipts	Three years lease	(i)Sl. no 54 of Notification No 12/2017 C.T. (Rate), dated 28-6-2017. (ii)Press Release No. 162/2017, dated 28-5-2018. (iii) Sl. no 24 of the table to Notification No. 11/2017 C.T. (Rate), dated 28-6-2017.
11	Right to fishing in bond	Three years lease	(i)Sl. No 5 of Notification No 12/2017 C.T. (Rate), dated 28-6-2017. (ii)Sl. no 24 of the table to Notification No. 11/2017 C.T. (Rate), dated 28-6-2017
12	Running a fish market	Three years lease	Sl. no 5 of Notification No 12/2017 or Sl. no 24 of 11/2017 dated 28-06-2017.
13	For entry vehicle in the market	For entry vehicle in the market	Notification No 14/2017 dt28-06-2017(or) sl. no 4 of Notification No 12/2017 dated 28-06-2017.
14	annual track rent -Cable operator laying fee(optical fibre laying fee)	Based on contract	Composite supply can be applied for road cutting charges by treating it as renting of immovable property service and reverse charge is applicable under Sl. No 5A of Notification No 13/2017 dated 28-06-2017 as amended
15	Renting of immovable property	Direct by the municipality on lease contract	Nonpayment of tax under reverse charge under Sl. No 5A of Notification No 13/2017 dated 28-06-2017 but paid under direct charge and whether it can be condoned and regularised for the period from 25-01-2018 in case of services to GSTN holders
16	Renting of immovable property	Direct by the municipality on lease contract to another Central / State Government.	Sl. no 8 of the table to Notification No 12/2017 dated 28-06-2017

3. The Appellant had sought Advance Ruling on the following questions:

The questions for which the ruling was sought are:

- Q.1. Advance ruling is required in respect of Sl. No 1 to 6, 8, 9 &13 whether the services rendered by them directly are covered under Twelfth Schedule to Article 243W of the Constitution and /or exempted under the Notification No mentioned against each Sl. No.
- Q.2. In respect of services rendered by them from Sl. No 1 to13 through tender contractors whether they are covered under Twelfth Schedule to Article 243W of the Constitution and/or exempted vide the Notification no mentioned against each Sl. No.
- Q.3. In respect of Sl. No 14 they are collecting charges for laying of cables alongside roads and collecting road cutting charges as well as annual rent. They require advancee ruling whether composite supply can be applied for classifying the said service as renting of immovable property service and reverse charge can be applied for collecting GST as per entry Sl. No 5A of the table to Notification No 13/2017 (CE rate) dated 29-06-2017 as amended from the telephone operators who are GSTIN holders
- Q.4. In respect of Sl. No 15 w.e.f. 25-01-2018, instead of reverse charge they collected tax under direct charge from the service availers who are registered with GSTIN and whether it can be regularised. (to be treated as technical lapses and condoned since the service rendered by us had suffered tax and Govt. revenue is not affected)
- Q.5. In respect of Sl No 16 the renting of immovable property service rendered by them as a local authority to
 - (i) Pure state Govt. offices (viz) Asst. Director Of L F Accounts, Project Officer, ICDS, ICDS Centre, Deputy Supt. Of Police and pure Central Govt offices (viz) post offices are fully exempted or not as per entry Sl. no 8 of the table to Notification. No 12/2017 dated28-06-2017.
 - (ii) Co operative society(viz) Chindhamani Super Market, Jeeva Co-Op Society, TNSTC Staff Society, Jeeva Co-Op Society and transport corporation TNSTC are exempted or not as per entry Sl. no 8 of the table to Notification. No 12/2017 dated28-06-2017.

(iii) Nationalised Banks are exempted or not as per Sl. no 8 of the table to Notification No 12/2017 dated 28-06-2017.

4. The AAR pronounced the following rulings:

Advance ruling is required in respect of Sl. No 1 to 6, 8, 9 & 13 whether the services rendered by them directly are covered under Twelfth Schedule to Article 243W of the Constitution and /or exempted under the Notification. No mentioned against each Sl. No as detailed below.

Sl. No	Description of the service	Ruling
1.	Maintenance of Park	Not a Supply of Service as per Notification No 14/2017 -CT(R) & dt 28-06-2017 as amended vide Notification No. 16/2018 dated 26.07.2018
2.	Providing Market facilities daily	Not a Supply of Service as per Notification No 14/2017 -CT(R) & dt 28-06-2017
3.	Providing Market facilities -weekly	Not a Supply of Service as per Notification No 14/2017 -CT(R) & dt 28-06-2017
4.	Providing bays in bus stand	Not a Supply of Service as per Notification No 14/2017 -CT(R) & dt 28-06-2017 as amended vide Notification No. 16/2018 dated 26.07.2018
5.	(B) Locker rent facilities	(B) Facility of providing locker for rent directly by the applicant is taxable for the reason that this does not fall under Notification No 14/2017 dt 28-06-2017 and is taxable
	(D) Providing stand for cycle, scooter, auto, four wheeler stand in bus stand and other places	(D) Not a Supply of Service as per Notification No 14/2017 -CT(R) & dt 28-06-2017 as amended vide Notification No. 16/2018 dated 26.07.2018
	(E) Providing room for rent for temporary stay	(E) This is exempted from tax as per Sl. No. 14 of Notification 12/2017 CT(R) dated 28.06.2017 for the reason that their room rent/day/person is not exceeding rupees 1000/-

7.	Providing Slaughter house facilities	Not a Supply of Service as per Notification. No14/2017 -CT(R) & dt 28-06-2017 as amended vide Notification, No. 16/2018 dated 26.07.2018
8.	Providing travellers bungalows& rest house	This is exempted from tax as per Sl. No. 14 of Notification 12/2017 CT(R)- dated 28.06.2017 for the reason that their room rent/day/person is not exceeded rupees 1000/-
9.	Toilet facilities	Not a Supply of Service as per Notification. No14/2017 -CT(R) & dt 28-06-2017 as amended vide Notification, No. 16/2018 dated 26.07.2018
13.	Entry of vehicle in the market	Not a Supply of Service as per Notification. No14/2017 -CT(R) & dt 28-06-2017

Q2. In respect of services rendered by us from Sl. No 1 to13 through tender contractors whether they are covered under Twelfth Schedule to Article 243W of the Constitution and/or exempted vide the Notification. no. mentioned against each Sl. No. as follows.

The applicant supplies the 'Right to collect the fees/right to certain amenities' to the contractors and the supply undertaken by the contractors are as per the tender conditions which is an independent supply. The applicability of the Notification to the supplies of the contractors is not answered as per S.95(a) read with S.103(1) of the GST Act.

Q3. In respect of Sl. No 14 we are collecting charges for laying of cables alongside roads and collecting road cutting charges as well as annual rent. We require advance ruling whether composite supply can be applied for classifying the said service as renting of immovable property service and reverse charge can be applied for collecting GST as per entry Sl. No 5A of the table to Notification No 13/2017 (CE rate) dated 29-06-2017 as amended from the telephone operators who are GSTN holders

Supply of allowing the road cut for laying the OFC and allowing the space alongside the road for the OFC lines are not 'composite supply' as defined under S. 2(30) of the GST Act, 2017 in as much as these two supplies are not made in conjunction with each other in the ordinary course of business. Hence Composite supply cannot be applied for classifying the said service as 'Renting of immovable property service'

Q.4. In respect of Sl. No 15 w.e.f. 25-01-2018, instead of reverse charge we collected tax under direct charge from the service availers who are registered with GSTN and whether it can be regularised.(to be treated as technical lapse and condoned since the service rendered by us had suffered tax and Govt. revenue is not affected)

The question seeks regularization of the payment made by them considering the same as a technical lapse, which is not in the purview of this authority as per Section 97 (2) and therefore, the question is not admitted under Section 98(2) of the Act

Q.5. In respect of Sl. No 16 the renting of immovable property service rendered by them as a local authority to

(i) Pure state Govt. offices (viz) Asst. Director Of L F Accounts, Project Officer, ICDS, ICDS Centre, Deputy Supt. Of Police and pure Central Govt offices (viz) post offices are fully exempted or not as per entry Sl no 8 of the table to Notification No 12/2017 dated 28-06-2017.

(ii) Co-operative society(viz) Chindhamani Super Market, Jeeva Co-Op Society, TNSTC Staff Society, Jeeva Co-Op Society and transport corporation TNSTC are exempted or not as per entry Sl. no 8 of the table to Notification No 12/2017 dated 28-06-2017.

(iii) Nationalised Banks are exempted or not as per Sl. no 8 of the table to Notification No 12/2017 dated 28-06-2017.

Service of renting of immovable property by the applicant to another Central/State government/Union territory or Local authority alone is exempted from tax as per Sl. No. 8 of Notification 12/2017 dated 28.06.2017 and the services of renting of immovable property to other than Central/State Government, Union Territory or Local authority, are not exempted under Sl. No. 8 of the table to Notification No.12/2017 C.T.(Rate) dated 28.06.2017.

5. Based on the above decision, the Appellant has filed the present appeal. The grounds of appeal are paraphrased as follows:

5. GROUNDS OF APPEAL

(i) **Sl No 6- Slaughter house fees-** In the application to the ARA it was pleaded that Services by way of slaughtering of animals is exempted vide entry Sl No 56 of the Notfn No 12/2017 dated 29-06-2017 as amended which reads as follows.

156	Heading 9988	Services by way of slaughtering of animals.	NIL	NIL
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Even though AAR in the order has given a ruling that services by way of slaughtering of animals is not a service as per Notfn. No14/2017 dt 28-06-2017 it is requested that exemption under SI No 56 of the Notfn No 12/2017 dated 29-06-2017 may also be considered and extended. As per SI No 56 of the table to Notfn No 12/2017 dated 29-06-2017 exemption is granted to the service rendered by way of "Services by way of slaughtering of animals". It is applicable to the service and not to the person,(ie) whether it is done by X or Y or by the appellant it is exempted unconditionally. It may be considered in appeal by appellate authority and ordered that the above activity is not only covered under Notfn. No14/2017 dt 28-06-2017 but also under SI No 56 of the Notfn No 12/2017 dated 29-06-2017 as amended .

(ii)SI No.9 - **Fees on pay & use toilets**- In the application to the AAR it was pleaded that *services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets* is exempted vide entry SI No 76 of the Notfn No 12/2017 dated 29-06-2017 as amended which reads as follows.

176	Heading 9994	Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets.	NIL	NIL
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Even though ARA in the order has given a ruling that services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets, is not a service as per Notfn. No14/2017 dt 28-06-2017 but the request of the appellant that the said service is exempted under SI No 76 of the Notfn No 12/2017 dated 29-06-2017 was not considered and extended. It may please be noted exemption is granted to the service and not to the person (ie) whether it is done by X or Y or by the appellant it is exempted unconditionally. It may be considered in appeal and ordered that the above activity is not only covered under Notfn. No14/2017 dt 28-06-2017 but also under SI No 76 of the Notfn No 12/2017 dated 29-06-2017 as amended .

(iii) In respect of Sl No 5B- locker rent provided in bus stand it has been decided in the above order by ARA that it is taxable. In our application it was pleaded that the said service is covered under Twelfth Schedule to Article 243W of the Constitution and hence it is exempted. It is now submitted that the said activity locker rent is a Cloak room activity.

2. The functions entrusted to a municipality under the Twelfth Schedule to Article 243W of the Constitution are as under.....

The words, "such as" under (l) and "including" under (q) of the functions entrusted to Municipality in twelfth schedule to Article 243 W have vide coverage and it could not be restricted to the definition as ordered of the ARA. Hence it is submitted the locker rent may be declared as an activity covered under Twelfth Schedule to Article 243W of the Constitution and covered under Notfn No 14/2017 and it may be declared as "*not a service*".

While discussing the following services rendered by the appellant direct to the public it was declared by the ARA as *not a supply of service*. It may please be noted that it is not an exemption Notfn/- but a Notfn issued under Section 7 (2) to treat whether the activity undertaken by the local authority is a service or not since it is a function entrusted to a Municipality under article 243W of the Constitution. When it is not a service it is outside the scope of supply (ie) levy and collection of tax under Section 7. It was already declared /ordered by the ARA that the activity done by the appellant under 243 W is not a service in respect of

Sl. No. 1 - Fee from parks

Sl. No. 2- Market fee-daily

Sl. No. 3- Market fee -weekly

Sl. No. 4- Fees for bays in bus stand

Sl. No. 5D -cycle stand, scooter, auto, four wheeler stand in bus stand and other places.

Sl. No. 6- Slaughter house fees.

Sl. No.9- Fees on pay &use toilets.

Sl. No.13 For entry vehicle in the market.

III. When the above activities were declared as 'not a service' under Notfn No 14/2017 then there is no necessity to go into the details of the service recipient, consideration paid for the activity etc. In view of the decision of the ARA that the above

activities are not a service for direct activity rendered by the appellant it is prayed that the above activities done by the appellant through tender contractors may also be declared as not a service since it is a function of **a Municipality under article 243W of the Constitution and** covered under Notfn No 14/2017.

The appellant never asked a question w. r. t the service provided by the tender contractor to the public. The question was w.r.t the service provided by the appellant to the tender contractors. Hence the answer of the ARA to the Question No 2 is not correct and it is requested the appellate authority may give the correct the answer to Question No 2 after taking into the following submissions.

Appellant's submissions.

In respect of SI No 1 to 13 rendered by the appellant to tender contractors activities are purely on public interest and are undertaken as mandatory and statutory functions. They could not to be treated as a service as per the above Notfn . Therefore, such activities assigned to and performed by a sovereign / public authority under the provisions of any law, could not be treated as taxable service. Any amount / fee collected for such activity could not to be treated as consideration for the purpose of levy of GST since it is outside the scope of levy. Hence the order of the ARA is not correct and the contention of appellant may be accepted and orders of the ARA may be overruled.

1. Maintenance of park is covered under (l) of Twelfth Schedule to Twelfth Schedule to Article 243W of the Constitution which read as follows :

(l) *Provision of urban amenities and facilities such as parks, gardens, playgrounds.*

2 & 3. Market fee - daily & weekly are covered under (c), (i) and (l) a of Twelfth Schedule to Article 243W of the Constitution which read as follows :

(c) *Planning for economic and social development*

(i) *Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.*

(l) *Provision of urban amenities and facilities such as parks, gardens, playgrounds.*

(b) It has been order by the ARA w. r. t SI No. 2& 3. Market fee daily&Market fee weekly, that direct collection by municipal corporation are covered Twelfth Schedule to Article 243W of the Constitution and as per Notification No. 14/2017- Central Tax (Rate) New Delhi, the 28th June, 2017 the services by way of any

activity in relation to a function entrusted to a Municipality under article 243W of the Constitution is not a service .Hence both the services are not chargeable to tax. The same ruling will apply to tender contractors also . It is submitted that exclusion from service was granted to the activity and not to the person ie) whether it is done by X or Y or by the appellant it is outside the scope of service . When the activity is out the scope of service there is no need examine the details of the activity receiver (tender contractors) and the consideration towards the activity(tender money) Hence the above activities may be declared as not a service but an activity in relation to a function of Municipality under article 243W of the Constitution and covered under Notfn No 14/2017CT (rate) dt 28-06 2017 as well as the relevant GO of TNGST Act,2017. It is a fact that the contractors of municipal corporation are public servants and the activities rendered by the municipal corporation to the contractors (public servants) could not be termed as service and the contractors could not be termed as business entities but they are agents of the municipality as per para C above. Hence the collection and maintenance work entrusted by the municipality to the contractors could not be termed as service since it is arrangement between principal and agent (ie) in this case Govt. and public servant and amount paid by the contractor to Govt. towards rendering of work entrusted under Section 374 and other provisions of the Tamil Nadu District Municipalities Act, 1920 and the functions entrusted to a municipality under the twelfth schedule to article 243W of the constitution could not be termed as service. As there is no service the question of payment of GST will not arise on all those lease contracts since the rate fixed by Govt. was adopted and the activities were rendered by the contractor to the public in the name of the local authority and receipt has been issued in the name of the local authority to the public.

The daily & weekly market are related agriculture activity and it is prayed that Sl no 2 & 3 may be declared as not as services and covered under Notfn no 14/2017 and if they are treated as services they are covered under Sl no 24 of the table to *Notification No. 11/2017 C.T. (Rate), dated 28 6 2017.*

(4)Fees for bays in bus stand is covered under (g)&(l) of Twelfth Schedule to Article 243W of the Constitution which read as follows

(i) *Public amenities including street lighting, parking lots, bus stops and public conveniences.*

(ii) *Provision of urban amenities and facilities such as parks, gardens, playgrounds.*

It has been order by the ARA w. r. t SI No.4. Fees for bays in bus stand done direct collection by municipal corporation are covered Twelfth Schedule to Article 243W of the Constitution and as per **Notification No. 14/2017-Central Tax (Rate)** New Delhi, the 28th June, 2017 the services by way of any activity in relation to a function entrusted to a Municipality under article 243W of the Constitution is not a service. Hence the service is not chargeable to tax. The same ruling will apply to tender contractors also. It may please be noted exemption is granted to the activity and not to the person ie) whether it is done by X or Y or by the appellant it is outside the scope of service. When the activity is out the scope of service there is no need examine the details of the activity receiver (tender contractors) and the consideration towards the activity(tender money) Hence the above activity may be declared as not a service but an activity in relation to a function of Municipality under article 243W of the Constitution and covered under Notfn No 14/2017CT (rate) dt 28-06-2017 as well as the relevant GO of TNGST Act,2017. It is submitted that it is not a taxable service due to the following reasons. As per the Tamil Nadu District Municipalites Act, 1920 as detailed in para C above it is a fact that the contractors of municipal corporation are public servants and the services rendered by the municipal corporation to the contractors (public servants) could not be termed as service and the contractors could not be termed as business entities but they are agents of the municipality. Hence the collection and maintenance work entrusted by the municipality to the contractors could not be termed as service since it is arrangement between principal and agent (ie) in this case Govt. and public servant and amount paid by the contractor to Govt. towards rendering of work entrusted under Section 374 and other provisions of the Tamil Nadu District Municipalities Act, 1920 and the functions entrusted to a municipality under the twelfth schedule to article 243W of the constitution could not be termed as service. As there is no service the question of payment of GST will not arise on all those lease contracts since the rate fixed by Govt. was adopted and the activity is rendered by the contractor to the public in the name of the local authority and receipt has been issued in the name of the local authority to the public.

5. Bus-stand -others . It relates to

- (A) charges for of TV advt. in bus-stand
- (B) locker rent provided in bus-stand
- (C) flower shop in bus stand in open space
- (D)cycle stand, scooter, auto, four wheeler stand in bus stand and other places and
- (E)collection of room rent for temporary stay

A) The ARA has not taken into consideration of the contention of the appellant in the application and has not discussed the issue at all in the order and the above contention may be taken into consideration ant the appeal may be allowed.

B) It is submitted the locker rent may be declared as an activity covered under Twelfth Schedule to Article 243W of the Constitution and covered under NotIn No .14/2017 and it may be declared as -not a service'.

It is submitted that it is not a taxable service due to the following reasons. As per the Tamil Nadu District Municipalites Act, 1920 as detailed in para C above it is a fact that the contractors of municipal corporation are public servants and the services rendered by the municipal corporation to the contractors (public servants) could not be termed as service and the contractors could not be termed as business entities but they are agents of the municipality Hence the collection and maintenance work entrusted by the municipality to the contractors could not be termed as service since it is arrangement between principal and agent (ie) in this case Govt. and public servant and amount paid by the contractor to Govt . towards rendering of work entrusted under Section 374 and other provisions of the Tamil Nadu District Municipalities Act, 1920 and the functions entrusted to a municipality under the twelfth schedule to article 243W of the constitution could not be termed as service. As there is no service the question of payment of GST will not arise on all those lease contracts since the rate fixed by Govt. was adopted and the activity is rendered by the contractor to the public in the name of the local authority and receipt has been issued in the name of the local authority to the public

C) flower shop in the bus stand 4x4 in open space in various places of bus stand and in RC buildings

Flower shop is covered under (i) of Twelfth Schedule to Twelfth Schedule to Article 243W of the Constitution which read as follows :

(i) *Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.*

It is also covered under the functions entrusted to a Panchayat under the Eleventh Schedule to Article 243G of the Constitution are as under :

(i) **Agriculture, including agricultural extension.**

There is no restrictions for the municipality to perform functions of a Panchayat.

(iii)As per **Notification No. 14/2017-Central Tax (Rate)** New Delhi, the 28th June, 2017 “Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution [or to a Municipality under article 243W of the Constitution]2.” is not a service .Hence it is not chargeable to tax.

D. cycle stand, scooter, auto and four wheeler stand in bus stand

As per **Notification No. 14/2017-Central Tax (Rate)** New Delhi, the 28th June, 2017 “Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution [or to a Municipality under article 243W of the Constitution]2.” is not a service .Hence it is not chargeable to tax.

cycle stand, scooter, auto, four wheeler stand in bus stand is covered under (q) of Twelfth Schedule to Twelfth Schedule to Article 243W of the Constitution which read as follows :

(q) *Public amenities including street lighting, parking lots, bus stops and public conveniences.*

It has been ordered by the AAR that direct service by the municipal corporation w.r.t maintenance of park is covered under Twelfth Schedule to Article 243W of the Constitution and hence covered under **Notification No. 14/2017-**

Central Tax (Rate) New Delhi, the 28th June, 2017and hence it is not a service and it is not chargeable to tax. When it is out side the scope of service there is no need to examine who is the service availer and consideration received etc. When it is not a service it is applicable to tender contractors also.

E. collection of room rent for temporary stay.

Collection of room rent for temporary stay is covered under (l) and(q) of Twelfth Schedule to Article 243W of the Constitution

6. Slaughter house fees

Maintenance of Slaughter house are covered under (r) of Twelfth Schedule to Article 243W of the Constitution which reads as follows :

(r) *Regulation of slaughter houses and tanneries.*

It has been ordered by the ARA that direct service by the municipal corporation w.r. t. slaughtering of animals is covered under of Twelfth Schedule to Article 243W of the Constitution and hence covered under **Notification No. 14/2017-Central Tax (Rate)** New Delhi, the 28th June, 2017and hence it is not a service and it is not chargeable to tax. When it is out side the scope of service there is no need to examine who is the service availer and consideration received etc. When it is not a service the same contention of the Notfn. is applicable to tender contractors also due to the following reasons . As per the Tamil Nadu District Municipalities Act, 1920 as detailed in para C above it is a fact that the contractors of municipal corporation are public servants and the services rendered by the municipal corporation to the contractors (public servants) could not be termed as service and the contractors could not be termed as business entities but they are agents of the municipality Hence the collection and maintenance work entrusted by the municipality to the contractors could not be termed as service since it is arrangement between principal and agent (ie) in this case Govt. and public servant and amount paid by the contractor to Govt . towards rendering of work entrusted under Section 374 and other provisions of the Tamil Nadu District Municipalities Act, 1920 and the functions entrusted to a municipality under the twelfth schedule to article 243W of the constitution could not be termed as service. As there is no service the question of payment of GST will not arise on all those lease contracts since the rate fixed by Govt.

was adopted and the activity is rendered by the contractor to the public in the name of the local authority and receipt has been issued in the name of the local authority to the public.

(i) Reserving our right to claim the benefit of Notfn/ No. 14/2017 the following submissions are made. In the application to the ARA it was pleaded that Services by way of slaughtering of animals is exempted vide entry Sl No 56 of the Notfn No 12/2017 dated 29-06-2017 as amended which reads as follows.

Sln	Heading	Services by way of slaughtering	NIL	NIL
	9988	of animals.		

Even though AAR in the order has given a ruling that services by way of slaughtering of animals is exempted as per Notfn. No 14/2017 dt 28-06-2017 it was requested that the exemption under Sl No 56 of the Notfn No 12/2017 dated 29-06-2017 may also be considered and extended. It may please be noted that exemption is granted to the service and not to the person. (ie) whether it is done by the Municipality to the tender contractors or by any other person to any body and whatever may be the consideration it is fully exempted unconditionally and hence exemption has to be granted to the appellant in respect of the tender contractors.

7. Bunk stalls.

ARA has not discussed the points of the appellant in the order and hence the above issue may be considered and decided in the favour of the appellant.

8. Rent -traveller's bungalows & rest house -municipal lodge .

Collection of room rent for temporary stay is covered under (l) and (q) of Twelfth Schedule to Article 243W of the Constitution which reads as follows :.

(l) *Provision of urban amenities and facilities such as parks, gardens, playgrounds.*

(q) *Public amenities including street lighting, parking lots, bus stops and public conveniences.*

The wordings , 'such as' and ' including ' have vide coverage and applying the above definition the activity of rom rent for temporary stay is covered under the above definition under (l) and(q) of Twelfth Schedule to Article 243W of the Constitution.

9. Fees on pay &use toilets

Fees on pay &use toilets is covered under (q) of Twelfth Schedule to Article 243W of the Constitution which reads as follows :

q) *Public amenities including street lighting, parking lots, bus stops and public conveniences.*

As per Notification No. 14/2017-Central Tax (Rate) New Delhi, the 28th June, 2017 "Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution [or to a Municipality under article 243W of the Constitution]" is not a service .Hence it is not chargeable to tax.

While discussing the services rendered by the appellant direct to the public it was declared by the ARA as not a supply of service . It may please be noted that it is not an exemption Notfn/- but a Notfn issued under Section 7 (2) to treat whether the activity undertaken by the local authority is a service or not since it is a function entrusted to a Municipality under article 243W of the Constitution. When it is not a service it is outside the scope of supply (ie) levy and collection of tax under Section 7. It was already declared /ordered by the ARA that the activity done by the appellant under 243 W is not a service in respect , 'Fees on pay &use toilets'. When the above activities were declared ' not a service' under Notfn No 14/2017 then there is no necessity to go into the details of the service recipient, consideration paid for the activity etc. In view of the decision of the ARA that the above activities are not a service for direct activity rendered by the appellant it is prayed that the above activities done by the appellant through tender contractors may also be declared as not a service since a function of ***a Municipality under article 243W of the Constitution and*** covered under Notfn No 14/2017. When it is not a service the same contention of the Notfn. is applicable to tender contractors also due to the following reasons . As per the Tamil Nadu District Municipalites Act, 1920 as detailed in para C above it is a fact that the contractors of municipal corporation are public servants and the services rendered by the municipal corporation to the contractors (public servants) could not

be termed as service and the contractors could not be termed as business entities but they are agents of the municipality. Hence the collection and maintenance work entrusted by the municipality to the contractors could not be termed as service since it is arrangement between principal and agent (ie) in this case Govt. and public servant and amount paid by the contractor to Govt. towards rendering of work entrusted under Section 374 and other provisions of the Tamil Nadu District Municipalities Act, 1920 and the functions entrusted to a municipality under the twelfth schedule to article 243W of the constitution could not be termed as service. As there is no service the question of payment of GST will not arise on all those lease contracts since the rate fixed by Govt. was adopted and the activity is rendered by the contractor to the public in the name of the local authority and receipt has been issued in the name of the local authority to the public.

(i) Reserving our right to claim the benefit of Notfn/ No. 14/2017 the following submissions are made. In the application to the ARA it was pleaded that Services by way of, "Fees on pay & use toilets", is exempted vide entry Sl No 76 of the Notfn No 12/2017 dated 29-06-2017 as amended which reads as follows:

76	Heading 9094	Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets.	NIL	NIL
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Even though AAR in the order has given a ruling that services by way of slaughtering of animals is exempted as per Notfn. No 14/2017 dt 28-06-2017 it was requested that the exemption under Sl No 76 of the Notfn No 12/2017 dated 29-06-2017 may also be considered and extended. It may please be noted that exemption is granted to the service and not to the person. (ie) whether it is done by the Municipality to the tender contractors or by any other person to any body and whatever may be the consideration it is fully exempted unconditionally and hence exemption has to be granted to the appellant in respect of the tender contractors.

10. Avenue receipts-- enjoyments of fruits of the trees in high ways of particular area .

The functions entrusted to a Panchayat under the Eleventh Schedule to Article

243G of the Constitution are as under :

- (i) Agriculture, including agricultural extension.**
- (ii) Land improvement, implementation of land reforms, land consolidation and soil conservation.
- (iii) Minor irrigation, water management and watershed development.
- (iv) Animal husbandry, dairying and poultry.
- (v) Fisheries.**
- (vi) Social forestry and farm forestry.**
- (vii) Minor forest produce.**
- (viii) Small scale industries, including food processing industries.
- (ix) Khadi, village and cottage industries.
- (x) Rural housing.
- (xi) Drinking water.
- (xii) Fuel and fodder.
- (xiii) Roads, culverts, bridges, ferries, waterways and other means of communication.
- (xiv) Rural electrification, including distribution of electricity.
- (xv) Non-conventional energy sources.
- (xvi) Poverty alleviation programme.
- (xvii) Education, including primary and secondary schools.
- (xviii) Technical training and vocational education.
- (xix) Adult and non-formal education.
- (xx) Libraries.
- (xxi) Cultural activities
- (xxii) Markets and fairs.
- (xxiii) Health and sanitation, including hospitals, primary health centres and dispensaries.
- (xxiv) Family welfare.
- (xxv) Women and child development.
- (xxvi) Social welfare, including welfare of the handicapped and mentally retarded.
- (xxvii) Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.

(xxviii) Public distribution system.

(xxix) Maintenance of community assets.

As per entry Sl No 54 of the table to Notfn No. *Notification No. 12/2017-C.T. (Rate), dated 28-6-2017, and Notifications issued by State as amended upto date/ the said service is exempted.*

54	Heading 9986	<p>Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce by way of -</p> <p>drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;</p> <p>(d) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;</p> <p>(c) loading, unloading, packing, storage or warehousing of agricultural produce;</p> <p>(f) agricultural extension services;</p> <p>(g) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.</p> <p>[(h) services by way of fumigation in a warehouse of agricultural produce.]</p>	Nil
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It may please be noted that exemption is granted to the service in the above Notfn/- and not to the person. (ic) whether it is done by the Municipality to the tender contractors or by any other person to any body and whatever may be the consideration it is fully exempted unconditionally and hence exemption has to be granted to the appellant in respect of the tender contractors.

11. Right to fishing in bond- Enjoyments of right - fishing in a particular bond.

i) Three years **tender contracts** by tender notice for the purpose of right to fishing

- (a)Service provider is the municipal corporation.
- (b)Service availer is the tender contractor who succeeded in the tender process
- (c)Service is right to take fish in a particular bond as per the prescribed conditions of tender.
- (d)consideration is the amount determined and confirmed in the tender process.

It may please be noted that exemption is granted to the service and not to the person. (ie) whether it is done by the Municipality to the tender contractors or by any other person to any body and whatever may be the consideration it is fully exempted unconditionally and hence exemption has to be granted to the appellant in respect of the tender contractors

12. Running a fish market.-right to sell fish in a particular shop in a specified area.

(i)Three years **tender contracts** by tender notice for the purpose of selling fish from a particular shop of a particular area.

- (a)service provider is the municipal corporation.
- (b)Service availer is the tender contractor who succeeded in the tender process
- (c)Service is enjoyments of fishing in a particular bond as per the prescribed conditions of tender.
- (d)consideration is the amount determined and confirmed in the tender process.

(ii) The functions entrusted to a Panchayat under the Eleventh Schedule to Article 243G of the Constitution.

(V) Fisheries

(xxii) Markets and fairs.

It may please be noted that exemption is granted to the service and not to the person. (ie) whether it is done by the Municipality to the tender contractors or by any other person to any body and whatever may be the consideration it is fully exempted unconditionally and hence exemption has to be granted to the appellant in respect of the tender contractors

13. For entry vehicle in the market

As per **Notification No. 14/2017-Central Tax (Rate)** New Delhi, the 28th June, 2017 “Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution [or to a Municipality under article 243W of the Constitution]” is not a service .Hence it is not chargeable to tax.

“entry of vehicles in the market” is covered under (q) of Twelfth Schedule to Twelfth Schedule to Article 243W of the Constitution which read as follows :

q) *Public amenities including street lighting, parking lots, bus stops and public conveniences.*

It has been ordered by the AAR that direct service by the municipal corporation w.r. t maintenance of park is covered under of Twelfth Schedule to Article 243W of the Constitution and hence covered under Notification No. 14/2017-Central Tax (Rate) New Delhi, the 28th June, 2017and hence it is not a service and it is not chargeable to tax. When it is out side the scope of service there is no need to examine who is the service availer and consideration received etc. When it is not a service it is applicable to tender contractors also due to the following reasons .

As per the Tamil Nadu District Municipalites Act, 1920 as detailed in para C above it is a fact that the contractors of municipal corporation are public servants and the services rendered by the municipal corporation to the contractors (public servants) could not be termed as service and the contractors could not be termed as business entities but they are agents of the municipality Hence the collection and maintenance work entrusted by the municipality to the contractors could not be termed as service since it is arrangement between principal and agent (ie) in this case Govt. and public servant and amount paid by the contractor to Govt . towards rendering of work entrusted under Section 374 and other provisions of the Tamil Nadu District Municipalities Act, 1920 and the functions entrusted to a municipality under the twelfth schedule to article 243W of the constitution could not be termed as service. As there is no service the question of payment of GST will not arise on all those lease contracts since the rate fixed by Govt. was adopted and the activity is rendered by the contractor to the public in the name of the local authority and receipt has been issued in the name of the local authority to the public.

Question No 3.

14. Annual track rent -Cable operator laying fee(optical fibre laying fee)

Charges towards cutting and repairing and rectification of roads and payment of annual rent for the optical cable laid alongside roads based on Contract.

- a)service provider is the municipal corporation
- (b)Service availer is the operator of phone/mobile services.
- (c) service is renting of immovable property service.
- (d) consideration is rent paid for optical cable laid alongside roads .

Whether the whole service can be treated as renting of immovable property service as composite supply and reverse charge can be applied since the service availers are registered with GSTN and the service provider is a local authority.

There are two charges collected(i) road cutting charges towards laying of cable and (ii) renting of road for the optical cables laid. Kind attention is invited to Section 2 (30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply; the principal supply is renting of space for laying cable and applying the above definition the road cutting charges has also to be treated as renting and whole service has to be classified as renting of immovable property service.

The ruling of the AAR are that the track rent is accounted under heading is accounted in the heading 1308007 and the road cutting charges (road restoration) is accounted under accounting head head 1407001. Also road cutting charges is one time supply. The rental charges are periodical. Both the supplies are not supplied in conjunction with each other in the ordinary course of business and therefore the same is not a composite supply.

The decision of the AAR is based on the accounting head of the two services which is not at all correct. It is true that road cutting charges is one time supply and the rental charges are periodical. But both the services are conjunction with each other in the ordinary course of business because without road cutting optical cable could not be laid. Without laying the cable rent could not be collected . Hence conjunction is there for road cutting and collecting rent for cable laid alongside road and hence it is

composite supply. Principal supply is renting and supplementary supply is road cutting

In view of the above the contention of the appellant that composite supply has to be adopted for road cutting charges may be accepted.

6.PERSONAL HEARING:

The Appellant was granted personal hearing through Virtual Personal Hearing as required under law before this Appellate Authority on 23-09-2021. The Authorized representatives of the Appellant Tvl. K. Sankaranarayanan , Advocate of the appellant company appeared for hearing. They reiterated the written submissions and emphasized that

1. In addition to the grounds of appeal submitted with the paper book documents the following grounds are submitted and the same was also requested to be taken on records as written submissions for the virtual hearing to be held on 23-09-2021 .
2. During the service tax period prior to 01-07-2017, show cause notice C.NO.V/15/48/2018ST Adj., SCN Sl No 06/2018 Commr. dated 24-10-2018(Annexure A attached) was issued by the Commissioner of Central Tax , Salem to Erode City Municipal Corporation (the appellant).In para 6 to 8 in page number 2 to 4 of the show cause notice, Commissioner discussed various provisions of THE TAMIL NADU DISTRICT MUNICIPALITES ACT, 1920 and CBEC Circular No.96/7/2007-ST F.No.354/28/2007-TRU New Delhi, the 23rd August, 2007 and concluded in the show cause notice itself that Parking fee, Market fees(annual lease), Market fee-weekly(Annual lease), slaughter house fee, fees on pay & use toilets(annual lease) and Garden/park receipts etc. were not chargeable to service tax. There is no major difference between concept of levy of service tax for the period prior to 01-07-2017 and the levy of GST w.e.f 01-07-2017 .Previously during service tax period the activities were covered under negative list / full exemption under Notfn No 25/2012 dated 20-06-2012.During GST period w.e.f 01-07-2012 as per Notification No. 14/2017-Central Tax (Rate) New Delhi, the 28th June, 2017 issued under Sub section (2) of section 7 the following activities or transactions undertaken by the Central

Government or State Government for Union territory[1] or **any local authority** in which they are engaged as public authority, shall be treated neither as a supply of goods nor a supply of service, namely:-

“Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution for to a Municipality under article 243W of the Constitution.

The decision of the Commissioner/Salem is applicable to the levy of GST for the above services. The decision of Commissioner of Central Tax ,Salem in the above show cause notice that Parking fee, Market fees(annual lease), Market fee-weekly(Annual lease), slaughter house fee, fees on pay & use toilets(annual lease) and Garden/park receipts etc that service tax were not chargeable will have major impact on GST period also as per CGST/TNSGST Act,2017 . It is submitted the above decision of Commissioner of Central Tax/Salem is not only applicable to the above services but also to all the activities Sl no 1 to 13 mentioned in the appeal as per the grounds of appeal submitted. Hence it is prayed the ratio of the decision of the Commissioner/Salem may be applied for the GST period also and the our appeal be allowed for all the activities from SL No 1 to 13 in case of the activities rendered by the appellant to tender contractors covered under Question 2 and also to the items covered under Question 1 in the present appeal.

3. Moreover the following decisions pertaining to the service tax /GST may also be taken into consideration and it is submitted that the ratio of the decisions is also applicable to the present appeal .

(i)2018 (364) E.L.T. 768 (Sett. Comm.)BEFORE THE SETTLEMENT COMMISSION, CUSTOMS, CENTRAL EXCISE AND SERVICE TAX, CHENNAI|ADDITIONAL BENCH|S/Shri C. Rajendiran, Vice-Chairman and R.D. Negi, Member IN RE : COMMISSIONER, MAHABOOBNAGAR MUNICIPALITY, TELANGANA Final Order No. 3/2018-S.T., dated 10-1-2018 in Application No. S.A. (S.T.) 51/2017 SC wherein it was decided that Service tax liability of market fees collected from contractors and on slaughter house fee charges collected from contractors were not chargeable.

(ii) 2019 (28) G.S.T.L. 193 (Cal.) IN THE HIGH COURT AT CALCUTTA Protik Prakash Banerjee, J.PIONEER COOPERATIVE CAR PARKING SERVICING AND CONSTRUCTION SOCIETY LTD .Versus STATE OF WEST BENGAL W.P. No. 9625 (W) of 2019, decided on 30-5-2019 wherein it has been decided that Parking services - Municipal Parking lots under Kolkata Municipal Corporation - Parking fees collected by a Cooperative Car Parking Servicing and Construction Society Ltd. for providing Municipal Parking lots, *prima facie*, not liable to GST as Municipal Corporation is also Municipality under Articles 243P and 243Q of Constitution of India and covered by exemption in respect of all functions under Article 243W *ibid* - Department directed not to take coercive action for recovery of GST for Municipal Parking lots - Section 73 of Central Goods and Services Tax Act, 2017/West Bengal Goods and Services Tax Act, 2017. *[paras 2, 3, 4]*

(iii). 2019 (20) G.S.T.L. 288 (Tri. - Mumbai) IN THE CESTAT, WEST ZONAL BENCH, MUMBAI S/Shri Ramesh Nair, Member (J) and Raju, Member (T) KARAD NAGAR PARISHAD Versus COMMISSIONER OF C. EX. & S.T., KOLHAPUR Final Order Nos. A/85156-85157/2018-WZB, dated 29-1-2018 in Appeal Nos. ST/85050 & 86031/2014-ST(DB) wherein it was decided that Renting of Immovable Property - Levy of Service Tax on slaughter house fees collected by Municipal Corporation - As per Twelfth Schedule of Constitution of India, Regulation of slaughter houses is sovereign function of Municipal Corporation - Demand of Service Tax on slaughter house fees collected, set aside - Section 65(90a) of Finance Act, 1994. *[para 4]*

iv) Hon'ble Madurai HC in the decision W.P.(MD)NO.12879 OF 2019 dated 22-02-2021 in case of Manonmaniam Sundaranar University decided that statutory functions are not chargeable to service tax.

Applying the ratio of the above decisions it has been prayed that the appeal of the appellant may be allowed by setting aside the order of the AAR.

7. DISCUSSION

7.1 We have carefully considered the various submissions made by the Appellant.

and the applicable statutory provisions. We find that the appellant has filed the present appeal only in respect of the following aspects:

- a. In respect of Q.No. 1 against Sl.No. 6 /Sl.No. 9 in as much the applicability of Sl.No. 56/76 of Notification No. 12/2017 dated 28.06.2017 was not considered and ordered by the LA;
- b. In respect of Q.No. 1, Sl.No. 5B-locker rent provided in bus-stand was ordered as taxable while the contention of the appellant is the said service is not taxable
- c. In respect of Q.No. 2 in respect of Sl.No. 1 to 13, it has been held that the appellant supply the rights held by them to the contractors through the tender process which is a supply made by them to the contractors who are business entities for furtherance of their business and it is not an activity in relation to the function entrusted under Article 243 G/W of the Constitution
- d. The LA has ruled that road cutting charges is one time supply; the rental charges are periodical; Both the supply are not in conjunction with each other in the ordinary course of business and therefore the same is not a composite supply

The above are taken up for consideration and ruling as under.

8.1 In respect of Q1 (Sl. No. 6 and 9), the AAR has given a ruling that services by way of slaughtering of animals / fees on pay & use toilets is neither a supply of goods nor a supply of service as per notfn. No. 14/2017-CT(R) as amended by notfn. No. 16/2018-CT(R) being an activity in relation to a function entrusted to a Municipality under Article 243W of the constitution, in which they are engaged as public authority. However, the appellant is not satisfied and has sought to appeal seeking another ruling from the appellate authorities that the activity is also covered under Sl no. 56 /76 of the table in notfn. No. 12/2017-CT(R). The very terms of reference for AAR as per S.95(a) is to provide a ruling for an applicant in relation to a supply being or proposed to be undertaken **by the applicant only (emphasis supplied)**. The Erode City Municipal Corporation being the applicant, having been given a ruling based on his activities as a Municipality under Article 243W of the constitution, cannot seek another ruling in the guise of appeal for the activity in general, whether the same be

covered by another entry in another notification or otherwise. In such a scenario, the ruling sought by the applicant is not for the activities undertaken by him but sought for the activity in general which is not permitted under S.95, especially when for the same service done by the tender contractors of the appellant, the same question has been raised by the appellant vide Q2. It appears only to be a ploy and an extravagant claim without supported by any legal fiction or rule nor even equity but only done to lure the AAAR into a trap of self-contradiction while answering further questions later and is therefore, highly condemnable. In view of the above, in respect of the question sought in Q 1 (Sl.No. 6 and 9), the appeal is not entertained.

3.2 In respect of sl. No. 5B (Rent for locker provided in bus stand), we find that the activities in relation to function entrusted to a municipality under 243W of the constitution are multitudinous and unless the provisions of respective state municipality acts are also read in conjoint with the functions entrusted under the constitution, it is not easy to fathom the activities undertaken by the municipalities in a state. On a harmonious reading of the provisions of the TamilNadu District Municipalities Act, 1920, together with the Twelfth Schedule to Article 243W of the constitution, providing bus stand in an area under the municipality with amenities for public at large is one of the activities of the municipality undertaken in the capacity of a public authority. Providing locker facility in a bus stand for the common man for which a fee is charged is only an activity ancillary to constructing a bus stand and therefore, there is no room for doubt in our minds that locker facility for common public in bus stand is an activity undertaken by the municipality as a function entrusted under 243W of the constitution and the services of rent or fee collection for such a facility is neither a supply of goods nor a supply of service as per notfn. No. 14/2017-CT(R) and hence exempt.

9.1 With respect to the same set of services raised in Q1 if not done directly by the municipal corporation but by the tender contractors (Q2), the appellant is aggrieved of the fact that the AAR had answered in negative for exemption and hence the appeal. The argument of the counsel for the municipal corporations is that section 7 (2) (b) allows the government, on the recommendation of the council, to notify such activities or transactions undertaken by the central government, state government or any local

authority in which they are engaged as public authorities, to be treated neither a supply goods nor a supply of services. In pursuance of this, the government has notified in notification 14/2017, that services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution or to a municipality under article 243W of the Constitution shall be treated neither has supply of goods or a supply of service.

In the present case, there are three parties, namely the corporation, the contractor and the public/consumer. The corporation enters into a contract with the contractor, requiring the contractor to provide to the public, a service which constitutes an activity covered under the above notification. This arrangement results in two sets of transactions, one between the Corporation and the contractor, and the other between the contractor and the public. The present application is restricted to seeking ruling on the tax applicable for the transaction between the corporation and the contractor.

The nature of activities under sl. No. 1 to 9 and 13 ('except Sl.No. 5A Charges for TV advt. in Bus Stand; 5C- Flower shop in bus stand in open space & Sl.No. 7 Bunk Stall) answered in affirmative by the AAR for direct services but not answered for the same set of activities if done by the contractors, has with all its variations and connotations indicate proximity with the main transaction indicated, i.e., functions under 243W of the constitution. It cannot be said to indicate any activities, not concerned with the functions indicated. The relationship is specific and tangible and has nexus and direct correlation with the functions under article 243G. The nature and constitution of performer is not distinct from the essential characteristics of the functions, envisaged under Art.243W. The criteria to determine that the activity is directly in relation to the functions entrusted under Article 243W viz., whether such activities are necessary to make the function operational or whether the activities are performed while carrying out the functions as such or the direct object of the activities enhances the value or efficiency of the functions or affects the nature of the functions etc., are met in full when performed by the contractors too. There is more than a mere indirect or incidental connection between the activities enumerated in Sl no. 1 to 9 and 13('except Sl.No. 5A-Charges for TV advt. in Bus Stand; 5C- Flower shop in bus stand in open space & Sl.No. 7-Bunk Stall) and the underlying functions under Art.243W. The functions are clearly identifiable to be the one from or in respect of

which the activity is received or supplied. Thus there is a close link or association between the activity and the functions. It is not the proportionality of the activity which determines whether it is in relation to the function but the implications of the legislative assessment of the term 'in relation to' is more tilted towards nexus, inseparability and identity of the activities involved with the functions and not merely on other parameters. However, in this case, the tender contractors appear to render back to back services to the municipal corporation. Needless to say, this exemption will not apply if the contractor has performed an activity that only has an indirect connection with the functions entrusted or if the activity is only an incidental component of a more comprehensive supply of other services.

Clearly, the transaction between the corporation and the contractor is an activity/transaction undertaken by the local authority, engaged as public authority. The requirement explicitly stated in section 7(2)(b) are met. Further, in as much as this transaction/activity undertaken by the corporation is an activity covered under the above notification, this transaction/activity under sl. No. 1 to 9 and 13 ('except Sl.No. 5A-Charges for TV advt. in Bus Stand; 5C- Flower shop in bus stand in open space & Sl.No. 7-Bunk Stall') listed by the AAR as neither a supply of goods nor a supply of service are available to contractors also provided the same are rendered as back to back services to the appellant.

9.2 With respect to operation of flower shops by contractors, Bunk Stalls by contractors as well as advertisement rent through TVs installed in the bus stand, as awarded by the appellant, since the same are earmarked to be kept at a particular location and at the same time ensuring prominence of location to attract buyers and further since a rent is fixed under contractual agreements, the same would fall under 'renting of immoveable property' services as defined under definitions 2(zz) under the notfn. No. 12/2017 and the exemption under sl.no. 7 of notfn no. 12/2017-CT (Rate) is available as well as charging of tax on RCM basis under sl. No. 5 of notfn. 13/2017-CT(R) subject to fulfilment of the conditions spelt out therein.

10.1 In respect of the question pertaining to whether the charges obtained for the service of road cutting for the purpose of laying cables by telephone companies alongside roads on contract basis is a composite supply, the question is answered in

affirmative. Though two charges are collected by the appellant for road cutting and annual rent for cables running across the road, it can be seen that unless road is cut, cables cannot be laid and mere road cutting without laying of cables is useless. Therefore, both the services have to run in tandem with respect to the telephone companies and the methodology of collection of money is immaterial to the fact of the activities of road cutting and laying of cables, which is indeed a composite supply. It must also be noted that this is a factual question and is restricted to the particular activity of road cutting followed by laying of cables by telephone companies and therefore, the same is not to be extended to all the types of road cutting activities.

11. In light of the above, we rule as under:

RULING

- a. In respect of Q.No. 1 against Sl.No. 6 & Sl.No. 9, the appeal is not entertained for the reasons stated in para 8.1 above
- b. In respect of Q.No. 1, Sl. No. 5-B (Rent for locker provided in bus stand by the appellant) it is held to be an activity undertaken by the Municipality as a function entrusted under 243 W of the Constitution and the service of rent or fee collection for such a facility is neither a Supply of Goods nor a supply of Service as per Notification No. 14/2017-CT (Rate)
- c. In respect of Q.No. 2, the transaction between the corporation and the contractor as listed in Sl.No. 1 to 9 and 13, except at Sl.No. 5A-Charges for TV advt. in Bus Stand; 5C-Flower shop in bus stand in open space & Sl.No. 7 Bunk Stalls' of the said question, in the factual matrix presented, it is held to be an activity/transaction in relation to the activity/transaction undertaken by the appellant engaged as Public authority and the same are covered under Notification No. 14/2017-C.T.(Rate) as amended
- d. In respect of Q.No. 2, Sl.No. 5A-Charges for TV advt. in Bus Stand; 5C-Flower Shop in bus stand in open space & Sl. No. 7 -Bunk Stall' of the said question, the same is covered under Sl.No. 7 of Notification No. 12/2017-CT (Rate) as well as charging of tax on RCM basis under Sl.No. 5 of Notfn No. 13/2017 – CT (Rate) subject to fulfillment of the conditions therein is available to appellant.
- e. In respect of supply of services of allowing road cutting and the subsequent track renting, the situation being factual in as much as the road cutting is

followed by laying of cables by telephone companies for which track rent is collected, the supply would be a 'Composite Supply', restricted to this particular activity and not extended to all types of road cutting activities.

The subject appeal is disposed of accordingly


(M.A. SHADIQUE)
Principal Secretary/
Commissioner of Commercial Taxes,
Tamil Nadu ~~APPENDATEAR~~.


(M.V.S. CHOUDARY)
Chief Commissioner of GST & Excise
Chennai Zone/Member, AAAR.

**AUTHORITY FOR
ADVANCE RULING**

01 DEC 2021

To **GOODS AND SERVICE TAX**
Chennai-5, Tamilnadu.
T.M. The Erode City Municipal Corporation,
246,Brough Road,
Erode-638 001 //By RPAD // E-Mail id: commr.erode@tn.gov.in

Copy to:

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