

**GUJARAT AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/RULING/2018/11
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2017-18/AR/22)

Date : 8.5.2018

Name and address of the applicant	:	M/s. National Dairy Development Board Post Box No. 40, Near Jagnath Mahadev, Anand – 388 001.
GSTIN of the applicant	:	24AADCN2029C1Z5
Date of application	:	03.11.2017
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(c) determination of time and value of supply of goods or services or both.
Date of Personal Hearing	:	28.12.2017
Present for the applicant	:	Shri Hardik Shah, CA

The applicant, NDDB, is a statutory body constituted by an Act of Parliament, namely the National Dairy Development Board Act, 1987 (NDDB Act); the objectives of NDDB include promoting dairy and other agriculture based industries; and the activities undertaken by NDDB, to fulfill its objectives, include providing technical, financial as well as managerial assistance.

1.1 The applicant submitted that the NDDB Act also empowers them to transfer the whole or any part of its managerial, technical or other functions in relation to any organizations receiving assistance from the National Dairy Development Board to the recipient organization; that Section 16(4) of the NDDB Act has specifically authorized NDDB to undertake any activity entrusted by the central government or any state government where the government requires assistance of NDDB's expertise in the dairy development sector; that as per Section 16(5) of the NDDB Act, the applicant can participate, with the prior approval of the central government, in any organization, financially, managerially, or in any other manner.

1.2 The applicant stated that the state government of Jharkhand & Assam have sought assistance of the applicant to support Jharkhand State Cooperative Milk Producers' Federation Limited (JMU) and West Assam Milk Producers' Co-operative Union Limited (WAMUL); that arrangement has been entered into by the said state governments and applicant with an objective of reviving the JMU & WAMUL (hereinafter jointly referred to as 'Unions') and developing dairying in the respective states; that the state governments have entrusted NDDB to run the management, appoint key managerial persons and provide end to end services which ultimately would help the Unions in developing.

1.3 It is further stated that as per the agreements made by them with these state governments on the matter, the applicant undertake following end to end activities as if they are owning and running Unions-

- (i) Taking over management of Unions and deputation of key managerial persons including managing director
- (ii) Preparation of business plans and implementation of the same
- (iii) Decide on procurement and distribution channels and preparation of policies thereof
- (iv) Determine the pricing policies for sale of products and usage of brands owned by Unions
- (v) Borrowing of funds as and when required
- (vi) Taking relevant decisions in order to achieve sustainable growth for Unions.

1.4 They further submitted that the applicant provides services to government or undertakes all managerial activity involving control over Unions with the sole objective of developing Unions without receiving any consideration in kind or otherwise. It is also submitted that the applicant has not issued any invoices to state governments or Unions.

1.5 The applicant further submitted that during the earlier regime of service tax, the services so provided by them were not subject to service tax in absence of any kind of consideration; that the situation would remain the same irrespective of the fact that the parties to the contract are related persons; that in GST regime, the transaction between related person would be valued at open market value irrespective of the fact that there is no consideration and price is the sole consideration for supply.

1.6 It is further submitted that according to Section 7 of CGST Act read with Schedule I, the supply of goods or services between related persons, even without consideration, in the course of furtherance of business would be contemplated as supply of goods or service; that in order to be supply, it is essential to understand whether NDDDB and Unions would be considered as related persons.

1.7 The applicant then by referring to the Section 15 of CGST Act and Rule 28 of CGST Rules, submitted that the moot question arises in the matter is that whether the applicant and Unions can be considered as related parties attracting open market valuation only because of control exercised over Unions on the basis of agreements entered into with the state governments which means that the privity of contract is between the applicant and the state governments; that the state governments have instructed to manage all operations and performing all activities without consideration; that it is the duty of the state governments to develop the dairy industry in the state; that in such scenario, the benefit of handing over the management of Unions to experts would accrue the state governments only; that the state governments would be directly benefitted when NDDDB manages Unions well which leads to sustainable growth of dairy industry in the state.

1.8 The applicant further submitted that Unions are beneficiaries of the agreement as the agreements are entered into for their growth; that as per the agreement dated 26.9.2013 the scope of WAMUL is limited to provide support to NDDDB in managing and running the operations of WAMUL.

1.9 The applicant then on the aspect of who can be considered as service recipient in any transaction referred the decisions of Delhi Tribunal in the case of Paul Merchants Limited Vs. Commissioner of C.Excise, Chandigarh (2013 (29) STR 257 (Tr-Del.) and

GAP International Sourcing (India) Pvt.Limited Vs. Commissioner of S.Tax , Delhi (2015(37) STR. 757 (tri-Del.).

1.10 It is also submitted by the applicant that the relationship between parties is identified from the perspective of who is service recipient; that it is logical and legal that the relationship can never be established between the service provider and the beneficiaries. The applicant then submitted that, in absence of any kind of relationship between NDDDB and Unions in the given contract, the question of valuation of services at open market value does not arise at all and the zero value would be treated as sole consideration for supply, subject to tax.

1.11 The applicant further submitted that irrespective of their above submissions, even if it is assumed that there exist relationship between the applicant and Unions as a reason of control of the applicant over Unions, the price for services is not influenced because of relationship; that it is at the instance of the state governments, they provide services at free of cost; that it is an obligation of state government for revival and development of dairy industries and they are insisting the applicant to not charge any sum; that such kind of reason or moral support provide by them cannot be equated with normal related party transaction required to be valued at open market value; that they do not have any commercial motive behind that agreements where either of the party influence the consideration for earning any kind of benefit which means that there are no extra commercial benefit to be earned by the applicant. In view of above, the applicant submitted that 'nil' or 'zero' charges are sole consideration for supply and therefore, the same needs not require revaluation to open market value.

1.12 The applicant further stated that the agreements has originated due to signing of a contract between NDDDB and the state governments and the applicant is in a position to control Unions only because of agreements due to which the relationship is formed and in such a situation the agreement because of which the relationship establishes cannot be considered a related party transaction requiring open market valuation; that the relationship is not established between them as a reason of acquiring any stake by either of them or any beneficial interest.

1.13 The applicant further stated that it is logically inappropriate that when the applicant does not charge anything and the arrangement is undertaken at transaction value or for price which is sole consideration, then also by reason of control, the applicant would be required to value the services and pay hefty taxes in absence of any kind of extra commercial benefit.

1.14 On the basis of above facts and submissions, the applicant has sought ruling on following points-

(i) By virtue of tripartite agreement between NDDDB, State Government & Unions, whether the arrangement between NDDDB and Unions would be considered as supply between 'related persons' in accordance with Schedule 1 of the Central Goods & Service Tax Act, 2017?

(ii) Assuming answer to above point is affirmative, whether the applicant would be required to determine value of activities undertaken by them in accordance with Section 15(5) of CGST Act, 2017 read with Rule 28 of the CGST Rules, 2017?

2 We heard Shri. Hardik Shah, Chartered Accountant, for the appellant on 30.11.2017. We gone through the submissions made by the applicant in their initially filed application and the corrigendum to earlier application for advance ruling and made at the time of personal hearing. We have also gone through the comments offered by the department vide FNo. IV/16-29/GST/AAR-NDDDB/T/17 dated 18.01.2018.

3. Firstly, we would like to see the provisions for the Schedule I of the CGST Act, 2017. Schedule- 1 deals with the activities to be treated as supply even if made without consideration. Section 7 of CGST Act defines 'supply'. Some of the scope of supply, as per Section 7© of the Act, are the activities specified in Schedule I, made or agreed to be made without a consideration. One of the activities to be treated as a supply even if made without consideration, as per clause 2 of Schedule I, is the 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.

4. Provisions of Section 15 of CGST Act, 2017 provides for valuation of taxable supply of goods or services or both. Section 15 of the CGST Act lays down the valuation aspects under GST which explained the value of taxable supply of goods or services or both on which tax is payable. It states that the value of supply of goods and services shall be the 'transaction value' that is the price actually paid or payable for the said supply, where the supplier and the recipient are not related and price is the sole consideration for the supply. Section 15(5) of CSGT Act specify the following situations wherein two persons could be deemed to be 'related persons'

1. Such persons are officers or directors of one another's businesses;
2. Such persons are legally recognized partners in business;
3. Such persons are employer and employee;
4. 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;
5. One of them directly or indirectly controls the other;
6. Both of them are directly or indirectly controlled by a third person;
7. together they directly or indirectly control a third person; or
8. They are members of the same family.

5 In the present case, pursuant to the agreements made by the applicant with the state government of Jharkhand and Assam, the applicant provides services to Unions. It is also seen that the actual services are received by the concerned State Governments and the Unions are simply beneficiaries of the services performed by the applicant. Thus, there is no question of exercise of control by the applicant over the Unions. Unions are in fact provide support to the applicant to fulfill the purposes as per the agreements made with the state governments and the applicant and in return they receive the benefits of it.

6 By the agreement dated 26th September, 2013, between the State of Assam and NDDDB, made with a view to revive WAMUL, a decision is found to have been taken to hand over the management of WAMUL to NDDDB under some terms and conditions specified therein. On perusal of this agreement, NDDDB would manage the WAMUL as Administrator by way of implementing suitable business plan for WAMUL, marketing the milk and milk products of WAMUL, deploying suitable man power in WAMUL etc.

7 By the agreement dated 1st March, 2014, between the State of Jharkhand and NDDDB, made with the purpose of revitalize the JMU, it was decided to handover the management of JMU to NDDDB under the specified terms and conditions therein. As per these terms and conditions, it is seen that NDDDB would take over the management of the JMU along with all the assets and manage it as Administrator; that NDDDB would prepare planning for developing the JMU and implement it; that NDDDB would deploy suitable personnel to key management of JMU; NDDDB would work out and implement business plans for SMU; NDDDB would decide production and plant operations and marketing of the products of SMU etc. One of the terms of the agreement is that NDDDB would not charge any management fee from the Government of Jharkhand .

8 It would be evident from above that the Unions are only beneficiaries of agreement entered into by the state governments with the applicant. The Unions are required only to provide adequate support to the applicant. In such a situation, we do not find any kind of relationship between NDDDB and the Unions. Hence situation specified at sl no. 5 of Section 15(5) of CGST Act is not found in existence in the transaction between

NDDB and WAMUL and NDDB & JMU and accordingly such transactions are not to be considered as related party transactions in GST.

9. Since the answer to the first part of the points raised by the applicant is negative no need to examine the next point of them.

10. Considering above, we rule as under:-

RULING

- (i) The transactions undertaken by NDDB and Unions in accordance with the agreements made by NDDB with State Government of Assam and Jharkhand are not to be considered as supply between 'related persons' in accordance with Schedule I of Central Goods and Service Tax Act, 2017 (CGST Act) read with Section 15 of CGST Act and corresponding provisions under the Gujarat Goods and Services Tax Act, 2017.

(R.B. Mankodi)
Member

(G.C. Jain)
Member

Place : Ahmedabad
Date : 8.5.2018.