
	KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM	
---	--	---

BEFORE THE AUTHORITY OF: Shri. Sivaprasad .S, IRS &
: Shri.B.S. Thyagarajababu, B.Sc, LL.M

Legal Name of the applicant	M/s. KOCHI METRO RAIL LTD
GSTIN	32AAECK5274H1ZL
Address	CC No.41, Revenue Tower, 8 th Floor, Park Avenue Road, Ernakulam 682011
Advance Ruling sought for	<p>1. Whether Kochi Metro Rail Ltd has any liability to pay GST on the funds received from Govt. of Kerala for paying the cost of the water metro project, as the State is the de jure owner of the assets of the project? If so whether GST invoice is to be raised on Govt. for transferring the value of assets on a back to back basis after completion of the works? If there is liability, how will the ITC be claimed?</p> <p>2. Whether KMRL can be treated as a Governmental Authority as per the IGST Act for the purpose of claiming exemption under Item No. 4 of Notification No. 12/2017 CT (Rate) dated 28.06.2017?</p> <p>3. Whether services rendered by KMRL as an executing agency to Govt. of Kerala can be treated as a pure service as per entry 3 of Notification No.12/2017 CT (Rate) dated 28.06.2017?</p>
Date of Personal Hearing	10-01-2020
Authorized Representative	Varma & Varma, CAs

ADVANCE RULING No. KER/75/2019 Dated 20-05-2020

1. M/s. Kochi Metro Rail Limited (KMRL) is a Special Purpose Vehicle formed for the implementation, operation and maintenance of Kochi Metro Rail Project as per orders from Planning Commission and the Union Government. KMRL is a joint venture company with equal equity contribution of Government of India and Government of Kerala. KMRL has been entrusted by the State Govt. with a project of executing and operating an integrated water transport system in Kochi. The project includes providing modern and safe

watercraft, jetties, access roads, lighting and other ancillary infrastructure developments. The water metro project has been initiated as part of urban planning and to improve amenities available to the public. It aims to improve the entire public transportation system in Kochi. The project is partly funded by Government of Kerala and partly out of a loan taken by Government of India from a German agency, M/s.Kreditanstalt fur Wiederaufbau (KFW). A tripartite project agreement has also been entered between KFW, Govt. of Kerala and KMRL. Accordingly, Government of Kerala had issued consequential orders vide G.O.(Ms)No.44/2016/Taxes dtd.13-06-2016.

2. KMRL, the applicant has requested advance ruling on the following:

1. Since the Govt. of Kerala is the *de jure* owner of the assets of the water metro project and the works contracts are performed by contractors with whom agreements are entered into by KMRL on behalf of Govt. of Kerala.
 - a) Whether KMRL has any liability to pay GST on the funds received from Govt. of Kerala for paying the cost of the water metro project?
 - b) Whether a GST invoice is to be raised on Govt. of Kerala for transferring the value of assets on a back to back basis after completion of the works?
 - c) In the above cases, if liable, how will the ITC be claimed against (a) & (b)
2. Notwithstanding the above, whether KMRL can be treated as a Governmental Authority as per the IGST Act for the purpose of claiming exemption under item no.4 of Notification No.12/2017 dated 28-06-2017 since it is a body established by the Government with ninety percent or more participation by way of equity to carry out function entrusted to a municipality under Article 243W of the Constitution?
3. Whether services rendered by KMRL as an executing agency to Govt. of Kerala can be treated as a pure service as per Entry 3 of the Notification no.12/2017 dtd.28-06-2017?

3. The authorized representative of the applicant was heard. It is pointed out that the water metro project is a project undertaken by the State Government as part of its responsibility of urban planning. The cost of the project will be fully met out of Government funding and the loan funding contracted by Government of Kerala. KMRL is entrusted with the task of implementation of the water metro project and after implementation to operate the water metro using the assets of Govt. of Kerala on their behalf. The cost of the project will be met by the Government of Kerala. KMRL is the agency executing and operating the integrated water transport project on behalf of Govt. of Kerala who will be the de-jure owner of the project. The loan amount and the contribution of Govt. of Kerala come to Rs.102.30 cr. (Excluding land acquisition). The fund for the project would be channelized to KMRL for execution of the project, as Govt. of Kerala's investment, in the project including taxes, if any. Any cost escalations over and above the approved cost and cash deficit in operation and loan servicing would be the obligation of the Govt. of Kerala.

4. It is presented that KMRL being an executing agency, the cost of assets set up are not reflected in their books of accounts. The amounts received from Government of Kerala and KFW are shown as non-current liability and expenses of the projects are set off against the said liability. KMRL is not entitled any remuneration for executing the project.

5. As per the loan agreement entered into between Government of India and KFW and the project agreement between KMRL, Government of Kerala and KFW, a separate agreement was entered into between KFW and KMRL. Accordingly the disbursement of funds would either be made directly to the contractors in case the contract value exceeds 5 Million Euro and to KMRL through Govt. of Kerala, if the contract value is less than 5 Million Euros. All

the disbursements will be exclusive of taxes. This project cost consists of the cost of contract works entrusted to various contractors by KMRL and cost incurred by KMRL on personnel recruited specifically for this project and whose costs reimbursed from the funds allocated to the project and other indirect overhead expenses.

6. Accordingly the applicant is of the view that the Government of Kerala is the *de jure* owner of the assets constructed as part of the water metro project. The funds for the project are provided by Government of Kerala by way of their contribution and by way of loan from KFW which is primarily repayable by Government of Kerala. As per law GST has to be levied by the supplier of goods or services in respect of the water metro project. Even though the contracts for construction of the water metro are entered into by KMRL on behalf of the Government, there is no supply of goods or service to Government of Kerala by KMRL in respect of such contracts. Government of Kerala is the *de jure* owner of all the facilities and there is no deemed supply by KMRL to Government of Kerala. As such no GST needs to be charged by KMRL on the funds received from Government of Kerala.

7. KMRL is an entity whose equity shares are fully held by the Government of India and Government of Kerala. It has been entrusted with the tasks of setting up a water metro on behalf of the Government of Kerala as part of its function of urban planning and providing public amenities which are functions entrusted to a Municipality under Article 243W of the Constitution which are listed in the Twelfth Schedule to the Constitution. Hence it is a Governmental Authority as per the GST law. Even if it is presumed that there is supply by KMRL to Government of Kerala, the said supply shall be eligible for exemption as per CGST notification No.12/2017 being supply made by Governmental authority by way of any activity in relation to any function entrusted to a

municipality under article 243 W of the Constitution. The functions entrusted to a Municipality under Article 243W of the constitution include urban planning and public amenities including street lighting, parking lots, bus stops and public conveniences. It is also contended that if for any reason it is found that there is supply by KMRL to Government of Kerala and the said supply is not eligible for exemption as per CGST notification No.12/2017, the services rendered by KMRL is in the nature of a pure agent and hence the activity is not liable to GST.

8. KMRL is not receiving consideration for rendering executing agency services to the Government of Kerala. KMRL is a joint venture between Government of Kerala and Government of India and hence the supply made by KMRL falls within the term related persons. Therefore, even in the absence of consideration, services supplied by KMRL to Government of Kerala are a 'Supply' under the GST Act. In this case the services rendered by KMRL to Government of Kerala are in the nature of pure services eligible for exemption as per CGST notification no.12/2017. It is neither works contract nor composite supply. The services are rendered to the State Government. It is in the nature of an activity for urban planning providing of public amenities which are functions listed in the Twelfth Schedule to the Constitution being in the nature of functions entrusted to a Municipality under section 243W of the Constitution.

9. The matter was examined in detail. The Government of the Federal Republic of Germany and the Government of India as per Loan Agreement dated 17-06-2016 had agreed to develop a climate friendly and sustainable integrated water transport system for greater Kochi through KMRL in the State of Kerala. The project is funded through loan amounting to Euro 85,000,000.00 with interest rate subsidies on the basis of the agreement

entered into between "Kreditanstalt für Wiederaufbau (KFW) and the Government of India. The loan agreement mandates for a project agreement to be concluded between the KFW, State of Kerala and KMRL in the capacity as the Project Executing Agency. The borrower (Government of India) shall channel the loan according to the terms and conditions to the KMRL through the State of Kerala which shall only be used exclusively to finance goods and services to set up the system. It is also a condition precedent that the KMRL shall determine the details of the Project as well as the goods and services to be financed from the loan in a separate agreement (Article 1.2 of the Loan Agreement). The Government of India shall ensure that the KMRL executes the project in compliance with the provisions of the project agreement. (Article 6.2(a) & 6.3 of the LA). It was also agreed upon by the Government of India that the KFW shall be entitled without having to resort to any legal procedure whatsoever to suspend disbursement or to terminate this loan and to demand immediate payment of all amounts payable under the Loan Agreement, if the project agreement or any parts thereof cease to have binding effect upon the Government of India or the State of Kerala or ceases to be enforceable against the KMRL. (Article 9.1(d)). Any law, regulation, decision, directive or any act of any authority or any order of any court precludes the due performance and fulfilment or may affect or impair the validity of the Loan Agreement or the Project agreement will entitle the KFW in termination of loan and to demand immediate payment of all amounts under the loan agreement. (Article 9.1(f)).

10. As per Article 4 of the Loan Agreement the GOI has to repay the principal loan amount to the KFW in 21 consecutive semi-annual instalments starting from December 30, 2020 with last instalment falling due on December 30, 2030. The Project Agreement based on the Loan Agreement dated 17-06-2016 has been concluded between the KFW, the State of Kerala and the KMRL on 18-06-2016. The Project Agreement requires that the KMRL use the loan

exclusively to finance goods and services to setup the system. As per the Project Agreement Article 2.1, "The State of Kerala as the *dejure* owner of the assets of the Project has engaged KMRL as the agency responsible for execution, operation and maintenance of the project on behalf of the State"

11. It is also agreed upon that "The channelling of the Loan shall not constitute any liability of the Project-Executing Agency to KFW for payment obligations under the Project Agreement." (Article 2.3 of PA). The Project Agreement authorizes KMRL to "prepare, implement, operate and maintain the Project in conformity with sound financial and technical practices and substantially in accordance with the Project conception agreed upon between KFW and the Project Executing Agency"(Article 5.1(a) of the PA). The Project Agreement had agreed that "The Project-Executing Agency and the State of Kerala may not assign or transfer, pledge or mortgage any claims from this Project Agreement." (Article 6.7 of the PA). As per Article II (2.3) of the Separate Agreement, the Project-Executing Agency shall be responsible for the preparation, implementation and operation of the Project in compliance with World Bank environmental and social standards.

12. Kochi Metro Rail Limited is a Special Purpose Vehicle (SPV) formed for the implementation of Kochi Metro Rail Project in the city of Kochi, its operation, maintenance and allied activities. The revenue streams of the company include fare collection from the passengers by way of sale of tickets and other indirect collections. KMRL is incorporated under the Companies Act, 1956 as a Government Company within the meaning of Section 2(45) of the Companies Act, 2013. The Company is a Joint venture between Government of India and State of Kerala, with equal equity participation.

13. The proposed Kochi Water Metro Project (KWMP) involves development of boat terminals, provision of boats, boatyard, dredging, systems and access

infrastructure at Kochi. The invoices are raised in the name of KMRL. The points for consideration are:

1. Whether there is any supply by the applicant to the Government of Kerala?
2. Whether the services rendered by the applicant to the Government of Kerala can be considered as pure services falling under Service Classification Code 998339 - Project management services for construction projects?
3. Whether the applicant can be considered as governmental authority as per Para 2 (zf) of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017?

14. Supply is defined under Section 7 of the GST Act. The provisions of Section 7 of the CGST Act, 2017 is reproduced below;

"7. Scope of supply. (1) For the purposes of this Act, the expression "supply" includes:-

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business; and

(c) the activities specified in Schedule I, made or agreed to be made without a consideration;

(1A) where certain activities or transaction constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1),-

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1) (1A) and (2), the Government may on the recommendations of the Council, specify, by notification, the transactions that are to be treated as -

(a) a supply of goods and not as supply of services; or

(b) a supply of services and not as a supply of goods."

15. Even though, consideration is an essential element of supply, as per Section 7(1) (c) of the CGST Act, 2017, the activities specified in Schedule I, made or agreed to be made without a consideration is also supply. As per Sl No. 2 of Schedule I; supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business is an activity to be treated as supply even if made without consideration.

16. As per the Explanation to sub -section (5) of Section 15 of the CGST Act, 2017 persons shall be deemed to be "related persons" if-

- (i) such persons are officers or directors of one another's businesses;
- (ii) such persons are legally recognised partners in business;
- (iii) such persons are employer and employee;
- (iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;
- (v) one of them directly or indirectly controls the other;
- (vi) both of them are directly or indirectly controlled by a third person;
- (vii) together they directly or indirectly control a third person; or
- (viii) they are members of the same family;

Since the applicant is a joint venture with equal equity participation of the Government of Kerala and the Government of India, the applicant falls within item (iv) of explanation to sub section (5) of Section 15 and hence the applicant and Government of Kerala are related persons and consequently the services rendered by the applicant to the Government of Kerala without consideration will also fall under the definition of supply.

In view of the above discussion it is evident that the services rendered by the applicant to the Government of Kerala as executing and operating agency of the Kochi Water Metro Project with or without consideration falls under the definition of supply under CGST Act, 2017.

17. It is evident from the G.O (Ms) No.44/2016/Trans Dt.13.06.2016 that the State of Kerala is the de jure owner of the water ways, the boat jetties, the boats and all other infrastructure created for the project. The status of the applicant is that of an agency that is executing the integrated water transport project on behalf of Government of Kerala.

18. The services rendered by the applicant to the Government of Kerala as executing and operating agency of the integrated water transport project is rightly classifiable under the Service Classification Code 998339 – Project management services for construction projects.

19. The explanatory note to the scheme of classification of services pertaining to the classification code 998339 reads as follows;

998339: Project management services for construction projects.

This service code includes services of assuming overall responsibility for the successful completion of a construction project on behalf of a client, including organizing the financing and the design, requesting tenders, and performing management and control functions; project management services provided by engineers or architects. This service code does not include:- general construction services, cf. 99541, 99542.

The services rendered by the applicant are squarely covered by the above explanatory notes and hence are pure services falling under Service Classification Code 998339. Therefore, the applicant as the agency for executing the integrated water transport project in Kochi is rendering pure services to the Government of Kerala.

20. Sl No. 3 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 reads as follows;

Chapter 99 - Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

21. The functions entrusted to a municipality under the Twelfth Schedule to Article 243W of the Constitution includes 'public amenities including street lighting, parking lots, bus stops and public conveniences'. Moreover, the functions entrusted to a Panchayat under the Eleventh Schedule to Article 243G of the Constitution includes Roads, culverts, bridges, ferries, waterways and other means of communication. In view of the conclusion above that the services rendered by the applicant to the Government of Kerala as executing and operating agency of the integrated water transport project is classifiable as pure services falling under service classification code 998339; the services are exempted from payment of goods and services tax by virtue of the entry at Sl No. 3 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017.

22. The next issue to be considered is whether the applicant falls within the definition of 'Governmental Authority' in Para 2 (zf) of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017:

23. As per Para 2(zf) of the Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017; "Government authority" means an authority or a board or any other body;

(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 any function entrusted to Municipality under Article 243W of the Constitution or to a Panchayath under Article 243G of the Constitution.

24. The applicant is an entity whose equity shares are fully held by the Government of India and Government of Kerala in equal proportion. It has been established as a Special Purpose Vehicle for the implementation, operation and maintenance of Kochi Metro Rail Project in the city of Kochi. Now, by G.O.(Ms)No. 44/2016/Trans dated 13.06.2016 it has been entrusted with the task of executing and operating the Integrated Water Transport Project at Kochi on behalf of the Government of Kerala. The establishment, operation and maintenance of the metro rail project as well as the water metro by the Government of Kerala is part of its function of urban planning and providing public amenities which are functions entrusted to a Municipality under Article 243W of the Constitution which are listed in the Twelfth Schedule to the Constitution. Further, the functions entrusted to a Panchayat under the Eleventh Schedule to Article 243G of the Constitution includes Roads, culverts, bridges, ferries, waterways and other means of communication. From the above discussion it is evident that the applicant is established by government with 90 percent or more equity participation and is entrusted with the functions which are entrusted to Municipality under Article 243W of the Constitution or to a Panchayath under Article 243G of the Constitution. Hence, the applicant squarely falls under the definition of

“Governmental Authority” under Para 2 (zf) of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017.

In view of the observations stated above, the following rulings are issued:

1. Since the Govt. of Kerala is the *de jure* owner of the assets of the water metro project and the works contracts are performed by contractors with whom agreements are entered into by KMRL on behalf of Govt. of Kerala:

(a) Whether KMRL has any liability to pay GST on the funds received from Govt. of Kerala for paying the cost of the water metro project?

No. The applicant being the agency for executing and operating the integrated water transport project in Kochi is rendering pure services to the Government of Kerala which is falling under the service classification code 998339. Hence, the services provided by the applicant to the Government of Kerala are exempted from payment of goods and services tax by virtue of the entry at Sl No. 3 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017.

(b) Whether a GST invoice is to be raised on Government of Kerala for transferring the value of assets on a back to back basis after completion of the works?

No, in view of answer to (a) above.

(c) In the above cases, if liable, how will the ITC be claimed against (a) & (b)

In view of the answer to (a) and (b) above question of availing of ITC does not arise.

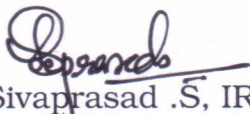
2. Notwithstanding the above, whether KMRL can be treated as a Governmental authority as per the IGST Act for the purpose of claiming exemption under item no.4 of Notification No.12/2017 dtd.28-06-2017 since it is a body established by the Government with ninety percent or more

participation by way of equity to carry out function entrusted to a municipality under Article 243W of the Constitution?

The applicant falls under the definition of "Governmental Authority" under Para 2 (zf) of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017.

3. Whether services rendered by KMRL as an executing agency to Govt. of Kerala can be treated as a pure service as per Entry 3 of the Notification no.12/2017 dtd.28-06-2017?

The services rendered by the applicant to the Government of Kerala as executing and operating agency of the integrated water transport project is classifiable as pure services falling under service classification code 998339 and the services are exempted from payment of goods and services tax by virtue of the entry at Sl No. 3 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017.



Sivaprasad S, IRS
Joint Commissioner of Central Tax
Member



B.S. Thyagarajababu, B.Sc, LL.M.
Additional Commissioner of State Tax
Member

To

M/s. Kochi Metro Rail Ltd.
CC No.41, Revenue Tower,
8th Floor, Park Avenue Road,
Ernakulam 682011.