

Notified Area Authority, Vapi neither Local or Governmental Authority for levy of GST

The Hon'ble Gujarat High Court in the case of *M/s. Nepra Resources Management Private Limited and Anr. v. State of Gujarat [R/Special Civil Application No. 17719 of 2021 dated April 24, 2024]* dismissed the writ petition and held that, the Notified Area Authority, Vapi ("**NAA, Vapi**") is neither a local authority nor a governmental authority carrying out any activity in relation to any function entrusted to panchayat under Article 243G of the Constitution or under Article 243W of the Constitution and therefore, the Assessee cannot claim exemption from payment of GST for the solid waste management services rendered to the NAA, Vapi.

Facts:

M/s. Nepra Resources Management Private Limited ("**the Petitioner**") is engaged in the business of Solid Waste Management and recycling services. The Notified Area Authority, Vapi floated a tender inviting application for request of proposals for providing services of collection, services, and recovery of waste and setting up material recovery facility. The NAA, Vapi is constituted by the State of Gujarat vide Notification issued under Section 16 of the Gujarat Industrial Development Act, 1962. The Petitioner participated in the bidding process for the tender and the said tender was granted for providing services to the NAA, Vapi for a period of five years.

The Petitioner filed an application for advance ruling before the AAR, Gujarat on whether the solid waste management service provided by the Petitioner to Notified Area Authority, Vapi would be exempted from levy of tax vide *Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017 ("**the Service Rate Exemption Notification**")*.

The AAR, Gujarat vide order dated September 17, 2020 ruled that solid waste management services provided by the Petitioner to the NAA, Vapi as per the agreement is not exempted from payment of GST as per the Service Rate Exemption Notification as the services provided

by the Petitioner are not pure services as it also involves supply of goods. Also, it was held that, the Petitioner does not fulfill the first condition of Serial No. 1 of Service Rate Exemption Notification.

Aggrieved by the Order passed by the AAR, Gujarat, the Petitioner filed an appeal before the appellate authority i.e. AAAR, Gujarat, wherein the Appellate Authority vide Order dated February 17, 2021 (**"the Impugned Order"**) rejected the appeal filed by the Petitioner and held that, the Petitioner is not entitled to the benefit of exemption available under Serial No. 3 of the Service Rate Exemption Notification as the Petitioner is not a local or governmental authority.

Aggrieved by the Impugned Order passed by the AAAR, Gujarat, the Petitioner filed the writ petition before the Hon'ble High Court contending that the Petitioner is entitled to the benefit of the exemption from payment of GST relating to contract awarded to the Petitioner by NAA, Vapi to provide solid waste management related services.

Issue:

Whether Notified Area Authority, Vapi would fall within the purview of Local or Governmental Authority for levy of GST?

Held:

The Hon'ble Gujarat High Court in the case of ***R/Special Civil Application No. 17719 of 2021*** held as under:

- Observed that, as per Serial No. 3 of the Service Rate Exemption Notification, the Petitioner is required to fulfil three conditions for claiming exemption for the services rendered which are:

- i. The Petitioner is required to provide pure services (excluding words contract service or other composite supplies involving supply of any goods)
 - ii. Pure Services must be provided to the Central Government, State Government or Union Territory or local authority or a Government Authority.
 - iii. The activity should be in relation to function entrusted to municipality under Article 243W of the Indian Constitution.
- Noted that, the NAA, Vapi is not discharging the function related to municipality and would not be considered as municipality as per the judgement rendered by the Hon'ble Supreme Court in the case of ***New Okhla Industrial Development Authority v. Chief Commissioner of Income Tax and Others [Civil Appeal No. 792-793 of 2014 dated July 2, 2018]*** wherein it was held that, Area Development Authority would not be considered as municipality constituted under Article 243Q(1) of the Indian Constitution.
 - Opined that, the NAA, Vapi is neither a local authority nor a governmental authority carrying out any activity in relation to any function entrusted to panchayat under Article 243G of the Constitution or under Article 243W of the Constitution.
 - Held that, the writ petition is dismissed.

Relevant Extract of the Service Rate Exemption Notification:

Entry No. 3 of the Service Rate Exemption Notification;

“3	<i>Chapter 99</i>	<i>Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority by way of any activity in relation</i>	<i>Nil</i>	<i>Nil”</i>
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		<i>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.</i>		
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(Author can be reached at info@a2ztaxcorp.com)

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