

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) **Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)**
(2) **Shri Pankaj Kumar, Joint Commissioner of Central Tax, (Member)**

GSTIN Number, if any/ User-id		27AAACC2936JIZO
Legal Name of Applicant		Cable Corporation of India Limited
Registered Address/Address provided while obtaining user id		PLOT NO F3/1 AND F 3/2, MIDC AREA MALEGAON, SINNAR, Nashik, Maharashtra, 422103
Details of application		GST-ARA, Application No. 63 Dated 06.08.2018
Concerned officer		Commissioner of GST- Nasik
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Service Provision
B	Description (in brief)	The Applicant has entered into an arrangement with the recipient for supply of goods and services. For the purposes of the same, the Applicant has entered into an agreement with separate considerations for each activity and scope identified in the contract. The supply of different services has independently prescribed considerations. The applicant not being a GTA, is availing exemption from payment of GST on the transportation services provided under the agreement.
Issue/s on which advance ruling required		(i) Classification of goods and services or both. (ii) Applicability of a notification issued under the provisions of the Act (v) Determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required		

PROCEEDINGS

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by **Cable Corporation of India Limited**, the applicant, seeking an advance ruling in respect of the following issue.

Whether the supply of transportation services, rendered by the Applicant, will be exempt from the levy of GST in terms of Sl. no. 18 of the Notification No. 12/2017 - Central Tax (Rate) dated 28th June, 2017

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

02. **FACTS AND CONTENTION - AS PER THE APPLICANT**

The submissions, as reproduced verbatim, could be seen thus-

A. STATEMENT OF FACTS HAVING A BEARING ON THE QUESTIONS RAISED

1. Cable Corporation of India Limited (hereinafter referred to as 'Applicant') having its corporate head office at, Laxmi Building, 4th Floor, 6, Shoorji Vallabhdas Marg, Ballard Estate, Mumbai, Maharashtra 400001, is a leading manufacturer and distributor of a wide range of power and control cables in India.
2. The Applicant was registered under the erstwhile tax regime, and was discharging excise duty, service tax and value added tax (VAT) on the manufacture, on commission and sale of the products, as applicable.
3. Under the current regime, the Applicant is registered as per the provisions of the GST Laws.
4. The Applicant is engaged in the work of Supply, Laying and Terminating of 220kV U/G cables package to the recipient. The engagement comprises of two separate agreements with respect to the supply of goods and services envisaged, which are as follows"-

- a) A supply of goods contract regarding the engineering, manufacturing, supply and type testing of Cable Package-C ('Goods');
- b) A Services Contract for Cable Package-C (which includes Detailed Route Survey, Planning, Transportation, Insurance, Delivery at site, Unloading, Handling, Store, laying, installation (including civil works), Jointing, Termination, testing, Demonstration for acceptance, Commissioning, Documentation required for complete execution of Cable Package-C) ("Services")

Copies of the contracts regarding the supply of goods and services are being annexed herewith as **Ex - A1 and Ex.-A2**

5. Each of the contracts consist of a 'cross fall breach clause' deeming any breach in either of the contracts to be a breach of the other contract as well, providing the recipient with an absolute right to terminate both the contracts or claim damages.

The various supplies envisaged under both the contracts are distinct and independent. Every such distinct supply of goods or services have separate considerations prescribed also. One of such supplies that the Applicant is required to provide is that of transportation services with a distinct consideration attributed to the same. Illustrative copies of invoices issued by the Applicant for such supplies are annexed herewith as Exhibit-B.

7. Now, Notification No. 12/2017 - Central Tax (Rate) provide for a list of services, supply of which shall be exempt from the levy of GST. One of such services so specified is that of transportation of goods services made by a supplier other than a GTA or courier agency.

8. In the light of the same, the question which is arising is whether the supply of transportation services, being rendered by the Applicant under the contract for services, will be exempt from levy of GST in terms of Sl. no. 18 of the Notification No. 12/2017 - Central Tax (Rate) dated 28th June, 2017

9. Under the said factual scenario, the Applicant requests the Hon'ble Maharashtra Authority for Advance Ruling to issue a ruling on the following question (A) Whether the supply of transportation services, rendered by the Applicant under the aforesaid facts or circumstances will be exempt from the levy of GST in terms of Sl. no. 18 of the Notification No. 12/2017 - Central Tax (Rate) dated 28th June, 2017.

STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW AND/OR FACTS, AS THE CASE MAY BE, IN RESPECT OF QUESTION(S) ON WHICH ADVANCE RULING IS REQUIRED.

B. QUESTION REQUIRING ADVANCE RULING

The questions on which Advance Ruling is sought by the Applicant is as under:

- B.1 Whether the supply of transportation services, rendered by the Applicant, will be exempt from the levy of GST in terms of Sl. no. 18 of the Notification No. 12/2017 - Central Tax (Rate) dated 28th June, 2017.

C. APPLICANT'S INTERPRETATION

THE SUPPLY OF TRANSPORTATION SERVICES BY THE APPLICANT SHALL BE EXEMPT FROM THE LEVY OF GST AS PER NOTIFICATION NO. 12/2017 CENTRAL TAX (RATE) DATED 27.05.2017

Transportation charges collected from the customer is covered by the exemption provided under Sl. No. 18 of the Notification No. 12/2017 - Central Tax (Rate)

- C.1 Sl. No. 18 of the Notification No. 12/2017 - Central Tax (Rate) dated exempts the supply of transportation of goods services by a supplier, not being a GTA or courier agency, from the levy of GST. The relevant portion maybe extracted as follows:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
18	Heading 9965	Services by way of transportation of goods (a) by road except the services of - (i) a goods transportation agency; (ii) a courier agency; (b) by inland waterways.	Nil	Nil

- C.2 In other words, the Applicant shall be eligible to claim exemption from the levy of GST in relation to such transportation services supplied by it under the contract for services, vide the above discussed Notification, provided it is neither GTA nor a courier agency.

- C.3 Now, 'GTA' has been defined in the Explanation to Sl. no 9 and 11 of Notification No. 11/2017 dated 28th June, 2017 as follows:
"goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.
- C.4 In the instant case, Applicant is engaging a GTA to undertake the activity of transportation of goods by road for the Applicant. The GTA service provider is issuing consignment note & the Applicant is discharging GST liability under RCM. The consignment note is issued to grant a right of custody of goods once the goods reach its destination. Therefore, two consignment notes cannot be issued for a single event of transportation of goods from one place to another. Consequently, once the consignment note has been issued by GTA, the applicant shall not be able to issue consignment note with regard to that supply again. Illustrative copies of the invoice raised, consignment note issued by the transporter to the Applicant is enclosed as Ann. Ex. D1 & Exhibit D2 respectively.
- C.5 Since, the Applicant doesn't issue any consignment note, it is not a GTA for the purposes of GST. On the basis of above discussions, it can be concluded that the activity undertaken by the applicant would be an activity of transportation of goods by road and would be squarely covered by Sl. No. 18 of the Notification No. 12/2017 - Central Tax (Rate). Thus, the Applicant shall be eligible to claim exemption from the levy of GST in relation to such transportation services supplied by it under the contract for services.

Transportation charges collected from the customer is a 'principal supply in itself.'

- C.6 The contract of services entered between the Applicant and the recipient contemplates separate consideration for the supply of the following services:
- a. Transportation and Insurance charges;
 - b. Installation charges; and
 - c. Training charges

- C.7 Now, as per the above discussed Notification, the exemption available is only with respect to the supply of transportation of goods services by a supplier, not being a GTA or courier agency, from the levy of GST. Thus, for determining the applicability of the notification, it is necessary to examine whether all the supply of services provided for in the services contract will constitute a 'composite supply' or not.

- C.8 The term 'composite supply' has been defined under section 2(30) of the CGST Act. The relevant portion of the provision may be extracted as follows for easy reference:

2. Definitions

(30) "**composite supply**" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

- C.9 Thus, 'composite supply means a supply of two or more taxable supplies of goods or services or both which are:
- d. naturally bundled; and
 - e. supplied in conjunction with each other in the ordinary course of business; and
 - f. one of which is a principal supply

- C.10 Section 2(90) of the CGST Act defines 'principal supply' as under:

2(90) "**principal supply**" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

- C.11 Thus, a combined reading of the definition of composite supply and principal supply indicates that a composite supply has only one 'principal supply'. If a particular contract has more than one principal supplies, the supply under the said contract will cease to be composite supply.
- C.12 Further, there is no strait-jacket formula to determine as to what constitutes a "composite supply". The determination as to whether a supply constitutes a "composite supply or separate supplies is very subjective and is required to be determined on the basis of the facts and circumstances of each case.
- C.13 In the light of the above, reference may be made to the observations of the Supreme court in some cases to get some guiding principles. The Court, in the case of State of Madras vs Gannon Dunkerley and Company (Madras) Ltd [2015 (330) ELT 0011 SC], while extensively discussing the divisibility of contracts observed:

"To avoid misconception, it must be stated that the above conclusion has reference to works contracts, which are entire and indivisible, as the contracts of the respondents have been held by the learned Judges of the Court below to be. The several forms which such kinds of contracts can assume are set out in Hudson on Building contracts, at p. 165. It is possible that the parties might enter into distinct and separate contracts, one for the transfer of materials for money consideration, and the other for payment of remuneration for services and for work done. In such case, there are really two agreements, though there is a single instrument embodying them, and the power of the State to separate the agreement to sell, from the agreement to do work and render service and to impose a tax thereon cannot be questioned, and will stand untouched by the present judgment."

- C.14 Reference may also be made to the decision of the Supreme court in the case of Ishikawajma-Harima Heavy Industries Limited v. Director of Income Tax, Mumbai reported [2007 (6) STR 3 (SC)]. The contract under consideration was a turnkey agreement between the parties which separately provided for the offshore supply of goods and service, onshore supply of goods and services and the services of construction and erection. It was held by the Hon'ble Supreme Court that very fact that in the contract, the supply segment and Service segment have been specified in different parts of the contract is a pointer to show that the liability of the Appellants thereunder would also be different.

- C.15 In the light of the above observations, the following points maybe noted with respect to the instant scenario:
- The supply of services under consideration are mutually exclusive and independent and are not intrinsically linked to each other in any manner.
 - The services contract provides for supply of transportation services, installation services and testing services along with separate considerations for each of them which indicates the intention of the parties to treat them independently.
 - Each of the services contemplated constitute an aim in itself for a consumer and no way can one service be considered ancillary for the better enjoyment of any other of the services contemplated.
 - While the installation and testing services are provided by the Applicant itself, the transportation services are being sub-contracted by the Applicant
 - The fact that a single contract provides for all the supply of services, cannot be a conclusive indicator of the supplies constituting a 'composite supply'
- C.16 The observations of the court maybe squarely made applicable to the facts of the instant scenario. The services contract provides for supply of transportation services, installation services and testing services along with separate considerations for each of them. Further, each of services are independent of each other and cannot be said to be intrinsically linked with each other. Also, while the installation and testing services are provided by the Applicant itself, the transportation services are being sub-contracted by the Applicant.
- C.17 Thus, in the light of the above, it is submitted that the supply of services envisaged under the services contract are distinct and independent. The fact that a single contract provides for all the supply of services, cannot be a conclusive indicator of the supplies constituting a 'composite supply'. The fact that the contract envisages different considerations for each supply, it is indicative of the parties intention to consider each of them to be separate and independent
- C.18 Further, it is pertinent to note that even though the contract envisages a single consideration for transportation and insurance services, the Applicant is charging majorly for the transportation services only. The economic reality of the supply is such that the Applicant has a common insurance cover for all such transportation of goods services supplied by it, to the recipient for a single project. Also, the value of such insurance cover procured is very miniscule compared to the total cost of provision of transportation services to the recipient of the project. The value of such insurance charges is also not discernable on goods-wise or per trip basis. The marine insurance policy for the project under consideration is enclosed as Annexure Exhibit-E. This factual position will not have any impact in claiming the benefit of exemption notification.
- C.19 Therefore, the invoice issued by the Applicant in lieu of such 'transportation and insurance charges' contains a very-negligible element of insurance charges. The practical reality of the transaction therefore is such that the amount charged by the Applicant pertains majorly to the transportation service supplied by it. In the instant case, principal supply envisaged under this agreement is transportation services only.

D. ISSUES RELATING TO ADVANCE RULING AND APPLICANT'S UNDERSTANDING.

Questions

- D.1 Whether the supply of transportation services, rendered by the Applicant under the contract for services, will be exempt from the levy of GST in terms of Sl. no. 18 of the Notification No. 12/2017-CT (Rate) dated 28.06.2017.
- Applicants understanding**
- D.2 As explained in the above para C, the Applicant is making an independent supply of transportation of goods service. Further, it is neither a GTA transportation agency nor a courier agency and thus is eligible to claim exemption from levy of GST under Notification No. 12/2017 dated 27.06.2017.

03. CONTENTION - AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-

Please refer to letter No. NSK-II Div/29/T-II/2-17-18 dated 25.09.2018 the above subject wherein Application for Advance Ruling filed by M/S Cable Corporation of India Ltd. (M/S CCL) before the Member (CGST & SGST) of the Advance Ruling Authority, Maharashtra, Mumbai was forwarded.

2. M/s Cable Corporation of India Lt (M/s CCL) has requested for ruling whether the supply of transportation services, rendered by them under the contract for services, will be exempt from the levy of GST in terms of Sl. No. 18 of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017.

3. (i) Exemption from the Central Tax leviable under sub-section (1) of Section 9 of the GST Act is provided under Notification 12/2017- Central Tax (Rate) dated 28.06.2017 to intra-State supply of services specified therein Serial No.18 of the Notification exempts Services by way of transportation of goods (a) by road except the services of a Goods Transport Agency; (ii) a courier agency.

(ii) In their written submission, M/s CCA admits that he is not transporting; the goods, but hiring the services of a GTA to undertake the transportation of goods by road and is discharging the GST liability under RCM. The Applicant has referred to Notification 12/2017-Central Tax (Rate) dtd. 28.06.2017, which according to him grants exemption on transportation service provided by an entity other than GTA. As the applicant is not GTA, his supply of transportation service, he claims, is exempt vide the above notification. In this case as the M/s CCL is hiring the service of GTA therefore, he is the recipient of such services and not a supplier thereof. The question of the Applicant providing transportation service therefore is not correct.

(iii) To decide the issue of taxability of the consideration payable under the Second Contract for inland/local transportation and ancillary services like in-transit insurance, which are included in the freight bills the contracts referred to above needs to be examined. The First Contract includes ex works supply of all equipments and materials.

The scope of the works includes testing and supply of Cable Package required for Successful commissioning. The second contract includes all other activities required to be performed for complete execution of the Cable package. The scope of the work includes transportation, insurance and other incidental services. It is apparent that the First Contract cannot be executed independent of the Second Contract. There cannot be any 'supply of goods' without a place of supply. As the goods to be supplied under the First Contract involves movement and/or installation at the site, the place of supply shall be the location of the goods at the time when movement of the goods terminates for delivery to the recipient or moved to the site for assembly or installation refer to Section 10(1)(a) & (d) of the IGST Act, 2017). The First Contract however does not include the provision and cost of such transportation and delivery. It, therefore, does not amount to a contract for 'supply of goods' unless tied up with the Second Contract. The First Contract has 'no leg' unless supported by the Second Contract. It is no contract at all unless tied up with the Second Contract.

The Contractee is aware of such interdependence of the two contracts. Although awarded under two separate contract agreements, clauses under both them make it abundantly clear that notwithstanding the break up of the Contract Price, the contract shall, at all times, be construed as a single source responsibility and the Applicant shall remain responsible to ensure execution of both the contracts to achieve successful completion. Any breach in any part of the First Contract shall be treated as a breach of the Second Contract, and vice versa.

The two contracts are, therefore, linked by a cross fall breach clause deeming that any breach in either of the contracts to be a breach of the other contract as well, providing the recipient with an absolute right to terminate both the contracts or claim damages. The 'cross fall breach clause', settles unambiguously that supply of goods, their transportation to the contractee's site delivery and related services are not separate contracts, but only form parts of an indivisible composite works contract supply, as defined under Section 2(119) of the GST Act, with 'single source responsibility'. Composite nature of the contract is clear from the facts that first Contract cannot be performed satisfactorily unless the goods have been transported and delivered to the contractee's site. The two contracts for supply of the goods and the allied services are not separately enforceable The recipient has not contracted for ex-factory supply of materials, but for the composite supply, namely Works Contract for Supply, Laying and Terminating or 220KV U/G Cables.

4. The price component of both the first and second Contracts, including that of transportation are required to be clubbed together to arrive at the assessable value of the composite supply of works contract services and taxed at 18% in terms of Serial No.3(ii) of Notification No.11/2017-Central Tax (Rate) dated 28.06.2017.
5. in view of above, the supply of transportation rendered by the Applicant, would not be exempt from the levy of GST in terms of serial No.18 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.
6. The above view is supported by the following decisions of Advance Ruling Authorities of Maharashtra and West Bengal:

(i) Maharashtra Authority for Advance Ruling has decided the application filed by Shri Dinesh Kumar Agrawal, Mumbai whether transportation charges received by the applicant are liable to GST, especially when the applicant is not a goods transport agency (GTA). Maharashtra Authority for Advance Ruling vide Order No.GST-ARA-36/2017-18/B-43 dated 04.06.2018 answered *in the affirmative that the same is liable to tax as a works contract as per the provisions of Section 2(119) of the GST Act.*

(ii) The Authority for Advance Ruling under GST, West Bengal vide Order in case no.7/2018 dated 11.05.2018 in the case of EMC Ltd. [2018(13)GSTL 217 (A.A.R.-GST)] ruled that *the applicant supplies works contract service, of which freight and transportation is merely a component and not a separate and independent identity and GST is to be paid at 18% on the entire value of the composite supply including supply of materials, freight and transportation, erection, commissioning etc.*

(iii) The Authority for Advance Ruling under GST, West Bengal vide Order in case no.8/2018 dated 27.02.2018 in the case of IAC Electricals Ltd. [2018-TIOL-40-AAR-GST] ruled that *services of transportation in-transit insurance and loading/unloading, being ancillary to the principal supply of goods, shall be treated to taxation under Section 8(a) of the GST Act, and the consideration receivable on that account be taxed accordingly.*

04. HEARING

The case was taken up for Preliminary hearing on dt. 04.09.2018 when Sh. Chaitanya Bhatt, Advocate along with Ms. Meghna Mohapatra, Advocate appeared and made oral and written submissions for admission of application. Jurisdictional Officer was not present during the hearing.

The application was admitted and called for final hearing on 19.09.2018, Sh. Chaitanya Bhatt, Advocate along with Ms. Meghna Mohapatra, Advocate appeared and made detailed oral and written contentions. Jurisdictional Officer, Sh. Pradip Zode, Supdt., Division - II, Nashik CGST & Central Excise Commissionerate appeared and stated that they have received the documents and application very late and therefore be granted 20 days time to make their submissions and made written submissions.

05. OBSERVATIONS

We have gone through the facts of the case, oral & written submissions made by the applicant as well as the jurisdictional officer & the applicable provisions of the GST laws in this regard. We find that the applicant is a leading manufacturer & distributor of a wide range of power and control cables in India.

We find that in the present application the applicant has stated and claimed that they are engaged in the work of supply, laying and terminating of 220 KV U/G cables package to the recipient and the engagement comprises of two separate agreements with respect to supply of goods and services which are as under:-

- a) *A supply of goods contract regarding the engineering, manufacturing, supply and type testing of Cable Package-C ('Goods');*
- b) *A Services Contract for Cable Package-C (which includes Detailed Route Survey, Planning, Transportation, Insurance, Delivery at site, Unloading, Handling, Store, laying, installation (including civil works), Jointing, Termination, testing, Demonstration for acceptance, Commissioning, Documentation required for complete execution of Cable Package-C) ("Services")*

We also find that the applicant in their application has clearly stated that each of the contracts referred above consists of a 'Cross Fall Breach Clause' deeming any breach in either of the contract would be a breach of the other contract as well and would provide the recipient with an absolute right to terminate both the contracts or claim damages.

In view of these facts we find that the applicant has raised the question as under:-

"Whether the supply of transportation services, rendered by the Applicant, will be exempt from the levy of GST in terms of Sl. no. 18 of the Notification No. 12/2017 - Central Tax (Rate) dated 28th June, 2017".

We also find from the facts and documents put up before us by the applicant as well as the jurisdictional officer that, the applicant is not transporting the goods but is hiring the services of a GTA to undertake the transportation of goods by road & is claiming to be discharging GST liability under Reverse Charge Mechanism and in such a situation he is a recipient of such service and is not a supplier thereof.

Further, from the submissions made before us, we clearly find that the first contract referred to above includes ex-works supply of all equipments and materials which includes testing and supply of cable package required for successful commissioning.

We find that the second contract consists of all other activities required to be performed for commissioning of the project which also includes transportation, insurance, etc.

We fully agree with the contentions of the jurisdictional officer with regard to interdependence of two contracts which are reproduced as under:-

"The First Contract includes ex works supply of all equipments & materials. The scope of the works includes testing and supply of Cable Package required for Successful commissioning. The second contract includes all other activities required to be performed for complete execution of the Cable package. The scope of the work includes transportation, insurance and other incidental services. It is apparent that the First Contract cannot be executed independent of the Second Contract. There cannot be any 'supply of goods' without a place of supply. As the goods to be supplied under the First Contract involves movement and/or installation at the site, the place of supply shall be the location of the goods at the time when movement of the goods terminates for delivery to the recipient or moved to the site for assembly or installation refer to Section 10(1)(a) & (d) of the IGST Act, 2017). The First Contract however

does not include the provision and cost of such transportation and delivery. It, therefore, does not amount to a contract for 'supply of goods' unless tied up with the Second Contract. The First Contract has 'no leg' unless supported by the Second Contract. It is no contract at all unless tied up with the Second Contract.

The Contractee is aware of such interdependence of the two contracts. Although awarded under two separate contract agreements, clauses under both them make it abundantly clear that notwithstanding the break up of the Contract Price, the contract shall, at all times, be construed as a single source responsibility and the Applicant shall remain responsible to ensure execution of both the contracts to achieve successful completion. Any breach in any part of the First Contract shall be treated as a breach of the Second Contract, and vice versa.

The two contracts are, therefore, linked by a cross fall breach clause deeming that any breach in either of the contracts to be a breach of the other contract as well, providing the recipient with an absolute right to terminate both the contracts or claim damages. The 'cross fall breach clause', settles unambiguously that supply of goods, their transportation to the contractee's site delivery & related services are not separate contracts, but only form parts of an indivisible composite works contract supply, as defined under Section 2(119) of the GST Act, with single source responsibility. Composite nature of the contract is clear from the facts that first Contract cannot be performed satisfactorily unless the goods have been transported & delivered to the contractee's site. The two contracts for supply of the goods & allied services are not separately enforceable. The recipient has not contracted for ex-factory supply of materials, but for the composite supply, namely Works Contract for Supply, Laying and Terminating or 220KV U/G Cables.

In respect of the proposition of law as made by the jurisdictional officer, we find support from the judgement of Hon. Supreme Court in case of M/s. Indure Ltd. & Anr vs Commercial Tax Officer & Ors on 20 September, 2010 C.A. No. 1123 of 2003, wherein the Hon. SC held as under:

11. By way of Letter of Award dated 16.08.1988, N.T.P.C awarded two contracts to the Company for performing the work of erection of aforesaid plant on Turnkey Basis. Even though, two contracts were entered into between the parties but in nutshell it was only one contract for the simple reason that N.T.P.C kept a right with it with regard to cross fall breach clause meaning thereby that default in one contract would tantamount to default in another and whole contract was liable to be cancelled.

Thus from the detailed facts of the case as put before us, as per the first and second contracts referred above there is no doubt that both these contracts consisting of cross fall breach provisions are in the nature of 'Composite supply of Works Contract' which is a service & would be taxable @ 18% in terms of Sr. No. 3(11) of Notification No. 11/2017 - Central tax (Rate) dated 28.06.2017 & artificial bifurcation of contracts & scope of work as claimed by the applicant to go out of the scope of correct tax liability is not legal and proper.

We find that we have already decided a similar issue vide Order No. GST-ARA-36/2017-18/B-43 dated 04.06.2018 in case of Shri Dinesh Kumar Agarwal and the relevant reasoning and decision as arrived in that case would be applicable in respect of the present case as well.

05. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)



NO.GST-ARA- 63/2018-19/B-

134

Mumbai, dt.

3/11/2018


For reasons as discussed in the body of the order, the questions are answered thus -

Question 1:- Whether the supply of transportation services, rendered by the Applicant, will be exempt from the levy of GST in terms of Sl. no. 18 of the Notification No. 12/2017 - Central Tax (Rate) dated 28th June, 2017

Answer:- Answered in the negative in view of detailed discussions and reasoning above.




B. V. BORHADE
(MEMBER)


PANKAJ KUMAR
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint commissioner of State tax , Mahavikas for Website.

CERTIFIED TRUE COPY


MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai - 400021.