

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri. AJAYKUMAR V. BONDE, Joint Commissioner of State Tax, (Member)Ms.

(2) Ms. PRIYA JADHAV, Joint Commissioner of Central Tax, (Member)

ARN No.	AD271123032443J
GSTIN Number, if any/ User-id	27AAAAF9930D1ZU
Legal Name of Applicant	M/s. FORTRESS INFRACON LIMITED AND YASH INNOVATIVE SOLUTIONS LLP (JV)
Registered Address/Address provided while obtaining user id	204, LOTUS PARK, ROAD NO 16, 2 nd Floor, Wagle Estate, Thane, Maharashtra 400604.
Details of application	GST-ARA, Application No. 21 Dated 05.09.2023
Concerned officer	THA-VAT-C012

NO.GST-ARA- 33 of 2023-24/2024-25/B- 56 Mumbai, dt. 31/07/2024

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

QUESTIONS RAISED BY THE APPLICANT in application filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017

[hereinafter referred to as "the CGST Act and MGST Act" respectively] by M/s. **FORTRESS INFRACON LIMITED AND YASH INNOVATIVE SOLUTIONS LLP (JV)** the applicant, seeking an advance ruling in respect of the following questions.

1. What is the rate of tax in respect of work allotted by Maharashtra Jeevan Pradhikaran ('MJP') as a part of Jal Jeevan Mission which is a mission of Government of India allotted, performed & invoiced before 01.01.2022?
2. What is the rate of tax in respect of work allotted by Maharashtra Jeevan Pradhikaran ('MJP') as a part of Jal Jeevan Mission which is a mission of Government of India which is performed & invoiced after 01.01.2022 but which is allotted before 01.01.2022?
3. What is the rate of tax in respect of work allotted by Maharashtra Jeevan Pradhikaran ('MJP') as a part of Jal Jeevan Mission which is a mission of Government of India allotted, performed & invoiced after 01.01.2022)?
4. Who is the service receiver within the meaning of Sec.2(93) of CGST/MGST Act in respect of amounts received as grants by MJP which are paid to the applicant on services provided before 01.01.2022?

Who is the service receiver within the meaning of Sec.2(93) of CGST/MGST Act in respect of amounts received as grants by MJP which are paid to the applicant on services provided after 01.01.2022?

5. Whether appointment of MJP as an agency to implement water supply schemes amounts to delegation of sovereign function enumerated in Sch. XI & XII within the framework of Constitution of India so as to hold that MJP has performed the function entrusted under Article 243G & 243W of the Constitution of India?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to



the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

1. FACTS AND CONTENTION – AS PER THE APPLICANT:

- 1.1 The Applicant FORTRESS INFRACON LIMITED AND YASH INNOVATIVE SOLUTIONS LLP (JV) is a partnership firm engaged in the business of providing technical consultancy to various Governments, Semi-Government, Government Corporations & Quasi-Government Institutions. It is duly registered under the CGST/SGST Act bearing 27AAAAF9930D1ZU at 204, LOTUS PARK, ROAD NO 16, 2nd Floor, Wagle Estate, Thane, Maharashtra 400604.
- 1.2 The Constitution of India envisages various functions and duties to be carried out at various tiers of Government. Villages, towns and cities require regular supply of water and proper facilities of sewage & used water disposal. The Constitution in its XI & XIIth Schedule has enumerated the duties to be performed by the State Govt & the Panchayat Raj Institutions under article 243G & 243W respectively. For that purpose, the said Government institutions initiate appropriate water supply schemes, drainage schemes etc. The implementation of the above schemes requires meticulous engineering, planning & designing. Due to lack of manpower & expertise the said activity is outsourced to outside agencies by the respective Govt. The applicant is engaged in this activity of designing, planning, supervising the implementation of such schemes within the framework of rules & procedures laid down by the Government. The activity of the applicant is in the nature of pure services.
- 1.3 Hitherto, the above activities have undisputedly been held to be *exempted* from tax by virtue of notifications issued under the CGST/MGST Acts. Even under the existing laws (Finance Act, 1994) the above activities were exempted. The applicable notifications under GST are reproduced as a matter of convenience.
- 1.4 On 18th November 2021 by Notification No. 16/2021 -Central Tax (Rate) the words "or a Governmental authority or a Government Entity" came to be omitted from Sr. 3 & 4 of Notification 12/2017.
- 1.5 In Maharashtra, the Govt. of Maharashtra has enacted the Maharashtra Jeevan Authority Act in 1976 virtue of which all water supply/drainage/sanitation/storm water schemes are implemented through the said authority. The said authority is wholly controlled by the Govt. & receives funds from consolidated funds as per budget allocations from the respective Government for execution of any new water supply/sanitation scheme. Please see page no 20 of the paper book that shows that the amounts received by the applicant are out of budget allocations.
- 1.6 By virtue of amendment dated 01.01.2022 referred to in para 4 above, there is a perception in trade that the activity of the applicant is no longer exempted but is chargeable to full rate of tax i.e., 18%. However, there is no uniformity in understanding the exact legal position of tax exigibility on the applicant's activity, for some of the Zilla Parishad's, some State Governments add GST payable @ 18% to the invoice payable in respect of pure service activity performed, by tax persons identically situated, to that performed, by the applicant. Therefore, this present application is preferred in order to officially clarify the rate of tax applicable to the activity performed by the applicant viz. "pure services in the nature of project management consultancy provided to Central/State Governments/Local Authority/Government Authority/Entity" before 01.01.2022 & after 01.01.2022

2. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW. -

- 2.1 The applicant submits that since time immemorial there are certain activities or services, the responsibility for provision of which solely resides in the monarch or the sovereign. Activities such as minting of money, maintaining an army, waging war, preservation of law & order & also provision of basic necessities such as electricity, water etc. have always been the responsibilities of Governments the world over. The framers of our constitution, cognizant of this fact, have expressly placed the responsibility of the said sovereign functions on the Central, State & Panchayat Raj institutions under 7th & 11th & 12th Schedule respectively.



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Given the fact that these services are to be provided to sovereign or in any case, if delegated, are paid for by the sovereign, they are and always have been. exempted from payment of tax. In the erstwhile Service Tax Regime, under the mega exemption notification 25/2012 services related to sanitation & water supply were exempted as:

"25. Services provided to Government, a local authority or a governmental authority by way of (a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or (b) repair or maintenance of [a vessel];"

Even after the coming of GST Act, the exemption continued by virtue of notification 12/2017-CT (Rate) 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 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"

2.1.1 There have been quite a few judicial pronouncements mandating that sovereign functions are exempt from taxation. The same are quoted as a matter of illustration.

a. Krishi constructions Pvt. Ltd. Versus commissioner of CT, Hyderabad (43 GSTL 236)

Wherein it was held that services provided by the Appellant to Government Corporations or Authorities established by the State Government under a legislation or government order are provided to a "Government Authority" within the meaning of Notification 25/2012.

b. Karad nagar parishad versus commissioner of C. Ex. & ST, Kolhapur (20 GSTL 288)

Wherein it was held that regulatory fees charged by the Municipal Corporation come within the ambit of "sovereign functions" within the meaning of Article 243W and hence not exigible to service tax.

c. Ganpati mega builders (1) Pvt. Ltd. (58 GSTL 324) Herein it was held that

construction services falling within the purview of Article 243 G & W provided to JNNURM, Mandi Samiti & Mandi Parishad & other municipal bodies are not subject to service tax.

d. Cuddalore Municipality (55 GSTL 397) Wherein it was reiterated that services

provided to Municipalities with respect to functions specified in article 243 G & W are not chargeable to service tax.

2.1.2. The applicant provides technical management consultancy services to the MJP, these services are related to water supply, irrigation & sewage management. The aforesaid services have been entrusted to the State Governments, panchayats & municipalities under article 243G & W of the constitution given. the fact that they are "sovereign" in nature. Similarly, the services provided to the respective Governments were also exempted on the ground that the services were in the nature of outsourcing of sovereign function which otherwise was to be performed by the respective Government.

2. 2. So far as the services rendered prior to 01.01.2022 are concerned, the applicant believes that MJP, which has been allotted the work, is a Government Authority/Entity insomuch so as it is created by an act of Maharashtra Legislature & is fully controlled by the State Government. Its expenditure is financed through Government Grants & therefore the services rendered prior to 01.01.2022 would be exempted under notification 12 of 2017.



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2.2.1. To the end that potable water is available to the last village & town, the Government of India has launched the "Jal Jeevan Mission" Scheme under the Mission Mode. Naturally, the programs identified under the mission mode are financed by Government of India and the remaining rest is financed by the State Government &/or the Panchayat Raj Institution which form the third tier of Government after the 1991 Constitutional Amendment. It would be seen that in Maharashtra the Jal Jeevan Mission is managed at a policy level by the State Government & the execution part is delegated to MJP. The Operational Guidelines issued by the Government of India lay down that all the payments made in respect of Jal Jeevan Mission shall be made through & reflected in the Public Finance Management System. Thus, it would be seen that even after appointment of MJP as an implementing agency the payments are fully & wholly controlled by the Government & therefore the payments must be held to have been made by the Government, because they come from budgetary grant & their payment is controlled by the Government through PFMS & by appointing appropriate officers to disburse it.

2.2.2. The Applicant says & submits that supply of water & construction of water supply schemes is a constitutional duty of the respective Government under Article 243G/243W of the Constitution of India. The schemes impugned herein, wherein the Applicant has rendered pure services are fully financed by the Central Government or the State Government. The Applicant is annexing herewith following documents that clearly & unequivocally show that the work of water supply/drainage schemes undertaken which is outsourced to the applicants is being executed & controlled by the Central/State Government as a part of Jal Jeevan Mission: -

- a. Operational Guidelines issued by Government of India Ministry of Jal Shakti in December 2019. Specific attention is drawn to Financial Planning & Funding at Sr no 7 page no 44 to 53 of the document.
- b. Funds Allocation order no 682 dated 28-04-23 issued by State Water & Sanitation Mission Director allocating the funds to various districts for Project Management Consultancy under which the work of the applicant falls.
- c. Government of Maharashtra Resolution of Water Supply & Sanitation Department dated 17-06-2021 appointing Under Secretary as the Drawing & Disbursing Officer & Deputy Secretary as the controlling officer.

2.2.3 Thus, even in case of services rendered post 01.01.2022, the applicant submits that the services rendered, though apparently rendered to MJP, become services rendered to State Government/Central Government because the MJP in the instant case is working as an agent of the Government in execution of a constitutional duty/function. Therefore, the Applicant submits that even after the deletion of the words "Government Authority & Government Entity" from notification no. 12 of 2017 w.e.f 01.01.2022, the services of the Applicant continue to remain exempted as being services rendered to Central/ State Government or Municipality.

2.3. Thus, insofar as the services rendered by applicant is concerned it would be seen that the consideration is paid to applicant as and when MJP receives the grants from Central/State Government. The same has been specified in the Operational Guidelines for Jal Jeevan Mission issued by the ministry of Jal Shakti.

"SWSM (State Water Services Mission - In this case managed by Maharashtra Jeevan Pradhikaran) will open a single nodal account in any scheduled commercial bank. SWSM will obtain details from these banks operational in State headquarters on services like PFMS compliance necessary for JJM implementation. The releases by the Government of India to the State Government will be made to their State treasuries from where States will be



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transferring the fund to the single nodal account of SWSM within 15 days along with the corresponding matching State share."

Section 2(93) of the GST Act defines the term "recipient of service"-

(93) "recipient" of supply of goods or services or both, means-

(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
..."

It is important to note that since the impugned schemes on which the applicant works are constitutional responsibilities of Government, it is the Government who is liable to pay the consideration to the applicant.

In fact, in the impugned arrangement, the services are paid through grants, the respective Governments become service receivers in view of the above definition.

2.3.1. Even otherwise, it is a fundamental principle of law that in situations where any transaction or activity is conducted through an agent, the agent works for and on behalf of, the principal. In the present case, the water supply & sewage disposal schemes are constitutional responsibilities of the State Governments & the Panchayat Raj Institutions under Article 243G & 243W respectively. The above functions are managed by the Central Government as a mission. In such circumstances, it must be held that the Central Government along with the State Governments/ municipalities, as principals, are executing the water supply & disposal schemes through their agent MJP. The payments made by MJP, in fulfilment of the constitutional of duties the State/Central/Municipality Governments must be construed as payment by an agent on behalf of the respective principal. The principle of common law that payment by agent amounts to payment by principal applies with full force in the facts & circumstances of the presently impugned transaction & therefore the respective Government's become the service recipient under Section 2(93) of GST Act.

2.4. As specified before now, water supply, irrigation, canaling, drainage and other related functions are responsibilities of the Centre & State Governments, as per Entry 56 of List I & Entry 17 of List II, respectively, of the Indian Constitution. The applicant submits that where the makers of the constitution have assigned a certain responsibility upon the government. The government cannot, by enacting a legislation or otherwise, further delegate the same to any other authority & even when such activity is delegated it remains to be the responsibility of the respective Government as per the scheme of the Constitution. The aforesaid law was laid down by the Hon'ble Supreme Court in K.C. Ganapathi Narayan Dev Vs State of Orissa, The Honorable Supreme Court has held that "a legislature having restrictive power cannot seek to do something indirectly which it cannot accomplish directly within the scope of its power. A legislature cannot overstep the field of competency indirectly." (M.P. Jain's Constitutional Law of India 4th Edition 1987 page 273). In the present case the Maharashtra Government could not have by an executive order simply delegated or passed the duty onto some municipal authority or body. Similarly, the Maharashtra Government also cannot, by enacting a legislation viz the Maharashtra Jeevan Authority Act, 1976, now say that it is no longer responsible for its constitutional duty of providing water, irrigation, canal or sanitation facilities as has been specifically entrusted to it by the Constitution. In order to be compliant with the constitutional provisions of article 243 G & W, it has to be construed that the function of water supply, irrigation, canaling etc. is being carried on by the State Government through the agency of Maharashtra Jeevan Pradhikaran, any attempt to interpret otherwise would mean that the State Government has abdicated its function of water supply, irrigation,



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canaling etc. to the Maharashtra Jeevan Pradhikaran which would be entirely unlawful & contrary to the constitutional prescriptions and procedure.

2.4.1. Any law enacted in India has to be interpreted & construed in harmony with the provisions of the Constitution or otherwise it falls prey to the vice of unconstitutionality. If as per the Constitution a given activity is the function/ duty or responsibility of State/Central Government or local Government, then, despite the fact that apparently a body corporate owned by Government is entrusted with the function, the activities of the said body corporate have to be construed as an agent of the respective Government. For all the above reasons, the applicant prays that it be held that despite the deletion of words Government Authority/ Entity from notification no 12/2017 with effect from 01-01-2022, the activity performed & rendered by the applicant in respect of Jal Jeevan Mission remain to be rendered to the respective Government who has financed the above activity through their budget allocations as a part of their Constitutional function.

2.5. The applicant has annexed all the relevant documents in support of the averments. If the Hon'ble Authority for Advance Ruling desires certain more information &/or documents, the applicant is ready & willing to supply the same.

2.6 Additional Submission dated 26.06.2024

Kindly find below common additional argument points on facts & law in respect of all the four applicants: -

2.6.1. Water is a State Subject. Entry 17 of List II VII Schedule lays down Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I. List I entry 56 deals with interstate rivers. As regards supply of water, the Water policy has defined major projects & minor projects. The former are those that have an irrigation potential of more than 2000 hectares whereas less than 2000 hectares are minor projects. Schedule XI entry 3 mentions "Minor irrigation, water management and watershed development." As within the realm of panchayats. Thus, the major projects are within the realm of State Governments.

2.6.2. It is in discharge of this Constitutional function that the MJP Act 1976 was enacted. The duties were formerly discharged by MWSSB i.e. Maharashtra Water Supply & Sewage Board. Thus, the major projects are implemented in Maharashtra through MJP & the minor projects are implemented by the Panchayats mostly through MJP.

2.6.3. The notification 12/2017 ENTRY 3 exempts pure services excluding composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority 1aa [***] 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. Thus, as may be seen the notification itself contemplates that though certain functions are within the realm of Panchayats or Municipalities, any activity amounting to supply in relation to the functions may amount to supply to Central/ State Government or local Authority. The above statement apparently contradicts the federal structure, but in real scenario applies with full force because the panchayats & municipalities have meagre resources & in most cases are dependent on Central/ State Government for funds. Therefore, as a matter of statement of principle, one may say that where funds are



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allocated by Central/ State Government in matters related to Article 243G/ 243W, the notification contemplates exemption.

- 2.6.4. Coming back to MJP, MJP itself has very little source of revenue, the little revenue that it generates is on account of water user charges as per Section 35/36 of MJP Act. The above sum is totally insufficient to fund any water supply scheme & therefore as a general rule, all the MJP schemes are funded by Central/ State Government or through loans that are guaranteed by the State Government as per Section 33 of the MJP Act.
- 2.6.5. The notification speaks of supply of pure services to Central/ State Government/ Local Authority/ Government entity/ Authority. The concept of supply envisages a provider providing service & a service receiver to whom the service is provided. The question that is raised is who shall be the service receiver in case the money is provided through Budgetary support as a part of Government Scheme. In case of a Centrally sponsored scheme where the payment is through budgetary support, the payment is authorized through a money bill that becomes a Finance Act upon passage, duly passed in the Parliament/ Assembly having the force of law. The above statement also applies with full force to the budgetary support by State Government. Section 2(93) defines recipient of service as the person who is liable to pay the consideration where consideration is payable for the supply. In the present case where the payment is authorized through the Central/ State Budget, by virtue of the respective finance Act, the concerned Government is legally liable to pay the sum earmarked & appropriated to a given expenditure head & therefore they become the person liable to pay & consequently the service receiver is the Central/ State Government. The applicants herein say & submit that their bills are cleared only when the amounts are received from budgetary support. Kindly note that all the arguments are restricted & limited to schemes implemented through Jal Jeevan Mission which is a Central mission scheme.
- 2.6.6. The payments received by the applicants is through Public Finance Management System (PFMS). PFMS is a web based financial application developed & Implemented by Controller of Accounts. Department of Expenditure. Government of India. The payment at no point of time is under control of MJP. It is only the regulation part which has been delegated to MJP. i.e. role in respect of supervision of implementation of water projects. The operational guidelines in respect of JJM clearly point out that the Central/ State Government is in total control of the payment process & at no point of time, MJP has any role in it except to the extent of certifying the measurements & completion of projects or stages therein. Kindly see the Operational Guidelines of JJM issued by the Government of India. (uploaded at page no 42 to 50 of paper book). The Guidelines lay down that the State Governments after receipt of Central share i.e. 50% in case of Maharashtra shall transfer it along with their 50% share to a designated account. The designated account is in the name of State Water & Sanitation Mission (SWSM). The State Governments also pass order in respect of allocation of district wise funds which is at page no 51.
- 2.6.7. Further attention is invited to page no 54 which is a GR passed by Water Supply & Sanitation department that appoints the DDO & controlling officer for payments to be made. The said order also clearly points out that the funds are transferred to the nodal account in the name of SWSM (para 1 at page no 55). The applicants receive the



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payments through the above nodal account & under the head of support services which are capped at 5% of total expenditure sanctioned.

- 2.6.8. Website of PFMS specifies that the PFMS is the codification of Government of India Receipt & Payment Rules which are framed under article 283 of the Indian Constitution.
- 2.6.9. The payment received by the applicants is reflected in PFMS & in their bank statements as received from State Water & Sanitation Mission (SWSM), therefore though the payment is received in consequence of empanelment by MJP, it is not the person making the payment. The payment advice, too, reflects the name of SWSM.
- 2.6.10. What should be the implication of para 5.5 of the empanelment contract. It may be noted that the empanelment contract is Standard form contract. MJP as a body corporate having perpetual existence has devised a standard form contract. JJM has been formulated in 2019 with limited time span of 5 years. It is a scheme which contemplates 100% Government funding, as against other schemes where contributions from other stake holders are involved similarly the present application is not intended in respect of schemes implemented through Commercial Borrowings.
- 2.6.11. Therefore, given the fact that payment is made through a designated account not in control of MJP rather in full control of Central/ State Government, JJM as a scheme entails the responsibility of Central/ State Government in making the payments thus making them the person liable to pay within the meaning of Section 2(93).
- 2.6.12. While interpreting the clause of payment, if one was to consider, the event of non-payment on the part of receiver, such scenario would lead to infringement of finance bill apart from the breach of contract. In such case the statutory liability to pay & incur the expenditure as per finance bill takes precedence over the contractual liability as per clause 5.5. of the empanelment agreement, while interpreting Section 2(93), i.e. person liable to pay.
- 2.6.13. Section 2(93) specifically includes an agent acting on behalf of principal as recipient, the present facts clearly point out that MJP who is acting as an agent of Central/ State Government thus making the latter recipient of service.

2.7 Further Additional Submission dated 26.06.2024

In continuation of the earlier additional submissions, the applicants respectfully further submit as follows:

- 2.7.1. During the course of earlier hearing the controversy narrowed down to the limited aspect as to who is liable to make the payment to the applicants within the meaning of Section 2(93) of GST Act so as to reckon that person as the service receiver.
- 2.7.2. On the above issue, the applicant respectfully submits that it emerges from para 3 & 4 of the agreement read with para 5.5 of the tender terms, that MJP is contractually bound (liable) to make the payment to the applicants. The applicants had during the course of earlier hearing submitted along with evidences that the payment is factually made through budgetary allocations by Central & State Governments. It was earlier submitted that the said allocation was made in consequence of passage of Finance Act wherein the appropriations are made against respective head of expenditure & therefore it was submitted that the Finance Act being a law makes the Central/ State Government legally liable to pay in terms of the Finance Act. Taking the argument further it was submitted that therefore the term 'liable to pay' in Section 2(93) has to



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be interpreted in the backdrop of above legal position i.e. the respective Governments are legally liable to pay in terms of the provisions of their respective Finance Acts.

- 2.7.3. It was also submitted along with evidences that the actual payments are made by the Water supply department & the payments are received from State Water & Sanitation Mission (SWSM). During the course of above submission, your honour's expressed an opinion that there is a difference between person liable to pay & the person who makes the payment. The applicant's representative was confronted with a question as to why was State Government/ SWSM making the payment. The undersigned representative was unable to reply extempore. Upon further deliberation the applicants submit that water supply, as submitted earlier, is a sovereign function & duty of Government. It is submitted that the present Jal Jeevan Mission which is impugned in the present application has been devised in consequence of the above duty of the respective Governments & payments under Jal Jeevan Mission are made in consequence of the Constitutional/ Legal duty of the sovereign Governments to supply water. It is in this context that the applicants submit that the State/ Central Government are making the payments being Constitutionally & legally liable to make payments for the water supply schemes.
- 2.7.4. The immediate issue that arises is then what is the impact of the Governments above legal duty to pay in the present matter where the contractual obligation is undertaken by MJP & then who is to be reckoned as the person liable to pay as per Section 2(93) of GST Act. The applicant submits that the legal liability to pay overrides the contractual liability to pay. The above proposition may be supported by an example. Say the legal liability to pay GST is on supplier u/s 9(1) in respect of transactions liable to forward charge. Suppose in a given case the above liability is contractually undertaken by the receiver or buyer. Even then the legal liability to pay overrides the contractual obligation undertaken & remains with the supplier. Similarly, it is submitted, that in the present case despite the fact that MJP has undertaken the contractual liability to pay, the same is overridden by the Governments Constitutional & Legal liability to pay.
- 2.7.5. Alternatively, in the earlier submission, the applicants had submitted that MJP is acting as an agent of State Government & agent as such is included in the definition of service receiver. For the sake of convenience, the relevant portion of Section 2(93) is reproduced as under ".....and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;". It is submitted that the above provision only reiterates the common/ civil law provision that supply to agent amounts to supply to principal. It is submitted that the applicants had in his earlier submissions submitted that MJP is acting as an agent in the present facts because the community assets being produced in consequence of the presently impugned agreements are not owned by MJP but are held by MJP in the name of & on behalf of Governor who is the executive head of the State Government.
- 2.7.6. In view of the above propositions, it is submitted & prayed that the presently impugned supplies be held as supplies to State/ Central Government because they are Constitutionally & legally liable to supply water & in that context incur the expenses for it that includes making payments for the water supply schemes thereby making them person liable to pay within the meaning of Section 2(93) of GST Act. Alternatively, it is



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submitted that the supplies be held to be to Central/ State Government because they being legally liable have made the payments through budget appropriations having the force of law. Alternatively, it be held that the supplies to MJP are to Government, since MJP is acting as an agent of Government so far as water supply schemes involving Jal Jeevan Mission are concerned & therefore in each of the above scenarios the supplies would continue to enjoy exemption despite the amendment deleting the words Government Authority/ Entity from notification 12/2017 entry 3 w.e.f. 01-01-22. Lastly, if your Honour are not inclined to accept the above propositions it be held that supplies till 31-12-21 are exempted within the meaning of notification no 12/ 2017 entry 3 as amended w.e.f. 01-01-22 being to MJP which is a Government Authority/ Entity & supplies after 01-01-22 are taxable @18%.

3. CONTENTION – AS PER THE CONCERNED OFFICER:

3.1. Before adverting to the Arguments in reply, the facts of the case are briefly canvassed by the Revenue: -

- a. The Applicant is an engineering consultant, it, among others, is providing engineering consultancy services to Maharashtra Jeevan Pradhikaran ('MJP') a governmental corporation for the execution of Jal Jeevan Mission Scheme.
- b. The Applicant, up until, 1.1.2022 was claiming exemption from payment of GST under Sr.No. 3 of notification 12/2017-GST claiming that it is providing pure services to a government authority for a purpose covered under 243 G/W of the Indian Constitution.
- c. By Notification 16/2021 dated 18.11.2021 the words "governmental authority or entity" were omitted from the said notification thereby attracting tax liability on the services provided by the applicant to MJP.
- d. Thus, in order to continue claiming exemption the Applicant has filed this ARA.

3.2. ARGUMENTS-IN-REPLY

3.2.1. As regards the work allotted, invoiced & performed by the applicant before 01.01.2022 it is submitted that the applicant was eligible to claim exemption since MJP was a government entity as per the notification 12- 2017 CT. Two conditions are necessary two qualify for someone to be a governmental authority: -

- i. The equity or voting control of the Government must be 90 percent or more
- ii. It must carry out a function entrusted to a municipality/panchayat within the meaning of Article 243G/W of the Indian Constitution."

a. It is not in dispute that MJP is within the complete control of the State Government. It also is an authority that carries out a constitutional function. Articles 243 G/W empower the appropriate government to entrust panchayat/municipal institutions with activities specified in eleventh & twelfth schedule respectively, the relevant entries read as under: -

"Eleventh Schedule: -

3. Minor irrigation, water management and watershed development.

11. Drinking water.

Twelfth Schedule: -

5. Water supply for domestic, industrial and commercial purposes.

6. Public health, sanitation conservancy and solid waste management."

The entries are very clear that the authority in question is to perform these functions. The preamble & the "about" section of the website of Maharashtra Jeevan Pradhikaran makes it clear that it is an authority responsible for providing water supply & sewerage infrastructure.



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3.2.2. As regards the work being allotted, performed & invoiced after 01.01.2022, it is submitted that there cannot be any dispute as to the liability to pay tax.

The fact of the words "a government authority or entity" having been omitted, unfailingly attract tax liability. Without prejudice to the aforesaid submission, although the applicant claims that MJP is working as an agent of the Central/State Government for the execution of the Jal Jeevan Scheme, it is MJP & not the Government that has issued the tender, empanelled the applicant, allotted work to the applicant. Section 188 of the Indian Contract Act delineates the scope of an agent's authority: - "188. Extent of agent's authority. —An agent, having an authority to do an act, has authority to do every lawful thing which is necessary in order to do such act. An agent having an authority to carry on a business, has authority to do every lawful thing necessary for the purpose, or usually done in the course, of conducting such business."

Thus, the extent of agency is limited to carrying out the means or a mode of doing an act & not to decide the very act itself. Actions of MJP in fixing the technical qualifications necessary for being eligible in the tender process, to enter into an agreement with applicant confirming his empanelment & eligibility, to enter into contractual negotiations for fixing consideration are much too broad & decisive to be narrowly circumscribed by the trappings of an agency.

It is trite law that the words of a notification have to be strictly construed & any ambiguity has to be construed in favour of the revenue. Since, the words government authority or entity have been removed, tax is undisputedly attracted.

3.3. In light of the above submissions, it is prayed that: -

- a. For works allotted, performed & invoiced before 01.01.2022, it may be held that the supplies made to MJP constitute an exempt supply & MJP is a government authority or entity within the meaning of Notification 12-2017 CT as it then stood.
- b. For works allotted, performed & invoiced after 01.01.2022 it may please be held taxable in light of deletion of the words "government authority or entity" from Notification 12-2017 CT.

4. HEARING

Preliminary hearing in the matter was held on 15.05.2024. Mr. Amit Sheode, Advocate appeared, and requested for admission of the application. The Jurisdictional officer Mr. Prashant Nimkar, Sales Tax Officer, THA-VAT-C-012 also appeared.

The application was admitted and called for final hearing on 26.06.2024. Mr. Amit Sheode, Advocate, authorized representative, appeared made oral and written submissions. The jurisdictional officer Mr. Prashant Nimkar, Sales Tax Officer, THA-VAT-C-012 also appeared. We heard both the sides.

5. FINDING OBSERVATIONS AND DISCUSSION: -

5.1 Uncontroverted facts of the case, in brief are as under,

- 5.1.1. M/s. FORTRESS INFRACON LIMITED AND YASH INNOVATIVE SOLUTIONS LLP (JV), (hereinafter referred as "Applicant"), is Registered taxable person.
- 5.1.2. The Maharashtra Jeevan Authority [erstwhile the Maharashtra Jeevan Pradhikaran] (Hereinafter referred as "MJP"), is a body Corporate set up by The Maharashtra Jeevan Authority Act, 1976 (hereinafter referred as "the MJA Act, 1976"), for rapid development and proper regulation of water supply and sewerage services in the State of Maharashtra.
- 5.1.3. The MJP has granted a contract for supply of "Technical Consultancy for Project Development and Management support "services to the Applicant vide agreement for Empanelment dated 30th of March 2021.
- 5.1.4. Important terms of the Contract, necessary for decision are reproduced as under,



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- (a) The agreement between Maharashtra Jala Pradhikaran and FORTRESS INFRACON LIMITED AND YASH INNOVATIVE SOLUTIONS LLP (JV) (Emphasis supplied)
- (b) Services to be performed by the Consultant are namely: i. Carrying out Reconnaissance Surveys and preparation of Feasibility Report. ii Carrying out detailed survey, preparing proposal for getting requisite. iii. Providing services for preparation of Tender Documents and Bid Process Management including preparing proposal for getting requisite permissions from various concern competent authority. iv. Functioning as Project Management Consultant & Technical Auditor. V. Supervision and Monitoring of Operation and Maintenance (O&M) and asset management for a period of maximum one year. (Emphasis supplied)
- (c.) Para3- The MJP hereby agrees to pay the Consultant in consideration of the performance of the Services such amounts as may become payable under the provisions of the agreement at the times and in the manner prescribed in the Consultancy Agreement. (Emphasis supplied)

4 In consideration of the payments to be made by the MJP to the Consultant as hereinafter mentioned in Clause 4 of the Consultancy Agreement, the consultant hereby agrees with the MJP to perform the Services of Project Development & Management Support" as CLASS I Consultant for Konkan Region in conformity with the provision of the Agreement. (Emphasis supplied).

Para no.1 of the agreement the MJP desires that certain services should be performed by the consultant, namely "project management service consultants for Aurangabad water supply project"

5.1.5. Important relevant clauses of the Tender document -e. Tender No 2022-23 are as under,

- (a) **Page 57 – Clause -1.10 Taxes and duties:** All duties, taxes and other levies as applicable on date of submission of Tender shall be payable by the Consultant in respect of the transaction between the Consultant and their consultation vendors/sub-suppliers is included in the Proposal's price i.e. in financial rate and 'Maharashtra Jeevan Pradhikaran' will entertain no claim on this behalf. All taxes, duties and levies in respect of the transaction between 'Maharashtra Jeevan Pradhikaran' and Consultant are included in the price as per financial rate. However, any increase in the statutory tax after submission of bid shall be on 'Maharashtra Jeevan Pradhikaran's account and shall be reimbursed on actual basis wherever there is any increase. (Emphasis supplied)
- (b) **Page 66 Para 5.5 Payment-**

5.5 Payment: In consideration of the Services performed by the Consultants under this Contract, the MJP shall make to the Consultants such payments and in such manner as is provided in schedule of Payments of this Contract as per scope of work.

- (c.) **Page 67 Para 6.4. Contract price and payments to the Consultants**

6.4. Terms and conditions of payment:

The rates given in schedule of payments are including GST and statutory taxes. Payments will be made as per payment schedule stated in the Schedule of payment Appendix II. Any other payment shall be made after the conditions listed in the Schedule for such payment have been met, and the consultants have submitted an invoice to the MJP specifying the amount due. If there is delay in payment due to shortage of funds or any other reason no extra payment or Interest will be payable



on account of delay of payment, however MJP will try to release payment as early as possible from other sources of MJP by taking approval from competent authority. **The Maharashtra Jeevan Pradhikaran shall make the payment of the Consultants periodically as given in schedule of payment above within Thirty days on receipt of invoice from the consultant after the receipt by the Maharashtra Jeevan Pradhikaran of bills with supporting documents.** Only such portion of a monthly statement that is not satisfactorily supported may be withheld from payment. (Emphasis supplied)

5.1.6. **The applicant has submitted copy of invoice issued to the MJP vide bill no YISFT/A'bad/900mm/part-3/AC.23-24/2023/4 dated 14-09-2023 in name of Executive Engineer Maharashtra Jeevan Pradhikaran, Division-Aurangabad, Description of services is "on submission and approval of monthly progress report and office administration services for water supplies scheme". Total value of the invoice amount is Rs. 31,32,829/-. No GST is shown separately.**

"GST implication mentioned on bill- Services provided against this invoice are exempted in GST under article 243W of function entrusted to municipality twelfth schedule point no. 12/2017."

5.1.7. **The applicant has submitted payment receipt Advice with its application. The payment receipt advice is actually "PFMS generated DSC transaction payment advice report". Agency name stated in the advice is Jala Jeevan mission Maharashtra, Escrow account – (MHND 00010898) debit Bank HDFC BANK LTD, approval date in PFMS is 31st Oct 2023 amount Rs. 9,86,414/-. Beneficiary name FORTRESS INFRACON LIMITED AND YASH INNOVATIVE SOLUTIONS LLP (JV).**

5.2 The applicant has raised multiple questions, which need findings, discussion & decision on following issues:

5.2.1 What is the classification of the services supplied by the applicant to Maharashtra Jeevan Pradhikaran ('MJP') as a part of Jal Jeevan Mission which is a mission of Government of India allotted, and its HSN/ SAC Code and applicable entry in Notification No. 11/ 2017- Central Tax (Rate) dated 28th June 2017?

5.2.2 Whether Services provided to MJP for the Constitutional function of State & Central Governments, for which these Governments are liable to pay the consideration of contract, and as payment is made through PFMS, supplies, are in fact made to the Central & State Government?

5.2.3 Applicability of entry No. 3 in Notification No. 12/ 2017- Central Tax (Rate) dated 28th June 2017, to Supply of services where Time of supply is on or before 31-12-2021 and rate of tax applicable.

5.2.4 Applicability of entry No. 3 in Notification No. 12/ 2017- Central Tax (Rate) dated 28th June 2017, to Supply of services where Time of supply is on or after 01-01-2021 and rate of tax applicable.

5.3 What is the classification of the services supplied to Maharashtra Jeevan Pradhikaran ('MJP') as a part of Jal Jeevan Mission which is a mission of Government of India allotted, and its HSN/ SAC Code and applicable entry in Notification No. 11/ 2017- Central Tax (Rate) dated 28th June 2017.



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The related entry is as under,

Heading & Group	Service Code (Tariff)	Service Description
Heading 9983		Business and Production Services
Group 99839		Other professional, technical and business services.
Heading 9983-Group 99839	998399	Other professional, technical and business services n.e.c. Explanatory Note- This service code includes drafting services (detailed layouts, drawings, plans and illustrations of buildings, structures, systems or components from engineering and architectural specifications, done by architectural draftsmen or engineering technicians); compilation services of facts and information (i.e. databases), n.e.c.

Notification No. 11/ 2017- Central Tax (Rate) dated 28th June 2017.

Sr No	Chapter, Section or Heading	Description of Service	Rate (percent.)	Condition
(1)	(2)	(3)	(4)	(5)
18	Section 8	Business and Production Services		
21	Heading 9983 (Other professional, technical and business services)	(ii) Other professional, technical and business services other than [(i) and (ia) above] [and serial number 38 below] media.	9	-

5.3.1 Applicants submission-

These services are classifiable under HSN Code/ SAC code -998399- Other professional, technical and business services n.e.c., under the head Business and Production Services, covered at Sr No 21 in the Notification No 11/2017-Central Tax (Rate)- dated 28th June 2017 and are taxable at rate of 18% (9% CGST & SGST each), wherever exemption is not applicable.

5.3.2 Submission of the Jurisdictional Officer is as under - The Applicant is an engineering consultant, it, among others, is providing engineering consultancy services to Maharashtra Jeevan Pradhikaran ('MJP') a governmental corporation for the execution of Jal Jeevan Mission Scheme.

The Applicant, up until, 1.1.2022 was claiming exemption from payment of GST under Sr.No. 3 of notification 12/2017-GST as is providing pure services to a government authority for a purpose covered under 243 G/W of the Indian Constitution.

5.3.3 Findings, observations and decision

The services supplied by the applicant are in nature of "Technical Consultancy for Project Development and Management support services, and hence classifiable under SAC code -998399- Other professional, technical and business services n.e.c., under the head Business and Production Services covered at Sr No 21 (ii) in the Notification No 11/2017-Central Tax (Rate)- dated 28th June 2017 and are taxable at rate of 18% (9% CGST & SGST each), wherever exemption is not applicable. Wherever exemption is not applicable.



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5.4 Whether Services provided to MJP for the Constitutional function of State & Central Governments, for which these Governments are liable to pay the consideration of contract, and as payment is made through PFMS, supplies are in fact made to the Central & State Government.

Hence, even after deletion of the word "Government Authorities" with effect from 01-01-2022, from the notification entry number 3, the services provided by the applicant shall be eligible for benefit of exemption. At the outset it is submitted by the applicant that, he has some alternate arguments to be submitted regarding the actual recipient of services in not "MJP", but as per provisions of GST Act, Finance Bills and Constitutional law, these are supplies to the Central and State Governments, for following reasons-

In brief teach of the arguments and decision thereon are as under,

5.4.1 Applicants Submission: -Supply of water is constitutional Duty of the Governments, and hence supplies by him to MJP, are legally supplies made to the Governments, as per Constitution.

The Central Government and similarly, the Maharashtra Government also cannot, by enacting a legislation viz the Maharashtra Jeevan Authority Act, 1976, now say that it is no longer responsible for its constitutional duty of providing water, irrigation, canal or sanitation facilities as has been specifically entrusted to it by the Constitution. In order to be compliant with the constitutional provisions of article 243 G & W, it has to be construed that the function of water supply, irrigation, canaling etc. is being carried on by the State Government through the agency of Maharashtra Jeevan Pradhikaran. any attempt to interpret otherwise would mean that the State Government has abdicated its function of water supply, irrigation, canaling etc. to the Maharashtra Jeevan Pradhikaran which would be entirely unlawful & contrary to the constitutional prescriptions and procedure.

4.1. Any law enacted in India has to be interpreted & construed in harmony with the provisions of the Constitution or otherwise it falls prey to the vice of unconstitutionality. If as per the Constitution a given activity is the function/ duty or responsibility of State/Central Government or local Government, then, despite the fact that apparently a body corporate owned by Government is entrusted with the function, the activities of the said body corporate have to be construed as an agent of the respective Government. For all the above reasons, the applicant prays that it be held that despite the deletion of words Government Authority/ Entity from notification no 12/2017 with effect from 01-01-2022, the activity performed & rendered by the applicant in respect of Jal Jeevan Mission remain to be rendered to the respective Government who has financed the above activity through their budget allocations as a part of their Constitutional function.

5.4.2 Submission of the Jurisdictional Officer is as under - The Officer stated that it is trite law that the words of a notification have to be strictly construed & any ambiguity has to be construed in favour of the revenue. Since, the words government authority or entity have been removed, tax is undisputedly attracted.

5.4.3 Findings, observation and decision -

Being creature of GST Law this Authority cannot comment on the submission that setting up MJP is entirely unlawful and contrary to the constitutional prescriptions and procedure, this is not appropriate forum to discuss such issue. However, it is clear that,



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as per the Constitution it is the function/ duty or responsibility of State/Central Government or local Government, and hence setting up MJP which is a body corporate owned by Government is entrusted with the function, is not prohibited but entirely expected, for development, implementation and regulation of such function.

a. Discussion and provisions of the MJA Act, on this issue are as under,

The Maharashtra Jeevan Authority Act, 1975, has set up the MJP. The MJA Act, does not mention that MJP is agent of the State Government. In fact the MJP has Authority to contract on its own (Refer Section 3 and 24) and entitled to sign contracts. Secondly, Government of Maharashtra has not given MJP any authority to sign contracts on its behalf. Refer provisions as under,

(i). Section 2. In this Act, unless the context otherwise requires, — (i) "Authority" means the Maharashtra Jeevan Authority established under section 3;

(ii) Chapter II- ESTABLISHMENT, CONDUCT OF BUSINESS, DUTIES AND POWERS OF THE AUTHORITY

Section 3. -Establishment of the Authority

(1) As soon as may be after the commencement of this Act, the State Government shall, by notification in the Official Gazette, with effect from a date to be specified therein establish for the purposes of this Act 2 [an Authority] to be called "the Maharashtra Jeevan Authority.

(2) The Authority shall be a body corporate, having perpetual succession and a common seal, with powers, subject to the provisions of this Act, to acquire, hold or dispose of property, both moveable and immovable, and to contract, and may sue or be sued by its corporate name aforesaid. (Emphasis supplied).

Section 24. Execution of contracts, etc

Every contract or assurance of property on behalf of the Authority shall be in writing and executed by such authority or officer and in such manner as may be provided by regulations. (Emphasis supplied).

b. The Empanelment & supply of Service Contract executed between the MJP and the Applicant dated 31-03-2021, does not mention that MJP is agent of the Authority or that it is signing contract on behalf of the State or Central Government. Relevant clauses are as under,

This Agreement (hereinafter called the March, "Contract") is made at Mumbai on 30th of 2021 between the Maharashtra Jeevan Pradhikaran (MJP) having its registered office at 4th Floor, Express Towers, Ramnath Goenka Marg, Nariman Point, Mumbai, Maharashtra 400021. (Herein after called "the MJP" which expression shall means and includes its successor or succession and permitted assigns) of the one part.

3 The MJP hereby agrees to pay the Consultant in consideration of the performance of the Services such amounts as may become payable under the provisions of the agreement at the times and in the manner prescribed in the Consultancy Agreement.

4 In consideration of the payments to be made by the MJP to the Consultant as hereinafter mentioned in Clause 4 of the Consultancy Agreement, the consultant hereby agrees with the MJP to perform the Services of Project Development & Management Support" as CLASS II Consultant for Pune Region in conformity with the provision of the Agreement. (Emphasis supplied).



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- c. Provisions of GST Act- As per section 60 of The MJA Act, 1976, State Government has control over the "MJP". Under GST Act- MJP and the State Government are related persons and not agents and principal. And supply by them to each other is treated as deemed supply. Under GST such agent Principal relation does not exist between MJP & State Government. Refer relevant provisions which are as under,

i) Section 15. Value of Taxable Supply. -

"Explanation. - For the purposes of this Act,-

(a) persons shall be deemed to be "related persons" if-

(iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

.....;

(b) the term "person" also includes legal persons;

(c), howsoever described, of the other, shall be deemed to be related."

(ii) Section 25. Procedure for registration.

(4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

(5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

(iii) SCHEDULE I [See section 7]-

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

(1)

(2) *Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business;*

d. Provisions of Article 282 of the Constitution of India-

"282. Expenditure defrayable by the Union or a State out of its revenues

The Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or, the Legislature of the State, as the case may be, may make laws."

Hon'ble Karnataka High Court in case of K N Subba Reddy v state of Karnataka, published in AIR 1993 Kant 66, has explained the purpose, Scope and Right arising out of Grants under Article 282 has explained as under,

"This provision vests in the Centre a very broad power to give grants to the States for any specific public purpose. The attitude of the courts is not to interfere this matter and leave it to the judgment of the Central Government. The proper place to criticise any grant by the government is the legislature and not the courts"



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The grants given under Art. 282 are also known as discretionary grants, the reason being that the Centre is under no obligation to give these grants to any State; the Centre may give such a grant to one State and not to another, and the matter lies solely within the Centre's discretion. The use of the word 'may' in Art. 282 signifies the discretionary nature of these pants. Unlike the 'fiscal need' grants under Art. 275, these grants lie outside the purview of the Finance Commission. The technique for grants under Art. 282 is used for a number of purposes. There are programmes which fall within the State sphere for purposes of legislation and administration, but interested in their implementation.

Therefore, in our view Scheme of "Jal Jeevan Mission Funding" is not a matter of Right for State or the implementing agency, and by no stretch of imagination, it can create right for benefit of vendors and suppliers of implementing Agencies., as claimed by the Applicant.

e. Provisions of Article 282 of the Constitution of India-

283. Custody, etc. of Consolidated Funds, Contingency Funds and moneys credited to the public accounts: -

(1) The custody of the Consolidated Fund of India and the Contingency Fund of India, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of India, their payment into the public account of India and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by Parliament, and, until provision in that behalf is so made, shall be regulated by rules made by the President.

(2) The custody of the Consolidated Fund of a State and the Contingency Fund of a State, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody- of public moneys other than those credited (o such Funds, received by or on behalf of the Government of the State, their payment into the public account of the State and withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature of the State, and, until provision in that behalf is so made, shall be regulated by rules made by the Governor of the State.

From the reading of Article it is very clear, that it just regulates the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received, by no stretch of imagination, this Article creates any right for benefit of vendors and suppliers of implementing Agencies., as claimed by the Applicant.

5.4.4 Decision- Submission of the Applicant is not based on the provisions of the MJA Act, 1976, the GST Act, 2017 and terms of Contract. The applicant could not produce any evidence (Binding Judgment on this issue) that The State Government has abdicated its responsibility while setting up the MJP. Secondly, to say that MJP is agent of State in Common Law and hence supplies made to MJP are in fact supplies made to the State Government, is contrary to the express provisions of section 15, 25 and Para v2 of Schedule I of the GST Act, as aforesaid. For purpose of GST, these are distinct Persons.



5.4.5 Financial Bill- after its passage thereof in parliament- The respective Governments become liable to pay for the Developmental schemes related to Constitutional functions. And these provisions of Finance Act, will override the provisions of the MJP Act, thereby making respective Governments, as persons liable to pay to the applicant. Hence as per provisions of section 2 (93) of the GST Act, 2017 and, they shall be treated to be recipient of service. Therefore, any service provided to MJP under Jal Jeevan Mission whether before 01-01-2022 or after is in fact service provided to the Central Government and State Government 50% respectively, and exempted from tax as per exemption Entry No. 3 even after deletion of word "Government Authority" from the said entry.

a. Submission of the Jurisdictional Officer is as under - The Officer stated that it is trite law that the words of a notification have to be strictly construed & any ambiguity has to be construed in favour of the revenue. Since, the words government authority or entity have been removed, tax is undisputedly attracted.

5.4.6 Findings, observations and decision - The applicant did not produce any evidence in support of his argument, He did not show any part in Budget Speech or Finance Bill or Finance Act, where such liability to pay the amount to various suppliers or vendors of the implementing agencies for such Constitutional work for which grants are earmarked. We have gone through the Interim Budget-2024 Speech of Hon'ble Finance Minister, Government of India, in **Para 5 - Inclusive Development and Growth**

a. 5. Our humane and inclusive approach to development is a marked and deliberate departure from the earlier approach of 'provisioning up-to-village level'. Development programmes, in the last ten years, have targeted each and every household and individual, through 'housing for all', 'har ghar jal', electricity for all, cooking gas for all, bank accounts and financial services for all, in record time.

The book-let Budget at a Glance -of Hon'ble Finance Minister for 2024- to see any such content regarding Jal Jeevan Mission.

b. Para 6 of the Budget Booklet is as under- "6. Total resources being transferred to the States including the devolution of State's share, Grants/Loans and releases under Centrally Sponsored Schemes, etc. in BE 2024-25 is `22,22,264 crore, which shows an increase of `4,13,848 crore over Actuals of FY 2022-23".

Page 16 shows Budget outlay for Major Schemes in Which in Heading Core Scheme at Sr No 8- Jal Jeevan Mission/JJM/ National is mentioned and outlay for Fy 2024-25 is mentioned at Rs 70,163/- Crores.

Finance Bill 2024 does not contain any statement that The Centre has undertaken liability to pay to the suppliers of the JJM Scheme in the said Budget or Finance Bill. Thus this argument is also without any evidence, hence rejected.

c. The issue of creation of rights against the "Grants" by the Central Government is decided by Hon'ble High Court of Punjab & Haryana, in Sukhpal Singh Khaira vs State Of Punjab And Others Civil Writ Petition No.20278 of 2012 (O&M) decided on January 16, 2013, in which it is held as under,

"21. We make it clear that because of the reason that petition is rejected as not maintainable, we have not gone into the proprietary wisdom and justification of the expenditure involved. It is for the Legislators to debate, at the Floor of the House, as to whether the expenditure is justified and can be treated as in 'public interest' or not; whether it serves any public interest to give donation of Rs.1 Crore to the school,



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which is not located in the State of Punjab, but in Himachal Pradesh; whether the expenditure could be appropriated to the said Programme/scheme for which it was allocated and spending the amount in the aforesaid manner amounts to violating the provisions of the said Programme or not; whether a sum or Rs.1 Crore should be

given to a school, which otherwise enjoys

robust financial health and on the other hand, the State of Punjab is unable to even release grant-in-aid to the aided schools situated in its own State because of which the teachers of this State are not able to get salaries for several months as alleged by the petitioner; whether the amount is sanctioned only because the respondent No.4 is the alumni of the said school and was invited to the valedictory function of 165th Foundation Celebration of the said School?

22. All these issues need to be debated by the Legislature and are to be left to its wisdom, adhering to the principles of separation of powers. Giving respect to the doctrine of separation of powers and realizing that judicial scrutiny of such expenditures is not permissible and leaving the matter to the Legislative wing of the State, we are left with no option but to dismiss the writ petition.

In view of lack of evidence in support of arguments by the applicant, the above Findings, discussion and provisions of Article 282 & Article 283 as explained by Hon'ble High Courts, we hold that the Supplies made by the Applicant to the MJP, are in fact supplies to the MJP itself and even by any stretch of imagination it can be treated as supply to the respective State or Central Government.

5.4.7 Under the "Jal Jivan Mission" or any work done for water supply Scheme, the whole work completed is property of the government and hence the services supplied by the applicant are services provided to the state government.

5.4.8 **Submission of the Jurisdictional Officer is as under:** - The Officer stated that it is trite law that the words of a notification have to be strictly construed & any ambiguity has to be construed in favour of the revenue. Since, the words government authority or entity have been removed, tax is undisputedly attracted.

5.4.9 **Findings, observations and decision -**

a. **Provisions of vesting of property to MJP is laid down in section 18 of the MJA Act, 1976, which is as under,**

CHAPTER III. - VESTING OF PROPERTY, ASSETS, LIABILITIES AND OBLIGATIONS AND TRANSFER OF EMPLOYEES.

18. (1) From such different dates as may be specified, from time to time, by the State Government (hereinafter in this section referred to as "the appointed date"), —

(1). (a) the properties and assets (including water works, buildings, laboratories, stores, vehicles, furnitures and other furnishing), specified in that behalf, which immediately before the appointed date, were vested in the State Government for the purposes of the Maharashtra Environmental Engineering Service, shall vest in and stand transferred to the Authority; and

(b) the rights, liabilities and obligations of the State Government, whether arising out of any contract or otherwise pertaining to the said service, shall be the rights, liabilities and obligations of the Authority.

(2) such properties, assets, rights, liabilities and obligations shall valued in such manner as the State Government may determine.



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(3) All suits and other legal proceedings with respect to the matters referred to above instituted or to be instituted or defended by or against the State Government before the appointed date may be continued, or instituted, or defended by or against the Authority.

- b. **Decision-** Property created under the Water supply schemes implemented by the MJP vests in MJP only, and not with the Government. Hence the argument being contrary to law is not accepted.

5.4.10 The work executed in this contract by the applicant are related to "Jal Jivan Mission" scheme launched by the Government of India, in 2019, to provide potable water is available to the last village and town through pipeline. It is further submitted that as per government resolution, 50% share of the expenditure incurred for the scheme is going to be borne and shared by the central government and the remaining 50% by the state government. Hence it is submitted that both these Governments are liable to pay the applicant the consideration for services supplied by it to MJP & the Governments are recipient of supplies as per provisions of section 2 (93) the GST act. Therefore any service provided to MJP under Jal Jivan Mission whether before 01-01-2022 or after is in fact service provided to the Central Government and State Government 50% respectively, and exempted from tax as per exemption Entry No. 3 even after deletion of word "Government Authority" from the said entry.

Section 2 (93) of GST Act is as under,

(93) "recipient" of supply of goods or services or both, means- (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration; (b)(c), and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied; (Emphasis supplied)

5.4.11 Submission of the Jurisdictional Officer is as under - The Officer stated that it is trite law that the words of a notification have to be strictly construed & any ambiguity has to be construed in favour of the revenue. Since, the words government authority or entity have been removed, tax is undisputedly attracted.

5.4.12 Findings, observations and decision -

- a. **As per terms of contract between the MJP And Applicant,** the terms of payment are as under, NOW THIS AGREEMENT WITNESS AS FOLLOWS -

3 The MJP hereby agrees to pay the Consultant in consideration of the performance of the Services such amounts as may become payable under the provisions of the agreement at the times and in the manner prescribed in the Consultancy Agreement.

4 In consideration of the payments to be made by the MJP to the Consultant as hereinafter mentioned in Clause 4 of the Consultancy Agreement, the consultant hereby agrees with the MJP to perform the Services of Project Development & Management Support" as Consultant for Aurangabad Region in conformity with the provision of the Agreement.

Tender Document- Page 66 & 67 Para 5.5 & 6.4

Payment:

In consideration of the Services performed by the Consultants under this Contract, the MJP shall make to the Consultants such payments and in such manner as is provided schedule of Payments of this Contract as per scope of work.



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Terms and conditions of payment:

The rates given in schedule of payments are including GST and statutory taxes. Payments will be made as per payment schedule stated in the Schedule of payment Appendix II. Any other payment shall be made after the conditions listed in the Schedule for such payment have been met, and the consultants have submitted an invoice to the MJP specifying the amount due. If there is delay in payment due to shortage of funds or any other reason no extra payment or Interest will be payable on account of delay of payment, however MJP will tried to release payment as early as possible from other sources of MJP by taking approval from competent authority. The Maharashtra Jeevan Pradhikaran shall make the payment of the Consultants periodically as given in schedule of payment above within Thirty days on receipt of invoice from the consultant after the receipt by the Maharashtra Jeevan Pradhikaran of bills with supporting documents. Only such portion of a monthly statement that is not satisfactorily supported may be withheld from payment.

From the terms of tender documents and Contract signed by the applicant, no term provides that "The State Government of Maharashtra" is liable for payment to the applicant. The applicant did not produce any document in support of his contention that Government of Maharashtra" is liable for payment to the applicant.

b. Secondly- Scope of supply under section 7 of the GST Act is as under;

Section 7. Scope of supply. - "(1) For the purposes of this Act, the expression -"supply" includes- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;"

The provision makes it very clear that supply has underlying contract between two persons to supply goods or services for consideration. In case of applicants' case, it is service provider and other party of contract liable to pay consideration for the supply of service is the MJP. Hence question of third party becoming liable to pay consideration does not arise, either under GST act or as per the terms of contract of this applicant.

Last but not least, the applicant could not produce any clause of the Contract for provision of service which states that "The Government of Maharashtra" is liable to pay the consideration of the Contract. Nor could he produce any document whereby The Government of Maharashtra has undertaken to pay the consideration.

c. The MJA Act,1976- Has made express provisions for Financial Resources & Authority to Contract and section 33 provides that The Government of Maharashtra" is only guarantee the loan taken by MJP. Here consideration against supply of services is not loan given by Applicant to the MJP.

CHAPTER IV. CONTRACT, FINANCE, ACCOUNTS AND AUDIT.

24. Execution of contracts, etc

Every contract or assurance of property on behalf of the Authority shall be in writing and executed by such authority or officer and in such manner as may be provided by regulations.



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25. Authority Fund

The Authority shall have its own fund to be called "the 2 [Authority] Loan Fund", which shall also be deemed to be a local fund and to which shall be credited all moneys received by or on behalf of 1 [the Authority] by way of loans

28. Grants and subventions to the Authority.

The State Government may, under appropriation duly made in this behalf, from time to time, make grants and subventions to the Authority for the purposes of this Act, on such terms and conditions as the State Government may determine.

29. Loans to the Authority

The State Government, from time to time, advance loans to the Authority on such terms and conditions, not inconsistent with the provisions of this Act, as the State Government and the Authority may agree upon.

33. Government as guarantor

The State Government may guarantee the repayment of any loan and payment of interest on all or any of the loans given or transferred to the Authority for the purposes of this Act.

5.4.13 "Jal Jeevan Mission- Govt Resolution- Water Supply and Sanitation Department Government Decision No.: JJM- 2019/Pra. Kra.No.138/PAPU-10 (07), G. T. Hospital Premises, New Ministry, Mumbai - 400 001 Dated: 04 September, 2020-which lays down guidelines for implementation of Jal Jeevan Mission in Maharashtra, through State. Loose translation is as under,

Para 6- Organizational Mechanism for Jeevan Mission: Institutional mechanisms are being created as follows.

Jal Jeevan Mission Guidelines dated 25.12.2019 by the Central Govt is a time bound programme. A strong four-tier organizational structure has been created to achieve the objectives within the prescribed time frame. It is the State Water and Sanitation Mission (SWSM) at the level of "National Jal Jeevan Mission" (NJJM) at the second level. District Water and Sanitation Mission (DWSM) & Bar Rural Water Supply and Sanitation Committee (VWSC).

Para- 6.1- State Water and Sanitation Mission (SWSM)-

6.1.1- For implementation of Water supply and sanitation programs through this Department, State Water and Sanitation Mission is registered on 10-02-2010 under the Society Registration Act, 1860, under the Chairmanship of the Chief Secretary of Government of Maharashtra. The State Water and Sanitation Mission has full responsibility and authority for the planning, implementation and control of Jeevan Mission and sanitation programs in the state. The State Water and Sanitation Mission has full powers to function as per the guidelines of the Jal Jeevan Mission. The State Water and Sanitation Mission (SWSM) is being empowered to act as the implementing mechanism for Jal Jeevan Mission as per the guidelines of the Central Government

Para- 8 Financial Matters:

Center and state share for this mission will be 50:50. Funds will be reserved according to the schedule caste/tribe population. A total estimated expenditure of



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Rs.13668.50 crore is expected to implement Jal Jeevan Mission in the state. These estimates are taken as a rough estimate and the expenditure on the actual scheme will be spent as per the administrative approval of that scheme.

Para-11. Public Financial Management System (PFMS):

A commercial account has been opened in a Scheduled / Nationalized Bank through the State Water and Sanitation Mission and is being approved by the Government. After the central government fund is received in the A fund of the state government, it will be transferred along with the state share to the Central Department of State Water and Sanitation Mission within days. As per the guidelines of Jal Jeevan Mission, financial expenditure control should be done only through Public Financial Management System (PFMS) system. It is mandatory to act according to the instructions received from the central government.

5.4.14 Findings, observations and decision -

Provisions of the aforesaid GR clearly state that (i) SMSM- is Registered as a society registered on 10-02-2010 under the Society Registration Act, 1860.

(ii) A commercial account has been opened in a Scheduled / Nationalized Bank through the State Water and Sanitation Mission and is being approved by the Government. (Emphasis supplied)

(iii) The respective Governments have made available the Grants to MJP for Execution various Water Supply Schemes. Provision of Grant to MJP cannot be said to be payment made by the Central Government & State Government in ratio of 50% each are made by them directly to the applicant.

From these facts and findings and aforesaid discussion, it is decided that, the Jal Jeevan Mission is implemented through SWSM, which is Society and has authority to undertake work, as per guidelines of the Jal Jeevan Mission. Authority and responsibility to Open Bank account. Both the Governments will transfer funds as grants in this account. Money is not directly going to be paid to the vendors/ contractors of SWSM, directly by respective Governments. Use of PFMS is binding. Hence it can not be said that the respective Governments are liable to pay to the vendors / contractors making supply to SWSM or MJP, as the case may be.

5.4.15 Payment received through PFMS, proves that both the Central Governments have paid to applicant for the services supplied by them, hence are services provided to the Governments and not MJP.

As per operational guidelines of "Jal Jeevan mission by ministry of Jal Shakti. The applicant has received the payment through Public Financial Management System "PFMS" rules that the central government and state government have directly paid the consideration to the applicant for the services rendered by him and as both these governments are liable to make payment to the applicant. In view of provisions of subsection (93) of section 2, the supplies may of the services made by the applicant treated as supplies made to the central government and state government for their respective share.

5.4.16 Submission of the Jurisdictional Officer is as under - The Officer stated that it is trite law that the words of a notification have to be strictly construed & any ambiguity has to be construed in favour of the revenue. Since, the words government authority or entity have been removed, tax is undisputedly attracted.



5.4.17 Findings, observations and decision -

a. For decision on this issue exact nature of Public Financial Management System (hereinafter referred as "PFMS") needs to be studied, which is taken from CAG website.

- (i) The Public Financial Management System (PFMS) is a web-based financial management application developed and implemented by the Controller General of Accounts (CGA), Department of Expenditure, Ministry of Finance, Government of India.
- (ii) Payment & Exchequer Control: Article 283 (1) of the constitution paved way for framing of Government of India Receipts and Payments Rules, which govern the payment and exchequer control functions. PFMS which has codified these rules facilitates this entire process online in a seamless and paperless manner.

Instructions issued by Ministry of Jalshakti vide No. PD-26025/ 2/2019-SBM dated 21-07-2024 about Implementation of PFMS by Implementing agencies are in brief as under,

- (i) Brief introduction of Public Financial Management System (PFMS) is a web-based application for online management of schemes of GOI and information & decision support system (DSS) for stakeholders.
- (ii) It is for Just-in-time Release of funds. It assists in complete monitoring of usage of funds including information on its ultimate utilization.
- (iii) The system is developed and maintained by O/o CGA, Dept. of Expenditure, Ministry of Finance, Government of India, New Delhi. o It is monitored by Prime Minister Office (PMO) regularly.

Para 16.1- Release from Centre to State level implementing body....

The funds under SBMG will be released electronically by DDWS to the State Governments as per instructions issued by the Ministry of Finance from time to time. The State Governments shall release the funds to the SSBMG within 15 days of transfer of funds from DDWS along with matching State share. In case of advance State share is released by the State Governments, the same can be adjusted against the Centre share released in the subsequent year(s).

Funds under SBMG will be released to the State / UTs only after the respective Government provides the undertaking that funds earmarked under 15th Finance Commission grants for sanitation activities are being devolved to rural local bodies. The States/UTs will operate a single savings bank account in any Scheduled Commercial Bank (except foreign banks) or a bank authorized by the State Government for receipt of SBMG funds and all transactions relating to SBMG including Central share, State share, or any other receipt. All the existing accounts for SBMG at District / Block / GP levels will be closed after transferring the unspent balance of those accounts to the State nodal account. The details of the SSBMG nodal bank account have to be communicated to DDWS along with the name of the bank, IFSC Code and Account Number, etc. and should not be changed during the implementation of the project without prior permission of the DDWS. The States/UTs may use the existing account at their SSBMG level as nodal account. The funds release / advance / transfer / expenditure under the programme at all levels shall be mandatory through the Public Financial Management System (PFMS) of



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Government of India. All the implementing agencies and below level agencies in the States / UTs will be registered in PFMS as parent-child agency and shall be mapped with Linked State scheme code for SBMG and to the State nodal account - it is also to be ensured that all the transactions shall be mandatorily made in PFMS. Utilization of funds and unspent balance will be monitored through the PFMS for the purpose of release of funds to the States / UTs.

b. The procedure of Billing & Payment needs to be understood to decide the issue.

- (i) The Applicant after provision of services, issues Bill/ Tax Invoice to the MJP in name of Engineer of the project.
- (ii) Concerned Engineers confirms the completion of work and then approves the Invoice.
- (iii) After approval of the Invoice, it is processed for payment through PFMS.
- (iv) The account from which amount is paid belongs to "The MJP" for implementation of the Scheme.
- (v) MJP or for that matter any implementing agency is allowed to open multiple Bank accounts qua scheme for use on PFMS. After the approval of Bill and after sufficient funds are received in the MJP account, transfer of funds is approved by MJP through PFMS. The account which is debited, is of MJP and not Government account.

From the guidelines stated above, it is very clear is that PFMS-(i) is The Public Financial Management System (PFMS) is a web-based financial management application, not Central or State Government, nor is it Bank account of either Government. (ii) Each Nodal Body either of Centre, State, District or the implementing agency will have to open their own Bank account, which shall not be changed during implementation of the scheme. (iii) Grants will be released by Centre and State just in time. Thus, it is clear that payment through PFMS is not payment by Government, but payment made by Implementing Agency (here either MJP or SWSM), out of the grants received by them from respective Governments. (Emphasis supplied)

Last but not least- In Indian Banking system money is transferred from one account to another by way of NEFT, which is "National Electronic Fund Transfer (NEFT) is an online fund transfer system introduced by the Reserve Bank of India (RBI) in November 2005. This nationwide payment system ensures a safe and faster method of fund transfer between banks across the country. This fund transfer system operates on a deferred net settlement (DNS) basis, under which the amount will be settled in batches only at a particular point in time. To initiate a NEFT transfer, the Bank IFSC Code is a must, along with other details such as bank account number, bank branch and account holder name, among other details. PFMS is similar to NEFT, but PFMS has other documentation, payment processing, accounting, auditing facility and movement of funds just in time facilities, which are absent in NEFT.

PFMS is a system through which funds flow from various governments to the various government authorities, various implementing agencies/ institutes which government schemes, Each such implementing agency has its own bank account one or many depending upon scheme etc. Government grants are transferred to



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such implementing agencies accounts, only when any bill is processed by the implementing agency. This the grants never flow from Government account to beneficiary accounts directly, but through implementing agencies. This it is far fetched argument that money received through PFMS is money paid by Government.

5.4.18 Findings, discussion & Decision- The argument of the applicant that services provided to MJP for the Constitutional function of State & Central Governments, for which these Governments are liable to pay the consideration of contract, and as payment is made through PFMS, supplies are in fact made to the Central & State Government. Hence, even after deletion of the word "Government Authorities " with effect from 01-01-2022, from the notification entry number 3, the services provided by the applicant shall be eligible for benefit of exemption services provided by it to MJP, is not based on evidence, far-fetched and based on conjectures and surmises and very specious argument and hence rejected. This decision is supported by principle laid down by Hon'ble Supreme court in case of New Okhla Industrial Development ... vs Chief Commissioner Of Income Tax, in CIVIL APPEAL NOS.792-793 OF 2014 decided on 2 July, 2018, where the issue of benefits of exemption available to Governmental Authorities vide Section 10(20A), and effect of its deletion on the levy of Income Tax is decided. In para 53 Hon'ble Supreme Court held as under,

"Para 53. The following passage from Cape Brandy Syndicate v. IRC 1921 (1) KB 64 has been approved by the Apex Court in the decisions rendered by their Lordships.

"in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied, one can only look fairly at the language used." (Emphasis supplied)

5.5 Supply of services where Time of supply is on or before 31-12-2021.

5.5.1 To decide applicability of the Exemption entry at Sr. No. 3 of the Notification No. 12/2017-Central tax (Rate) to the supplies during impugned period, following issues need to be decided.

Table

SL. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (percent.)	Condition
(1)	(2)	(3)	(4)	(5)
3	Chapter 99	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority ***{ or a Governmental authority or a Government Entity } by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.	NIL	NIL

*****Sr. No. 3, in the entry in column (3), the words 'or a Governmental authority or a Government Entity' omitted by Notification No. 16/2021- Central Tax (Rate) dated 18-11-2021 (W.e.f. 01 January 2022).**

2. Definitions. - For the purposes of this notification, unless the context otherwise requires,



[(zf) "Governmental Authority" means an authority or a board or any other body, -
(i) set up by an Act of Parliament or a State Legislature; or
(ii) established by any Government, with 90per cent. or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243 W of the Constitution or to a Panchayat under article 243 G of the Constitution;

5.5.2 Submission of the Applicant- In this regard also, the applicant has argued that Supply of Services by it, to the MJP for Jal Jeevan Mission, are in fact supplies to the Central Government, State Government for the aforesaid reasons.

These arguments are found to be is not based on evidence, far-fetched and based on conjectures and surmises and very specious argument and hence rejected and are in fact supplies made to the MJP.

5.5.3 whether the services provided by the applicant as aforesaid are pure services (excluding works contract service or other composite supplies involving supply of any goods)?

a. Submission of Applicant- It is submitted that the aforesaid services are pure services.

b. Submission of the Jurisdictional Officer is as under - It is submitted that the aforesaid services are pure services.

c. FINDING OBSERVATIONS AND DISCUSSION -

From the contract referred above, it is clear that the applicant has supplied only the "Technical Consultancy for Project Development and Management support services ", which are pure services. No transfer of goods in any form takes place from the Applicant to the MJP.

5.5.4 whether these services are provided in relation to any function entrusted to a Panchayat under article 243G of the constitution or in relation to any function entrusted to the municipality under article 243W of the constitution.

a. Submission of Applicant- It is submitted that the aforesaid services provided for Works to be executed by MJP for Water supply and in particular Jal Jivan Mission. Hence are in relation to the function entrusted under article 243G & 243W.

b. Submission of the Jurisdictional Officer is as under - Officer agreed with the applicant.

c. FINDING OBSERVATIONS AND DISCUSSION

From the agreement, it is clear that the applicant has provided "Technical Consultancy for Project Development and Management support services "for water supply scheme at various locations implemented by the MJP for supply of water, which are the function stated in article 243G & 243W. For sake of reference- relevant functions are reproduced as under,

(a) ELEVENTH SCHEDULE (Article 243G) - Sr No. 3. Minor irrigation, water management and watershed development. & at Sr No 11. Drinking water.

(b) TWELFTH SCHEDULE (Article 243W)- Sr No. 5. Water supply for domestic, industrial and commercial purposes & Sr No. 6. Public health, sanitation conservancy and solid waste management



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5.5.5 Whether "the MJP" is "Governmental Authority" as required in entry number 3 & defined in definition 2 (zf) of the exemption notification.

a. **Submission of Applicant-** It is submitted that the MJP is set up under "The Maharashtra Jeevan Authority Act, 1976" by Legislature of Maharashtra and hence it is Governmental Authority as defined in definition (zf) of the exemption notification.

b. **Submission of the Jurisdictional Officer is as under** - Officer agreed with the applicant.

c. FINDING OBSERVATIONS AND DISCUSSION

Definition clause 2 (zf) of the notification defines

[(zf) "Governmental Authority" means an authority or a board or any other body,

- (i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government, with 90 per cent. or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243 W of the Constitution or to a Panchayat under article 243 G of the Constitution;

As the MJP is set up by an Act of Legislature of Maharashtra State, it is "Governmental Authority", for the purpose of exemption entry at Sr No 3, before the omission of the words from the entry by Notification No. 16/2021- Central Tax (Rate) dated 18-11-2021 (W.e.f. 01 January 2022).

We are supported by earlier advance ruling in case of M/s Mekorot Development and Enterprises Limited, order dated 22 September 2021 in GST Ara application number 71 dated 29th November 2019, rendered by Maharashtra Authority of advanced ruling.

5.5.6 Final decision - Supply of services where Time of supply is on or before 31-12-2021. After Considering all the aforesaid facts, provisions of Law, issues and decision therein, we have no hesitation in holding the "Technical Consultancy for Project Development and Management support services", provided by the applicant to the MJP for its Water supply schemes where time of supply is on or before 31-12-2021, are covered by the exemption entry at Sr No. 3 of the exemption notification No 12/2017-Central Tax (Rate), dated 28th June 2017.

5.6 Supply of services where Time of supply is on or after 01-01-2022.

To decide applicability of the Exemption entry to the applicant for impugned period following issues need to be decided.

5.6.1 Submission of the Applicant- In this regard also, the applicant has argued that Supply of Services by it, to the MJP for Jal Jeevan Mission, are in fact supplies to the Central Government, State Government for the aforesaid reasons.

These arguments are found to be is not based on evidence, far-fetched and based on conjectures and surmises and very specious argument and hence rejected and are in fact supplies made to the MJP.

5.6.2 Submission of the Applicant- In this regard also, the applicant has argued that Supply of Services by it, to the MJP for Jal Jeevan Mission, are in fact supplies to the Central Government, State Government for the aforesaid reasons.



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These arguments are found to be is not based on evidence, far-fetched and based on conjectures and surmises and very specious argument and hence rejected and are in fact supplies made to the MJP.

5.6.3 Submission of the Jurisdictional Officer is as under - The fact of the words "a government authority or entity" having been omitted, unfailingly attract tax liability. Without prejudice to the aforesaid submission, although the applicant claims that MJP is working as an agent of the Central/State Government for the execution of the Jal Jeevan Scheme, it is MJP & not the Government that has issued the tender, empanelled the applicant, allotted work to the applicant. Section 188 of the Indian Contract Act delineates the scope of an agent's authority: - "188. Extent of agent's authority. —An agent, having an authority to do an act, has authority to do every lawful thing which is necessary in order to do such act. An agent having an authority to carry on a business, has authority to do every lawful thing necessary for the purpose, or usually done in the course, of conducting such business."

Thus, the extent of agency is limited to carrying out the means or a mode of doing an act & not to decide the very act itself. Actions of MJP in fixing the technical qualifications necessary for being eligible in the tender process, to enter into an agreement with applicant confirming his empanelment & eligibility, to enter into contractual negotiations for fixing consideration are much too broad & decisive to be narrowly circumscribed by the trappings of an agency.

It is trite law that the words of a notification have to be strictly construed & any ambiguity has to be construed in favour of the revenue. Since, the words government authority or entity have been removed, tax is undisputedly attracted.

5.6.4 Findings, observation and decision - Deletion of words "or a Government Authority or a Government Entity", from the entry at Sr No. 3 will result in making this entry not applicable of supply of pure services to the "or a Government Authority or a Government Entity".

(a) **This decision is supported by principle laid down by Hon'ble Supreme court in case of New Okhla Industrial Development ... vs Chief Commissioner of Income Tax, in CIVIL APPEAL NOS.792-793 OF 2014 decided on on 2 July, 2018.**

where the issue of benefits of exemption available to Governmental Authorities vide Section 10(20A), and effect of its deletion on the levy of Income Tax is decided. The appellant-New Okhla Industrial Development Authority has been constituted under Section 3 of the U.P. Industrial Area Development Act, 1976. Earlier on 14-02-2000, High Court held that it is covered by the exemption under Section 10(20A) of I.T.Act, 1961. However, sub-section (20A) is now deleted wef 01-04-2003. In brief provisions are as under,

"Section 10 - In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included-

(20). the income of a local authority which is chargeable under the head "Income from house property", "Capital gains" or "Income from other sources" or from a trade or business carried on by it which accrues or arises from the supply of a commodity or service (not being water or electricity) within its own jurisdictional area or from the supply of water or electricity within or outside its own jurisdictional area.

****[Explanation. —For the purposes of this clause, the expression "local authority" means—**

(i) Panchayat as referred to in clause (d) of article 243 of the Constitution; or



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- (ii) Municipality as referred to in clause (e) of article 243P of the Constitution;
or
- (iii) Municipal Committee and District Board, legally entitled to, or entrusted by the Government with, the control or management of a Municipal or local fund; or
- (iv) Cantonment Board as defined in section 3 of the Cantonments Act, 1924 (2 of 1924);].

**** Explanation was inserted by the Finance Act, 2002 w.e.f. 01.04.2003**

****(20A) any income of an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both,"

******* Sub-section (20A) was omitted by the Finance Act, 2002 w.e.f. 01.04.2003.**

Deciding the applicability of exemption to the Appellant after deletion of sub-section 10 (20A), Hon'ble Supreme Court held as under,

"Para 53. The following passage from Cape Brandy Syndicate v. IRC 1921 (1) KB 64 has been approved by the Apex Court in the decisions rendered by their Lordships.

"in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied, One can only look fairly at the language used." (Emphasis supplied)

54. We fully endorse the views taken by the High Court in the above two judgments.

55. Now, reverting back to Explanation to Section 10(20), these are entities which mean the local authority. The submission of the appellant is that the appellant is covered by Clause (ii) of the Explanation i.e. "Municipality as referred to in clause (e) of Article 243P of the Constitution". We, while discussing above provisions, have already held that the appellant is not covered by the word/expression of "Municipality" in clause (e) of Article 243P. Thus, the appellant is not clearly included in sub-clause (ii) of Explanation. It is not even the case of the appellant that the appellant is covered by Section 10(20) except clause (ii).

56. Thus, we are of the considered opinion that the appellant is not covered by the definition of local authority as contained in Explanation to Section 10(20).

57. In view of what has been stated above, we dismiss these appeals."

- b. This decision is supported by principle laid down by Constitution Bench of Hon'ble Supreme Court has in case of Commissioner of Central Excise, New Delhi Versus M/s Hari Chand Shri Gopal & Others etc. etc. in CIVIL APPEAL NOS. 1878-1880 OF 2004 decided on November 18, 2010, in para 22 has held as under,**
- "22. A person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with



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certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption”.

c. **Decision:** In our considered view the Applicant has failed to discharge the burden of proof to substantiate his claim of exemption.

5.6.5 Final decision on Supply of services where Time of supply is on or after 01-01-2022. After Considering all the aforesaid facts, provisions of Law, issues and decision therein, we have no hesitation in holding the “Technical Consultancy for Project Development and Management support services”, provided by the applicant to the MJP for its Water supply schemes where time of supply is on or after 01-01-2022, are not covered by the entry at Sr No. 3 of the Notification No 12/2017-Central Tax (Rate), dated 28th June 2017. As the words “or a Government Authority or a Government Entity”, are omitted from the aforesaid Entry at Sr. No. 3.

6. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

For reasons as discussed in the body of the order, the questions are answered thus –

Question 1: What is the rate of tax in respect of work allotted by Maharashtra Jeevan Pradhikaran ('MJP') as a part of Jal Jeevan Mission which is a mission of Government of India allotted, performed & invoiced before 01.01.2022?

Answer: - Nil, being exempted under Entry at Sr No. 3 of the Notification No. 12/2017-Central tax (Rate)- dated 28th June 2017.

Question 2: What is the rate of tax in respect of work allotted by Maharashtra Jeevan Pradhikaran ('MJP') as a part of Jal Jeevan Mission which is a mission of Government of India which is performed & invoiced after 01.01.2022 but which is allotted before 01.01.2022?

Answer: - Taxable at rate of 18% (at 9% under CGST & SGST Act, each), being covered by Entry at Sr. No. 21 Heading 9983, (ii) of the Notification No. 11/2017-Central tax (Rate)- dated 28th June 2017.

Question 3: What is the rate of tax in respect of work allotted by Maharashtra Jeevan Pradhikaran ('MJP') as a part of Jal Jeevan Mission which is a mission of Government of India allotted, performed & invoiced after 01.01.2022?

Answer: - Taxable at rate of 18% (at 9% under CGST & SGST Act, each), being covered by Entry at Sr. No. 21 Heading 9983, (ii) of the Notification No. 11/2017-Central tax (Rate)- dated 28th June 2017.

Question 4: Who is the service receiver within the meaning of Sec.2(93) of CGST/MGST Act in respect of amounts received as grants by MJP which are paid to the applicant on services provided before 01.01.2022?

Answer: - The Maharashtra Jeevan Authority [erstwhile the Maharashtra Jeevan Pradhikaran]



Question 5: Who is the service receiver within the meaning of Sec.2(93) of CGST/MGST Act in respect of amounts received as grants by MJP which are paid to the applicant on services provided after 01.01.2022?

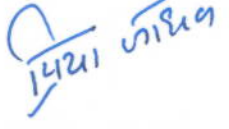
Answer: - The Maharashtra Jeevan Authority [erstwhile the Maharashtra Jeevan Pradhikaran]

Question 6: Whether appointment of MJP as an agency to implement water supply schemes amounts to delegation of sovereign function enumerated in Sch. XI & XII within the framework of Constitution of India so as to hold that MJP has performed the function entrusted under Article 243G & 243W of the Constitution of India?

Answer: - Not answered, being out of purview of provisions of section 97 (2) of the GST ACT, 2017.




AJAYKUMAR V. BONDE
(MEMBER)


PRIYA JADHAV
(MEMBER)

- Copy to:
1. The applicant
 2. The concerned Central / State officer
 3. The Commissioner of State Tax, Maharashtra State, Mumbai
 4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
 5. The Joint commissioner of State Tax, Mahavikas for Website.

Note:- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.

