



सत्यमेव जयते

आयुक्त का कार्यालय

Office of the Commissioner

केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय

Central GST, Appeals Ahmedabad Commissionerate

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015

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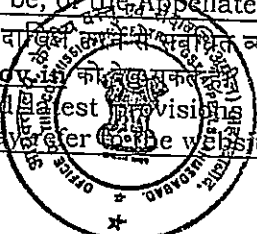
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आजादी का  
अमृत महोत्सव

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(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTD/136/2023 / 2312
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-CGST-002-APP-JC-69/2023-24 and 30.09.2023
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	17.10.2023
(ङ)	Arising out of Order No. ZA2409220317656 dated 26.09.2022 issued by The Deputy Commissioner, CGST, Division - VII, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	The Assistant / Deputy Commissioner, CGST & C.Ex., Division - VII, Ahmedabad North Commissionerate
	प्रतिवादी का नाम और पता / Name and Address of the Respondent	M/s Adani Total Gas Limited (GSTIN-24AAFCA3788D1ZS) Plot No 76/1 and 77, Adani Total Gas Limited, Maninagar Road, Opp. Fire Brigade, Maninagar Ahmedabad, Gujarat-380008
(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.	
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.	
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017	
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.	
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.	
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying -	
	(i)	Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant; and
(ii)	A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.	
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.	
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website <a href="http://www.cbic.gov.in">www.cbic.gov.in</a> .	



ORDER-IN-APPEALBRIEF FACTS OF THE CASE:

The following appeal has been filed by the Assistant Commissioner, CGST & C.Ex.Division-VII Ahmedabad-North Commissionerate (herein after referred to as the "appellant" / "department") in terms of Review Order issued under Section 107(2) of the CGST Act, 2017 (hereinafter referred as "the Act") by the Reviewing Authority i.e the Commissioner, CGST & C.Ex., Ahmedabad-North Commissionerate against the RFD-06 Order dated 26-09-2022 (herein after referred as the "impugned order") as mentioned below passed by the Assistant Commissioner, CGST & C.Ex. Division -VII, Ahmedabad-North Commissionerate (herein after referred as the "adjudicating authority") in the case M/s. Adani Total Gas Ltd.(GSTIN-24AAFCA3788D1ZS) having principal place of business Plot No 76/1 and 77, Adani Total Gas Limited, Maninagar Road, Opp. Fire Brigade, Maninagar, Ahmedabad, Ahmedabad, Gujarat, 380008 (hereinafter referred to as the "respondent"). The details are as under:

TABLE -A:

Sl.	Appeal Number	File	Date of filing of appeal	Order-in-Original (Impugned Order) No. & Date / No. & Date	Tax Period	Orders reviewed under Review Reference (Impugned Review Order) No. & Date	Amount of Tax paid under RCM
(1)	(2)	(3)	(4)	(5)	(6)	(7)	
1	GEXCOM/RFD/MISC/78/2023- CGST-DIV-7-COMMRTE-AHMEDABAD(N)		01-03-2023	RFD-06 ZA24092203 17656 dated 26-09-2022	July-2020	23/2022-23 dated -- -----	Rs.4,96,271/- TAX

2. Brief facts of the case: The "Respondent" registered under [GSTIN-24AAFCA3788D1ZS] is engaged in the business of laying gas pipeline networks across the country for transportation/supply of gas. The Respondent has paid Rs.4,96,271/- on the services under RCM towards the road restoration charges to different Government organizations. The adjudicating authority has found that the said amount of Rs.4,96,271/- paid as GST on a transaction which is neither a supply of goods nor a supply of services and is thus entitled to refund of the same as per Section 54 of the CGST Act, 2017. Therefore, the respondent was sanctioned Refund of Rs.4,96,271/- vide the impugned order dated 26-09-2022.

3. Being aggrieved with the impugned order, the Appellant Department filed the present appeal on 01.03.2023 on the grounds that:

"10.The subject Sanction order has been examined and it is observed/found that the refund passed by refund sanctioning authority, by holding that the restoration charges paid to the Municipal Corporation is an amount paid to a local authority engaged as a public authority in relation to a function entrusted to a Municipality under article 243W of the Constitution and is thus not in relation to any supply of goods or services so as to be liable to GST as discussed supra, is not proper and legal on following ground.

a) The refund sanctioning authority failed to observe the service provided by the Municipality towards restoration of damaged roads caused by excavation work done by M/s. AGL was purely for commercial purpose upon consideration. doesn't come under purview of Article 243W of the Constitution and hence not exempted in terms of Notification No. 14/2017- Central Tax (rate), dated 28-6-2017(Page No.22) which reads as below

G.S.R. --(E).- In exercise of the powers conferred by sub- section (2) of section 7 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council hereby notifies that the following activities or transactions undertaken by the Central Government or State Government or any local authority in which they are engaged as public authority, shall be treated neither as a supply of goods nor a supply of service, namely:-

"Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution."

This notification shall come into force with effect from the 1<sup>o</sup> day of July, 2017


The findings of refund sanctioning authority that 'roads and bridges' is a matter listed in the Sr. No. 13 of the Eleventh Schedule and Sr. No. 4 of the Twelfth Schedule specifies so it is a function of a Municipality/Panchayat in relation to 'Roads' as the Constitution defines "Municipality" as an institution of self-government. However, he failed to distinguished that the function as entrusted by the Constitution to these government bodies are in relation to 'Roads' is the construction of roads for the use by the general public. These are sovereign functions. In the present M/s AGL is inter alia engaged in the laying of Gas pipelines which requires the digging up of the roads/streets. The Municipal Authorities grant the needful permissions. However, these permissions came with charges for restoring the street or pavement which had been dug up. Thus, the activity in the present case was the charges recovered by the Municipal Authorities to restore that portion of the street or pavement which has been dug up. It does not amount to construction of the entire road, as such. The function in relation to 'Roads' as entrusted by the Constitution does not entitle the Municipality, as the one performing the function, to receive any charges from



anyone for doing the said work. It is by nature a sovereign function done for the community at large. These are governmental functions which are legislated to be performed by the Municipalities. Such functions are in the nature of performing works for the public. While in the present case, M/s AGL while performing their business activities requested the Municipal Authorities to be allowed to dig up streets for works such as laying Gas pipes. There are so many such entities such as the telephone, gas, electricity etc. Each time each one of them digs up the road and there is restoration required to be done. This restoration work would not result in performing of the sovereign function. The sovereign function has already been performed by constructing the road or undertaking maintenance works of the roads. The restoration work can be equated neither to construction work nor to maintenance work as suo motu undertaken by the Municipal Authorities.

The restoration charges were also not in the nature that the Municipal Authorities were performing any job of construction for the applicant. The street or pavement or road that was dug up is a general road. In view of all above the recovering of charges for restoring the patches which had been dug up by M/s AGL cannot be equated to performing a sovereign function as envisaged under Article 243W of the Constitution.

The refund sanctioning authority failed to notice that there is a specific entry in Notification No. 12/2017-Central/State Tax (Rate), dated 28-6-2017 which reads under -



Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description Service	Rate (per cent)	Condition
6	Chapter 99	Services by the Central Government, State Government, Union territory or local authority excluding the following services- (a) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory; (b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (c) transport of goods or passengers; or (d) any service, other than services covered under entries (a) to (c) above, provided to business entities	Nil	Nil

In the entry (d) above, it is very clear that if any services other than the three services provided in clauses (a) to (c) of the above entry, Provided by the Government or local authority to any business entity they would not be eligible for any exemption under GST.

c) Further the refund sanctioning authority failed to notice that there is no other entry in the Schedule contained in the Notification No. 12/2017- Central Tax (Rate) for services exempted from GST which would cover the impugned transaction.

d) The refund sanctioning authority failed to observe the service provided by the Municipality towards restoration of damaged roads caused by excavation work done by M/s. AGL was for furtherance of their business and hence attracts GST.

-The adjudicating authority failed to notice that In terms of entry No. 5 of the Notification No. 13/2017-Central Tax (rate), dated 28-6-2017, the leviable GST is correctly paid by the recipient i.e. M/s. AGL on reverse charge basis.

The Notification No. 13/2017-Central (Rate) reads as under :

..... in exercise of the powers conferred by sub-section (3) of Section 9 of the Central Goods and Services Tax Act, 2017, the Central/State Government on the recommendations of the Council hereby notifies that on categories of supply of services mentioned in column (2) of the Table below, supplied by a person as specified in column (3) of the said Table, the whole of central/state tax leviable under section 9 of the said Central Goods and Services Tax Act, shall be paid on reverse charge basis by the recipient of the such services as specified in column (4) of the said Table:-

Sl.N o.	Category of Supply Services	Supplier service	Recipient of service
(2)	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding- (1) Renting of immovable property and (2) Services specified below- (i) Services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, state Government or Union territory or local authority; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers.	(3) Central Government, State Government, Union territory or local authority	(4) Any business entity located in the taxable territory.

As can be seen when the services are supplied by the local authority to a business entity, the GST Act has cast the duty on the recipient of service to pay the tax on reverse charge basis as if he is the person liable to pay the tax in relation to the supply. In the present case, the service had been provided by the Municipal authorities therefore, M/s AGL had correctly paid tax in respect of the services received from the Municipal authorities.

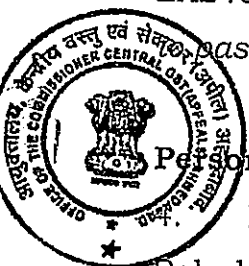
11. Further Authority of Advance Ruling (AAR) under GST, Maharashtra in the similar case of M/s Reliance Infrastructures Ltd. (2018 (13) G.S.T.L. 449 (A.A.R. - GST) (Annexure-A) held that:

i) Reinstatement charges paid to Municipal authorities for restoring patches on street or pavement or road which have been dug-up by business entities such as the applicant, who is inter alia engaged in business of generation, transmission and distribution of electricity, are liable to GST on reverse charge basis.

ii) Applicant's claim that such recovery of charges amounts to a service activity in relation to function entrusted to Municipality under Article 243W of Constitution and hence, exempt from GST is incorrect. The function as entrusted to Municipality under Article 243W in relation to 'Roads' is construction of roads for use by general public, and "The restoration work can be equated neither to construction work nor to maintenance work as suo-motu undertaken by the Municipal Authorities..."

iii) GST would be applicable at 18% under residuary entry no. 35 of Notification No. 11/2017-Central Tax / State Tax (Rate)."

Further, the Appellant Department has prayed to set aside order No. ZA2409220317656 dated 26-09-2022 passed by the Adjudicating authority or pass any other order as deemed fit in the interest of justice.



#### Personal Hearing :

Personal hearing in the present appeal was held on 26.07.2023. Shri Rahul Patel, Chartered Accountant appeared on behalf of the Respondent. During P.H. he submitted that Appeal Memo was not received by them, therefore a copy of the memo may be provided. The request for providing Appeal memo was allowed. A copy of memo was provided and it was submitted by them that they would file cross objection within a period of 15 days.

The Cross Objection was submitted by the Respondent on 13-09-2023 and as requested, a further PH. Was held on 29-09-2023 wherein Shri Rahul Patel, Chartered Accountant reiterated the written submissions.

#### 5. CROSS EXAMINATION FILED BY THE RESPONDENT:

The Grounds of Submission by the Respondent are as under:

**"Ground No. 1 - Restoration activities not for Article 243W [ Para 10(a) of AM ]**

3. Appellant has urged in this Ground that the activity of road restoration was carried out by the Respondent is purely for commercial purpose upon consideration and thus does not come under the purview of Article 243W.



9. Without prejudice to the generality of foregoing, it is to submit that the Id. Appellant does not have any authority to prove or to disprove, unless corroborative evidence is brought on record by the competent authority i.e. MC itself, that the functions carried out by it were beyond the scope of Article 243W. Therefore, it is a constitutional presumption required to be made that the functions carried out by MC were within the scope of Article 243W.

10. Accordingly, the payments made by the Respondent to the MC in relation to the road are to be deemed as the payments for functions carried out by it under Article 243W. It is pertinent to reiterate at this juncture that Id. Applicant has not brought any evidence on record to prove that the said activity was not falling within the scope of Article 243W and the MC had acted beyond its scope.

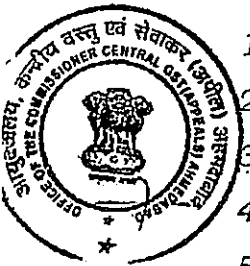
11. Without prejudice to generality of foregoing, it is to further submit that the very activity involved in the dispute falls within the scope of Article 243W as the same is duly covered by the Twelfth Schedule of the Constitution of India.

12. For sake of clarity, the Twelfth Schedule is reproduced hereinafter:

Twelfth Schedule

(Article 243W)

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 upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
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.





13. Kind attention of your honour is invited to SI No 4 of Twelfth Schedule which deals with roads and bridges. 'Road' is thus an integral part of the functions entrusted to Municipality under Article 243W.

14. It is undisputed that the payments made by the Respondent were in relation to restoration of roads which are damaged by the Appellant while laying of pipelines.

15. Moreover, it is to be appreciated that the constitutional entries are to be given widest import and be read liberally.

16. Moreover, use of expression "in relation to" in Notification No. 14/2017-CTR for which the very interpretation of Article 243W is required to be advanced, is also of wider connotation as explained by Hon'ble Supreme Court in case of Doypack Systems P Ltd v. Union of India - 1988 (36) ELT 201.

17. Therefore, it is necessary to appreciate that all the activities relating to, pertaining or concerning with the 'road' shall be construed as the activities under Twelfth Schedule and as a fortiori part of Article 243W.

18. Therefore, a mere contention of Id. Appellant in Appeal, without attribution of speaking reasons and explanations, that the activity of MC does not fall within the scope of Article 243 is contrary to the provisions of statute and articles of Constitution of India, as explained in detail hereinbefore.

19. Furthermore, it is to vehemently pressed before your honour that the very contention of the Appellant that the activity of road restoration is carried out by the Respondent for its own business is a misleading submission. Context in which the Notification No. 14/2017-CTR is to be read and interpreted involves activity in hands of the MC and not the person who actually carried out the work. It is no matter of dispute that the MC had collected the amount from the Respondent and on which the tax was paid and therefore it is the MC which is a supplier and therefore all the facts shall be analysed in the context and in hands of the MC and not in hands of the Respondent.

20. Moreover, it is to be appreciated that the activity which is under consideration is certainly in relation to road and that fact is no more in dispute. It is also explained hereinbefore that the constitution entry shall be given widest interpretation and significance and accordingly any activity in relation to road shall be construed as the functions entrusted by the Schedule 12.

21. Moreover, entry 4 of Schedule 12, supra, does not refer to construction of 'road' but merely refers to 'road'. Hence, all the activities in relation to 'road' shall stand covered by the entry 4. An attempt made by the Appellant that only the construction of road is covered within the entry but not the restoration is fallacious and contrary to the very entry of the Constitution. Appellant must not be allowed to add any further rider, condition, limitation on the constitutional entry which is absolute, unqualified and wide.



22. Therefore, it is evidently clear that the treatment shall be one and the same to both the activities i.e. construction of road as well as repairs to the road. Anything done to the road and any matter pertaining to the road shall stand covered by the Schedule 12 of the Constitution of India and accordingly eligible for exclusion from taxation by virtue of Notification No. 14/2017-CTR.

**Ground No. 2- Entry 6 of Notification No. 12/2017-CTR [ Para 10(b) of AM]**

23. It is further contended by the Respondent that the Adjudicating Authority had failed in noticing that the exemption would not available to the Respondent under Entry 6 of Notification No. 12/2017-CTR due to exclusion provided in clause (d).

24. Without prejudice to generality of the right to deny the ground taken by the Respondent, it is to submit at the outset that the very ground and the rationale advanced by the Respondent show complete lack of understanding of the law.

25. Entry 6 of the above stated Notification is an enabling entry granting exemption with a limitation on the scope inasmuch the non-specified services are concerned as per clause (d) thereof. It merely imposes disability on the business entity to seek exemption under the said Entry No. 6. However, if the entry is

read as it is written by the Government, it emanates that the exemption is available in as much as such non-specified services are supplied to business entity. However, by no stretch of imagination it can be deduced that the said entry does not impose any taxability on any person.

26. Coming to the aspect of eligibility to exemption, it is to be appreciated that the refund was sought by the Respondent by resorting to the Notification No. 14/2017-CTR which excludes the supply of services made by the local authority in relation to functions entrusted under Article 243W, from the very scope of supply.

Hence, any supplies covered by the said Notification are not to be treated as supply for the purpose of section 7 of the Act and accordingly does not attract the levy of tax as per section 9 of the act and as a fortiori the transaction does not attract the levy of tax as per section 9 of the act and as a fortiori the transaction does not require shelter of exemption under Notification No. 12/2017-CTR

27. Therefore, the very question as to eligibility or ineligibility under Entry 6 of Notification No. 12/2017-CTR is redundant and otiose.

**28. Ground No. 3 - No Entry of exemption under Notification No. 12/2017-CTR [ Para 10(c) of AM]**

29. Without repeating or reiterating the submission, it is to submit that the ground taken in clause (c) of para 10 is liable to be dismissed for the submissions and reasons more particularly described hereinbefore against Ground No. 2.



**Ground No. 4 - Restoration was in furtherance of business [ Para 10(d) of AM ]**

30. Without repeating or reiterating the submission, it is to submit that the ground taken in the clause (d) is showing complete lack of understanding of the law. The Respondent has failed to appreciate and understand that fact of having indulged into a business activity by the Respondent is of no relevance to decide the taxability.

31. The refund was sought in respect to tax paid under reverse charge mechanism as the supply made by the MC was mistakenly considered as taxable supply.

However, the said supply was covered by the Notification No. 14/2017-CTR and accordingly the same was not to be treated as supply for the purpose of taxation.

32. Whether or not the business activity is undertaken by the Respondent and whether or not the restoration was part of the business shall be of no relevance as the supplier in the given case is MC and not the Respondent

33. Hence, for the reasons and submissions, more particularly made against the Ground No. 1, supra, are mutatis mutandis applicable and accordingly this ground is liable for dismissal in limine.

**Ground No. 5 - Applicability of Notification No. 13/2017-CTR [ Para 10(e) of AM ]**

34. It is to submit that the ground taken by the Respondent that the tax is required to be paid under reverse charge mechanism as per Notification No. 13/2017-CTR is in appropriate and misleading.

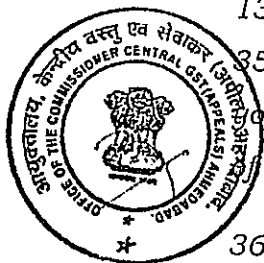
35. It is to reiterate that the only question which is involved in the case before your honour is about applicability of Notification No. 14/2017-CTR and taxability of the supply made by the MC.

36. It is to be appreciated that the Notification No. 13/2017-CTR is under sub-section (3) or (4) of section 9 of the act which merely deals with the collection of tax.

Whereas the levy of tax is to be determined as per sub-section (1) of section 9 of the act which is to be read in conjunction with section 7, Schedule III and Notification No. 14/2017-CTR.

37. In case the supply made by the MC is not to be treated as a supply for the purpose of levy of tax under sub-section (1) of section 9, question as to payment under reverse charge does not arise at all. It is also to be appreciated that the Notification No. 13/2017-CTR per se does not impose levy of tax on any transaction but merely deals with as to who is the person liable to payment.

38. Therefore, reliance placed by the Appellant on this ground is inappropriate, redundant and misleading and thus liable to be dismissed.



**Ground No. 6 - Reliance placed on the Advance Ruling [ Para 11 of /AM]**

39. It is to submit at the outset that the advance ruling, as per the provisions of the Act, shall have limited application to the applicant and cannot be relied upon in any other matter or matters pertaining to any other taxpayers.

40. Therefore, reliance placed by the Appellant on the ruling delivered to M/s Reliance Infrastructures Ltd in the appeal memorandum is contrary to the statutory provisions and thus the same must not be taken into consideration while deciding the grounds by your honour.

41. Without prejudice to generality of the foregoing, it is to further submit that the facts involved in the case before the Advance Ruling and the facts involved in the present case are distinguishable and therefore the ratio drawn therein shall not be available in the present case.

42. Therefore, the reliance placed in the said ruling is to be assailed.

Without prejudice to foregoing submissions and the contentions on merit, it is to further submit that the appeal preferred by the Appellant is liable for rejection inasmuch as the Adjudicating Authority himself has preferred this appeal as the Appellant which is contrary to the provisions of section 107 of the Act. As per the provisions of sub-section (2) of section 107, any officer who is authorised by the Commissioner shall prefer the appeal, however the reference to any officer shall not include the reference to the adjudicating authority himself.

44. It is a settled position of law that one cannot be aggrieved with the order passed by himself. Unless the statute specifically provides otherwise, it is to be presumed that the adjudicating authority himself cannot become the appellant in any matter.

45. Provisions of section 107 are different that the provisions available in erstwhile laws and therefore the procedure for filing of appeal shall be strictly adopted as per the statutory provisions available in the Act read with the jurisprudence."

Further, the Respondent has requested to dismiss the appeal preferred by the Appellant in totality and without any adverse decision.

**6 Discussion and Findings:**

6.1 I have carefully gone through the facts of the case and the submissions made by the Appellant Department in their grounds of appeal and find that the Appellant Department is mainly contesting with the amount of GST Rs.4,96,271/- paid by the Respondent under R.C.M. on the amount of Demand Note raised by the Municipal Corporation of Morbi, Porbander , Khed, Surat for recovery of Road restoration charges to the tune of Rs.27,56,780/-, which subsequently on the presumption by the Respondent that there was no liability to discharge GST on the amount paid by them to the Municipal Corporation towards road restoration/repair charges & compensatory afforestation charges, hence filed refund application dated 05-08-2022 to the tune of Rs. 5,10,956/- (including the amount under dispute in the present case) paid by them for the period July-2020, which is not proper and legal in terms of the grounds mentioned by them.

6.2 So the question to be answered in the present appeal is:

(i) Whether the refund sanctioned by the adjudicating authority amounting to Rs.4,96,271/-vide the impugned order is proper or otherwise?

6.3 At the foremost, I observed that in the instant case the "impugned order" is of dated 26.09.2023 and the present appeal is filed on 01.03.2023. As per Section 107(2) of the CGST Act, 2017, the appeal is required to be filed within six months time limit. I observed that in the instant case the appeal has been filed within normal period prescribed under Section 107(2) of the CGST Act, 2017. Accordingly, I am proceeding to decide the case.



I find that M/s. Adani Gas Ltd. ("hereinafter referred to as AGL"), having principal place of business at Ahmedabad, and holding GST registration number 24AAFCA3788D1ZS is engaged in the business of laying gas pipeline networks across the country for transportation/supply of gas. These pipelines are generally laid towards the edge of the roads. The permission were granted by the respective Municipal Authorities/Panchayats in various states/urban areas where the pipelines are sought to be laid. The permission granted by the respective Municipal Corporations/Panchayats/Nagar Palikas inter alia specifies the co-ordinates of the area (road) where the pipe laying work is to be undertaken and authorizes AGL for cutting the road, digging, barricading etc. for the same. Permissions were granted to AGL further requires AGL to restore the road to its original condition after undertaking the road cutting work, or alternatively, AGL is required to pay to the respective Municipal Corporations/Panchayats/NagarPalikas other government authority such as forest department, a charge for restoration/repair of road. For recovering the road restoration/repair charges, the Municipal, Authorities/Panchayats/Nagar

Palikas raise a demand note on AGL, based on which the requisite amount is paid by AGL to the Municipal Authorities/Panchayats/Nagar Palikas. M/s AGL has interalia received permission from the Municipal Corporation of Morbi, Porbandar, Khed, Surat for laying a gas pipeline network. The respective Municipal Corporations in this respect, raised a demand note detailed in the table below, on AGL for recovery of road restoration charges totaling to the tune of Rs 27,56,780/- and AGL paid GST under RCM amounting to Rs.4,96,220/- (CGST - Rs 248110/-, SGT 248110)- M/s. AGL deposited the requisite amount with the Municipal Corporation & Forest Department. It has also discharged GST at the rate of 18% thereon, amounting to Rs.496220 + 14736 = 510956 (9% CGST- Rs.2,55,478/-& SGST- Rs.2,55,478/-) under the reverse charge mechanism. Subsequently, the Respondent filed Refund claim with the adjudicating authority, presuming that there was no Liability to discharge GST on the amount paid by them to the Municipal Corporation towards restoration/repaid charges and compensatory afforestation charges. According to the appellant department, the services provided by the Municipality towards restoration of damaged roads caused by excavation work done by M/s AGL doesn't fall under the purview of Article 243W of the Constitution and hence not exempted under Notification No.12/2017-CT(Rate) dated 28-06-2017. The text of the same is available at para 2(b).

Further according to the Appellant Department, as per entry (d) of entry No.6 of the Notification No.12/2017-CT(Rate) the services provided by the Municipality, the Respondent are not eligible for any exemption under GST. Hence as per the entry No.5 of the Notification No.13/2017-Central (Rate) dated 28-06-2017, the text of the same available at para 2(d) (at para 3 above) Respondent had correctly paid the tax in respect of the services received by them from the Municipal authorities.

6.6 I therefore, refer Article 243W of the Constitution, Notification No.12/2017-CT(Rate) dated 28-06-2017, Notification No.13/2017-CT(Rate) dated 28-06-2017, and Notification No.134/2017-CT(Rate) dated 28-06-2017, which are already quoted in the above paragraphs.

6.7 From the plain reading of the Article 243W of the Constitution, it is seen that it covers Road and Bridges, Further as per Notification No.14/2017-CT(Rate) dated 28-06-2017 as amended vide Notification No. 16/2018-CT (Rate) the following activities or transactions undertaken by the Central Government or State Government or Union Territory or any local authority in which they are engaged as public authority, shall be treated neither as a supply of goods nor a supply of service:

*"Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution or to a Municipality under article 243W"*

6.8 From the above, it is amply clear that the services under article 243G/243W of the Constitution, which includes "Roads", if undertaken by the Central Government or State Government or Union Territory or any local authority in which they are engaged as public authority, shall be treated neither as a supply of goods nor a supply of service.

6.9 Here it is pertinent to note that the services undertaken by the authority as laid down in the Notification *ibid* in which they are engaged as public authority meaning thereby the activity undertaken by them for Roads etc., which is a function entrusted to them, for the use by general public, is exempted. In this regard if the activity is undertaken, the demand won't be raised to any business entity but the authority themselves will bear the cost of the construction and/or repairs of Roads, for which they are eligible for exemption from payment of GST.


6.10 I find that the scenario in the present case is different. The services of restoration of roads are not received by the Municipal authority. The roads are already there, however the restoration of roads is undertaken by the Municipality authority on behalf of the Respondent due to permission granted for digging of roads for laying pipelines to the Respondent for transportation supply of gas to their customers i.e. for the purpose of the business which they are carrying out and it was the responsibility of the Respondent to restore the road to its original condition after undertaking the road cutting work, or alternatively, Respondent is required to pay to the respective Municipal authority, a charge for restoration/repair of roads. It is for such service for which the demand Notes have been raised by the Municipality to the Respondent. It is made clear in the Notification No.12/2017-CT(Rate) dated 28-06-2017, at Sl.No.6, point No.(d) that any service, other than services covered under entries (a) to (c) if provided to the business entities are not exempted. Here the services are provided by the Municipal authority to the Respondent as explained above, as per my view the same are covered under entry (d) of the Sl.No.6 of the Notification No.12/2017-CT(Rate) dated 28-06-2017, hence not entitled for exemption from payment of GST.

6.11 The Respondent in their cross objections filed have also admitted that it is undisputed that the payments made by the Respondent were in relation to restoration of roads which are damaged by them while laying of pipelines.



However, claim of the respondent that the payments made by the Respondent to the MC in relation to the road are to be deemed as the payments for functions carried out by it under Article 243W. Here if the said restoration of roads was suo moto conducted by the Municipal Authority due to any reason other than the road damaged for laying of cables, pipes, etc. by any business entity, falls under article 243W of the constitution and hence exempted from payment of GST as it is neither supply of goods nor supply of services.

6.12 As regards contention of the Respondent that the activity of road restoration is carried out by the Respondent for its own business is a misleading submission, I find that had the Respondent not dug the road for laying the pipelines for transportation /supply of gas to their customers, the question of restoration of roads would have not arisen. The Whole act of digging, laying of pipelines for transportation of gas through it to their customers and restoring the roads to its original is nothing but part of their business activity. It is not possible to supply gas through pipeline without undertaking the said activity. Therefore restoration of the roads conducted on account of it is also part of furtherance of their business, hence liable for payment of GST on the services so received from the Municipal Authority.



As regards to submission of the Respondent that the appeal preferred by Appellant is liable for rejection in limine as the Adjudicating Authority himself has preferred this appeal as the Appellant, which is contrary to the provisions of section 107 of the Act. As per the provisions of sub-section (2) of section 107, any officer who is authorised by the Commissioner shall prefer the appeal, however the reference to any officer shall not include the reference to the adjudicating authority himself. In this regard, I find that the appeal is not preferred by the adjudicating authority himself. As per Section 107(2) of the CGST Act, the Commissioner of CGST & C.Ex. Ahmedabad-North has preferred to file appeal against the impugned order passed by the adjudicating authority. It is only matter of authorization to the Assistant Commissioner of Division, who also happens to be the Adjudicating authority and entrusted with different type of duties to be performed pertaining to the Division, who has filed appeal only after he is authorized to do so. Therefore, it cannot be said that the adjudicating authority himself has preferred the present appeal. Therefore I do not find any violation of Section 107 of the CGST Act, in this regard.

6.14 In view of the discussions above, I am of the view that the service under dispute does not qualify under Article 243W of the Constitution, hence not eligible for exemption under the Notification No. 12/2017-CT(Rate) dated 28-06-2017. I am of the view that Respondent had rightly paid the GST amounting

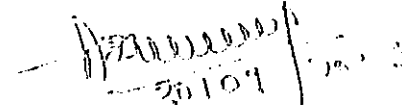


to Rs.4,96,271/- on the amount of services charged by the Municipal Authority, under the Reverse Charge Mechanism as per entry No.5 of the Notification No.13/2017-CT(Rate) dated 28-06-2017.

7. In view of the above discussions, I set aside the impugned order passed by the adjudicating authority, to the above extent and allow the present appeal of the Appellant Department.

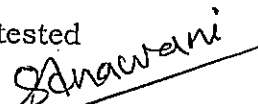
8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

8. The appeal filed by the Appellant Department stands disposed of in above terms.

  
(ADESH KUMAR JAIN)  
JOINT COMMISSIONER(APPEALS)  
CGST & C.EX., AHMEDABAD.

Date: 30.9.2023

Attested

  
(Sumita D. Nawani)  
Superintendent,  
CGST & C.Ex.,  
(Appeals), Ahmedabad



By R.P.A.D.

To:

The Assistant Commissioner, CGST & C.Ex., Division-VII, Ahmedabad North Commissionerate, 4<sup>th</sup> floor, Sahjanand Arcade, Near Helmet Circle, Memnagar, Ahmedabad-380052.

Copy to:

1. The Principal Chief Commissioner of CGST & C.Ex., Ahmedabad Zone.
2. The Commissioner, CGST & C.Ex., Appeals, Ahmedabad
3. The Commissioner, CGST & C.Ex, Ahmedabad-North Commissionerate.
4. The Additional Commissioner (Systems) CGST & C.Ex., Ahmedabad-North Commissionerate.
5. M/s. Adani Total Gas Limited, Plot No 76/1 and 77, Maninagar Road, Opp. Fire Brigade, Maninagar, Ahmedabad, Ahmedabad, Gujarat, 380008.
6. The Superintendent (Systems), CGST Appeals, Ahmedabad, for publication of the OIA on website.
7. Guard File/ P.A. File.



