

 सत्यमेव जयते	RAJASTHAN AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX KAR BHAWAN, AMBEDKAR CIRCLE, NEAR RAJASTHAN HIGH COURT JAIPUR – 302005 (RAJASTHAN)	
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ADVANCE RULING NO. RAJ/AAR/2022-23/20

Umesh Kumar Garg Joint Commissioner	Member (Central Tax)
M. S. Kavia Additional Commissioner	Member (State Tax)
Name and address of the applicant	M/s Rajasthan Housing Board, Janpath, Bhagwandas Road, Jyoti Nagar, Jaipur
GSTIN of the applicant	08AAALR0046F1ZA
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised.	Applicability of a notification issued under the provisions of the Act (a) Classification of any goods or services or both; (e) determination of the liability to pay tax on services or both
Date of Personal Hearing	06.09.2022
Present for the applicant	CA, Manish Maliwal & CA Virendra Parwal (Authorized Representatives)
Date of Ruling	14.12.2022

Note: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.

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

The applicant M/s Rajasthan Housing Board, Janpath, Bhagwandas Road, Jyoti Nagar, Jaipur (Rajasthan) (hereinafter the Applicant) being a registered person (GSTIN is 08AAALR0046F1ZA) as per the declaration given by him in Form (ARA-01) the issue raised by the applicant is neither pending for proceedings nor proceedings were passed by any authority. The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017

The appellant i.e M/s Rajasthan Housing Board, Janpath, Bhagwandas Road, Jyoti Nagar, Jaipur (Rajasthan) (Rajasthan) has raised the following question for advance ruling in the application for Advance Ruling filed by it.

1. Whether the Rajasthan Housing Board is covered under the definition of "Governmental Authority" as defined in clause (zf) Paragraph 2 vide notification no. 12/2017-Central Tax (Rate) dated 28.06.2017?

2. Whether the services provided by the Rajasthan Housing Board as governmental authority such as permission for building construction, approval of map, permission of additional Floor Area Ratio, leasing of land etc. are exempt as per Notification no. 12/2017 CTR dated 28.06.2017 as amended from time to time, under entry specified at S.No. 4 of said notification?

A. SUBMISSION OF THE APPLICANT :(in brief)

1. The Rajasthan Housing Board (RHB) is established on 24th February, 1970 vide Rajasthan Housing Board ordinance & later on notified under section 4 of the Rajasthan Housing Board Act 1970 (Act No. 4 of 1970). The RHB is constituted by the State Government and in light of section 5 of the Rajasthan Housing Board Act, 1970 ("RHB Act"), the Chairman and all the members of RHB are appointed by the State Government. Section 2 (relevant part), 4 and 5 of RHB Act are reproduced here under for ready reference:-

2. Section 2 (Definitions) of the RHB Act provides that

(2) "Board" means the Rajasthan Housing Board constituted under section 4 of this Act;

(8) "Government or State Government" means the Government of the State of Rajasthan;

4. Establishment of the Board –

(1) The State Government may, by notification in the Official Gazette, establish, for the purposes of this Act, a Board to be called "The Rajasthan Housing Board", hereinafter called the Board, with effect from such date as may be specified in the notification.

(2) The Board shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property both immovable and immovable and to enter into contracts and may by its corporate name sue and be sued and do all things and acts necessary for the purposes of this Act.

(3) For the purposes of this Act and the Rajasthan Land Acquisition Act. 1953 (Act No. XXIV of 1953), the Board shall be deemed to be a local authority.

Explanation - The purposes of this Act referred to in sub-section (3) include the management and use of lands and buildings belonging to or vesting in the Board under or for the purposes of this Act and the exercise of its rights over and with respect to such lands and buildings for the purposes of this Act.

5. Constitution of the Board –

(1) The Board shall consist of a Chairman appointed by the State Government and of the following other members, namely:-

(a) Financial Commissioner, Government of Rajasthan, ex-Of-ficio member:

(b) Secretary to Government, Town Planning Department, ex-Officio member:

(c) Chief Town Planner and Architectural Adviser, ex-Officio member:

(d) Housing Commissioner of the Board, ex-Officio member: and

(e) Six non official members, appointed by the Government of whom one shall belong to the Scheduled Castes or Scheduled Tribes.

(2) The names of the Chairman and other members appointed under sub-section (1) shall be published in the Official Gazette.

(3) A non-official member of the Board may at any time resign his office by submitting his resignation to the State Government:

Provided that the resignation shall not take effect until it is accepted by the Government

(4) The State Government may, by notification in the Official Gazette, remove from office the Chairman or any other member who-

(a) is, or has become, subject to any of the disqualifications mentioned in section 7, or

(b) in the opinion of the State Government, has been guilty of any misconduct or neglect or has so flagrantly abused his position as to render his continuance as member detrimental to the interests thereof or of the general public:

Provided that no person shall be removed from office unless he has been given an opportunity to show cause against his removal

3. Administrative Cost of the RHB is born by the Government of Rajasthan by making grant as mentioned in section 40 of the RHB Act. Further, for Investment of Fund other than mode specified in the Act, RHB have to take approval of the Government of Rajasthan:

40. Board's Fund. - (1) The Board shall have its own fund.

(2) The Board may accept grants, subventions, donations and gifts from the Central or State Government or a local authority or any individual or body, whether incorporated or not for all or any of the purposes of this Act.

(3) The State Government may every year make a grant to the Board of a sum equivalent to the administrative expenses of the Board:

Provided that the amount of such grant may be reduced or discontinued to the extent the financial position of the Board warrants

(4) All moneys received by or on behalf of the Board by virtue of this Act, all proceeds of land or any other kind of property sold by the Board, all rents and all interests, profits and other moneys accruing to the Board shall constitute the fund of the Board.

(5) Except as otherwise directed by the State Government, all moneys and receipts specified in the foregoing provisions and forming part of the fund of the Board shall be deposited in the Reserve Bank of India or in any Nationalized Bank or other Scheduled Bank, invested in such securities as may be approved by the State Government.

(6) Such account shall be operated upon by such officers as may be authorised by the Board.

4. That the RHB is directly controlled by the State Government and all acts of the RHB are under the supervisory control of the State Government. Reference can also be made to section 60 of the RHB Act, which states that while exercising its powers and duties under the RHB Act, the RHB shall adhere to the policies and guidelines laid down by the State Government.

60. Government's power to give directions to the Board. - The State Government may give the Board such directions as in its opinion are necessary or expedient for carrying out the purposes of this Act, and it shall be the duty of the Board to comply with such directions.

5. That section 62 of the RHB Act empowers the State Government to dissolve RHB by publishing a notification in official gazette to give effect to such dissolution. Moreover, pursuant to such dissolution, all properties, funds and dues vested in or realizable by the Board shall stand transferred to the State Government. RHB is formed for providing infrastructure of housing facility. Thus, the RHB is the instrumentality of the State Government and has been discharging the statutory functions assigned to it under the statute or those entrusted to it by the State Government.

Objective and Mission of RHB

6. As per the Vision statement of RHB, it has been established with the objective to, inter alia:

a) Ensure affordable housing in environmentally invigorating habitats with inclusive facilities especially for the economically weaker section, low and middle income groups and competitive price options for the other sections of the society.

b) To plan and develop state of art townships at affordable price to all the section.

c) To develop the townships with inclusive facilities which include modern amenities, community services, hospitals, educational institutes, neighborhood parks and playgrounds.

7. The role of RHB for the development of Housing schemes can be understood from section 26 of the RHB Act, which reads as under:

Section 26, Powers and duties of the Board to undertake Housing Schemes –

(1) Subject to the provisions of this Act and subject to the control of the State

Government, the Board may, from time to time incur expenditure and undertake works in any area in which this Act is in force for the framing and execution of such housing Schemes as it may consider necessary.

(2) The Housing Schemes may be of one of the following types, or combination of any two or more of such types or of any special features hereof, namely:-

(a) a house accommodation scheme with special emphasis for the scheduled castes, scheduled tribes and other economically backward classes:

(b) a rebuilding scheme;

(c) a rehousing or rehabilitation scheme;

(d) a city or town or village expansion scheme;

(e) a commercial or commercial-cum residential scheme;

(f) an Urban Renewal Scheme including of Slum Clearance of Slum Improvement Schemes:

(g) a subsidized industrial Housing Scheme; or

(h) any other scheme with the approval of the State Government.

(3) The State Government may, on such terms and conditions as it may think fit to impose, entrust to the Board the framing and execution of any housing scheme whether provided for by this Act or not, and the Board shall thereupon undertake the framing and execution of such scheme as if it had been provided for by this Act.

(4) The Board may, on such terms and conditions as may be agreed upon and with the previous approval of the State Government, take over for execution any housing scheme on behalf of a local authority or co-operative society or on behalf of an employer when the houses are to be built mainly for the residence of his employees, and the Board shall execute such scheme as if it has been provided for by this Act.

8. The facilities which are to be provided in a housing scheme is mentioned in Sec. 28 of the RHB Act, which reads as under:-

28. Matters to be provided for by housing schemes - Notwithstanding anything contained in any other law for the time being in force, a housing scheme may provide for all or any of the following matters, namely: -

(a) the acquisition by purchase, exchange or otherwise of any property necessary for or affected by the execution of the scheme:

(b) the laying or re-laying out of any land comprised in the scheme:

(c) the distribution or re-distribution of site belonging to owners of property comprised in the scheme;

(d) the closure or demolition of dwellings or portions of dwellings unfit for human habitation;

(e) the demolition of obstructive buildings or portions of buildings;

(f) the construction and reconstruction of buildings;

(g) the sale, letting or exchange of any property comprised in the scheme;

(h) the construction and alteration of streets and back lanes:

(i) the formation of a reconstituted plot by the alterations of the boundaries of an original plot:

(j) the allotment of a plot to any owner dispossessed of his land in furtherance of the housing scheme:

(k) the transfer of ownership of a plot from one person to another:

(l) the reconstitution of two or more plots belonging to different persons into one plot without changing their boundaries and making them joint property with the consent of the owners of the original plots;

(m) the provision of draining, water-supply and lighting of the area included in the scheme:

(n) the provision of parks, playing-fields and open spaces for the benefit of any area

comprised in the scheme or any adjoining areas, and the enlargement of existing parks, playing fields, open spaces and approaches:

- (o) the reclamation or reservation of lands, for markets, gardens, playing-fields, schools, dispensaries, hospitals and other amenities in the scheme;
- (p) the letting out, management and use of the Board premises;
- (q) the provision of sanitary arrangements required for the area comprised in the scheme, including the conservation of, and prevention of any injury or contamination to reverse or other sources and means of water-supply;
- (r) the provision of accommodation for any class of inhabitants;
- (s) the advance of money for the purpose of the scheme;
- (t) the provision of facilities for communication and transport;
- (u) the collection of such information and statistics as may be necessary for the purposes of this Act;
- (v) any other matter for which, in the opinion of the State Government, it is expedient to make provision with a view to provide housing accommodation and to the improvement or development of any area comprised in the scheme or any adjoining area or the general efficiency of the scheme.

B Interpolation and understanding of applicant on question rose (in Brief)

1. As per Interpretation of applicant the Rajasthan Housing Board is a "governmental authority" and the services provided by RHB are exempt in GST under the entry mentioned below. The reasoning is mentioned in the subsequent paras Vide Notification 12/2017-Central Tax (Rate) dated 28th June, 2017 (as amended) Central Government in exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017) exempted intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the Table, entry specified at S.No. 4 of said notification, reproduced below:-

S. No.	Chapter, Sec., Heading, group or service code	Description of services	Rate	Condition
4.	Chapter 99	Services by governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the constitution.	Nil	Nil

Further, Section 11(4) of Rajasthan Goods & Services Tax Act, 2017 provides that any notification issued by the Central Government, on the recommendations of the Council, under sub-section (1) of section 11 or order issued under sub-section (2) of the said section of the Central Goods and Services Tax Act shall be deemed to be a notification or, as the case may be, an order issued under this Act.

2. That above exemption entry has 2 parts:-

- (i) Services must be provided by "Governmental authority"
- (ii) That service should be in relation to any function entrusted to a municipality under Article 243W of the constitution.

3. That for condition no. (i) it is imperative to discuss the definition of "Governmental authority" which is defined in clause (zf) Paragraph 2 vide notification no. 12/2017- Central Tax (Rate) dated 28.06.2017, reproduced below for reference. —

"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 243G of the Constitution.

4. As mentioned above, the RHB is established as per Section 4 of the Rajasthan Housing Board Act. It is established by the state government with 100% control of government and to ensure affordable housing in environmentally invigorating habitats with inclusive facilities especially for the economically weaker section, low and middle income groups and competitive price options for the other sections of the society. The functions of RHB are covered under the Article 243W and the Twelfth schedule of the Constitution as mentioned below:-

“Article 243W - Powers, authority and responsibility 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...”

The Twelfth Schedule for Article 243W of the Constitution (Seventy-Fourth Amendment) Act, 1992 are as follows;

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 up gradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, play grounds.
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.

5. Thus, it is evident that RHB is constituted with the object of promoting affordable housing for the weaker sections of the society and for the up liftment of slums, inter alia and the said acts are also carried out to fulfill the duties of the State under the Constitution and more specifically under Article 243W read with the 12th Schedule of the Constitution.

The RHB carries out the specific functions as highlighted underlined in the list of Twelfth Schedule.

6. It is imperative to state that as per the settled proposition of law it is not mandatory that the functions stipulated in Article 243W of the Constitution are required to be performed only by the municipality; rather the State is empowered to authorize any other local authority to carry out the similar functions. In furtherance of this, RHB has been constituted by the State Government for setting up a specialized body for urban planning and development of townships. Guidance can be sought from the judgment of the Hon'ble Rajasthan High Court in the case of Ram Chandra Kasliwal vs State of Rajasthan and Ors, 2004 (4) WLC 17 wherein it was held that "Taking a cue from the aforesaid decision of the Supreme Court, there is no difficulty in holding that Article 243W, being an enabling provision, has not imposed any constitutional duty on the State Legislature to confer power & responsibilities on the Municipal Corporations. Rather Article 243W enable the State to endow power & responsibilities on the Municipal Corporations. But no binding directions have been issued to the legislatures to endow powers & responsibilities on the municipalities. It is, however, another matter that the State legislature has conferred the powers & responsibilities on the municipalities through the RM Act. At the same time, it does not mean that the State legislature could not have conferred similar powers on any other local authority under Article 246(3), read with List II of the seventh Schedule."

Thus undisputedly, the RHB is performing the public function and all the activities undertaken by RHB are for the welfare of public at large. The duties and functions of RHB are of similar to functions under Article 243 W read with the schedule 12 of the Constitution.

7. The interpretation of applicant is also supported by the advance ruling in the case of M/s Dhananjay Kumar Singh HN 13, Sanyasi Para, Khamtarai Raipur, Chhattisgarh vide Advance Ruling No. STC/ AAR/06/2018, Dated 05th December, 2018 wherein it is held that the Chhattisgarh Housing Board is a Government Authority fully owned by the State Government. In this case work of supply of services of colony maintenance with regard to solid waste management, water supply operation, garbage collection door to door and disposal, cleaning of colony i.e. garden, street and open area, drainage system, sewerage, water tank, cleaning of common area in multistoried building etc. and all other related work pertaining to operation and maintenance work was awarded pertaining to C.G. Housing Board Colony, Sector 29, Naya Raipur. The AAR after examining the nature of activities and Article 243W of the Constitution has held that the service supply to be provided by the applicant by their very nature appear to fall in the list of services enumerated under serial no. 5, 6, 8, 10, 12 and 17 of 12th schedule of Article 243W of the Indian Constitution and therefore the services has been held as exempt supply covered under Notification No 12/2017-State Tax (Rate).

8. In case of M/S PDCOR Limited, the GST AAR Rajasthan has held that Jaipur Development Authority (JDA) is a 'Governmental Authority' and the Project Management Consulting Services (PMCs) provided by M/s PDCOR Ltd. to JDA for Rejuvenation of Amanishah Nallah (Dravyavati River), Jaipur awarded to them vide MOA dated: 01.09.2017 are covered under Sl. No.3 of GST under Notification 12 /2017 Central Tax (Rate) dated 28/06/2017 (Notification No. F.12 (56) FD/Tax/2017- Pt-I-50 Dated 29/09/2017 issued by the Government of Rajasthan) and hence exempt from GST.

9. The Gujarat GST AAR vide Advance Ruling No. GUJ/GAAR/R/42/2021 dated 11/08/2021, in case of Gujarat State Road Development Corporation (GSRDC) observed that GSRDC was established with objective to undertake the development of bridges and roads and that Government of Gujarat has established GSRDC as its wholly owned company and entrusted it with the work of development of roads and bridges. The AAR held that GSRDC satisfies the definition of "Government Entity". Government Entity

defined under GST Law is as follows:

“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.”

Further, it was held that roads and bridges are activities entrusted to a municipality under Article 243W of our Constitution and to a Panchayat under Article 243G of our Constitution and therefore, in such specific cases where GSRDC constructs municipal roads/bridges or village roads/bridges, it satisfies the definition of “Government Authority”. Accordingly it was held that:

1. GSRDC is a Government Entity.
2. In addition to being a Government Entity, GSRDC shall be a Government Authority, in such cases when it constructs
 - i. Municipal Roads/ bridges;
 - ii. Village Roads/bridges.

10. Here it would be relevant to mention that the Hon’ble Patna High Court in case of Shapoorji Paloonji & Company (P) Ltd. Vs. Commissioner, Customs & Central Excise & Service Tax [(2016) 67 taxmann.com 218 (Patna)] has examined the definition of “governmental authority” which is same as was in service tax. The definition given in para 2(s) of Mega Exemption N.No. 25/2012-ST dated 20-6-2012 is reproduced below for ready reference:-

“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 Government,

with 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 Hon’ble High Court of Patna held as under:

- The ‘Governmental authority’ as defined in the Notification dated January 30, 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) are independent disjunctive 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) alone, as the sub-clause (i) is followed by ‘;’ and the word ‘or’. Therefore, each of the sub-clauses is independent provision;
- Thus, it means that when an authority is established by Government, then, it 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.

11. Thus, in light of the above submissions the applicant is of the view that the RHB is “Governmental Authority” and the services provided by the RHB as “Governmental Authority” are duly covered under the ambit of entry 4 of the exemption Notification no. 12/2017-CT(R) as both the conditions stipulated in the said entry stands satisfied and therefore, in view of applicant the services of granting permission for Building construction,

approval of Building Map, permission for additional Floor Area Ratio, Services of Leasing of Land are exempt from GST.

12. Further applicant made submission vide letter 19.09.2022 that The RHB in capacity of 'Government Authority' has been casted the following duties under Sec. 26 of the RHB Act and pleaded that urban amenities and facilities such as parks, gardens, play grounds and the various services or functions of RHB such as granting permission for Building construction, approval of Building Map, permission for additional Floor Area Ratio, Services of Leasing of Land etc. is covered under the functions entrusted to a Municipality under Article 243W of the Constitution and therefore, exempt under GST under entry 4 of the exemption Notification no. 12/2017-CT(R).

13. Applicant again made submission vide letter 22.10.2022 that RHB in capacity of "Governmental Authority" charge various amounts towards Map Approval fee, amount for BSUP Shelter fund, Betterment levy etc which is charged as per the Gazette Notification of Govt. of Rajasthan dated 7 Jan 2021; that as per this notification the Rajasthan Housing Board Act, 1970 is included in definition of 'Act' (sec. 2.1) and Housing Board is included in definition of 'Competent Authority' (Sec. 2.2) for charging various fees such as Map Approval Fee, Betterment levy, application fee etc. The Applicant further contended that "RHB for the purpose of granting various permissions for building construction, map approval etc has been considered at par with Jaipur Development Authority as Urban Development Housing & Local Self Govt. department of Govt. of Rajasthan vide office order dated 19-5-2010 and order dated 20-6-2018 has directed RHB, JDA, other development authorities, municipalities, Nagar Nigam to charge for BSUP (Shelter) Fund for implementation of Affordable Housing Policy-2009. This order is equally applicable on RHB also as mentioned in the order itself. This also proves that for charging various amounts, RHB has been given power at par with JDA and Municipal authorities. Hence it is clear that the various services or functions of RHB such as granting permission for Building construction, approval of Building Map, permission for additional Floor Area Ratio, Services of Leasing of Land, betterment levy etc. is covered under the functions entrusted to a Municipality under Article 243W of the Constitution and therefore, exempt under GST under entry 4 of the exemption Notification no. 12/2017-CT(R). "

C. Question(s) on which advance ruling is sought

Q.1 Whether the Rajasthan Housing Board is covered under the definition of "Governmental Authority" as defined in clause (zf) Paragraph 2 vide notification no. 12/2017-Central Tax (Rate) dated 28.06.2017?

Q.2 Whether the services provided by the Rajasthan Housing Board as governmental authority such as permission for building construction, approval of map, permission of additional Floor Area Ratio, leasing of land etc. are exempt as per Notification no. 12/2017 CTR dated 28.06.2017 as amended from time to time, under entry specified at S.No. 4 of said notification?

D. PERSONAL HEARING

In the matter personal hearing was granted to the applicant on 06.09.2022. On behalf of the applicant CA, Manish Maliwal & CA Virendra Parwal (Authorized Representatives) (Authorized Representatives) appeared for PH. During the PH, they reiterated the submissions already made in the application. Applicant made additional submission on dated and dated .

E. COMMENTS OF THE JURISDICTIONAL OFFICER

In the matter, Assistant Commissioner, CGST Div. H Jaipur has given his comments vide letter V(H)30/02/Advance ruling /03/2022 dated 19.07.2022 that Rajasthan Housing Board may be considered as Governmental Authority and exemption under Sl.No.4 of Notification 12/2017 dated 28.06.2017 is available to them.

F. FINDINGS, ANALYSIS & CONCLUSION:

1) We have carefully examined the statement of facts, supporting documents filed by the Applicant along with application, oral and written submissions made at the time of hearing and the comments of the Central Tax Authority. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts. We would like to discuss the submission made by applicant and will take up the above question for discussion one by one.

2) The applicant The Rajasthan Housing Board (RHB) is established on 24th February, 1970 vide Rajasthan Housing Board ordinance & later on notified under section 4 of the Rajasthan Housing Board Act 1970 (Act No. 4 of 1970). The RHB is constituted by the State Government and in light of section 5 of the Rajasthan Housing Board Act, 1970. The duties of Rajasthan Housing board are well defined in Sec 26 & 28 of Rajasthan Housing Board Act, 1970. The Applicant is involved for the framing and execution of housing Schemes subject to the control of the State Government through its Board. The applicant has sought ruling on the following question:

(i) Whether the Rajasthan Housing Board is covered under the definition of "Governmental Authority" as defined in clause (zf) Paragraph 2 vide notification no. 12/2017-Central Tax (Rate) dated 28.06.2017?

(ii) Whether the services provided by the Rajasthan Housing Board as governmental authority such as permission for building construction, approval of map, permission of additional Floor Area Ratio, leasing of land etc. are exempt as per Notification no. 12/2017 CTR dated 28.06.2017 as amended from time to time, under entry specified at S.No. 4 of said notification?

3) We have gone through the judicial pronouncements of various judicial authority government authorities. We have also gone through the decisions of various courts submitted by applicant on dated 06.09.2022. Applicant also quoted the reference of Pre-GST regime, i.e Notification No. 25/2012-ST dated 20.06.2012. We found that none of pronouncement submitted by applicant in his favors squarely covers the present question of law in respect of questions on which advance ruling has been sought by applicant.

4) The Section 2(53) of the Central Goods and service Tax Act 2017 had defined the government

"Government" means the Central Government;

And sub-section 2(53) of the Rajasthan Goods and service Tax Act, 2017 provided that

"Government" means the Government of Rajasthan;

Further the "government Authority" is being defined in the clause (zf) of notification no. 12/2017 dated 28.06.2017 of Central Goods and service Tax Act 2017 as amended is 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 243W of the Constitution or to a Panchayat under article 243G of the Constitution.

5) We observe and found from records that RHB is constituted by State Government under Rajasthan Housing Board Act 1970 (Act No. 4 of 1970) and fully controlled by state government, Thus it is amply clear for us that RHB is Governmental Authority under GST Act.

6) Now for arriving at a decision as to whether the nature of service supplies being provided by the RHB falls under 12th schedule, Article 243W of the Indian Constitution, the following works enumerated under Article 243W needs consideration.

(i) **"Article 243W - Powers, authority and responsibility 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..."

The Twelfth Schedule for Article 243W of the Constitution (Seventy-Fourth Amendment) Act, 1992 are as follows;

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 up gradation.

11. Urban poverty alleviation.

12. Provision of urban amenities and facilities such as parks, gardens, play grounds.

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.

(ii) We found that the objectives and motto of RHB may be derived from section 26 of the RHB Act 1970, which reads as under:

Section 26. Powers and duties of the Board to undertake Housing Schemes. –

(1) Subject to the provisions of this Act and subject to the control of the State Government, the Board may, from time to time incur expenditure and undertake works in any area in which this Act is in force for the framing and execution of such housing Schemes as it may consider necessary.

(2) The Housing Schemes may be of one of the following types, or combination of any two or more of such types or of any special features hereof, namely:-

(a) a house accommodation scheme with special emphasis for the scheduled castes, scheduled tribes and other economically backward classes:

(b) a rebuilding scheme;

(c) a rehousing or rehabilitation scheme;

(d) a city or town or village expansion scheme;

(e) a commercial or commercial-cum residential scheme;

(f) an Urban Renewal Scheme including of Slum Clearance of Slum Improvement Schemes:

(g) a subsidized industrial Housing Scheme; or

(h) any other scheme with the approval of the State Government.

(3) The State Government may, on such terms and conditions as it may think fit to impose, entrust to the Board the framing and execution of any housing scheme whether provided for by this Act or not, and the Board shall thereupon undertake the framing and execution of such scheme as if it had been provided for by this Act.

(4) The Board may, on such terms and conditions as may be agreed upon and with the previous approval of the State Government, take over for execution any housing scheme on behalf of a local authority or co-operative society or on behalf of an employer when the houses are to be built mainly for the residence of his employees, and the Board shall execute such scheme as if it has been provided for by this Act.

(iii) We further observes that the facilities which are to be provided in a housing scheme is mentioned in Sec. 28 of the RHB Act 1970 which is as under-

28. Matters to be provided for by housing schemes - Notwithstanding anything contained in any other law for the time being in force, a housing scheme may provide for all or any of the following matters, namely: -

- (a) the acquisition by purchase, exchange or otherwise of any property necessary for or affected by the execution of the scheme;
- (b) the laying or re-laying out of any land comprised in the scheme;
- (c) the distribution or re-distribution of site belonging to owners of property comprised in the scheme;
- (d) the closure or demolition of dwellings or portions of dwellings unfit for human habitation;
- (e) the demolition of obstructive buildings or portions of buildings;
- (f) the construction and reconstruction of buildings;
- (g) the sale, letting or exchange of any property comprised in the scheme;
- (h) the construction and alteration of streets and back lanes;
- (i) the formation of a reconstituted plot by the alterations of the boundaries of an original plot;
- (j) the allotment of a plot to any owner dispossessed of his land in furtherance of the housing scheme;
- (k) the transfer of ownership of a plot from one person to another;
- (l) the reconstitution of two or more plots belonging to different persons into one plot without changing their boundaries and making them joint property with the consent of the owners of the original plots;
- (m) the provision of draining, water-supply and lighting of the area included in the scheme;
- (n) the provision of parks, playing-fields and open spaces for the benefit of any area comprised in the scheme or any adjoining areas, and the enlargement of existing parks, playing fields, open spaces and approaches;
- (o) the reclamation or reservation of lands, for markets, gardens, playing-fields, schools, dispensaries, hospitals and other amenities in the scheme;
- (p) the letting out, management and use of the Board premises;
- (q) the provision of sanitary arrangements required for the area comprised in the scheme, including the conservation of, and prevention of any injury or contamination to reverse or other sources and means of water-supply;
- (r) the provision of accommodation for any class of inhabitants;
- (s) the advance of money for the purpose of the scheme;
- (t) the provision of facilities for communication and transport;
- (u) the collection of such information and statistics as may be necessary for the purposes of this Act;
- (v) any other matter for which, in the opinion of the State Government, it is expedient to make provision with a view to provide housing accommodation and to the improvement or development of any area comprised in the scheme or any adjoining area or the general efficiency of the scheme.

7) In light of submissions made by applicant, We found that applicant asked advance ruling against certain services provided by him which are such as permission for building construction, approval of map, permission of additional Floor Area Ratio, leasing of land etc. So we observe that authority of advance ruling have constraints up to these services. The

aforesaid service supply to be provided by the applicant by their very nature appear to fall in the list of services enumerated under serial no. 1, 2, 4, 9, 12 of 12th schedule of Article 243W of the Indian Constitution, thus qualifying the admissibility criterion.

8) We observe that it has also been categorically stated by RHB that the said services are to be provided by them. We would like to discuss relevant portion of Notification 12/2017-Central Tax (Rate) dated 28th June, 2017 (as amended) which is as under:-

Vide Central Government in exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017) exempted intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the Table, entry specified at S.No. 4 of said notification, reproduced below:-

S. No.	Chapter, Sec., Heading, group or service code	Description of services	Rate	Condition
4.	Chapter 99	Services by governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the constitution.	Nil	Nil

Further, Section 11(4) of Rajasthan Goods & Services Tax Act, 2017 provides that any notification issued by the Central Government, on the recommendations of the Council, under sub-section (1) of section 11 or order issued under sub-section (2) of the said section of the Central Goods and Services Tax Act shall be deemed to be a notification or, as the case may be, an order issued under this Act.

9) On the above basis, we come to the considered conclusion that the said services provided by the Rajasthan Housing Board (RHB) qualifies being placed under the category of services as stipulated at sl. No. 4 under Notification No. 12/2017- (Rate) ..

In view of the foregoing, we rule as follows: -

RULING

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

Q.1: Whether the Rajasthan Housing Board is covered under the definition of "Governmental Authority" as defined in clause (zf) Paragraph 2 vide notification no. 12/2017-Central Tax (Rate) dated 28.06.2017?

Ans.1: Yes, Rajasthan Housing Board is covered under the definition of "Governmental Authority" as defined in clause (zf) Paragraph 2 vide notification no. 12/2017-Central Tax (Rate) dated 28.06.2017

Q.2: Whether the services provided by the Rajasthan Housing Board as governmental authority such as permission for building construction, approval of map, permission of

additional Floor Area Ratio, leasing of land etc. are exempt as per Notification no. 12/2017 CTR dated 28.06.2017 as amended from time to time, under entry specified at S.No. 4 of said notification?

Ans.2: Yes, above mentioned services provided by Rajasthan Housing Board in relation to any function entrusted to a municipality under article 243 W of the constitution are nil rated GST exempted vide S.No 4 of Notification No.12/2017-CT (Rate) dated 28.06.2017 as amended.


14.12.22
(Umesh Kumar Garg)
MEMBER
CENTRAL TAX




14/12/2022
(M. S. Kavia)
MEMBER
STATE TAX

8/c
SPEED POST

M/s Rajasthan Housing Board, Janpath, Bhagwandas Road, Jyoti Nagar, Jaipur)

F. No. AAR/SF/2022-23/256-260

Date: 14.12.2022

Copy to: -

1. The Chief Commissioner, CGST and central Excise, (Jaipur Zone), NCRB, Statue Circle, Jaipur, Rajasthan 302005
2. The Chief Commissioner, State Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005.
3. The Principal Commissioner, CGST and Central Excise Commissionerate Jaipur, Rajasthan.
4. The Assistant Commissioner, CGST Div. H , Sector 10, Vidhyadhar Nagar, Jaipur Rajasthan.

8/c