

Body

Advance Ruling No. KAR ADRG 23/2022, Dated 12th August, 2022

**THE AUTHORITY FOR ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Present:

1. Dr. M.P.Ravi Prasad
Additional Commissioner of Commercial Taxes Member (State)
2. Sri. T. Kiran Reddy,
Additional Commissioner of Customs & Indirect Taxes Member(Central)

1.	Name and address of the applicant	M/s. THE INDIAN HUME PIPE COMPANY LIMITED, 58/1, Bellary Road, Venkatala Village, Yelahanka, Bangalore-560 064.
2.	GSTIN or User ID	29AAACT4063D1ZI
3.	Date of filing of Form GST ARA-01	04-05-2022
4.	Represented by	Sri Manish Goel, Chartered Accountant
5.	Jurisdictional Authority - Centre	The Commissioner of Central Taxes, Bengaluru North GST Commissionerate, Bengaluru North Division-8, Range-DND8
6.	Jurisdictional Authority -State	ACCT, LGSTO-151, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000-00 under CGST Act and Rs.5,000-00 under SGST Act vide debit of Electronic Cash Ledger Reference NO.DC2904220401547 Dated 29-04-2022

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND
UNDER SECTION 98(4) OF THE KGST ACT, 2017**

M/s. The Indian Hume Pipe Company Limited, (hereinafter referred to as The applicant), 58/1, Bellary Road, Venkatala Village, Yelahanka, Bangalore-560 064 having GSTIN 29AAACT4063D1ZI have filed an application for Advance Ruling under section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of KGST Rules, 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The Applicant is a Public Limited Company registered under the Indian Companies Act and also under the provisions of Central Goods and Services Tax Act, 2017 as well as Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act and KGST/SGST Act respectively). The Applicant undertakes contract for construction of Head Works, Sumps, Pump Rooms, laying, jointing of pipe line and commissioning and maintenance of the entire work for water supply projects/ sewerage projects / facilities.

3. The applicant has sought advance ruling in respect of the following questions:-

- i. Whether the supply of Services by the Applicant to M/s. Bangalore Water Supply and Sewerage Board is covered by Notification No. 15/2021-Central Tax (Rate), dated 18th November, 2021 r/w Notification No.22/2021-Central Tax (Rate), dated 31st December 2021?
- ii. If the supplies as per Question 1 are covered by Notification No. 15/2021-Central Tax (Rate), dated 18th November, 2021 r/w Notification No.22/2021 -Central Tax (Rate), dated 31st December, 2021, then what is the applicable rate of tax under the Goods and Services Tax Act, 2017 on such supplies made w.e.f, 01-01-2022;
- iii. In case if the supplies as per Question 1 are not covered by the Notification supra then what is the applicable rate of tax on such supplies under

the Goods and Services Tax Act, made w.e.f, 01-01-2022?

4. Admissibility of the application: The question is about the "applicability of a notification issued under the provisions of the Act" and "determination of the liability to pay tax on any goods or services or both" and hence is admissible under Section 97(2) (b) and (e) of the CGST Act 2017.

5. BRIEF FACTS OF THE CASE:

The applicant furnishes some facts relevant to the issue:

5.1 The applicant states that they undertake contract for construction of Head Works, Sumps, Pump Rooms, laying, jointing of pipe line and commissioning and maintenance of the entire work for Water Supply Projects / Sewerage Projects / Facilities. Their major customers include Government Bodies / Entities / Authorities / Local Bodies/ Municipalities.

5.2 The applicant states that they have been awarded a contract by M/s. Bangalore Water Supply and Sewerage Board (BWSSB for brevity) vide LOA NO-BWSSB/CE (WWM)/ACE(WWM)/TA-2/1747/2017-18 dated 21-12-2017 to execute the work of Rehabilitation/Remodeling/Replacement of 400-1000 mm dia sewer line in V-Valley. BWSSB holds TDS registration No. 29BLRA06245B1DJ under the Goods and Services Tax Act, 2017.

5.3 Bangalore Water Supply and Sewerage Board is an autonomous body formed by the State Legislature under Bangalore Water Supply and Sewerage Board Act on 10.09.1964 for Water Supply and Sewage disposal. It is one of the first Water Supply and Sanitation Utilities in India with jurisdiction of entire Bruhat Bengaluru Mahanagar Palike Area of 800 Sq.km., (Bengaluru Core area of 245 Sq.Kms., 8 Urban Local Bodies of 330 Sq. kms. (7 City Municipal Corporation and 1 Town Municipal Corporation and 110 villages of 225 Sq. kms.)

5.4 The Applicant states that, BWSSB has the following mandates: Adequate water supply to meet demand; creation of sewerage network & safe disposal of sewage; preparation, implementation of plans and schemes for augmenting water supply & safe disposal of sewage; levy and collection of water charges on for sustainability of the system.

5.5 Since its inception in the year 1964, BWSSB has executed several water supply and sewage schemes for the city, including the prestigious Cauvery Water Supply Scheme (CWSS) Stages-1,11,111 & Stage IV Phase-I, Phase-II and sewerage system improvement projects concentrating on sewage collection, conveyance and treatment works. The existing sewerage system covers an area of 265 Sq.kms. of core area of the city, in which three major Sewage Treatment Plants (STP) are constructed at Vrishabhavathi, K & C and Hebbal Valleys (major and minor). The sewerage system for newly added areas mainly the erstwhile CMC's is nearing completion.

5.6 The applicant states that Notification No. 15/2021-Central Tax (Rate) seeks to amend parent Notification No. 11/2017-Central Tax (Rate) dated 28th June, 2017. This Notification prescribed rate of tax on construction services at Serial No.3 of the table therein, viz-"(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017" at 9% under CGST Act; thereby implying total GST at 18% (CGST-9% + SGST-9%); Notification 11/2017-Central Tax (Rate) dated 28th June, 2017 was subsequently amended vide Notification No.20/2017-Central Tax (Rate) dated 22nd August, 2017; whereby in Serial No.3 of the Table therein item (iii) was inserted viz-"(iii) Composite supply of works contract as defined in clause (119) of Section 2 of the Central Goods and Services Tax Act, 2017, supplied to the Government, a local authority or a Governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, -(a)....., (b) canal, dam or other irrigation works; (c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal" to be taxed at 6% under CGST Act; thereby implying total GST at 12% (CGST-6% + SGST-6%); Subsequently Notification No.31/2017 dated 13th October, 2017 was issued to amend Serial No.3(iii) viz-"Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity"; Further this Notification also clarified the meaning of the term Governmental Authority and Government Entity to mean as under-

"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 percent 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 243G of the Constitution."

"Government Entity" means an authority or a board or any other body including a society, trust, corporation,

- i) set up by an Act of Parliament or State Legislature; or
- ii) established by any Government, with 90per cent, or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority."

The functions entrusted to a Municipality under the Twelfth Schedule to Article 243W of the Constitution are as under:-

- (a) Urban planning including town planning.
- (b) Regulation of land-use and construction of buildings.
- (c) Planning for economic and social development.
- (d) Roads and bridges.

- (e) Water supply for domestic, industrial and commercial purposes.
- (f) Public health, sanitation conservancy and solid waste management.
- (g) Fire services.
- (h) Urban forestry, protection of the environment and promotion of ecological aspects.
- (i) Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
 - (j) Slum improvement and upgradation.
 - (k) Urban poverty alleviation.
- (l) Provision of urban amenities and facilities such as parks, gardens, playgrounds.
 - (m) Promotion of cultural, educational and aesthetic aspects.
- (n) Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
 - (o) Cattle pounds; prevention of cruelty to animals.
 - (p) Vital statistics including registration of births and deaths.
- (q) Public amenities including street lighting, parking lots, bus stops and public conveniences.
 - (r) Regulation of slaughter houses and tanneries.

Notification No. 15/2021-Central Tax (Rate) dated 18th November, 2021, r/w Notification No. 22/2021-Central Tax (Rate), dated 31st December, 2021 issued seeks to amend at Sr.No.3(iii) as -"Union territory or a local authority" thereby deleting the words- a Governmental Authority or a Government Entity.

5.7 The applicant further submits that M/s. BWSSB is holder of PAN-AAALB0015G. The 4th character of PAN as highlighted is "L". PAN under Income Tax is designed in a Unique manner whereby the 4th character in the PAN classifies its Constitution / Status. "L" in this case denotes Local Authority. The GST Department while issuing GST REG-06 has stated as "Constitution of Business-Local Authority".

5.8 The applicant submit that the Constitution of the Business cannot change depending on different provisions under the same Act; i.e., for limited purposes under the Act the Constitution of the person is different and for another purposes under the same Act the Constitution is different.

5.9 The applicant states that as per Section 2(69) "local authority" means-

- (a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution;
- (b) a "Municipality" as defined in clause (e) of article 243P of the Constitution;
- (c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
- (d) a Cantonment Board as defined in Section 3 of the Cantonments Act, 2006;
- (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
- (f) a Development Board constituted under article 371 and article 371J of the Constitution; or
- (g) a Regional Council constituted under article 371J of the Constitution;

Article 243P of Indian Constitution

In this Part, unless the context otherwise requires,-

- (e) "Municipality" means an institution of self government constituted under article 243Q;

Article 243Q of Indian Constitution

Constitution of Municipalities.

- (1) There shall be constituted in every State,-

- (a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;
- (b) a Municipal Council for a smaller urban area; and
- (c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this part: provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

6. Applicant's Interpretation of Law:

6.1 The applicant states that the contractee of the applicant (BWSSB) in question are holding GST TDS Registration No 29BLRA06245B1DJ issued by the GST Department classifies the Contractee under Local Authority.

6.2 The applicant submits that as the Contractee of the applicant are classified as Local Authority as per the GST Authorities, they are of the opinion that -

a. the said transaction is covered by Notification No. 15/2021-Central Tax (Rate) dated 18th November, 2021 r/w. Notification No.22/2021-Central

Tax (Rate), dated 31st December, 2021; which after amendment now reads as "(iii) composite supply of works contract as defined in clause (119) of Section 2 of the Central Goods and Services Tax Act, 2017, supplied to Central Government, State Government, Union Territory or a local authority";

b. the said transaction is liable to tax under the GST Act @ 12%; and

c. Not applicable

PERSONAL HEARING / PROCEEDINGS HELD ON 07-07-2022

7. Shri Manish Goel, Chartered Accountant and Duly Authorised Representative appeared for personal hearing proceedings held on 07-07-2022 and reiterated the facts narrated in their application.

FINDINGS & DISCUSSION

8. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in pari-materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

9. We have considered the submissions made by the applicant in their application for advance ruling. We have also considered the issues involved on which advance ruling is sought by the applicant and the relevant facts along with the arguments made by the applicant and also their submissions made during the time of hearing.

10. The Applicant has been awarded a contract by BWSSB to execute the work of Rehabilitation/Remodeling/Replacement of 400-1000 mm dia sewer line in V-Valley and wants to know the applicable rate of GST on the same.

11. Bangalore Water Supply and Sewerage Board was set up by The Bangalore Water supply and Sewerage Act 1964 to supply water in Bangalore Metropolitan area and to make adequate provision for the sewerage and disposal of sewage in the Bangalore Metropolitan area.

12. Now we have to find out the applicable GST rate on the work assigned by BWSSB to the Applicant. For this we invite reference of Entry No. iii of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 further amended vide Notification No. 20/2017-Central Tax (Rate) dated: 22.08.2017 and Notification No. 31/2017-Central Tax (Rate) dated: 13.10.2017 which is as below:

Sl. No	Chapter, Section or Heading	Description of Service	Rate (per cent.)
3	Heading 9954 (Construction services)	(iii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,- (a) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958); (b) canal, dam or other irrigation works; (c) pipeline, conduit or plant for (i) water supply (ii)water treatment, or (iii) sewerage treatment or disposal	6

Since the Applicant has been awarded a contract work of Rehabilitation/Remodeling/Replacement of sewer line, the same may be covered under entry 3 (iii)(c) mentioned supra. Before deciding on the same we need to find out whether BWSSB is a State Government or local authority or

Governmental Authority or Government Entity. If the Applicant is any one of these then only the Entry No.3(iii) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 will be applicable to the applicant.

13. Since the BWSSB is a Board set up by The Bangalore Water Supply and Sewerage Act 1964, the same cannot be considered as State Government. Now let us discuss whether BWSSB is a Local Authority or not. Subsection 69 of section 2 of CGST Act 2017 defines Local Authority as below:

Section 2. Definitions.-

In this Act, unless the context otherwise requires,-

.....

.....

(69) "local authority" means

(a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution;

(b) a "Municipality" as defined in clause (e) of article 243P of the Constitution;

(c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;

(d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006 (41 of 2006);

(e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;

(f) a Development Board constituted under article 371 8[and article 371 J] of the Constitution; or

(g) a Regional Council constituted under article 371A of the Constitution;

13.1 "Panchayat" is defined in clause (d) of article 243 of the Constitution. Clause (d) of Article 243 of the Indian Constitution reads as below:-

243. In this Part, unless the context otherwise requires,-

(a)

(b).....

(c).....

(d) "Panchayat" means an institution (by whatever name called) of self-government constituted under article 243B, for the rural areas;

Article 243B of the Indian Constitution reads as below:-

243B. (1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.

As per Clause (d) of Article 243 and Article 243B of Indian Constitution we can say that panchayat is an institution of self-government at the village level.

13.2 "Municipality" is defined in clause (e) of article 243P of the Constitution. Clause (e) of Article 243P of the Indian Constitution reads as below:-

243P. In this Part, unless the context otherwise requires,-

(a)

(b).....

(c).....

(d).....

(e)"Municipality" means an institution of self-government constituted under article 243Q;

Article 243Q of the Indian Constitution reads as below:-

243Q. (1) There shall be constituted in every State,

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area,

in accordance with the provisions of this Part: Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township

As per Clause (e) of Article 243 and Article 243Q of Indian Constitution, we can say that Municipality is an institution of self-government at transitional area, smaller and larger urban areas.

13.3 From the definitions of Panchayat and Municipalities we can see that both are institutions of self-government in defined areas. Self-Government is the management of local affairs by local Authorities, members of which have been elected by the local people. One of the distinctive attributes and characteristics of Local Authority is that, their members are elected through direct elections by the inhabitants of the defined area. But as per the section 3 of BWSSB Act 1964, all the members of BWSSB are appointed by the State Government.

13.4 BWSSB is also not a Municipal Committee or a Zilla Parishad or a District Board, since it is not vested with the control or management of a municipal or local fund. In view of the above, we can conclude that BWSSB is not Local Authority.

14. Now let us examine whether BWSSB is a Governmental Authority or Government Entity. Notification No. 11/2017-Central Tax (Rate), dated: 28.06.2017 as amended vide Notification No.31/2017-Central Tax (Rate), dated: 13.10.2017 defines Governmental Authority and Government Entity in as below:-

"(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 percent, or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243W of the Constitution or to a Panchayat under article 243 G of the Constitution.

(x) "Government Entity" means an authority or a board or any other body including a society, trust, corporation,

- i) set up by an Act of Parliament or State Legislature; or
- ii) established by any Government,

with 90 per cent, or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority. "

14. 1 BWSSB was set up by The Bangalore Water Supply and Sewerage Act 1964, to supply water in Bangalore Metropolitan area and to make adequate provision for the sewerage and disposal of sewage in the Bangalore Metropolitan area. These duties performed by BWSSB are covered under the functions entrusted to a Municipality under article 243W of the Constitution that is 5th and 6th entry of 12th schedule of the constitution which are as below:-

- 5. Water supply for domestic, industrial and commercial purposes.
- 6. Public health, sanitation conservancy and solid waste management.

Since the BWSSB is set up by the Act of State Legislature to carry out function entrusted to a Municipality under article 243W of the Constitution, the same may be considered as Governmental Authority.

15. Since BWSSB is considered as Governmental Authority, the services provided by the Applicant to the BWSSB are covered under the entry 3 (iii)(c)(iii) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 as discussed in para 12 supra and hence the same is exigible to GST at 12% till 31.12.2021.

16. Notification No.22/2021-Central Tax (Rate), dated 31.12.2021 was issued in supersession of Notification No. 15/2021-Central Tax (Rate), dated 18.11.2021 which brought amendment to No. 11/2017-Central Tax (Rate) dated 28.06.2017 as below:-

In the said notification, in the TABLE, against serial number 3,-

- 1) in column (3), in the heading "Description of Service", in items (iii),(vi),(ix) and (x), for the words "Union territory, a local authority, a Governmental Authority or a Government Entity" the words "Union territory or a local authority" shall be substituted;
- 2) in column (3), in the heading "Description of Service", in item (vii), for the words "Union territory, local authority, a Governmental Authority or a Government Entity" the words "Union territory or a local authority" shall be substituted;
- 3) in column (5), in the heading "Condition", the entries against items (iii),(ui),(uii),(ix) and (x), shall be omitted.

In view of the above notification, Entry No. 3(iii) of Notification No. 11 /2017-Central Tax (Rate) dated 28.06.2017 is amended as below with effect from 01.01.2022:

Sl. No	Chapter, Section or Heading	Description of Service	Rate (per cent.)
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3	Heading 9954 (Construction services)	(iii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied to the Central Government, State Government, Union territory or a local authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,- (a) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958); (b) canal, dam or other irrigation works; (c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal	6
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17. As per the above amendment, the services mentioned in entry 3(iii) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 are subjected to GST at 12% only if those services are supplied to Central Government, State Government, Union territory or a local authority and not when supplied to Governmental Authority or a Government Entity. Since BWSSB is considered as Governmental Authority, this entry is not applicable to the services supplied by the applicant to the BWSSB with effect from 01.01.2022. Now the services supplied by the Applicant to the BWSSB are covered under entry 3 (xii) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, amended vide further notifications, and is exigible to GST at 18% (w.e.f. 01.01.2022). The same is reproduced below:

Sl. No	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
3	Heading 9954 (Construction services)	(xii). Construction Services other than (i), (ia), (ib), (ic), (id), (ie), (if), (iii), (iv), (v), (va), (vi), (vii), (viii), (ix), (x) and (xi) above	9	

18. In view of the foregoing, we pass the following

RULING

- The supply of Services by the Applicant to M/s. Bangalore Water Supply and Sewerage Board is covered by Notification No. 15/2021-Central Tax (Rate), dated 18th November, 2021 r/w Notification No.22/2021-Central Tax (Rate), dated 31st December 2021.
- The applicable rate of tax under the Goods and Services Tax Act, 2017 on the supplies made by the Applicant to the BWSSB as per the instant application is 18% w.ef 01.01.2022 as per entry 3 (xii) of No.11/2017-Central Tax (Rate) dated 28.06.2017.
- In view of the ruling given at question (i). this question becomes redundant.

(Dr.M.P.Ravi Prasad)

(T. Kiran Reddy)

Member

Member

Place: Bengaluru-560 009

Date: 12-08-2022

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