

**GUJARAT AUTHORITY FOR ADVANCE RULING,  
GOODS AND SERVICES TAX,  
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,  
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/08/2021  
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/35)

Date: 20.01.2021

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| Name and address of the applicant  | : | M/s. National Institute of Design,<br>Paldi, Ahmedabad-380007.   |
| GSTIN of the applicant   | : | 24AAATN1137D1Z6  |
| Date of application  | : | 16.07.2020.  |
| Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised. | : | (b) Applicability of a notification issued under the provisions of this Act.<br>(e) Determination of the liability to pay tax on any goods or services or both.<br>(f) Whether applicant is required to be registered. |
| Date of Personal Hearing   | : | 23.12.2020   |
| Present for the applicant  | : | Shri Hardik Shah   |

**BRIEF FACTS**

The applicant M/s.National Institute of Design, Paldi, Ahmedabad (hereunder referred to as 'NID' or 'the Applicant') having registration no 24AAATN1137D1Z6 has been declared as an institution of national importance for promotion of quality and excellence in design education, research and training in all disciplines relating to Design and for matters connected therewith or incidental thereto. The NID Act regulates NID by laying down its powers, functions and responsibilities. The applicant has submitted a copy of the NID Act along with their submission as well as the copy of their registration with GST authorities.

**2.** The applicant has submitted that according to Section 9 of the NID Act, the President of India would be the visitor of the institution, who may appoint one or more persons to review the work and progress of the institute or to hold the inquiries into affairs of the institute and to report them in such manner as he directs and that on the basis of the report, the visitor shall take such actions and issue such directions as he may consider necessary, which shall be binding on the Applicant. The applicant has explained some of the sections of the NID Act as under:

- (1) Section 10 of the NID Act provides that a Governing Council ('Council') shall be an authority of the institution. Moreover, as per Section 11 of the NID Act, Council would comprise of a chairperson who would be nominated by the President of India. Apart from chairperson, the Council also shall have such number of members, who are nominated by Central Government, State Government or visitor / President or Senate of NID. Further, the Director of the Applicant would also be appointed by Central Government as per Section 18 of NID Act.

- (2) In order to enable the NID to function effectively, Section 22 of the NID Act provides that the Central Government, after due appropriation made by Parliament, would pay to the institution such sum of money as it may deem fit, in each financial year. This means that NID is receiving substantial grant from Department for Promotion of Industry and Internal Trade('DPIIT'), Ministry of Commerce & Industry, Government of India for its functioning.
- (3) It is further stipulated in Section 23 of NID Act that NID would maintain a fund wherein all money received or earned by NID including grants, donation, fees etc. would be credited. Further, the amount so credited to the Fund would be deposited in banks or invested in such manner as may be decided, with the approval of the Central Government.
- (4) As far as book-keeping is concerned, Section 25 of NID Act states that the accounts would be maintained by NID in such manner as directed by the Central Government in consultation with the Comptroller and Auditor General of India (CAG). The accounts of the NID are audited by the Comptroller and Auditor General of India and the certified accounts along with audit report would be forwarded to Central Government and same would be laid before each House of Parliament.
- (5) Section 36 of the NID Act also stipulates that the Central Government may issue directions as it may deem necessary for effective administration of this Act.

**3.** The applicant has submitted that in order to render education services, being the only objective of the Applicant, NID procures numerous services such as security services, subscription of e-books/database, house-keeping services, professional services, annual maintenance services etc.; that major services provided by NID are educational services, which are exempted supplies and therefore the applicant is not able to avail input tax credit of taxes paid on receipt of supply; that on perusal of GST law, the applicant understands that Sl. No. 3 of Notification No.12/2017 – Central Tax (Rate) and Notification no. 9/2017 – Integrated Tax (Rate) wherein pure services provided to a Central Government, State Government or Union Territory or local authority or a Governmental Authority by way of any activity in relation to a function entrusted to a Municipality under Article 243W of the Constitution of India ('COI') is exempted; that since, NID is set-up by an Act of Parliament and the Central Government has complete control over the institution, the Applicant believes that they would merit categorization as a Governmental Authority as defined in the GST Act; that they believe that their activity of providing education in the field of design is one of the functions of Article 243W of COI and services received by them in relation to/pertaining to education service should be eligible for exemption from payment of GST; that in light of above discussion, if the applicant decides to avail security services from individual or partnership firm, the liability to pay tax rests with the applicant as per Notification #13/2017- CT (Rate), as amended from time to time. The applicant has further stated that apart from the above, they make payment to service providers located outside India for access of e-books or e-database, which are used for the educational purpose. For such services, the liability to pay tax rests with the Applicant as per Notification #10/2017 – IGST (Rate), as amended from time to time, as import of services for which sample copy of invoices have been submitted by the applicant for ready reference. The applicant have also stated that they have obtained registration as tax deductor under Section 24 of CGST Act, 2017.

**4.** Considering the above facts, the applicant has asked the following questions seeking Advance Ruling on the same:

- (i) Whether NID would qualify as ‘Governmental Authority’ as defined under the Integrated Goods and Services Tax Act, 2017?
- (ii) Whether NID is liable to pay GST on procurement of following services under reverse charge mechanism, in view of the exemption granted in Sl. no.3 of Notification No.12/2017 – Central Tax (Rate) or Sl. no. 3 of Notification No.09/2017 – IGST (Rate) ?
- Security services received from any person other than body corporate as per Notification No.13/2017 – Central Tax (Rate)
  - Access to e-books/e-database from service provider located outside India as import of service as per Notification No.10/2017 – IGST (Rate)
- (iii) Whether NID is required to be registered as a tax deductor under GST as per the provision of Section 24 of the CGST Act?

**Grounds for Application/Interpretation of law**

**5.** Explaining the grounds for application as well as his interpretation of law, the applicant has submitted that in order to understand eligibility of exemption, the Applicant wishes to reproduce relevant extract of the exemption Notification No. 12/2017 – CT (Rate) dated June 28, 2017 as under.

| Sl.No. | Chapter, Section, Heading, Group or Service Code (Tariff) | Description of Services   | Rate (per cent) | Condition |
|--------|---|---|-----------------|-----------|
| 3      | Chapter 99  | <b>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 243G of the constitution or in relation to any function entrusted to a Municipality under article 243W of the constitution.</b> | Nil             | Nil       |

**6.** The applicant has submitted that from perusal of the above, they understand that in order to qualify for above referred exemption, it is essential to fulfill following conditions:

- The Applicant should merit category of Governmental Authority
- The services (procured) are by way of activity in relation to function entrusted to Municipality under Article 243W of the Constitution of India (‘COI’)

**Part A – Whether NID would qualify as ‘governmental authority’ as defined under the Integrated Goods and Services Tax Act, 2017?**

On the basis of the information/details, as provided in the statement of facts, the Applicant would like to submit that they are set up by an Act of Parliament as well as established by the Central Government through Department for

Promotion of Industry and Internal Trade (DPIIT) of Ministry of Commerce & Industry, Government of India. Further, the Director, Chairman or Governing Council are appointed by Government and in a way, Government has 100% participation by way of control in NID. They have submitted a copy of annual report for FY 2018-19 for reference. The applicant has stated that for analyzing the question being the subject matter, it would be relevant to refer to the definition of the Governmental Authority as given under Section 2(16) of IGST Act, which has been reproduced hereunder:

“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 ninety per cent or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;

**7.** The applicant has further stated that words used in the definition of Governmental Authority is ‘or’ between clause (i) & clause (ii). This means that the condition of 90% or more participation by way of equity or control, to carry out any function entrusted to municipality under Article 243W would be applicable to body which is established by the Government. This means that the board/body set up by an act of parliament is independent and is not bound by above condition. Once, the organization is set up by an Act of Parliament or State Legislature, the same would become Governmental Authority from GST perspective. The applicant have further stated that to buttress the above point, they would like to further submit that the definition of the ‘Governmental Authority’ was similar in the erstwhile service tax legislation and during erstwhile regime, Hon’ble Patna High Court had an occasion to deal with the similar issue in the case of **Shapoorji Paloondi & Company Ltd. Vs CCE, Patna [2016-TIOL-556-HC-PATNA-ST]**. In that decision, the Court held that that the condition attached to the definition viz. participation of government by way of 90% or more of equity and control to carry out the functions of municipality under article 243W of the Constitution, is relevant only for the board established by the Government. The Court further held that the authority set up by an Act of Parliament or State Legislature is not and cannot be made subject to the condition of 90% or more participation by way of equity or control to carry out any function entrusted to a municipality under Article 243W of the Constitution. The applicant has submitted relevant extract of the case as under and has also submitted a copy of the case.

*“The Governmental Authority as defined in the Notification dated 30th January, 2014, means an authority or a board or any other body set up by an Act of Parliament or State Legislature. The provisions contained in sub-clause (i) and sub-clause (ii) of Clause 2(s) are independent dis-junctive provisions and the expression "90% or more participation by way of equity or control to carry out any function entrusted to a municipality under Article 243W of the Constitution" is related to sub-clause (ii) of Clause 2(s) alone. The clause (i) is followed by ";" and the word "or". Therefore, each of the sub-clauses is independent provision. The condition of 90% or more participation by way of equity or control to carry out any function entrusted to a municipality under Article 243W of the Constitution is relatable to only sub-clause (ii) of Clause 2(s). It means that an authority established by Government should have 90% or more participation by way of equity or control to carry out any function entrusted to a municipality under Article 243W of the Constitution to be eligible for exemption. **The Authority set up by an Act of Parliament or State Legislature is not and cannot be made subject to the condition of 90% or more participation by way of equity or control to carry out any function entrusted to a municipality under Article 243W of the Constitution.**”*

**8.** The applicant has further submitted that they believe that fulfilling the condition prescribed in clause (i) of definition of 'Governmental Authority' is sufficient enough to classify any body as a Governmental Authority i.e. when the body is set up by an Act of Parliament, it would be classified as a 'Governmental Authority' for GST perspective and that they were not required to comply with conditions of 90% of control and functions entrusted under Article 243W. The applicant has stated that notwithstanding above, even if the applicant is also required to comply with the conditions of 90% control, they have made a reference to Circular no 76/50/2018-GST dated December 31, 2018 in respect of a similar query wherein the question before CBIC was in respect of the applicability of a long line mentioned in clause (a) of the Notification No.50/2018 – Central tax dated 13.09.2018 i.e. *"with fifty-one per cent or more participation by way of equity or control, to carry out any function."* The circular clarified that the long line is applicable to both the sub-clauses of the said notification i.e. (i) set up by an Act of Parliament or a State Legislature; or (ii) established by any Government. In other words, it was clarified that in order to qualify as an authority or a board or any other body, each such person be it set up by an act of parliament or a state legislature or established by any government, need to fulfill the criteria of being managed either by way of fifty-one percent or more participation by way of equity or control. The applicant has stated that in light of the above and applying this to the facts of the case, they would like to submit that they are duly established by DPIIT, that the Governing Council of the Applicant comprises of the personnel nominated by Central Government, that the books of account are audited by CAG and is laid before the House of Parliament, that for effective administration, the Central Government can issue direction to the institution and that even part time Chief Vigilance Officer ('CVO') are appointed by DPIIT as per guidelines issued under Central Vigilance Commission Act, 2003. The applicant has further stated that this Act is applicable for the corporations established by Central Act, owned or controlled by the Central Government and that NID is also subject to provisions of Right to Information Act, 2005 and personnel of NID is also given the election duty which normally is given to Government organization / entities and entities controlled or owned by Government. The applicant has also stated that considering above discussion, they would like to submit that NID is controlled by Central Government and most of decisions of NID is subject to approval from Central Government which evidently proves that the applicant fulfils the condition of being controlled by the Government and therefore, they are Governmental Authority as per GST provisions. The applicant has also referred to the Ruling of Advance Ruling authority in the case of National Dairy Development Board ('NDDB') vide reference #GUJ/GAAR/Ruling/2019/02 dated February 22, 2019 wherein the facts in that ruling and facts in hand are similar as NDDB was an institution set up by an Act of Parliament viz. National Dairy Development Board Act, 1987, the Government has substantial control over the operations of NDDB, the Board of Directors would be nominated by the Central Government, the auditors of NDDB would be appointed in consultation with Central Government and the audited accounts would be laid before Parliament by the Central Government. The applicant has further stated that in such a scenario, the Authorities for Advance Ruling upheld that NDDB would be considered as Governmental Authority if they fulfil the condition of ninety percent or more participation by way of equity or control to carry out functions entrusted to a municipality under Article 243W of COI.

**9.** The applicant has submitted that considering above ruling, the applicant observes that when the organization is set up by an Act of Parliament or established by the Government with the condition of 90% or more participation by way of equity or control then the same would be considered as Governmental Authority provided it carries out the functions entrusted to a municipality under Article 243W of COI; that, therefore, it is imperative to analyze whether NID is considered to carry out any functions entrusted to municipality under Article 243W of COI; that the Article 243W was inserted in the constitution of India while enacting the Constitution (Seventy-fourth

Amendment) Act, 1992 in order to enable the Urban Local bodies perform effectively as vibrant democratic units of self – government. The extract of the Statement of Objects and Reasons is given as under,

*“In many States local bodies have become weak and ineffective on account of a variety of reasons, including the failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions. As a result, Urban Local Bodies are not able to perform effectively as vibrant democratic units of self-government.”*

The extract of Article 243W has also been reproduced hereunder:

*“243W. Powers, authority and responsibilities of Municipalities, etc.- Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow-*

*(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to-*

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

*(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;*

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

Further, the Applicant has reproduced the matters that are listed in the Twelfth Schedule, as under:

*“1. Urban planning including town planning. 2. Planning of land- use and construction of buildings. 3. Planning for economic and social development. 4. Roads and bridges. 5. Water supply for domestic, industrial and commercial purposes. 6. Public health, sanitation conservancy and solid waste management. 7. Fire services. 8. Urban forestry, protection of the environment and promotion of ecological aspects. 9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded. 10. Slum improvement and upgradation. 11. Urban poverty alleviation. 12. Provision of urban amenities and facilities such as parks, gardens, playgrounds. **13. Promotion of cultural, educational and aesthetic aspects.** 14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums. 15. Cattle pounds; prevention of cruelty to animals. 16. Vital statistics including registration of births and deaths. 17. Public amenities including street lighting, parking lots, bus stops and public conveniences. 18. Regulation of slaughter houses and tanneries.”*

**10.** The applicant has submitted that on conjoint reading of statement of objectives, Article 243W and Twelfth Schedule, it is vital to understand that the COI wishes to enable the Urban Local bodies perform effectively as vibrant democratic units of self – government which means that Urban Local bodies or to say Municipalities should be providing educational services including higher and technical education to perform as self-government; that in order to understand what kind of functions may be entrusted to a Municipality, the Applicant wishes to draw attention to the Gujarat Municipalities Act, 1963; that the preamble to the said act states that it is, “an act to consolidate and amend the law relating to municipalities in the state of Gujarat so as to give them wider powers in the management of municipal affairs; that section 91 of the Gujarat Municipalities Act, 1963 (GMA) mentions certain discretionary function entrusted to them. An extract of the Section 91 of GMA is reproduced hereunder.

*“In the sphere of education. (a) establishing and maintaining pre-primary schools such as balwadies, balmandirs, etc; (b) undertaking cultural activities; (c) making contribution by way of aid to pre-primary schools, secondary schools, institutions providing higher or technical education and institutions of educational societies; (d) **establishing and maintaining secondary schools and institutions for higher or technical education**; (e) making contribution to the funds of the local Self-government Institute; (f) undertaking measures for promotion of social and moral welfare of the population in the borough (including prohibition of consumption of intoxicants, and removal of untouchability); (g) establishing and maintaining gymnasia, playgrounds, theatres, libraries, reading rooms and other recreation centers.*

**11.** The applicant has further submitted that apart from above, they would also like to refer to Gujarat Provincial Municipal Corporations Act, 1949 (GPMCA) wherein Chapter VI provides for obligatory and discretionary duties of the Corporation and Section 66 of GPMCA, (copy of which is submitted), prescribes discretionary functions, one of which is promotion of cultural, educational and esthetical aspects. The relevant extract of the law is reproduced hereunder.

*“66. The Corporation may, in its discretion, provide from time to time, either wholly or partly, for all or any of the following matters, namely :—*

*...*

*(8A) promotion of cultural, educational and esthetical aspects;”*

The Applicant has stated that the Twelfth schedule to COI also lists out that promotion of cultural, educational and aesthetic aspects is one of the functions entrusted to a Municipality; that it is crystal clear from the above discussion that rendering of higher and technical education is one of the functions of a Municipality; that it is important to note that there is no restriction envisaged/ stated in above provisions including Article 243W with respect to higher education; that the law intends to cover all type of education including higher & technical education to be covered within the function of Municipality; that the activities of NID are for the promotion of educational aspect and the main and primary objective of NID is promotion of quality and excellence in education, research and training in all discipline relating to Design and matters connected therewith and incidental thereto; that to achieve this objective, NID would develop courses leading to graduate and post graduate degrees, doctoral; that apart from this, NID would also hold examinations and grant degrees, diplomas, other academic distinctions or titles.

**12.** The applicant has further submitted that in view of the above facts, they are of the view that providing education would squarely be considered as function of municipality; that it is important to note that the line item above states promotion of educational aspect whereas NID is a premier and internationally acclaimed institute in the field of design education and hence, the wider scope of above line item would clearly include the activities of NID; that considering above discussion, the applicant is of the view that the functions of NID are in line with Article 243W of COI and NID would be considered as carrying out such activities and accordingly, NID would be considered as ‘Governmental authority’ as per above definition. The applicant has stated that in light of the above analysis, they want to know whether they would merit the classification of ‘Governmental Authority’ for the purpose of GST legislation.

**13.** The applicant has discussed their interpretation of law in respect of the following question asked by them seeking Advance Ruling on the same as under:

**Part B – Whether NID is liable to pay GST on procurement of following services under reverse charge mechanism, in view of the exemption granted in Sl. no. 3 of Notification No.12/2017 – Central Tax (Rate) or Sl. no. 3 of Notification No.09/2017 – IGST (Rate) ?**

- **Security services received from any person other than body corporate as per Notification No.13/2017 – Central Tax (Rate)**
- **Access to e-books/e-database from service provider located outside India as import of service as per Notification No.10/2017 – IGST (Rate)**

The applicant has stated that before discussing details of services that are proposed to be procured by NID, they wish to reproduce the second limb of exemption Notification as under in order to analyze the same.

The services (procured) are by way of activity in relation to function entrusted to Municipality under Article 243W of the Constitution of India ('COI')

**14.** The applicant has submitted that in this connection, the term 'in relation to' used in above exemption is very much wide enough to cover every kind of services that results in performance of the functions as mentioned in Article 243W of the COI either directly or indirectly; that even the services provided for enabling the organization to perform defined functions would also be covered as a reason of usage of words 'in relation to'; that to substantiate this, they would like to refer to the judgement of **Doypack Systems (P.) Ltd. vs. UOI as reported in 1988 (36) E.LT. 201 (S.C.)** wherein it was held that the expression "in relation to" (so also "pertaining to"), is a very broad expression which pre-supposes another subject matter; that these are words of comprehensiveness which might both have a direct significance as well as an indirect significance depending on the context; that it is also held that the expression "in relation to" has been interpreted to the words of wisest amplitude; that they also wish to rely on judgement of **State Waqf Board Vs. Abdul Azeer sahib as reported in AIR 1968 Mad 79**, wherein it was held that, "in relation to" are words of comprehensiveness which might both have a direct significance as well as an indirect significance, depending on the context. They are not words of restrictive content and ought not to be so construed."; that the term 'in relation to' is very wide and the intention of the legislature is to encompass all those services which are provided so as to enable the organization to perform function entrusted in Article 243W of COI; that in the present case, they believe all those services which are directly used for providing education service or those service without which it is difficult to provide education service such as security services would be included within the term 'in relation to' and accordingly, would be covered within pure service as envisaged in the exemption Notification.

**15.** The applicant has submitted that apart from above, they wish to place reliance on the recent Advance Ruling in the case of **A. B. Enterprise vide order No.GUJ/GAAR/R/2020/18** wherein the applicant is engaged in supplying manpower for security and housekeeping to the Central Government, State Government, Local Authority and Governmental Authority and it was upheld in the AAR that these pure services would be eligible for exemption from payment of tax subject to the condition that the services provided to the entities mentioned above are provided by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution of India or in relation to any function entrusted to a Municipality under Article 243W of the Constitution of India; that though the AAR is conditional, but the analysis of certain work orders clearly suggests that if the service recipient i.e. Central Government, State Government, Local authority, Governmental Authority is involved in any functions as per Article 243G or 243W, then the



pure services provided to them would be eligible for exemption from payment of tax. The applicant has stated that they also wish to place reliance on the Advance ruling in the case of **Shri Jayesh Anilkumar Dalal vide order No. GUJ/GAAR/R/08/2019** whereby the Applicant is engaged in providing consultancy services in the field of structural, architectural and project management consultancy to various Local Authorities, Urban Development Authorities and other Government departments which are entrusted with the functions mentioned under article 243G and 243W of Constitution of India and the Authorities have pronounced that the services of the Applicant would be considered as “pure services” and eligible for exemption on fulfilment of the below mentioned conditions:

- It excludes works contract service
- It excludes other composite supplies involving supply of any goods
- It is supply of services without involving any supply of goods

**16.** The applicant has further submitted that, similarly, the West Bengal Authorities for Advance Ruling has also pronounced a similar ruling in the case of **Mr. Mahendra Roy vide order No.24/WBAAR/2019-20 dated September 23, 2019** wherein the applicant was engaged in providing conservancy/solid waste management services to Conservancy department of Howrah Municipal Corporation (‘HMC’); that while making the payment to the Applicant, HMC deducted GST TDS; that the applicant had contended that they are supplying pure services to Municipal Corporation and eligible for exemption under Sl. No.3 of Notification No. 12/2017- CT (rate) and the GST TDS provisions would not be applicable to this transaction. The contention of the applicant was upheld by the authorities who upheld that the services provided by applicant is eligible for exemption. The applicant also wants to rely upon the judgement of the Andhra Pradesh Authority for Advance Ruling in the case of **Amaravathi Metro Rail Corporation Limited vide order # AAR/AP/07(GST)/2018 dated July 02, 2018** whereby it was held that the applicant being controlled by the Government of Andhra Pradesh squarely falls under the definition of Governmental Authority. Further, it was pronounced that various consultancy services procured by them such as preparation of detailed project reports, transaction advisors etc. comes within the purview of the functions of the Municipality under article 243W read with twelfth schedule to the COI.

**17.** The applicant has submitted that additionally, on the basis of its public domain research, they understand that the Additional Commissioner of State Tax (Establishment / Vigilance), Gujarat State, Ahmedabad, has issued a letter to Gujarat Water Supply & Sewerage Board (‘GWSSB’) stating that GWSSB, which is set up by State Legislature, would be considered as Governmental Authority; that the letter also stipulates that pure services received by GWSSB would be eligible for exemption under line item Sl.no.3 of Notification no. 12/2017 – CT (Rate); that in addition to above, advance ruling authorities have upheld eligibility of above such exemptions in below mentioned rulings:

- Rajasthan Authorities for Advance Rulings in the case of M/s PDCOR Limited, Jaipur(Raj) vide order no RAJ/AAR/2018-19/13 Dt. 25.08.2018
- West Bengal Authorities for Advance Rulings in the case of Shri Sumitabha Ray vide order no. 27/WBAAR/2019-20 Dt. September 23, 2019
- Karnataka Authorities for Advance Rulings in the case of Sri Roopesh Kumar vide order No.KAR/AAR/101/2019-20 dated 27.09.2019
- West Bengal Authorities for Advance Rulings in the case of M/s Arihant Dredging Developers Private Limited vide order No. 49/WBAAR/2019-20 dated June 10, 2019



The applicant has submitted that considering the fact that NID has been set by a passing a separate Act, the line item extracted needs to be examined in detail and from a review of the above mentioned line item, a question may arise as to whether the condition of fifty-one percent or more participation by way of equity or control, to carry out any function is applicable to the body set up by an Act of Parliament; that as discussed earlier, usage of word 'or' between (i) & (ii) coupled with the fact that clause (i) is followed by ';' unlike the clause (ii) is followed by ',' means that the condition of fifty-one percent or more participation by way of equity or control, to carry out any function would be applicable to body which is established by the Government. This means that the board/body set up by an act of Parliament or State legislature is independent and is not bound by above condition; that, recently, a Circular is issued vide reference No.76/50/2018 – GST dated 31 December, 2018 wherein the clarity is provided on similar aspect or legal interpretation according to which, the long line written in clause (a) in Notification No. 50/2018-Central Tax dated 13.09.2018 is applicable to both the items (i) and (ii) of clause (a) of the said notification; that in other words, the provisions of section 51 of the CGST Act are applicable only to such authority or a board or any other body set up by an Act of parliament or a State legislature or established by any Government in which fifty one per cent or more participation by way of equity or control is with the Government; that even in such scenario, the important question that arises is whether NID fulfils condition mentioned in clause (a) in notification No. 50/2018-Central Tax dated 13.09.2018. On conjoint reading of above, the applicant wishes to know whether NID is liable to be registered as a deductor under GST.

#### **DISCUSSION & FINDINGS:**

**20.** We have considered the submissions made by the applicant in their application for advance ruling as well as the arguments/discussions made by their representative Shri Hardik Shah at the time of personal hearing. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

**21.** At the outset, we would like to state that the provisions of both the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017 are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to similar provisions of the GGST Act.

**22.** Based on the submission of the applicant as well as the arguments/discussions made by the representative of the applicant during the course of personal hearing and the three questions asked by the applicant seeking Advance Ruling on the same, we find that the three issues to be discussed are: (i) Whether NID would qualify as 'Governmental Authority' as defined under the Integrated Goods and Services Tax Act, 2017. (ii) Whether NID is liable to pay GST on procurement of (a) security services received from any person other than body corporate as per Notification No.13/2017-Central Tax Rate (b) access to e-books/e-database from service provider located outside India as import of service as per Notification No.10/2017-IGST(Rate) under reverse charge mechanism, in view of the exemption granted in Sl.No.3 of Notification No.12/2017-Central Tax(Rate) or Sl.No.3 of Notification No.09/2017-IGST(Rate). (iii) Whether NID is required to be registered as a tax deductor under GST as per the provision of Section 24 of the CGST Act. We will take up each of these issues one by one.

**23.** The first issue to be discussed is whether National Institute of Designs, Ahmedabad qualifies as 'Governmental Authority' as defined under the Integrated Goods and Services Tax Act, 2017 or otherwise. But, before doing

that, we would like to refer to that portion of the submission of the applicant wherein, while referring to the judgement of Hon'ble High Court in the case of Shapoorji Paloonji & Company Id. v/s. CCE, Patna (2016-TIOL-556-HC-Patna-ST) they have stated that vide this decision, the Court held that the condition attached to the definition of the 'Governmental Authority' given in the erstwhile Service Tax Legislation viz. Participation of government by way of 90% or more of equity and control to carry out the functions of municipality under Article 243W of the Constitution, is relevant only for the Board established by the Government. However, we have to state here that the said judgement is under challenge by the Department before the Hon'ble Supreme Court and has therefore not attained finality. Further, for the purpose of examining whether the applicant is covered under the definition of 'Governmental Authority' or otherwise, we will be required to refer to the definition of 'Governmental Authority' as appearing in the IGST Act, 2017. On going through the various sections of the IGST Act, 2017, we find that the definition of 'Governmental Authority' has been provided in the Explanation to Section-2(16) of the said Act and reads as under:

*2(16) "non-taxable online recipient" means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.*

**Explanation.—For the purposes of this clause, the expression "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 ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;**

Further, in Notification No.39/2017-Integrated Tax(Rate) dated 13.10.2017 which amended Notification No.08/2017-Integrated Tax(Rate) dated 28.06.2017, the definition of 'Governmental Authority' has been inserted at paragraph-5(ix) and reads as under:

*"(ix) "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.*

**23.1** Thus, for the applicant to fall under the definition of 'Governmental Authority', the following 3 conditions will be required to be satisfied:

- (1) It has to be set up by an Act of Parliament or a State Legislature or has to be established by any Government.
- (2) The Government should have 90 per cent or more participation by way of equity or control.
- (3) It should be established for carrying out any function entrusted to a municipality under Article 243W of the Constitution or to a Panchayat under Article 243G of the Constitution.

We are therefore required to examine whether the applicant fulfils all the aforementioned 3 conditions or otherwise. The conclusion reached after examining the issue in hand vis-a-vis the 3 conditions elaborated above, is as under:

- (1) The applicant National Institute of Design has been formed by the National Institute of Design Act of the Government of India which means that it has been formed by an Act of Parliament. Therefore the first condition is fulfilled.
- (2) The applicant in their submission have stated that that since NID is set-up by an Act of Parliament and the Central Government has complete control over the institution, they believe that they would merit categorization as a Governmental Authority as defined in the GST Act. However, they have not provided any proof/submission with regard to the Government having 90% or more by way of participation of equity or control. Therefore, unless and until it is proved that the Government is having 90% or more by way of participation of equity or control in NID, this condition will not be considered to have been fulfilled. In other words, the applicant can qualify to be a 'Governmental Authority', if and only if, there is 90% or more by way of participation of equity or control by Government in NID.
- (3) In order to examine as to whether NID has been established to carry out any function entrusted to a municipality under Article 243W of the Constitution or to a Panchayat under Article 243G of the Constitution, we will be required to refer to the list of functions entrusted to a municipality under Article 243W of the Constitution of India and to a Panchayat under Article 243G of the Constitution of India.

(a) The list of functions entrusted to a municipality under 243W of the Constitution of India are as under:

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
- 13. Promotion of cultural, educational and aesthetic aspects.**
14. Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
15. Cattle pounds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries.

(b) The list of functions entrusted to a Panchayat under 243G of the Constitution of India are as under:

1. Agriculture, including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.

7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi, village and cottage industries.
10. Rural housing.
11. Drinking water.
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centres and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
28. Public distribution system.
29. Maintenance of community assets.

We have gone through the aforementioned lists. As submitted by the applicant, theirs' is an Institute involved in the field of Education i.e. in education, research and training in all discipline relating to Design and matters therewith, and on going through the above list, we find there are two functions related to Education i.e.(i) one appearing at Sr.No.13 in the list of functions entrusted to a municipality under Article 243W of the Constitution and (ii) the other, appearing at Sr.No.17 of the list of functions entrusted to a Panchayat under Article 243G of the Constitution of India. Hence we conclude that NID has been established to carry out functions entrusted to a municipality under Article 243W of the Constitution and Panchayat under Article 243G of the Constitution. Hence, the third condition is also fulfilled.

**23.2** In view of the above, since the applicant has already fulfilled the conditions of being formed by an Act of Parliament and being established to carry out the function entrusted to a municipality under Article 243W of the Constitution and to a Panchayat under Article 243G of the Constitution, we conclude that the applicant will fall under the definition of Governmental Authority if it also fulfils the condition namely ' ninety percent or more participation of Government by way of equity or control.'

**24.** The next question asked by the applicant seeking Advance Ruling is whether NID is liable to pay GST on procurement of (a)security services received from any person other than body corporate as per Notification No.13/2017-central Tax Rate (b)access to e-books/e-database from service provider located outside India as import of service as per Notification No.10/2017-IGST(Rate) under reverse charge mechanism, in view of the exemption granted in Sr.No.3 of Notification No.12/2017-Central Tax(Rate) or Sr.No.3 of Notification No.09/2017-IGST(Rate). In view of the above, we are first required to refer to Sr.No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 as well as Sr.No.3 of Notification No.09/2017-IGST(Rate) dated 28.06.2017. Sr.No.3 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017 reads as under:

| Sr. No. | Chapter, Section, Heading, Group or Service Code (Tariff) | Description of Service   | 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 of Notification No.09/2017-IGST(Rate) dated 28.06.2017 reads as under:

| Sr. No. | Chapter, Section, Heading, Group or Service Code (Tariff) | Description of Service   | 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       |

**24.1** As can be seen from the above, Sr.No.3 of aforementioned Notifications No.12/2017-Central Tax(Rate) dated 28.06.2017 and Notification No.09/2017-IGST(Rate) dated 28.06.2017 exempts Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental Authority 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. Hence, three conditions are required to be satisfied for a service to be covered under subject entry of the notification which is as below:

- (1) It must be pure service not involving any supply of goods.
- (2) It must be provided to the Central Government or State Government or Union Territory or Local Authority or a Governmental Authority or a Government Entity.
- (3) It must be an activity in relation to any function entrusted to a
  - (i) Panchayat under Article 243G of the Constitution; or
  - (ii) Municipality under Article 243W of the Constitution.

**24.2** So, the first condition to be discussed is as to what is meant by pure service? Since '**pure service**' has not been defined under GST, the same can be construed in general terms as any supply which is either deemed as services under Schedule II of CGST Act or which are not covered under the definition of goods shall be categorized as pure services. However, as per the notification, works contract services or other composite supplies involving supply of any

goods are not covered in Sr.No.3 of aforementioned notifications. In other words, if a person provides only service to any person without involvement of supply of goods along with supply of services, then the same would be termed as supply of pure service. We have gone through the documents submitted by the applicant along with their submission and found that the applicant has not submitted copies of any agreement or contract made by them with: (i) the service providers who are providing/will be providing security services to them (ii) the service providers located outside India who are providing/will be providing them access to e-books/e-database. In absence of the same, and without going through the conditions/provisions of the contract/agreement made by the applicant with their service providers, it will not be possible for us to determine the nature of services or whether the services received/to be received by them are 'Pure services' or otherwise. We, therefore, conclude that in view of non-submission of copies of agreement or contract with regard to the services received/to be received by the applicant, it would not be possible for us to give a decision in the matter.

**25.** The third question to be discussed is whether NID is required to be registered as a tax deductor under GST as per the provision of Section 24 of the CGST Act. For this purpose, we will be required to refer to Section 24 of the CGST Act, 2017. Section 24 of the said Act reads as under:

*24. Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,—*

- (i) persons making any inter-State taxable supply;*
- (ii) casual taxable persons making taxable supply;*
- (iii) persons who are required to pay tax under reverse charge;*
- (iv) person who are required to pay tax under sub-section (5) of section 9;*
- (v) non-resident taxable persons making taxable supply;*
- (vi) persons who are required to deduct tax under section 51, whether or not separately registered under this Act;***
- (vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;*
- (viii) Input Service Distributor, whether or not separately registered under this Act;*
- (ix) persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;*
- (x) every electronic commerce operator;*
- (xi) every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person; and*
- (xii) such other person or class of persons as may be notified by the Government on the recommendations of the Council.*

**25.1** We have gone through the provisions of the aforementioned section. Since the applicant has asked as to whether they need to be registered as a tax deductor under the provisions of Section 24 of the CGST Act, we need to refer to entry no. (vi) which pertains to persons who are required to deduct tax under section 51, whether or not separately registered under this Act. Since, a specific mention has been made to Section-51, we feel the need to refer to Section 51 of the CGST Act, 2017 also. Section-51 of the CGST Act, 2017 reads as under:

*51. (1) Notwithstanding anything to the contrary contained in this Act, the Government may mandate,—*

- (a) a department or establishment of the Central Government or State Government; or*
- (b) local authority; or*
- (c) Governmental agencies; or*
- (d) such persons or category of persons as may be notified by the Government on the recommendations of the Council,*



*(hereafter in this section referred to as “the deductor”), to deduct tax at the rate of one per cent. from the payment made or credited to the supplier (hereafter in this section referred to as “the deductee”) of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees:*

**25.2** Since, NID is not covered under any of the categories mentioned under (a), (b) or (c) above, it is required to examine as to whether the applicant is covered under category(d) or otherwise. In this regard, we find that the Government has issued a Notification No.50/2018-Central Tax dated 13.09.2018 vide which the Central Government has appointed 1<sup>st</sup> day of October, 2018, as the date on which the provisions of Section 51 of the CGST Act, 2017 shall come into force with respect to persons specified under clause (a), (b), (c) of sub-section(1) of the said Act and the persons specified below under clause(d) of sub-section(1) of section 51 of the said Act, namely:-

- (a) *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 fifty-one percent, or more participation by way of equity or control, to carry out any function;*
- (b) *Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860(21 of 1860).*
- (c) *Public sector undertakings.*

**25.3** Since, the applicant is not covered under any of the categories of (b) or (c) mentioned above, we are required to examine whether they are covered under the category of (a) above. As discussed earlier, NID has been formed by an Act of Parliament of the Government of India i.e. the NID Act. However, they have not given any proof with regard to ‘fifty-one percent, or more participation of Government by way of equity or control, to carry out any function’. Hence, we find that since it has been established that NID has been formed by an Act of Parliament, the applicant will have to be registered as a tax deductor under the provisions of Section 24 of the CGST Act read with Section 51 of the Act, if, and only if, they fulfil the condition of ‘fifty-one percent, or more participation of Government by way of equity or control, to carry out any function’. We therefore conclude that the applicant will have to be registered as a tax deductor under the provisions of Section 24 of the CGST Act read with Section 51 of the Act, if they fulfil the condition of ‘fifty-one percent, or more participation of Government by way of equity or control, to carry out any function’.

**26.** We have also observed that the applicant has cited many judgements of Advance Ruling Authorities to support their contention. In this context, we have to emphasise here that decisions of Advance Ruling Authorities cannot be relied upon by the applicant, since, as per the provisions of Section 103 of the CGST Act, 2017, the Advance Ruling pronounced by the Advance Ruling Authority or the Appellate Authority shall be binding only on the applicant who had sought it in respect of any matter referred to in sub-section(2) of Section 97 for Advance Ruling and the concerned officer or the jurisdictional officer in respect of the applicant.

**27.** In light of the foregoing, we rule, as under –

### **R U L I N G**

**Question-1:** Whether NID would qualify as ‘Governmental Authority’ as defined under the Integrated Goods and Services Tax Act, 2017?

**Answer:** Since it has been established from the discussions hereinabove, that the applicant M/s. National Institute of Design, Ahmedabad has been formed by an Act of Parliament to carry out the function entrusted to a municipality

under Article 243W of the Constitution and to a Panchayat under Article 243G of the Constitution, the applicant will qualify as 'Governmental Authority' if it also fulfils the condition namely 'ninety percent or more participation of Government by way of equity or control.'

**Question-2:** Whether NID is liable to pay GST on procurement of following services under reverse charge mechanism, in view of the exemption granted in Sl. no.3 of Notification No.12/2017-Central Tax(Rate) or Sl.No.3 of Notification No.09/2017-IGST (Rate) ?

- Security services received from any person other than body corporate as per Notification No.13/2017 – Central Tax (Rate)
- Access to e-books/e-database from service provider located outside India as import of service as per Notification No.10/2017 – IGST (Rate)

**Answer:** In view of non-submission of copies of agreement or contract with regard to the services received/to be received by the applicant, it would not be possible for us to give a decision in the matter for the reasons discussed hereinabove.

**Question-3:** Whether NID is required to be registered as a tax deductor under GST as per the provision of Section 24 of the CGST Act?

**Answer:** Since it has been established from the discussions hereinabove, that NID has been formed by an Act of Parliament, the applicant will have to register themselves as a tax deductor under the provisions of Section 24 of the CGST Act, 2017 read with Section 51 of the Act, if they fulfil the condition of 'fifty-one percent, or more participation of Government by way of equity or control, to carry out any function'.

**(SANJAY SAXENA)**

**MEMBER**

**(MOHIT AGRAWAL)**

**MEMBER**

Place: Ahmedabad

Date: 20.01.2021.