

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH
4, Vibhuti Khand, Gomti Nagar, Lucknow

ADVANCE RULING NO. UP ADRG - 20/2023 **DATED 22-3-2023**

PRESENT:

- 1. Shri Rajendra Kumar**
Additional Commissioner, Central Goods and Service Tax
.....Member (Central Tax)
- 2. Shri Harilal Prajapati**
Joint Commissioner, State Goods and Service Tax .Member (State Tax)

1.	Name of the Applicant	M/s RUDRABHISHEK ENTERPRISES LIMITED A 6, SECTOR 58, NOIDA, Uttar Pradesh, 201301
2.	GSTIN or User ID	09AAACR0707L2ZD
3.	Date of filing of Form GST ARA-01	29-11-2022
4.	Represented by	Shri Pankaj Kumar Shukla (CA & Authorized representative)
5.	Jurisdictional Authority-Centre	Division-II Noida, Commissionerate-Noida
6.	Jurisdictional Authority-State	Range-Gautambudha Nagar(B), Zone-Gautambudha Nagar
7.	Whether the payment of fees discharged and if yes, the amount CIN	Yes HDFC22110900506223

ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 & UNDER SECTION 98(4) OF THE UPGST ACT, 2017

- 1.** M/s RUDRABHISHEK ENTERPRISES LIMITED, A 6, SECTOR 58, NOIDA, Uttar Pradesh, 201301, (here in after referred to as the applicant) is a registered assessee under GST having GSTN: 09AAACR0707L2ZD.
- 2.** The Applicant has submitted application for Advance Ruling dated 29-11-2022 enclosing duly filled Form ARA-01(the application form for Advance Ruling).
- 3.** The Applicant in his application sought Advance Ruling as follows : –
 - (1) Whether the Project Development Service (i.e. Detailed Project Report Service ('DPR') and Project Management Consultancy services ('PMCS') provided by the applicant to the recipient under the Contract from State Urban Development Agency (SUDA) under the Contract for PMAY-U would qualify as an activity in relation to function entrusted to Panchayat or Municipality under Article 243G or Article 243W respectively, of the Constitution of India?
 - (2) If answer to first question is in affirmative then, whether such services provided by the applicant would qualify as Pure services (excluding works contract service or composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local 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, as provided in serial number 3 of Notification No. 12/2017-Central Tax (Rate) dated 28 June, 2017, as amended and corresponding Notifications No. K.A.N.I.-2-843/X1- 9 (47) / 17-UP. Act-1 - 2017 - Order - (10) - 2017 Lucknow, dated June 30, 2017, as amended, issued under Uttar Pradesh Goods and Service Tax Act, 2017 ('UPGST Act'), where the Project cost includes the cost of service rendered along with reimbursement of cost of procurement of goods for rendering such service, and, thus, be eligible for exemption from levy of CGST and UPGST, respectively.

4. As per the declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending in any proceedings nor decided in any proceedings in the applicant's case under any of the provisions of the CGST Act, 2017/UPGST Act, 2017.

5. The applicant has submitted following facts-

1. Under the Department of Urban Employment and Poverty Alleviation Program at the state level, STATE URBAN DEVELOPMENT AGENCY (SUDA in short) has been constituted as the nodal agency in the Uttar Pradesh government. At the district level District Urban Development Agencies (DUDAs) have been established. Through these agencies (SUDA/DUDA), schemes for social and economic upliftment of the urban poor are being implemented. In the direction of all-round upliftment of the urban poor by the Department of Urban Employment and Poverty Alleviation Programme, the following scheme is being operated mainly through the State Urban Development Agency (SUDA) - Pradhan Mantri Awas Yojana-Housing for All (Urban) Mission.

As SUDA Lucknow is a State Level Nodal Agencies (SLNA) for PMAY (U) in Uttar Pradesh, SUDA through its Director invited technical and financial proposals from eligible Consultancy Firms / Agencies/ Companies for Preparation of Detailed Project Report (DPR) and providing Project Management Consultancy Service (PMC) services under Pradhan Mantri Awas Yojna (PMAY in short) for Projects under Beneficiary Led Construction in 635 Urban Local Bodies/Authorities in Uttar Pradesh by its Request for Proposal (RFP) vide Invitation No. 708/01/29/HFA/2016-17 dated 01/02-06-2017 (RFP Attached Annexure-4) (Page Nos. 55-116).

2. Brief Description of the Project-

Pradhan Mantri Awas Yojana – Urban (PMAY-U), a flagship Mission of Government of India being implemented by Ministry of Housing and Urban Affairs (MoHUA), was launched on 25th June 2015. The Mission addresses urban housing shortage among the EWS/LIG and MIG categories including the slum dwellers by ensuring a pucca house to all eligible urban households by the year 2022, when Nation completes 75 years of its Independence. PMAY(U) adopts a demand driven approach wherein the Housing shortage is decided based on demand assessment by States/Union Territories. State Level Nodal Agencies (SLNAs), Urban Local Bodies (ULBs)/ Implementing Agencies (IAs), Central Nodal Agencies (CNAs) and Primary Lending Institutions (PLIs) are main stakeholders who play an important role in implementation and success of PMAY(U).

The Mission covers the entire urban area consisting of Statutory Towns, Notified Planning Areas, Development Authorities, Special Area Development Authorities, Industrial Development Authorities or any such authority under State legislation which is entrusted with

the functions of urban planning & regulations. The scheme has been divided into four verticals as given below:

- Slum rehabilitations of slum dwellers with participation of private developers using land as a resource
- Promotion of affordable housing for weaker section through credit linked subsidy
- Affordable housing in partnership with Public and Private sectors
- Beneficiary- Led individual house construction

3. "M/s RUDRABHISHEK ENTERPRISES LIMITED", among others qualified the terms and conditions of above RFP and shortlisted as an agency for "Preparation of Detailed Project Report" and providing "Project Management Consultancy Service" under Pradhan Mantri Awas Yojna (PMAY) in various districts of U.P. Principal Secretary U.P. Govt. vide Government Order No. 483/2018/1584/69-1-2018-14(139)/2015 TC Dated 04-09-2018 to Director SUDA specified the list of shortlisted agencies for the above services, where in the Name of REL is also mentioned. The G.O. is attached here.

4. SUDA Lucknow on 10th July 2017 has entered into three agreements with M/s RUDRABHISHEK ENTERPRISES LIMITED, A 6, SECTOR 58, NOIDA, Uttar Pradesh, 201301 which was formerly known as RUDRABHISHEK ENTERPRISES PRIVATE LIMITED (here in after called the applicant) vide agreement no. 708/01/29/HFA/2016-17 for Cluster No. 7 (Chitrakoot); agreement no. 708/01/29/HFA/2016-17 for Cluster No. 14 (Meerut); and vide agreement no. 708/01/29/HFA/2016-17 for Cluster No. 16 (Moradabad) for "Preparation of Detailed Project Report" and providing "Project Management Consultancy Service" under Pradhan Mantri Awas Yojna Urban(PMAY-U) specifying the terms of reference and scope of work as per model RFP No. 708/01/29/HFA/2016-17 dated 01/02-06-2017 of SUDA referred above. After entering into such agreements, work orders for various local bodies/authorities under the cluster were issued by SUDA one by one after completion of work of a given local body.

5. To understand purpose and scope of work for which the applicant has gone into contract with SUDA and PMAY.

6. SUDA has been established as a state level nodal agency, under the department for Urban Employment and Poverty Alleviation by Uttar Pradesh Government to carry out any function entrusted to a municipality under article 243W of the Constitution. As per the "Memorandum of Association of State Urban Development Agency", it's main objectives shall be-

- (a) To identify the urban poor in the state.
- (b) To draw up plans and formulate schemes for the upliftment of the urban poor in the state.
- (c) To implement schemes for the benefit of the urban poor either directly or through other agencies engaged in this direction, whether private, public or cooperative.
- (d) To review the progress of the execution of these activities as well as effectiveness of the benefits directed towards the urban poor.
- (e) To set up or establish any specific service such as training facilities, infrastructural etc. in furtherance of the economic interest of the urban poor.

7. As per the Memorandum of Association, the Secretary, Urban Employment and Poverty Alleviation Program, will be the Chairman of the SUDA. Further, as per point no. 33 of Article Of Association, the accounts of SUDA shall be subject to an audit by the Comptroller and Auditor General of India and as per point no. 43, "Members to receive no profit upon dissolution of the society if after disposal and settlement of the property of the society and its claims and liabilities, there are any surplus assets, such assets shall not be paid to or distributed amongst the members of the society or any of them but shall be disposed off as directed by the Government of India or State Government. Memorandum of SUDA is attached herewith.

8. As SUDA has been established as a state level nodal agency, under the department of Urban Employment And Poverty Alleviation by Uttar Pradesh Government and as per the information contained in Memorandum Of Association (in para 15.vi above), it is clear that SUDA is a part of State Government of UP.

In view of facts stated above, it can be established that SUDA falls under Government category.

9. District Urban Development Agency (DUDA in short), as mentioned above is organizational extension of SUDA in various Districts of Uttar Pradesh. DUDA works on same lines of objectives in a district on which SUDA works in the entire state of Uttar Pradesh. District Magistrate is the Chairman of the Governing Body of DUDA having other Government Officers and Chairpersons of elected local bodies of the district as the members of governing body. All the beneficiaries of the schemes are habitants of the local bodies of the districts. The reports are submitted by applicant to office of DUDA and assessment of quality of service is done with DUDA and such local bodies in the respective districts.

10. Further As per website of the Pradhan Mantri Awas Yojna- Housing for All (Urban), Ministry of Housing and Urban Affairs, the PMAY is a scheme to provide central assistance to Urban Local Bodies (ULBs) and other implementing agencies through States/UTs for rehabilitation of existing slum dwellers using their land as a resource through private participation, and affordable housing in partnership. As per the details available on website SUDA is the state level nodal agency for PMAY(U) in the state of Uttar Pradesh.

11. Furthermore, the matters listed in the 11th and 12th schedule to the constitution (details 243G and 243W, respectively), as functions pertaining to Panchayats/Municipality, are inter alia: (a) Safe water for drinking, (b) Maintenance of community assets, (c) Family welfare, (d) Markets and Fairs, (e) Poverty Alleviation Programmes, (f) Regulation of land use and construction of land buildings, (g) Urban planning including the town planning, (h) Planning for economic and social development, (i) Urban poverty alleviation, (j) Slum improvement and up-gradation.

12. Now, The scope of work by the applicant with the contractor -

A. Scope of work under Preparation of DPR:

- 100% physical verification includes door survey, collection of land documents and consent letters from the beneficiaries as per HFAPOA (Housing for All by 2022- Plan of Action), data

collection, data verification and data compilation

- Inclusion of present status and proposed works of infrastructure details.

- MIS Entry.
- Key stakeholder consultations.
- Preparation of beneficiaries wise detailed Architectural/Engineering designs. Drawing and estimates for all sizes of plots, project structuring under appropriate development and funding mechanism. .
- Assistance in obtaining appropriate approvals from concerned agencies/departments. .
- Appropriating all necessary data in reference to Slum Free city Plan in the DPR.
- The DPR should be complete in all respect with all report drawings, statements and documents necessary for obtaining the grant from the Government of India.

B. Scope of Work under Project Management Consultancy (PMC)/Supervision Services:

- PMC will coordinate, execute and monitor the activities leading to the construction of approved DUS (Dwelling units) by Govt. of India.
- All the activities till the completion of DUS will be taken care of by PMC.
- PMC shall also administer the works by the beneficiaries and ensure that the agreement between the ULBs and beneficiaries whether related to quality or quantities of work are executed in accordance with its provisions.
- PMC shall attach Beneficiaries to the project in PMAY-MIS and also upload Annexure 7A & 7C.
- PMC shall execute all MIS related work of PMAY (U).
- PMC will supervise the construction work to ensure adherence to the drawings, prescribed high standards of quality and timely completion of the project and verify and certify the progress of the work.
- Preparation of Physical and Financial progress and shall submit to respective ULBs and DUDA.
- Preparation of individual files consist of application, copy of Aadhar Card, bank details, land documents, consent letters etc, stage wise photographs for every beneficiaries.
- PMC will assist Beneficiaries at various stages such as Plinth Level, Lintel Level, roof level and final finishing works and assist to get timely installments.
- PMC will make sure that the project/ DUs construction must complete as per the agreement made with the beneficiaries for the successful and timely implementation of the Project.
- PMC will implement GEO tagging of constructions of all the stages.
- Time extension will not be considered except in very exceptional cases without prejudice to levy of penalties. However any approval for extension of time of completion of the works stipulated in the construction, beneficiaries will be without any additional financial implication.
- PMC shall be fully responsible for quality control and shall put in place such measures as are

essential for ensuring regular on site quality check.

- PMC shall submit the tentative organization chart for managing the project so that appropriate decisions are taken quickly. However, the actual number of technical and financial personnel to be deployed and the deployment schedule shall be prepared by the PMC and manually agreed upon after award of work. .

- Generate and submit to the ULBs time to time progress reports in the agreed formats and the agreed frequency.

- PMC shall also apprise the beneficiaries of the progress or activities of the project on fortnightly/monthly basis.

- Cash flow Chart —Actual and Scheduled & Bar Chart Actual and Scheduled Status of payments of beneficiaries. Photographs of various stages (Before excavation, Foundation, Plinth Level, Lintel Level & Completion) of DUs of each beneficiary, Geo tagging of constructions all the stages Visitors' Site Inspection, Settlement of all accounts of the beneficiaries with the ULBs.

- Provide project completion report/closure report which shall contain all technical and financial information of the project.

6. The applicant has submitted statement containing the applicant's interpretation of law as under-

1. Issue raised in the application is squarely covered under Section 97(2) (b) of the CGST Act 2017 being a matter related to applicability of a notification issued under the provisions of this Act.
2. The provisions of both the CGST Act and the UPGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the UPGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling Application, a reference to such a similar provision under the CGST Act / UPGST Act would be mentioned as being under the CGST Act'.

3. As per Constitution of India the text of Article 243G and 243W stands as follows-

Functions entrusted to Panchayats as laid down under section 243G of the Constitution of India are:-

“Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to-

- (a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.”

Functions of Municipality as laid down under section 243W of the Constitution of India are:-

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

(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.”

4. According to foregoing discussions it may be construed that the Consultancy services rendered i.e. DPR and PMC under the contract with SUDA as per scope of RFP issued by SUDA, and for PMAY-U are in relation to functions entrusted to Municipalities under Article 243G and to Panchayats under Article 243W of the Constitution of India.
5. Now coming to second question for consideration which is a corollary to the first, when answer to the first is in affirmative. Since it may be established that answer to the first question is in affirmative, moving to decide as to whether such services provided would qualify as "Pure services (excluding works contract service or other composite supplies involving supply of any goods)" as provided in serial number 3 of Notification No. 12/2017- Central Tax (Rate) dated 28 June, 2017 as amended (relevant portion is reproduced below), and corresponding Notifications No. KA.N.I.-2-843/X1-9 (47) / 17-UP. Act-1 - 2017 - Order - (10) - 2017 Lucknow, dated June 30, 2017 issued under Uttar Pradesh Goods and Service Tax Act, 2017 ('UPGST Act') as amended (relevant portion attached as per Annexure- 9 (Page Nos. 148-153)), where the Project cost includes the cost of service rendered along with reimbursement of cost of procurement of goods for rendering such service and, thus, be eligible for exemption from levy of CGST and UPGST, respectively.
6. The extracts of Notification No. 12/2017-Central Tax (Rate) dated 28 June, 2017, as amended are as follows:

Table

S.No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	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 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

7. Going through the Scope of work under preparation of DPR and scope of work under PMC, this may be clearly observed that such services provided would qualify as "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 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 as provided in serial number 3 of Notification No. 12/2017- Central Tax (Rate) dated 28 June, 2017, as amended and corresponding Notifications No. K.A.N.I.-2-843/X1-9 (47) / 17-UP. Act-1 - 2017 - Order - (10) - 2017 Lucknow, dated June 30, 2017 issued under Uttar Pradesh Goods and Service Tax Act, 2017 ('UPGST Act'), as amended where the Project cost includes the cost of service rendered along with reimbursement of cost of procurement of goods for rendering such service and, thus, be eligible for exemption from levy of CGST and UPGST, respectively.
8. As per the said entry (entry no. 3 of notification No. 12/2017 Central Tax (Rate) dated 28 June, 2017, as amended), the main conditions for the exemption are:
- It should be a pure service (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
 - 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.

9. Hence since it is established in para 15.vi & 15.vii supra and the same was also observed by AAAR in an identical matter vide Appeal Order NO. 17/AAAR/02/07/2021, that SUDA falls under Government Category and the services of providing "Preparation of Detailed Project Report (DPR)" and providing "Project Management Consultancy Service (PMC)" under Pradhan Mantri Awas Yojna (Urban), by the applicant, in terms of contract entered between applicant and SUDA, as per scope of RFP issued by SUDA, are PURE services and are exempt from GST.

10. M/s. KDS Services Private Limited, Lucknow, Uttar Pradesh was providing Project Development Service (i.e. Detailed Project Report Service) and Project Management Consultancy services ('PMCS') under the back to back Contract to SUDA under the Contract for Pradhan Mantri Awas Yojna-Urban "PMAY-U".

In this regard copy of AAR Order No. 07/2022 dated 01.07.2022, in the case of M/S KDS Services Private Limited, Lucknow, Uttar Pradesh is attached herewith as per Annexure- 10 (Page Nos. 154-169) where the same two questions as raised here in this application were raised before the Authority for advance ruling "AAR". Answers to both the questions were given in affirmative by the AAR.

11. Thus this has been established that based on the above Notification No. 12/2017, as amended, issued under Central Tax (Rate), GST is exempt in the hands of applicant in case of DPR and PMCs provided to SUDA.

7. The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer his comments/views/verification report on the matter. But no reply was received.

8. The applicant was granted a personal hearing in the matter. In compliance, Shri Pankaj Kumar Shukla, Chartered Accountant & Authorized representative, attended personal hearing in person on 12.01.2023 on behalf of the applicant. During the personal hearing, he reiterated the submissions already made in the application of advance ruling.

DISCUSSION AND FINDING

9. At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the UPGST Act. Further for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / UPGST Act would be mentioned as being under the 'CGST Act'.

10. We have gone through the submissions made by the applicant and have examined the explanation submitted by them. At the outset, we find that the issue raised in the application is squarely covered under Section 97(2)(b) of the CGST Act 2017 being a matter related to applicability of a notification issued under the provisions of this Act. We therefore, admit the application for consideration on merits.

11. We have gone through the submissions made by the applicant and examined the detailed explanation submitted by them. We observe that the question sought by the applicant is as under-

(1) *Whether the Project Development Service (i.e. Detailed Project Report Service ('DPR') and Project Management Consultancy services ('PMCS') provided by the applicant to the recipient under the Contract from State Urban Development Agency (SUDA) under the Contract for PMAY-U would qualify as an activity in relation to function entrusted to Panchayat or Municipality under Article 243G or Article 243W respectively, of the Constitution of India?*

(2) *If answer to first question is in affirmative then, whether such services provided by the applicant would qualify as Pure services (excluding works contract service or composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local 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, as provided in serial number 3 of Notification No. 12/2017- Central Tax (Rate) dated 28 June, 2017, as amended and corresponding Notifications No. KA.N.I.-2-843/X1- 9 (47) / 17-UP. Act-1 - 2017 - Order - (10) - 2017 Lucknow, dated June 30, 2017, as amended, issued under Uttar Pradesh Goods and Service Tax Act, 2017 ('UPGST Act'), where the Project cost includes the cost of service rendered along with reimbursement of cost of procurement of goods for rendering such service, and, thus, be eligible for exemption from levy of CGST and UPGST, respectively.*

12. We observe that as per Sl. No. 3 of Notification No. 12/2017-CT (Rate) dated 28.06.2017 “*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 243W of the Constitution*” as amended by notification no. 16/2021-central tax (rate) w.e.f.1.1.2022 are exempt from tax.

13. We observe that SUDA has been established as a state level nodal agency, under the department for Urban Employment and Poverty Alleviation by Uttar Pradesh Government. As per the “Memorandum of Association of State Urban Development Agency”, its main objectives shall be-

(a) To identify the urban poor in the state.

(b) To draw up plans and formulate schemes for the upliftment of the urban poor in the state.

(c) To implement schemes for the benefit of the urban poor either directly or through other agencies engaged in this direction, whether private, public or cooperative.

(d) To review the progress of the execution of these activities as well as effectiveness of the benefits directed towards the urban poor.

(e) To set up or establish any specific service such as training facilities, infrastructural etc. in furtherance of the economic interest of the urban poor.

14. As per the Memorandum of Association, the Secretary, Urban Employment & Poverty alleviation Programme, will be the Chairman of the SUDA and Director SUDA Lucknow will be Executive Secretary. Further, as per point no. 33 of Article of Association, the accounts of the SUDA shall be subject to an account audit by the Comptroller and Auditor General of India and as per point no. 43 “*Members to receive no profit upon dissolution of the society if after disposal and settlement of the property of the society and its claims and liabilities, there are any surplus assets, such asset shall not be paid to or distributed amongst the member of the*

society or any of them but shall be disposed off as directed by the Government of India or State Government”.

15. As SUDA has been established as a state level nodal agency, under the department for Urban Employment and Poverty Alleviation by Uttar Pradesh Government and as per the information contained in Memorandum of Association (in Para 14 above), it is clear that SUDA is a part of State Government of UP. The said observation is further supported by the following Government Orders which is addressed to the Director, SUDA UP, Department for Urban Employment and Poverty Alleviation (available on www.shasnadesh.up.nic.in).

- (i) No. 172/69-1-10-75(Sa)/97 dated 26.02.2010 and No. 123/2021/174/69-1-21-14(137)/12 dated 11.05.21 both regarding continuity of post in SUDA/DUDA UP.
- (ii) No. 595/69-1-10-14(27)/10 dated 24.05.2010 regarding declaration of property by the employees of SUDA/DUDA UP.

In view of facts stated above, at least it can be established that SUDA falls under Government category.

16. Further, as per website of Pradhan Mantri Awas Yojana-Housing for All (Urban), Ministry of Housing and Urban Affairs, the PMAY is a Scheme to provide central assistance to Urban Local Bodies (ULBs) and other implementing agencies through States/UTs for Rehabilitation of existing slum dwellers using their land as a resource through private, participation, and affordable Housing in Partnership. As per the details available on website SUDA is the state level nodal agency for PMAY(U) in the state of Uttar Pradesh.

17. Now coming to the functions entrusted to Panchayats/Municipalities, the matters listed in the 11th and 12th schedule to the constitution (details 243G and 243W, respectively), are inter alia: (a) Safe water for drinking, (b) Maintenance of community assets, (c) Family welfare, (d) Markets and Fairs, (e) Poverty Alleviation Programmes, (f) Regulation of land use and construction of land buildings, (g) Urban planning including the town planning, (h) Planning for economic and social development, (i) Urban poverty alleviation, (j) Slum improvement and up-gradation etc. Further as per the preface to the PMAY, Housing for All (Urban) Scheme Guidelines:-

“The Mission seeks to address the affordable housing requirement in urban areas through following programme verticals:

- *Slum rehabilitation of Slum Dwellers with participation of private developers using land as a resource*
- *Promotion of Affordable Housing through Credit Linked Subsidy*
- *Affordable Housing in Partnership with Public & Private sectors*
- *Subsidy for Beneficiary-Led individual house construction /enhancement.”*

18. In view of forgoing discussions, we are of the opinion that the Consultancy services rendered by the Applicant under the contract with SUDA, and for PMAY are in relation to functions entrusted to Municipalities / Panchayats under Article 243W / 243G of the Constitution of India.

19. Now coming to the second question that whether such services provided by the Applicant would qualify as Pure services, we come to examine the scope of work under agreement, as provided by the Applicant:-

- a. Identification and Validation of new beneficiaries/replacement of beneficiaries as and when required
- b. Scope of work under preparation of DPR:-

- 100% Physical verification including Door to Door Survey,
 - Collection of land documents and consent letter from the beneficiaries
 - Data collection, Data verification and Data compilation
 - Inclusion of present status and proposed works of infrastructure details
 - MIS Entry
 - Key Stakeholder consultations
 - Preparation of Beneficiaries wise detailed Architectural/ Engineering designs, Drawings & Estimates for all sizes of plots
 - Project structuring under appropriate development and funding mechanism
 - Assistance in obtaining approvals from concerned agencies / departments
 - The Consultant shall incorporate all necessary data in reference to Slum Free City Plan in the DPR.
 - The DPR should be complete in all respects with all reports drawings, statements and document necessary for obtaining the grant from the Government of India.
 - The DPR shall be computer typed and printed and drawing should be in Auto Cad.
- c. Scope of work under Project Management Consultancy (PMC):-
- PMC will coordinate, execute and monitor the activities leading to the construction of approved DUs by Govt. of India. All the activities till the completion of DUs will be taken care of by PMC.
 - PMC shall also administer the works by the beneficiaries and ensure that the agreement between the ULBs and Beneficiaries whether related to quality or quantities of works are executed in accordance with its provisions.
 - PMC shall attach Beneficiaries to the project in PMA YMIS and also upload Annexure 7C/7D/7E.
 - PMC shall execute all MIS related work of PMAY (U).
 - PMC will supervise the construction work to ensure adherence to the drawings, prescribed high standards of quality and timely completion of the project and verify and certify the progress of the work.
 - Preparation of Physical and Financial progress and shall submit to respective ULBs and DUDA
 - Preparation of individual files consist of application, copy of Aadhar card, bank details, land documents, consent letters etc, stage wise photographs for every beneficiaries.
 - PMC will assist Beneficiaries at various stages such as Plinth Level, Lintel Level, roof level and final finishing works and assist to get timely installments.
 - PMC will make sure that the project / DUs construction must complete as per the agreement made with the beneficiaries for the successful and timely implementation of the Project.
 - PMC will implement the Geo tagging of constructions of all the stages.
 - Time extension will not be considered except in very exceptional cases without prejudice to levy of penalties. However any approval for extension of time of completion of the works stipulated in the construction, beneficiaries will be without any additional financial implication.
 - PMC shall be fully responsible for quality control and shall put in place such measures as are essential for ensuring regular on site quality checks.
 - PMC shall submit the tentative organization chart for managing the project so that appropriate decisions are taken quickly.
 - However, the actual number of technical and financial personnel to be deployed and the deployment schedule shall be prepared by the PMC and mutually agreed upon after award of work.

- Generate and submit to the ULBs time-to-time progress reports in the agreed formats and at the agreed frequency.
- PMC shall also apprise the beneficiaries of the progress and/or activities of the project on fortnightly/monthly basis.
- Cash Flow Chart – Actual and Scheduled & Bar Chart-Actual and Scheduled
- Status of Payment to beneficiaries
- Photographs of various stages (Before Excavation, Foundation, Plinth level, Lintel Level & Completion) of DUs of each beneficiary
- Geo tagging of constructions of all the stages
- Visitors' Site Inspection
- Settlement of all accounts of the beneficiaries with the ULBs
- Provide project completions report/closure report which shall contain all technical and financial Information of the project.

20. After examining the agreement and scope of work, we are of the opinion that services mentioned in the contract would qualify as Pure Service (excluding works contract service or other composite supplies involving supply of any goods)" as provided in serial number 3 of Notification No. 12/2017- Central Tax (Rate) dated 28 June, 2017 issued under Central Goods and Services Tax Act, 2017 ('CGST') and corresponding Notifications No. — KA.N.I.-2-843/X1- 9 (47) / 17-UP. Act-1 - 2017 - Order - (10) - 2017 Lucknow, dated June 30, 2017 issued under Uttar Pradesh Goods and Service Tax Act, 2017 ('UPGST Act').

21. We find that in an identical matter, the Appellate Authority of Advance Ruling, Uttar Pradesh vide Appeal Order No. 17/AAAR/02/7/2021 dated 02.07.2021 has held as under-

In view of above discussion, we hold that the Services rendered by the appellant to the State Urban Development Agency, Uttar Pradesh (SUDA), and for PMAY are in relation to functions entrusted to Municipalities under Article 243W and to Panchayats under Article 243G of the Constitution of India and such services would qualify as Pure Service (excluding works contract service or other composite supplies involving supply of any goods)".

22. However, in the instant case, the applicant is providing services of *Project Development Service (i.e. Detailed Project Report Service/Beneficiary Document Preparation) and Project Management Consultancy services ('PMCS')/Supervision Services* to SUDA as a sub-contractor. SUDA Lucknow on 10th July 2017 has entered into three agreements with M/s RUDRABHISHEK ENTERPRISES LIMITED, A 6, SECTOR 58, NOIDA, Uttar Pradesh, 201301 which was formerly known as RUDRABHISHEK ENTERPRISES PRIVATE LIMITED (here in after called the applicant) vide agreement no. 708/01/29/HFA/2016-17 for Cluster No. 7 (Chitrakoot); agreement no. 708/01/29/HFA/2016-17 for Cluster No. 14 (Meerut); and vide agreement no. 708/01/29/HFA/2016-17 for Cluster No. 16 (Moradabad) for "Preparation of Detailed Project Report" and providing "Project Management Consultancy Service" under Pradhan Mantri Awas Yojna Urban(PMAY-U) specifying the terms of reference and scope of work as per model RFP No. 708/01/29/HFA/2016-17 dated 01/02-06-2017 of SUDA referred above. After entering into such agreements, work orders for various local bodies/authorities under the cluster were issued by SUDA one by one after completion of work of a given local body.

23. The applicant has submitted that service provided by sub-contractor regarding DPR and PMS to main contractor shall be exempted because such services stands exempted as long as they are provided to SUDA under PMAY either by main contractor or by subcontractor. They have cited following orders in their support-

- (1) Rajasthan Authority for Advance Ruling, vide Advance Ruling No. RAJ/AAR/2019-20/28 dated 19.12.2019, in the case of Sevak Ram Sahu (M/S S.R.S. Enterprises) wherein the Authority has observed that
".... The entry does not speak of contractor or sub-contractor but supply of pure service by way of construction under certain project. It clearly stipulates that whosoever is supplying the pure labour contract services for the construction of a civil structure or any other original work under PMAY is exempt from GST."
- (2) Appellate Authority for Advance Ruling, Maharashtra, Order No. MAH/AAAR/SS-RJ/15/2018-19 dated 03.01.2019 in the case of M/s Shree Construction wherein it was observed that-
"...In the instant case though the respondent i.e. M/s Shree Construction is providing works contract service to its main contractor who has entered into works contract agreement with Railways, the composite supply of works contract being carried out by M/s Shree Construction is ultimately going to the use of Railways without being subjected to any change or modification, thus the said work contract, though undertaken by the sub-contractor is undoubtedly pertaining to the Railways and no one else. Thus the condition specified under item (u) of the sr. 3 of the said Notification is completely fulfilled and therefore the service provided by the sub-contractor would attract concessional rate of 12% GST.there was no need to include such sub-contracts in the item (v) of the Notification as there was no confusion whether the sub-contractor will be eligible to such concessional rate of GST, since the activities described under item (v) of sr. no. 3 of the Notification are services specific. The service provider and the service recipient are immaterial for the determination of beneficiary of this concessional rate of GST..."
- (3) The Hon'ble Supreme Court Order in case of G.P. Ceramics Private Limited v. Commissioner, Trade Tax, Uttar Pradesh, (2009) 2 SCC 90
- (4) Authority of Advance Ruling Order No. 61 dated 07.07.2020, in the case of M/S Manpar Icon Technologies, Lucknow, Uttar Pradesh wherein also SUDA Lucknow has entered into an agreement with "M/s Creative Consortium, and M/s Rudrabhishek Enterprises Limited for "Preparation of Detailed Project Report" and providing "Project Management Consultancy Service" under Pradhan Mantri Awas Yojna (PMAY in short). The above two parties made an agreement and awarded, back to back, same work to M/S Manpar Icon Technologies, Lucknow, Uttar Pradesh. In the said case, exactly the same two questions as raised in this application were raised before the Authority for advance ruling and answers to both the questions were given in affirmative by the AAR.

24. We observe that sl. No. 3 of Notification No. 12/2017-CT (Rate) dated 28.06.2017 exempts *"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 243W of the Constitution" as amended by notification no. 16/2021-central tax (rate) w.e.f.1.1.2022.* As such, for qualifying exemption under the said entry, it is essential that specified services are provided to the Central Government, State Government or Union territory or local authority or a Governmental authority and there is no condition in the notification that the said services are provided directly to the Central Government, State Government or Union territory or local authority or a Governmental authority. Accordingly, the applicant is entitled for exemption if the specified services are provided to SUDA under sub-contract with main contractor.

25. In view of the above, both the members unanimously rule as under;

RULING

Question 1. Whether the Project Development Service (i.e. Detailed Project Report Service ('DPR') and Project Management Consultancy services ('PMCS') provided by the applicant to the recipient under the Contract from State Urban Development Agency (SUDA) under the Contract for PMAY-U would qualify as an activity in relation to function entrusted to Panchayat or Municipality under Article 243G or Article 243W respectively, of the Constitution of India?

Answer 1- The Services rendered under the contract with State Urban Development Agency, Uttar Pradesh (SUDA), and for PMAY-U are in relation to functions entrusted to Municipalities under Article 243W and to Panchayats under Article 243G of the Constitution of India.

Question 2. If answer to first question is in affirmative then, whether such services provided by the applicant would qualify as Pure services (excluding works contract service or composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local 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, as provided in serial number 3 of Notification No. 12/2017- Central Tax (Rate) dated 28 June, 2017, as amended by notification no. 16/2021-central tax (rate) w.e.f.1.1.2022 and corresponding Notifications No. KA.N.I.-2-843/X1- 9 (47) / 17-UP. Act-1 - 2017 - Order - (10) - 2017 Lucknow, dated June 30, 2017, as amended, issued under Uttar Pradesh Goods and Service Tax Act, 2017 ('UPGST Act'), where the Project cost includes the cost of service rendered along with reimbursement of cost of procurement of goods for rendering such service, and, thus, be eligible for exemption from levy of CGST and UPGST, respectively.

Answer 2- Such services would qualify as Pure Service (excluding works contract service or other composite supplies involving supply of any goods)" and accordingly exempt from the payment of GST duly covered in Sl. No 3 of Notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017 issued under Central Goods and Services Tax Act, 2017 (CGST/Act), and corresponding notifications issued under Uttar Pradesh Goods and Services Tax Act, 2017 (UPGST Act).

26. This ruling is valid only within the jurisdiction of Authority for Advance Ruling Uttar Pradesh and subject to the provisions under Section 103(2) of the CGST Act, 2017 until and unless declared void under Section 104(1) of the Act.



(Harilal Prajapati)
Member of Authority for Advance
Ruling



(Rajendra Kumar)
Member of Authority for Advance
Ruling

To,

M/s RUDRABHISHEK ENTERPRISES LIMITED
A 6, SECTOR 58, NOIDA, Uttar Pradesh, 201301

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

Copy to –

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Commissioner, CGST & Central Excise, Noida, C-56/42, Sector-62, Noida-201309
4. The Deputy/Assistant Commissioner, CGST & Central Excise, Division- II Noida, C-56/42, Sector-62, Noida-201309.
5. Through the Additional Commissioner, Gr-I, Commercial Tax, *Gautambudha Nagar Zone*, Uttar Pradesh to jurisdictional tax assessing officers.