

AUTHORITY FOR ADVANCE RULING, TAMILNADU
DOOR NO.32, INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX
5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,
CHENNAI -600 003.

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.

Members present are:

1. Thiru Senthilvelavan B., I.R.S., Member/ Additional Commissioner,
Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -34.

2. Tmt. Padmavathi T., Member/ Joint Commissioner (ST)
Authority for Advance Ruling, Tamil Nadu, Chennai-600 003.

ORDER No. 34/ARA/2021 Dated 17.08.2021

GSTIN Number, if any / User id		33AAIFM7746B1ZE
Legal Name of Applicant		M/s. Mukesh & Associates
Registered Address / Address provided while obtaining user id		No. 2/6, Perumal Malai Main Road, Narasothipatty. Salem, 636 004.
Details of Application		Form GST ARA - 001 Application Sl.No.03/2021/ARA dated 21.01.2021
Concerned Officer		State:Assistant Commissioner (ST) Alagapuram Assessment Circle Centre: Salem Commissionerate.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Service Provision
B	Description (in brief)	
Issue/s on which advance ruling required		Applicability of a Notification issued under the provisions of this Act
Question(s) on which advance ruling is required		Whether the Pure services M/s Mukesh & Associates, by way of rendering Consulting Service for Programme Management and Accompanying Measures for implementation of Integrated Storm Water Drain for M1 & M2 components of Kovalam Basin in the extended

	area of Greater Chennai Corporation supplied to the Superintending Engineer, Storm Water Drain Department, Greater Chennai Corporation, Chennai are exempted from payment of GST as per the S.No.3 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017?
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Note: Any appeal against the Advance Ruling order shall be filed before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-section (1) of Section 100 of CGST ACT/TNGST Act 2017 within 30 days from the date on which the ruling sought to be appealed against is communicated.

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service. Tax Act.

Tvl Mukesh & Associates, No. 2/6, Perumal Malai Main Road, Narasothipatty. Salem, 636 004. (hereinafter called the 'Applicant') is registered under the GST Vide GSTIN 33AAIFM7746B1ZE. They have sought Advance Ruling on the following question:

Whether the pure services provided by M/s Mukesh & Associates, by way of rendering Consulting Service for Programme Management and Accompanying Measures for implementation of Integrated Storm Water Drain for M1 & M2 components of Kovalam Basin in the extended area of Greater Chennai Corporation supplied to the Superintending Engineer, Storm Water Drain Department, Greater Chennai Corporation, Chennai are exempted from payment of GST as per the S.No.3 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017?

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.

2.1 The applicant has stated that they are supplying services of Consulting Engineer, Architects Services and Technical Testing, Inspection, Certification, etc. and they have been given letter of Acceptance dated 28.10.2020 by the Superintending Engineer, Storm Water Drain Department, Greater Chennai Corporation, Chennai for execution of Consulting Services for Programme Management and Accompanying Measures for implementation of Integrated Storm Water Drain for M1 & M2 components of Kovalam Basin in the extended area of Greater Chennai corporation. They are one among the four recipients of the said letter of acceptance and they provide the Consulting Service to the Greater Chennai Corporation in Joint Venture with M/s GITECH-IGIP, GmbH, Cologne, Germany and payments will be made to them (Service Provider) directly by Greater Chennai Corporation (Client).

2.2 On the interpretation of law, they have referred Sl. No. 3 of the Notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017, "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". As per Article 243W of the Constitution, the Legislature of a State may, by law, endow the performance of functions and the implementation of schemes as may be entrusted to Municipalities etc. including those in relation to the matters listed in the Twelfth Schedule.

2.3 The applicants are of the view that when seen in broader perspective their Consulting Services are in relation to the implementation of the scheme namely 'Integrated Storm Water Drain for M1 & M2 Components of Kovalam Basin in the extended area of Greater Chennai Corporation and can also be considered to be in relation to the activity namely "urban planning including town planning" at Sl. No. 1 of the Twelfth Schedule to article 243W of the Constitution. Since, the Greater Chennai Corporation, is falling under the definition of "Local Authority", their Consulting Services as mentioned above are exempted from the levy of GST by virtue of Sl.No. 3 of the Notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017.

2.4 Though the consulting services to be supplied by the applicant to the Greater Chennai Corporation are evidently exempted from the levy of GST for the reasons stated above, yet an advance ruling authenticating the exemption from levy of GST in this issue, will be of an immense support to them in delivering better tax compliance and following the statutory provisions scrupulously.

2.5 In support of their statement of relevant facts having a bearing on the question raised, they have relied upon Karnataka Advance Ruling Authority order vide Ref. KAR ADRG 52/2020 dated 09.10.2020 in respect of M/s Vimos Technocrats Private Limited., Bengaluru. They have stated that in view of the above, they are of the strong view that the services of execution of Consulting Services for Programme Management and Accompanying Measures for implementation of Integrated Storm Water Drain for M1 & M2 Components of Kovalam Basin in the extended area of Greater Chennai Corporation supplied to the Superintending Engineer, Storm Water Drain Department, Greater Chennai Corporation are exempted from payment of GST by virtue of S.No.3 of the Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017.

3.1 Due to the prevailing PANDEMIC situation and in order not to delay the proceedings, the applicant was addressed through the Email Address mentioned in the application to seek their willingness to participate in a virtual Personal Hearing in Digital media. The applicant consented and the hearing was held on 12.03.2021 virtually. The Authorized representative appeared for the hearing virtually and stated that they undertake only pure services and for the work allotted to them by Greater Chennai Corporation (GCC) and they are eligible for exemption under Notification 12/2017 CT(R). He stated that their service is towards provision of Design Services for Storm Water Drain which is an urban amenity as per the Tamil Nadu Town Planning Act, 1972. They were asked to furnish the documents shared during the hearing. They were also asked to furnish the copy of agreement, copy of invoices raised and a synopsis on their duties and payment with the reference to the contract, when the contract is between GCC and the unincorporated Joint Ventures comprising of the applicant. The applicant was asked to establish the capacity in which the ruling is sought whether JV Member or in his individual capacity.

3.2 The applicant has clarified the following clarifications in pursuance of the personal hearing proceedings.

1. Whether Mukesh & Associates are providing direct services to the Greater Chennai Corporation (GCC):

Mukesh & Associates are providing direct services to the Greater Chennai Corporation (GCC).

2. Role and Share of Mukesh & Associates:

The role and share of Mukesh & Associates and other consortium partners are specified in 'Annexure-1 & Annexure-2'. (Annexure-1: Roles and Responsibility of Mukesh & Associates under 'Staffing Schedule' (Contract Agreement Page No.277,278,279,280,281 &282 of 959, Annexure-2: Direct Payment of Mukesh & Associates under 'Payment Schedule' Contract Agreement Page No.322 & 323 of 959)

3. Whether Mukesh & Associates are claiming invoices directly to the Greater Chennai Corporation (GCC):

Mukesh & Associates are directly raising the Invoice on Greater Chennai Corporation and the GCC would be paying the bill amount direct to our Bank Account through KfW, the financing institution. The expenditure on the project would be accounted as expenditure in the Books of GCC and there is direct relationship between the GCC and Mukesh & Associates. Copy of invoice raised by Mukesh & Associates is enclosed as 'Annexure-3' (Annexure-3: Copy of 'Invoice' raised by Mukesh & Associates Invoice No.M&A/GCC/PMC-1A+1C/Adv-001 dated 24.12.2020)

4. Whether Mukesh & Associates are receiving payments directly from the Greater Chennai Corporation (GCC):

The consortium partners will receive the payments directly from GCC through KfW in their bank accounts in accordance with the method of payment stipulated in the Special Conditions of Contract (SCC). Accordingly, Mukesh & Associates will receive payments directly from GCC through KfW and the respective amount will be credited in the bank account of Mukesh & Associates mentioned in the SCC. Extract from contract agreement is enclosed as 'Annexure-4' (Annexure-4: 'Method of payment' (Bank Account details of Mukesh & Associates)-Direct Payment (Contract Agreement page No.39 & 40 of 959).

3.3 The Registry vide Notice in Ref.ARA No.03/2021 dated 12.04.2021 requested the applicant to furnish the following:

1. Copy of Agreement
2. Write up on what capacity they are seeking the ruling.

3.4 The applicants in response to the Notice from Registry submitted Consulting agreement and stated that they are seeking exemption under GST and they are one of the members of the Consortium which entered into Agreement with Greater Chennai Corporation for providing "Pure Services" falling under serial number 3 of Notification No.12/2017. They further stated that their invoices are directly paid to them by the Greater Chennai Corporation.

3.5 In order to adhere to the Principle of Natural Justice, the applicant was afforded another opportunity of personal hearing through virtual mode before the newly constituted bench with their consent. The virtual personal hearing was conducted on 04.08.2021. Mr. Mukesh, managing partner attended the hearing and he was asked to clarify whether ruling is sought in their individual capacity of the consortium (JV) or on behalf of the consortium (as a Joint venture member). He replied that they seek ruling in their individual capacity only. The applicant was asked to furnish a write up indicating their role in detail and cross referencing the terms of the contract.

3.6 The applicant vide his letter dated 04.08.2021 clarified the queries put before them at the time of virtual personal hearing on 04.08.2021.

➤ **Whether the advance ruling for exemption of GST is requested for Mukesh & Associates only are for all the consortium members:**

This request for advance ruling for exemption of GST is requested for Mukesh & Associates only.

➤ **Role of Mukesh & Associates:**

Mukesh & Associates offers the following services through the experts deployed by them in the Staffing Schedule.

➤ **PMC (Programme Management Component)**

- Preparation of the detailed design of the drainage system.

- Construction supervision of drainage system and associated works, monitoring and evaluation of various contracts for works, preparation of work plan and quarterly reports, among others.
 - Hydraulic Modelling
 - Civil/Structural Engineering design
 - Electrical Engineering Design
 - Mechanical engineering design
 - Quantity Surveying

AMC (Accompanying Measures Component)

- Administration of the AM fund and directly responsible for procuring the services of experts and consultants for the utilization of the fund. Also, the development and monitoring of a Financial Sustainability Plan.
- Identifying innovative partners for collaboration as well as for developing and managing the institutional change process within GCC.
- Developing and managing outreach and communication measures with the Programme population, Residents Welfare Associations (RWAs)/Ward Committees/other civil society as well as within the PEA and other relevant agencies.

4. The State Jurisdictional authority, Assistant Commissioner (ST), Alagapuram Circle, Salem who has the administrative jurisdiction over the applicant vide Ref.No.226/2021/A1 dated 10.03.2021 has stated that there are no pending proceedings on the subject issue and had offered their comments on merits of the issue as follows:

A thorough verification of the documents furnished by the applicant, clearly lead to the conclusion that the services rendered by Tvl.Mukesh & Associates, Salem for the implementation of Integrated Storm Water drain for M1 and M2 components of Kovalam Basin in the extended area of Greater Chennai corporation will fall under Sl. No.3 of Chapter 99 as per Notification No.12/2017-Central Tax(Rate), New Delhi, the 28th June 2017 and as per G.O.No.73 CT & R (B1) Department dated: 29.06.2017, for the reasons that

- i. the Greater Chennai Corporation is a local authority as per Article 243 of the constitution and Section 2(69) of the TNGST Act, 2017
- ii. the services provided by the applicant is pure services.

5. The Center Jurisdictional Authority vide letter File No. TECHN/Misc/72/2021-TECH-O/o COMMR-CGST-SALEM dated .03.2021 stated that there are no pending proceedings in respect of the applicant on the issue raised by them in the application and have submitted that the applicant may be eligible for exemption from payment of GST as per Sl.No. 3 of Notification No. 12/2017-C.T.(Rate) dated 28.06.2017.

6. We have carefully examined the statement of facts, supporting documents filed by the Applicant along with application, submissions made at the time of Virtual hearing and the comments of the Jurisdictional Authorities. The applicant has stated to be providing Consulting services for the Project Programme Management and Accompanying Measures for the Chennai Storm Water Drainage, M1 and M2 Components of Kovalam Basin” (BMZ-no.2014.680.99, 2017.704.37) (hereinafter called the “Services”) to Greater Chennai Corporation (GCC), Government of Tamil Nadu. They have sought Advance Ruling on the following questions:

Whether the pure services provided by M/s Mukesh & Associates, by way of rendering Consulting Service for Programme Management and Accompanying Measures for implementation of Integrated Storm Water Drain for M1 & M2 components of Kovalam Basin in the extended area of Greater Chennai Corporation supplied to the Superintending Engineer, Storm Water Drain Department, Greater Chennai Corporation, Chennai are exempted from payment of GST as per the S.No.3 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017?

The admissibility of the above question before this authority is prima-facie examined.

7.1 They have submitted document of Contract for consulting services dated 03.12.2021 between Greater Chennai Corporation (GCC) Government of Tamil Nadu (hereinafter referred to as the Employer, Co-financed by KfW, Germany

(hereinafter referred to as KfW) and the Lead partner GITEC-IGIP India Pvt. Ltd Jaipur, India and GITEC-IGIP GmbH, Cologne, Germany, in Joint Venture with Mukesh & Associates, Salem, India, N K Buildcon Pvt.Ltd., Jaipur, India for the Project Programme Management and Accompanying Measures for the Chennai Storm Water Drainage, M1 and M2 Components of Kovalam Basin” (BMZ-no.2014.680.99, 2017.704.37). The applicant vide their letter dated 04.08.2021 has clarified that the ruling is sought on their individual capacity in respect of services being directly rendered by their personnel to GCC for which they receive invoice on GCC and receive payment.

7.2 On perusal of the Contract, copy of which has been furnished by the applicant, the following are observed:

- The contract is executed between GCC and the Consultant, the unincorporated Joint Venture with GITEC-IGIP India Pvt. Ltd Jaipur, India and GITEC-IGIP GmbH, Cologne, Germany as Lead Partner and applicant & N K Buildcon Pvt Ltd and Members;
- As per the Joint Venture Declaration (annexure-1 of the agreement),
 - The members of the JV shall be jointly and severally liable for performance of the project
 - the registered seat of the Association is Cologne, Germany;
 - lead member of the JV, GITEC-IGIP GmbH is entrusted with the task of general coordination of JV- He or she will be the sole representative vis-à-vis the Client and third parties. Any restrictions to this power of attorney resulting from the Contract of JV entered into by the participating members shall be invalid vis-avis the client and third parties
- Paragraph 3.1 gives the ‘Scope of Services’ – The Consultant to deliver the Services in full and on time; the services to be performed encompasses all the part services described and explained in the Contract and its Annexes, in particular in Annex 2, Annex 3 and Annex 9 and Special Services as defined in Paragraph 3.2.1
 - Annex 2 is the Minutes of the Meeting held on 08.04.2020,26.05.2020,01.06.2020,02.06.2020,05.06.2020,10.07.2020 & Subsequent correspondence dated 14.07.2020, 29.07.2020 and 03.08.2020 signed between the lead partner and the Commissioner of GCC

- Annexure 3 is the Terms of Reference plus Tender Documents
- Annex 9 is the Consultant's Bid signed by the Managing Director GITEC-IGIP and Authorised representative of the Applicant(in respect of the Bid), submitted to the Tender agent of GCC; M/s. Mukesh Associates has authorized the Managing Director, GITEC-IGIP GmbH to act on behalf of the unincorporated JV GITEC-NK Buildcon-Mukesh & Associates as authorized representative for the proposal and to formally sign /initial any document related to the project vide their letter dated 10.01.2020

From the above it is evident that the JV GITEC-NK Buildcon-Mukesh & Associates is the 'Consultant' to whom the 'Project' is awarded.

7.3 The applicant, in the case at hand has stated that they require the ruling in their individual capacity of M/s. Mukesh Associates, a Partnership firm and not as a Member of the JV or the 'Consultant' to whom the 'Project' is awarded. The applicant has stated that they offer services through their experts, raise invoice and receive payments and therefore they are eligible to seek the ruling pertaining to their part. The moot point to be deliberated is whether the applicant is the 'Person' to whom the 'Project' is extended and the one providing the service. It is very clear that the project is executed by the 'Consultant', which is JV GITEC-NK Buildcon—Mukesh & Associates. The applicant in his individual capacity is different from the JV, in which he is a member. The 'project' is awarded to the JV and not to the applicant.

8. As per Section 95(a) of the GST Act read with Section 103 of the Act, the term 'advance ruling' means a decision provided by this authority to the applicant on matters or questions specified in sub-section (2) of Section 97, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant and the ruling is applicable to only such person, the Jurisdictional Authority of Such Person and the Concerned Authority. Thus it is seen that only an applicant who satisfies the condition mentioned in Section 95 can apply for Advance Ruling. Section 95 (a) is reproduced as below :

Section 95 :

In this Chapter, unless the context otherwise requires,-

- (a) *"advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of Section 97 or sub-section (1) of Section*


100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

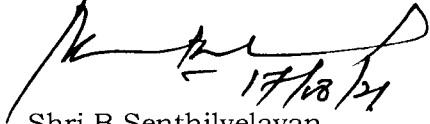
From the submissions made by the applicant we find that it is the Joint Venture with the Registered seat of the Association at Cologne, Germany is the 'Person' to whom the 'Project' is awarded and not the applicant. As per existing laws of the land, a Joint Venture Company, which is formed by 2 or more entities have a separate existence than that of the said entities. Further, as per the Joint Venture Declaration, it is seen that the Lead Member of the JV is the sole representative of the JV and any restrictions to the Power of attorney extended by the participating Members shall be invalid. Therefore supply of goods or services or both, being undertaken or proposed to be undertaken in respect of the 'Project' will be by the Joint Venture Company, and not the applicant. Thus the person who can make such application is the Joint Venture Company only and not the applicant, hence the application is not admitted for consideration on merits.

9. In view of the above, we rule as under:

RULING

The application is rejected as not admissible for the reasons mentioned in para 8 above


Smt. T. Padmavathi,
Member, SGST


Shri B. Senthilvelavan
Member, CGST

To
Tvl Mukesh & Associates, //By RPAD//
No. 2/6, Perumal Malai Main Road,
Narasothipatty, Salem, 636 004.

Copy Submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. The Principal Secretary/Commissioner of Commercial Taxes/Member,
II Floor, Ezhilagam, Chepauk, Chennai-600 005.

Copy to:

3. The Commissioner of GST & Central Excise,
Salem Commissionerate,
No.1, Foulkes Compound,
Anaimedu,
Salem 636 001.
4. Assistant Commissioner (ST),
Alagapuram Assessment Circle,
Commercial Taxes Building,
Room No 226, 2nd Floor,
Pitchards Road,
Hasthampatty,
Salem – 636 007.
5. Master File/ Spare-2