

GST ANALYSIS - PROJECT MANAGEMENT CONSULTANCY SERVICES



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1. What is Project Management Consultancy (PMC) Services?

- 1.1. Project management consultants provide their professional expertise, advice and guidance to their clients to help plan, manage, execute and ultimately, successfully deliver projects. As a result of their expertise & methodologies, their clients benefit in terms of enhancement in the overall process, increased efficiency and very importantly, deliver projects on time within budget and scope assigned.
- 1.2. The first question that comes up is what kind of projects do they handle? The answer is literally 'any type' of projects. The projects could be a feasibility study for setting up an industry in a particular area or it could be as huge as design, plan, coordinate and execute the activities leading to the construction of a huge oil rig in the middle of the ocean! The project scope could be improvement of efficiency of a single plant in the industry or it could be an environmental impact assessment of construction of a new highway corridor planned in the country. Some projects may be a desk job of designing structures / strategies, while some other may involve suggesting a better process for increasing output, decreasing cost, improving efficiency and so on.
- 1.3. Who are these Project Management Consultants? Once again, there might not be an “one-size fits all” type of an answer to decide the qualification background for these consultants. Designing activity may require an architect, financial impact analysis may require a Chartered Accountant, supervising / managing construction related activities may require an engineer and implementation of a new software may require someone with Information technology background. In many cases, the team is a mixture of professionals of different background, working together on the project.

2. Distinguishing PMC from EPC projects

- 2.1. EPC project is acronym for Engineering, Procurement and Construction projects. The EPC contractor is the one that executes construction-related projects whereas PMC, on the other hand, is a type of consulting / managing service. In most construction-related projects, PMC shall oversee EPC contractors' work to ensure they meet the project guidelines and when there are multiple EPC contractors involved, then PMC services also include better coordination between all of them.

3. GST Background for PMC services

- 3.1. Under GST, the scope of “supply” covers all forms of goods and services. Hence, there has never been any debate regarding the regarding applicability of GST on PMC services. Most of the PMC services are classified under “HSN 9983 - Other professional, technical and business services,” which inter-alia includes, management consulting, information technology services, architectural services, engineering services, scientific and other technical services within its scope.
- 3.2. In terms of Sr. No. 21(c) of the notification no. 11/2017 – CT (Rate) dated 28.06.2017 (as updated), the general rate applicable for PMC services is 18%.

- 3.3. Many a times such PMC services are also availed by Central and State Governments, local agencies, government bodies and so on for various development activities of the nation. Hence, the most common (read: “debated”) exemption available under notification no. 12/2017 – CT (Rate) dated

SN	Description of services
3	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 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.

- 3.4. The input tax credit (ITC) provisions of Sections 16 and 17 of the CGST Act, 2017 along with relevant rules are applicable to PMC services as well with no special / specific provision enacted for the same in the GST Law.

4. Analysis of key issues plaguing PMC services

In this article, the key focus of discussion shall be centered around the following GST related issues prevalent in PMC service sector, namely,

- Determination of Place of Supply
- Eligibility for claiming exemption of entry no. 3
 - Services to Central Government, State Government or Local Authority
 - Services is in relation to any function entrusted to a Panchayat or a Municipality

4.1. Determination of Place of Supply

4.1.1. Under GST, the concept of “Place of Supply” is relevant because in conjunction with “location of supplier of services,” it helps in determining what tax (IGST or CGST + SGST) is to be levied and in case of levy of IGST, the State / UT should also be identified so that such tax revenue flow to such State / UT.

4.1.2. Location of supplier of service in such PMC services is generally available because of established place of business for which GST registration has been obtained would be available in almost all cases.

4.1.3. As a thumb rule, PMC services would be covered by the general rule, wherein the place of supply shall be the location of recipient as provided under Section 12(2) or 13(2) of the IGST Act 2017, as applicable. However, the real challenge comes when the services provided / to be provided relate to immoveable property.

4.1.4. The relevant extract of the provision relating to place of supply are reproduced hereunder:

When supplier and recipient are located in India	When either supplier or recipient is outside India
Section 12(3) of the IGST Act, 2017	Section 13(4) of the IGST Act, 2017
<p>The place of supply of services,</p> <p>(a) <u>directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work,</u></p> <p>(b)</p> <p>(c)</p> <p>(d) any services ancillary to the services referred to in clauses (a), (b) and (c)</p> <p><u>shall be the location at which the immovable property....is located or intended to be located.</u></p>	<p>The place of supply of services supplied <u>directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be located</u></p>

- 4.1.5. Key emphasis is placed on two phrases used in the above provisions viz., “directly related to” and “immoveable property.”
- 4.1.6. Thus, if the PMC services are directly in relation to an immoveable property, then the place of supply shall be location / intended location of the immoveable property and in all other cases, it shall be location of the recipient.
- 4.1.7. Hence, these provisions are triggered only when there is a direct connection with the immoveable property in question. They do not apply if the PMC service only has an indirect connection with the immoveable property or the immoveable property is only an incidental component to a larger spectrum of services offered.
- 4.1.8. Thus, for PMC services in connection with an immoveable property, it first becomes important to identify whether the said immovable property is central to / essential for the services being supplied or not? If yes, then immoveable property location shall be the place of supply and if not, then the general rule shall apply.
- 4.1.9. Further there cannot be straight jacket formula in such PMC services because, the scope of services varies from contract to contract. Some feasibility study assignments may be generic, whereas some feasibility study assignments may be so specific that it may entail physical counting of trees being intended to be cut down or determining the average number of heavy vehicles that ply a specific road during a month or soil testing of that region.
- 4.1.10. For example, let's say, a foreign investor is interested to set up a particular type of manufacturing plant in a specific state / region of India and for that, they have appointed M/s. ABC (in India) to prepare the feasibility report in this regard wherein the scope of service inter alia, includes land

acquisition study, labour availability and labour cost in that region, government subsidies in that region, cost of setting up of manufacturing plant, reviewing the disasters, their frequency and their impacts in such region and so on. In such a case, intended location of the manufacturing plant (i.e., the immovable property) is a constituent element of the project and hence, such PMC services in form of feasibility report provided by M/s. ABC shall be not be treated as export of PMC services because the place of supply shall be the intended location of the manufacturing plant in India, and accordingly, GST would be levied for such services to the foreign investor.

4.1.11. Some examples of services directly related to immovable property can include:

- Drawing up of plans for a building or parts thereof for a particular area / plot
- Assessment of the environmental impact of a particular proposed project such as construction of underground metro line
- Surveying and assessment of the risk and integrity of an immovable property such as building, bridge and so on
- On-site supervision / management for construction activity

4.1.12. Some examples of services NOT directly related to immovable property can include:

- Drawing up of plans for a building or parts thereof not designated for a particular area / plot
- Desk job of analyzing the improved efficiency on account of new proposed process in a manufacturing plant
- Strategizing ways for reducing overheads for a Corporate Office

4.1.13. One may find the Irish Tax and Custom's VAT treatment of services connected with immovable property¹ an interesting read in this regard where the Irish Government has explained their view w.r.t. services directly in relation to immovable property.

4.1.14. From the above discussion, whenever any immovable property is involved in the provision of PMC services, it is pertinent to dwell into a number of questions to ascertain whether the immovable property is a fundamental part of the service or not to determine the correct nature of tax to be levied.

4.2. Exemption Conundrum

4.2.1. In the recent past, there have been so many rulings by authority for advance ruling (AAR) from so many different states that discuss the eligibility of exemption pertaining to Entry 3 (highlighted supra) of notification no 12/2017 – CT (Rate) dated 28.06.2017 (as updated).

4.2.2. To claim exemption under Entry 3 of the said notification, following three conditions should be satisfied:

- a. The activity should be in the nature of pure services
- b. Services should be provided to Central Government, State Government or Local Authorities

¹<https://www.revenue.ie/en/tax-professionals/tdm/value-added-tax/part03-taxable-transactions-goods-ica-services/Services/services-connected-with-immovable-property.pdf>

c. The activity should be in relation to any function entrusted to a Panchayat under article 243G of the Constitution of India or to a Municipality under article 243W of the Constitution of India

4.2.3. Earlier, exemption was eligible under Entry 3 of the exemption notification, when the services were provided to “governmental authority” and “governmental entity” as well. However, vide notification no. 16/2021 – Central Tax (Rate) dated 18.11.2021 made effective from 01.01.2022, the scope of the exemption entry was trimmed down by excluding “governmental authority” and “governmental entity.”

4.2.4. For PMC services, challenge is not satisfying condition regarding pure service, but the major challenge is satisfying the next two condition, which also have been bone of contention in most of the AARs till now and part of both the exemption entries.

➔ Whether the PMC service are provided to Central Government, State Government or Local Authorities?

4.2.5. PMC services would be eligible for exemption only if such services are provided to Central Government, State Government or Local Authorities. Hence, it is important to understand the coverage of these three terms to explore the scope of the exemption.

4.2.6. The terms, “Central Government” and “State Government” have not been defined in the GST law. Hence, we refer to the General Clauses Act, 1897 which define them as under:

(relevant extract)

2. (8) “Central Government” shall,

(a)...

(b) *in relation to anything done or to be done after the commencement of the Constitution, mean the President.*

....

2. (60) “State Government”, –

(a)...

(b)...

(c) *as respects anything done or to be done after the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean, in a State, the Governor, and in a Union territory, the Central Government.*

4.2.7. Hence, while referring to Central Government, “President” would include all officers subordinate to the President while exercising the executive powers vested in the President and in the name of President². Hence, any contract which is awarded to any Project management consultant in the name of the President of India would be considered as service provided to Central Government. Similarly, the same analogy would apply in the case of State Government and the Governor of the respective State.

²In re: VPSSR Facilities [2018 (13) G.S.T.L. 116 (A.A.R. - GST)]

4.2.8. On the other hand, “Local Authority” has been defined under the CGST Act, 2017 as under:

2. (69) “local authority” means—

(a) a “Panchayat” as defined in clause (d) of article 243 of the Constitution;

(b) a “Municipality” as defined in clause (e) of article 243P of the Constitution;

(c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;

(d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;

(e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;

(f) a Development Board constituted under article 371 and article 371J of the Constitution; or

(g) a Regional Council constituted under article 371A of the Constitution;

4.2.9. While all terms are well defined in the above definition, there is one clause that can cause some interpretation issues and that is “any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund”

4.2.10. The above entry was recently put to test in the recent rulings by AARs in the state of Karnataka³ while interpreting whether “Bengaluru Water Supply and Sewerage Board (BWSSB)” is a local authority or not. The Karnataka AAR in both rulings held that such entity is not a local authority.

4.2.11. The BWSSB came out with a clarification letter on 08.09.2022 bearing reference no. BWSSB / FA & CAO / AC-Acts / AS / GST-Advance-Ruling-Appeal / 151 / 2022-23 that it does not agree with interpretation pronounced by the AAR in the case of Hume Pipe Company Ltd. In the same letter which is address to all the contractors of BWSSB, it referred to the decision of Union of India & Ors vs. R. C. Jain and Ors⁴, and clarified that it believes that BWSSB is a “local authority.”

4.2.12. It is quite comical to note that GST registration of BWSSB recognizes them as “local authority” based on their constitution on the GSTN portal, but the AAR rulings do not!

4.2.13. While analyzing this operative part of definition of “local authority,” one must refer to the statute that governs the formation, constitution, functioning, powers, and responsibilities to determine whether such entity is entitled to or entrusted by CG or SG with control or management of a municipal or local fund. Other additional indicators also include constitution under Permanent Account Number (PAN) & GST registration.

4.2.14. Once the Tribunals are established under GST, there will be more stability w.r.t. interpretation to be adopted, especially for “local authorities.”

➔ Whether the activity is in relation to any function entrusted to a Panchayat under article 243G of the Constitution of India or to a Municipality under article 243W of the Constitution of India⁵?

4.2.15. Articles 243G and 243W of Constitution of India empowers the State Government to endow the Municipalities and Panchayats with powers to function as institutions of self-government. The said articles also list down specific functions which are entrusted to Municipalities and Panchayats.

³Suez India Pvt Ltd [KAR ADRG 08/2023 dtd 17.02.23] & Hume Pipe Company Ltd [KAR ADRG 23/2022 dtd 12.08.22]

⁴Union of India & Ors vs. R. C. Jain and Ors [AIR 1981 SC 951]

⁵https://iddashboard.legislative.gov.in/sites/default/files/COI_English.pdf

- 4.2.16. Hence, if the services are provided within a Municipal or Panchayat area for any activities in relation to functions mentioned under article 243G and 243W, then this condition would be satisfied for claim of exemption. Therefore, it becomes important to understand the scope of the phrase “in relation to” used in the exemption entry.
- 4.2.17. Under legal parlance, the phrase “in relation to” is used to widen the scope of any following sentence. In the case of Doypack Systems (P) Ltd vs. UoI [1988 (36) E.L.T. 201 (S.C.)], the Hon'ble Supreme Court has explained that the expression “in relation to” is a very broad expression, which pre-supposes another subject matter. The Court highlighted that these are words of comprehensiveness which might both have a direct significance as well as an indirect significance depending on the context. “Relating to” has been held to be equivalent to or synonymous with as to “concerning with” and “pertaining to.” The expression “pertaining to” is an expression of expansion and not of contraction.
- 4.2.18. The phrase “in relation to” therefore, widens the applicability of exemption. It means that if the services are indirectly related to a function of Municipality or a Panchayat as listed above and provided to a Central Government, State Government or a Local Authority, then such services would be eligible for exemption under GST.
- 4.2.19. In this context, it would be relevant to refer the following ruling given by AAR in the case of VPSSR Facilities [2018 (13) G.S.T.L. 116 (A.A.R. - GST)]. In this case, VPSSR Facilities (applicant) had undertaken contract for railway station sanitation and/or cleaning, train cleaning & railway premises for Northern Railways. The applicant had sought clarification whether exemption under Entry 3 to Notification No. 12/2017-Central Tax (Rate) will be applicable to their contract or not. The relevant extract of the ruling is reproduced below:
- “38....It is observed that contracts by Northern Railway to the applicant have been awarded in the name of the President of India. Hence, it is held that Northern Railway is covered in the said Notification as 'Central Government.'*
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- 43. The Railways cannot be called a Municipality under Articles 243P and 243Q of the Constitution of India. Further, the functions of Railways i.e., transport of goods or passengers are not covered in Schedule XII of the Constitution which covers the constitutional functions of Municipalities. The cleaning services supplied to Railways i.e., cleaning of locomotives, railway stations, railway lines provided by the applicant cannot be said to be covered in Clause (6) of Schedule XII of the Constitution which covers 'public health, sanitation conservancy and solid waste management' functions of the Municipalities. The Municipalities are constitutionally entrusted with such functions in relation to urban areas but they are not entrusted with such functions in relation to Railway properties.”*
- 4.2.20. As per Section 103 of the CGST Act 2017, the advance ruling is applicable only to the applicant who has sought the ruling. But it is important to draw reference to the principles highlighted by the ruling in interpretation of law.
- 4.2.21. In this case of VPSSR Facilities, the AAR has made stark observations for interpreting the exemption entry. It has stated that though Northern Railways qualifies as Central Government, it is vital to look at the functions vis-à-vis Municipal bodies. The exemption is given for activities pertaining to functions entrusted to a Municipality or a Panchayat. The activity must be integral to such functions. If a service is provided to any Government or local authority but the activities are not related to functions entrusted to a Municipality or a Panchayat, then the exemption under the GST law cannot be availed.

- 4.2.22. Hence, the exemption will be available only for those PMC services which are fundamental to the functions of a Municipality or a Panchayat. It means that all services provided to Central Government, State Government or Local Authorities, do not automatically qualify for exemption. It is equally important to equate the said function (for which PMC services are provided) with the functions entrusted to a Municipality or a Panchayat.
- 4.2.23. To further drive home the point, illustratively, following PMC services have been ruled by AAR as services in relation to functions entrusted to a Municipality or a Panchayat:
- a. Imparting Management Consultant and Detailed Project Report services for the water related projects at Chennai⁶
 - b. PMC services under the Atal Mission for Rejuvenation and Urban Transformation & Pradhan Mantri Awas Yojna⁷
 - c. PMC services for Andhra Pradesh Panchayat Raj Engineering Department for Andhra Pradesh Rural Road Project⁸
 - d. PMC services for project management and quality assurance for the work of Rejuvenation and development of Lake to Forest Department⁹

5. Conclusion

- 5.1. Given the nature of PMC services, no two contracts will be the same and hence, it is always important to independently review the scope of PMC service to identify key elements which aid in deciding the applicable place of supply provisions.
- 5.2. Similarly, even though exemption entry of pure services has been pruned, the task to determine the actual recipient of PMC services (Central Government, State Government or local authority) and whether services rendered are in fact relate to function entrusted to a Panchayat or Municipality (Article 243G and 243W of the Constitution of India) will continue to drive maximum litigations for PMC services in the days to come.

⁶In re: Tamil Nadu Water Investment Company Limited [2019 (21) G.S.T.L. 342 (A.A.R. – GST – TN)]

⁷In re: Egis India Consulting Engineers P. Ltd (Madhu Garg) [2018 (16) G.S.T.L. 171 (A.A.R. - GST)]

⁸In re: Consulting Engineers Group Ltd [2020 (39) G.S.T.L. 155 (A.A.R. - GST - A.P.)]

⁹In re: Vimos Technocrats Pvt. Ltd [2020 (42) G.S.T.L. 263 (A.A.R. - GST - Kar.)]

