

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, 8<sup>th</sup> floor, H- Wing, Mazgaon, Mumbai - 400010.

(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, (State Tax Member)

(2) Shri B. Timothy, Addl. Commissioner of Central Tax, (Central Tax Member)

GSTIN Number, if any/ User-id	27AAACS0764L1Z6
Legal Name of Applicant	Siemens Limited
Registered Address/Address provided while obtaining user id	Plot No 2 ,Siemens Limited, Sector 2 Kharghar Node, Maharashtra Navi Mumbai 410218
Details of application	GST-ARA, Application No. 69 Dated 21.08.2018
Concerned officer	Dy. Commr. of S.T.(RAI-VAT-E-004) C.B.D., Belapur, Navi Mumbai
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Factory/ Manufacturing
B Description (in brief)	The Applicant is a leader in technology solutions for intelligent (smart), sustainable cities, smart grid, building technologies, mobility and power distribution.
Issue/s on which advance ruling required	(ii) Applicability of a notification issued under the provisions of this Act (v) determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

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 **Siemens Limited**, the applicant, seeking an advance ruling in respect of the following questions.

- Whether the freight charges recovered by the Applicant under the aforesaid contract from the customer without issuance of consignment note will be eligible for exemption from CGST as prescribed in Serial no. 18 of Notification no. 12/2017 - Central Tax Rate F. No. 334/1/2017, dated 28 June 2017?
- Whether the freight charges recovered by the Applicant under the aforesaid contract from the customer without issuance of consignment note will be eligible for exemption from SGST as prescribed in Serial no. 18 in Notification no. 12/2017 - State Tax (Rate) no. MGST 1017/C.R.103 (11)/ Taxation-I dated 29 June 2017.

At the outset, it is made clear that since the provisions of both the CGST Act and the MGST Act are the same except for a few provisions, a reference to the CGST Act would also mean a reference to the MGST Act, unless specified otherwise.

**2. FACTS AND CONTENTIONS – AS PER THE APPLICANT:**

- (i) M/s Siemens Limited (herein after referred as the "Applicant") is registered under the Central and State GST legislations vide GSTIN 27AAACS0764L1Z6 and is situated at Plot No 2, Siemens Limited, Sector 2, Kharghar Node, Navi Mumbai 410210, Maharashtra. The Applicant is a leader in technology solutions for intelligent (smart), sustainable cities, smart grid, building technologies, mobility and power distribution.
- (ii) The Applicant has a contract with one of the major Public Sector Undertakings in the State of Haryana (herein after referred as "the Customer").
- (iii) In terms of the said contract, the Customer has placed an order thru their "Notification of Award" (NOA) vide reference no.CC-CS/698-SR2/HVDC-3249/7/610/R/NOA-V/7217 dated 22 03-2017 for VSC (voltage source converters) based HVDC Terminals between Pugalur and North Trichur. This involves supply of equipment and services both on off-shore as well as on-shore basis.
- (iv) The subject NOA is awarded to the Joint Venture (JV) of M/s Siemens AG, Germany (Lead Partner) and M/s Sumitomo Electric Industries Ltd. Japan (other Partner).
- (v) The scope of the contract is divided into six contracts covering specific and detailed nature of supply of various goods and services. The 'On shore service contract (VSC part)' (*herein after referred as "Service Contract"*) needs to be executed by the Applicant as JV's Associate.
- (vi) The query is relates to the 'service activities' involved in their 'fifth contract' termed as "On shore service contract (VSC part) (NOA-V)" - copy attached. The scope of work under this contract as referred at 3.1 is as follows:
- a. Local transportation, insurance and other incidental services
  - b. Installation charges
  - c. Training charges
- (vii) With respect to on-shore supply of goods, the terms of the contract provide for supply of goods on "ex-works" basis. Attention is invited to clause 3.1(i) of the Supply Contract (NOA-III) - copy attached.
- (viii) While the supply of goods is on "ex-works" basis under the "on-shore supply contract", the Applicant, through a separate "Service Contract" is entrusted with the responsibility of delivery of the goods at Customer's site. For this, the Applicant engages local transporters who issue consignment notes to the Applicant for such transportation of goods and issue their freight invoices on the Applicant.
- (ix) In turn, the Applicant discharges the GST liability on such freight amount being paid by it to these transporters as provided under notification no. 13/2017 - Central Tax Rate F. No. 334/1/2017, dated 28 June 2017.
- (x) The Applicant charges local transportation as referred in para 6(a) above from the customer as per the terms of the contract. However, since the consignment note is already issued by the transporters engaged by the Applicant, no subsequent additional consignment note is issued by the Applicant.

- (xi) In terms of Serial no. 18 of Notification no. 12/2017 - Central Tax Rate F. No. 334/1/2017, dated 28 June 2017, an exemption from Central GST has been provided for services by way of transportation of goods. The relevant extract of the notification is given below:

Sr. no.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (percent)	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

- (xii) There is a similar exemption which has been provided under the Maharashtra Goods and Services Tax Act, 2017 vide Serial no. 18 in Notification no. 12/2017 - State Tax (Rate) no. MGST 1017/C.R.103 (11)/ Taxation-I dated 29 June 2017.

- (xiii) With respect to these local transportation charges as referred in para 6(a) above and recovered by the Applicant from the Customer, the Applicant seeks this Advance Ruling under Section 97(2) of Central Goods and Services Act, 2017 (CGST Act) and the Maharashtra Goods and Services Tax Act, 2017 (SGST Act) on the applicability of tax exemption as provided under serial no. 18 of the Notification No.12/2017-Central Tax (Rate) dated the 28th June,2017 as indicated in para 11 above.

- (xiv) The Applicant has already paid the requisite fee of INR 5,000 vide Challan no SBIN18052700096244 dated 09 May 2018.

- (xv) The Applicant requests that the name of the customer from the contracts as shared along with this application, being confidential, is not disclosed in the final advance ruling to be given by the Authority.

**STATEMENT CONTAINING THE APPLICANT'S UNDERSTANDING OF RATE OF TAX/EXIGIBILITY IN RESPECT OF THE AFORESAID CLARIFICATION(S) / TRANSACTION(S)**

- (i) In terms of Serial no. 18 of Notification no. 12/2017 - Central Tax Rate F. No. 334/1/2017, dated 28 June 2017, an exemption from Central GST has been provided for services by way of transportation of goods. The relevant extract of the notification is given below:

Sr. no.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (percent)	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

- (ii) There is a similar exemption which has been provided under the Maharashtra Goods and Services Tax Act, 2017 vide Serial no. 18 in Notification no. 12/2017 - State Tax (Rate) no. MGST 1017/C.R.103 (11)/Taxation-1 dated 29 June 2017.
- (iii) On the other hand, transportation services provided by a Goods Transportation Agency (GTA) who issues a consignment note are subject to payment of GST at the rate of 5% (combined rate for CGST and SGST without availment of credit of input taxes) or 12% (combined rate for CGST and SGST with availment of credit of input taxes).
- (iv) The term GTA has been defined under the aforesaid notifications by way of an explanation as:  
*"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."*
- (v) As can be seen from the above definition of GTA, to qualify a person a GTA, it is mandatory that the person should be issuing a consignment note.
- (vi) This position on taxability of GTA services is very similar to the erstwhile Service Tax regime wherein service tax was applicable on GTA, provided the service provider issues a consignment note to the service recipient.
- (vii) This matter has come up before various Courts in past wherein the issue was on applicability of service tax wherein the transporter does not issue any consignment note.
- (viii) In the matter of *M/s Om Telecom Logistics vs. CCE, Delhi (2018-TIOL-1430)*, Delhi - CESTAT has held that a person is to be categorized as a "goods transport agent", only when he issues the "consignment note" in manner prescribed in statute.
- (ix) Similar view has been taken by the Tribunals in the following matters:
- CCE Guntur vs. Kanaka Durga Agro Oil Products Pvt. Ltd. (2009) 15 STR 399 - Bangalore CESTAT
  - South Eastern Coal Fields Ltd. vs. CCE, Raipur (2016-TIOL-2773) - Delhi CESTAT
  - Birla Ready Mix vs. CCE, Noida (2012-TIOL-2200) - Delhi CESTAT
  - Northern Coal Fields vs CCE, Allahabad (2015-TIOL-2459) - Allahabad CESTAT
  - Nangana Sihori Sugar Co. Ltd. vs. CCE (MANU/CE/0194/2014) - Delhi CESTAT
- (x) The Applicant also relies upon the discussions held in the GST Council meetings with respect to applicability of GST rates on services. As per para 15.3 of the Minutes of the Meeting of the 14th GST Council meeting, the Council agreed to follow the same rate structure for most of the services with a suggestion to continue with the same GST rate on transportation services which were applicable in pre-GST regime. Relevant para from the Minutes of the Meeting of the GST Council meeting is reproduced below:  
*"He further stated that in the case of services, the Committee largely followed the following principles while recommending the GST rate structure: (a) continuance of exemption for certain services, so as to maintain present tax incidence on services; (b) To suggest broadly the same GST rate for different modes of transportation services, more or less at the present rates [lower than the general standard rate of 18% for services] because the inputs for transportation sector such as fuel, etc. were not in GST; (c) Withdrawal of exemptions in certain cases where such exemptions had been extended because of lack of jurisdiction; (d)*



*Withdrawal of exemption in certain cases, like Works Contract (a composite supply of service). The Committee had recommended withdrawal of present service tax exemptions, keeping in view the fact that sale of goods in these contracts would now attract GST and it might not be possible to segregate the value of services from the total value; (e) For ensuring similar GST rates, when similar supplies could be treated as supply of services or goods (depending on facts of the case) so as to remove tax arbitrage [For example, transfer of right to use goods is a service under GST law (Schedule II: Entry 5 (f)) whereas the sale of similar goods is supply of goods]. He further stated that keeping these principles in mind, the Committee had recommended the goods and services that would fall into different rates, namely, Nil, 5%, 12%, 18%, 28%, as also the Compensation Cess rates and the IGST exemptions.”*

*(emphasis supplied)*

- (xi) On the service charges levied by the Applicant from the customer towards the transportation charges is in anyway have suffered tax in the hands of the Applicant itself when it has discharged service tax on the freight payment made by it to the transporters who have issued consignment notes. The Applicant has not claimed credit of input service tax on such services assuming that the subsequent charge of transportation charge by it from the customer will not be subject to further tax.
- (xii) Considering the above referred legal provisions, past judicial precedents on this topic, and the intention of the Government to continue with the same exemptions as existed prior to implementation of GST, the Applicant is of the view that the charges recovered by the Applicant in terms of the underlying contract with its customer, wherein no consignment note is issued by the Applicant should not be subject to levy of GST under the Central and respective State GST legislation.

**3.1 Additional submission of the Applicant dt .11.12.2018.**

**A. Advance Rulings of other applicants/States are not binding.**

During the hearing held on 12th September, 2018, Department Representative (DR), Shri N. G. Deshmukh made his submissions which were based on another decision of West Bengal AAR in the matter of M/s EMC Ltd and M/S IAC Electricals Private Limited. Basis the said decisions, learned DR tried to classify the activity carried out by the applicant of supply of goods and certain services as works contract services.

- we would like to submit that first and foremost, under Section 103 of the Central Goods and Services tax Act, 2017 (CGST Act), any advance ruling is binding only on the applicant who has sought it and on the concerned officer in respect of the applicant. Accordingly, AARs ruling as cited above cannot be relied upon in the present case of the applicant.
- It is a matter of fact, that there are divergent AARs on similar subjects/ issues by different State AAR Authorities. There is an AAR from Karnataka AAR in which EPC contract for construction of a solar power plant was decided to be two independent contracts and decided accordingly - attached as 'Annexure I'.
- However, as stated above, in terms of Section 103 of the CGST Act, all these AARs are binding only on the applicant and jurisdictional officer. Hence, it is requested that the present application

is considered and decided without being influenced by any other prior AAR

- Even for the sake of argument, since the learned DR cited other AAR rulings in his submissions, we would like to highlight that the said ruling is not applicable in the applicant's case and that we do not agree with the said submissions made by the learned DR as reasoned below.

i) In the case M/s. EMC (attached as 'Annexure 2'), the applicant are delivering complete solution to the customer i.e. they have been awarded the contract for setting up a substation collectively called as tower package which includes supply of goods, erection of towers, testing and commissioning of transmission lines. Further, on the basis of the activities carried out by M/s. EMC, the authority had held that M/s. EMC has provided works contract services for construction of Tower Package.

ii) In the case of the applicant, as per contract no.3, the applicant is required to supply on ex works basis, *inter-alia*, equipment and materials including mandatory spares from within India type testing, required for the complete execution of the  $\pm 320$ KV, 2\*1000MW VSC based HVDC Terminals and as per contract no. 5, they are supposed to provide following services:

- Local transportation, insurance and other incidental service
- Installation charges
- Training charges

As can be seen from the above, the applicant is not providing complete solution to the customer and is only executing a part of the solution. Further, the applicant is not required to carry out any erection or commissioning of goods and with the provision of services stipulated in the service contract it would not result into an immovable property.

(iii) It is pertinent to mention that the Advance Ruling of M/s. IAC Electricals Pvt. Ltd. (attached as 'Annexure 3'), the supply made by the applicant has not been held to be an immovable property. The Authority held it to be composite supply and refrained from categorizing it as a works contract.

**B. Contract under consideration is not a works contract as it does not result in an immovable property**

- It is submitted that works contract is defined as a composite supply and includes a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.
- In the case of the applicant, the intent of the contract no.3 and 5 being executed by the applicant is not in the nature of erection, commissioning or fitting out, etc. Instead, contract no. 3 is to supply specific goods as referred in para 4(ii) and contract no.5 is purely for services which are not naturally bundled and hence cannot be treated as a composite supply resulting into works contract services.
- The applicant submits that the goods and services supplied by the applicant do not result in any immovable property which is a pre-condition to qualify the contract as a works contract under the CGST Act.

- It has been held in various pronouncements by the courts that in cases where an object is installed/fastened to the land for better running of the said object, and not for the benefit of land, such object will not be considered as immovable property. Further, it has been held that if fixing of a plant to a foundation is only meant to give stability to the goods and where there is no intention to make such goods permanent, the foundation would not change the nature of the goods and make it an immovable property.
- The applicant would also like to rely upon the following judgments in furtherance of their arguments.

(i) In a Landmark judgment the Hon'ble Apex Court in *Sirpur Paper Mills Ltd.* [(1998) 1 SCC 400; (1998) 97 ELT 3], attached as 'Annexure 4', it has been held that the whole purpose behind attaching the machine to a concrete base was to prevent wobbling of the machine and was to secure maximum operational efficiency and also safety. In view of these findings, it was held that the machinery assembled and erected by the appellant at its factory site was not an immoveable property as something attached to the earth like a building or a tree.

Similar view is also taken in the following judicial pronouncements:

- Commissioner of Central Excise v. Solid and Correct Engg. Works and Ors.** (2010 (175) ECR 8 (SC), attached as 'Annexure 5',
- Sri Velayuthaswamy Spinning Mills's v. The Inspector General of Registration and the Sub Registrar** (2013 (2) CTC 551), attached as 'Annexure 6',
- Perumal Naicker v. T. Ramaswami Kone and Anr** (AIR 1969 Mad 346), attached as Annexure 7.

In view of the aforesaid judgments, the applicant submits that in the instant case, specific goods supplied by the applicant are installed only for the purpose of better functioning of the said goods and are capable of being removed and transferred from one place to another. Hence, the fact that the said goods is firmly but not permanently attached to the land means that the same is not an immovable property.

- The applicant is also making reference to Circular issued by Central Board of Customs and Excise ("CBEC"), vide 37B Order No. 58/1/2002-CX issued under F. No. 154/26/99-CX4 dated 15 January, 2002 ('the Circular'), attached as 'Annexure 8' wherein after realizing the anomaly in case of plant and machinery assembled at site, issued the Circular clarifying the following:

*"(i) if items assembled or erected at site and attached by foundation to earth cannot be dismantled without substantial damage to its components and thus cannot be reassembled, then the items would not be considered as moveable and will, therefore, not be excisable goods.*

*.....*  
*(vi) if any goods installed at site (example paper making machine) are capable of being sold or shifted as such after removal from the base and without dismantling into its components/parts, the goods would be considered to be movable and thus excisable. The mere fact that the goods, though being capable of being sold or shifted without dismantling, are actually dismantled into their components/parts for ease of transportation etc., they will not cease to be dutiable merely because they are transported in dismantled condition...."*



- Relying on the aforesaid circular the applicant contends that as the underlying goods, once installed, are capable of being removed and transferred from one place to another without substantial damage, the same should undoubtedly qualify as movable property.
- C. **The applicant has separate contracts for supply of goods and services; cross fall breach clause in the two contracts does not alter the nature of contracts to composite supply**
- The applicant is of the firm view that each of the activities to be carried on by the applicant under the aforementioned two contracts are independent and distinct supply of goods and services which cannot be regarded as one single contract. Merely because the activities take place as a continuous chain of events does not alter fact that each of these activities were separate activities.
- In case of **Commissioner of C. Ex., Versus Technical Associates reported at 2011 (24) STR 567** (Tri. - Del.), attached as 'Annexure 9' it was held that the service of transportation of faulty transformers and the service of repair of such faulty transformer are distinct services. It appears that the present case is directly covered by this decision. It is submitted that the facts in the present case are far better than that involved in the above referred case.
- Reliance is also placed on the decision of the Supreme Court in the **Income Tax Officer and Others v. Shriram Bearings Ltd. - (1997) 10 SCC 332**, attached as 'Annexure 10' where in the Supreme Court held as under:

*"We are not prepared to agree that the High Court has not correctly understood the purport of the agreement between the respondent and M/s Nippon Seike Kabushiki Kaisha (NSK). The agreement is in two parts. It is true that the two parts are interdependent but yet the consideration for the sale of trade secrets and consideration of technical assistance is separately provided for and mentioned under separate sections. So far as the consideration for the technical assistance is concerned, its taxability is not in doubt. The only controversy is with respect to the taxability of 1, 65,000 US Dollars which is stipulated as the consideration for sale of trade secrets. The agreement specifically says that the said sale is affected in Japan. We are unable to see on what basis it can be said that any part of the said amount has been earned in India."*

- Further in the case of **Ishikawajima-Harima Heavy Indus. Ltd. Vs Dir. Of Income Tax, Mumbai 2007 (6) STR 3 (S.C.)**, attached as "Annexure 11", the assessee was to develop, design, engineer and procure equipment, materials and supplies, to erect and construct storage tanks and some other services for Petronet LNG in India. The contract, inter alia, involved onshore services as also offshore services. Separate prices were mentioned in the contract. One of the contentions of the Income Tax department was that the entire contract is one composite contract and therefore, income tax is payable even on offshore services. The Supreme Court in this case held as under:

*"63. This case is clearly distinguishable from the facts of the present case, since the payment for the offshore and onshore supply of goods and services were in itself clearly demarcated and cannot be held to be a complete contract that has to be read as a whole and not in parts.*

*89. We would in the aforementioned context consider the question of division of taxable income of offshore services. Parties were ad idem that there existed a distinction between onshore supply and offshore supply. The intention of the parties, thus, must be judged from different types of services, different types of prices, as also different currencies in which the prices are to be paid"*

- Moreover, the Hon'ble High Court of Kerala has in a matter concerned with an identical issue in



the case of applicant themselves (**Siemens India Limited vs. State of Kerala 2003-(132)-STC 0418**, attached as 'Annexure 12' held that *when two separate contracts have been entered into by either parties identifying two separate works viz. supply and service then it is wrong in holding the same as indivisible contract*

A Brief summary of the case and relevant extracts of the judgment rendered by the Hon'ble High Court of Kerala is outlined herein below:

In the instant case, the Hon'ble Court had found that

*"Siemens India Ltd. was receiving work orders from the Cominco Binani Zinc Limited (CBZL) for the supply and erection of electrical equipments. The work orders were split into two, one for design, engineering, manufacturing, testing and supply of equipments and materials and the other for erection and commissioning of the equipments. The first order is characterized as "supply order" and the second one as "service order". However, the assessing authority proceeded as if the contracts entered into by the assessee with CBZL are indivisible contract for the purpose of charging the levy of VAT under the KGST Act.*

*Before the Hon'ble High Court the Appellants had contended that "the authority was wrong in holding that the contract is an indivisible contract. As a matter of fact, the work order will show that there are two separate works; supply order and service order."*

*After hearing the parties, and after going through the records, the Hon'ble Court had held that "we are of the opinion that the matter has to be considered again by the assessing authority. The assessing authority takes the view that in this case, there is indivisible contract. So far as this case is concerned, according to us, it is not indivisible. It contains two parts: supply order and service order. According to us, the Tribunal was not correct in holdi there was only one contract. The work order will show that it contains two parts; supply order and service order. Price is also shown separately. The right of the buyer to inspect the goods before they are transported is also preserved. So also, the goods are insured. When the goods were transmitted, the assessee transferred the title to the property to cominco Binani Zinc Limited."*

It is submitted that the ratio of the above decisions is squarely applicable in the facts of the present case, since even in the present case it was the intention of the parties to regard each of the activities as distinct and separate.

- A similar question had arisen in the case of transportation of coal/other mined products within the mine or for transportation outside the mine. Transportation of goods by road is liable to service tax under the category of 'Goods Transport Agency Service' w.e.f. 1st Jan, 2005. The mining activity per se became liable to service tax w.e.f. 1st June, 2007. CBEC clarified in Circular dated 12th Nov, 2007 that the transportation of mined product is post-mining activity and is chargeable to service tax under the relevant taxable services, i.e., "Goods Transport by Road". The relevant portion of the circular was reproduced below:

"Mining Service – Applicability of Service tax on activities undertaken in mining sector before 1-6-2007

C.B.E. and C. Letter F. No. 232/2/2006-CX. 4, dated 12-11-2007, attached as 'Annexure 13'.

*Subject: Applicability of Service tax on activities undertaken at mines prior to enactment of the Finance Bill, 2007 - Regarding*

**Handling and transportation of coal/mineral from pithead to a specified location within the mine/factory or for transportation outside the mine:**

These activities are post-mining activities and are chargeable to service tax under the relevant taxable services, i.e., "Cargo Handling service" and "Goods Transport by Road". However, in case, such transportation is undertaken by mechanical systems, such as conveyor belt system, ropeway system, merry-go-round systems etc., and the same is not transported by road, no service tax would be chargeable. Service tax is, however, chargeable under cargo handling service, even if the loading, unloading and similar activities are done using mechanical systems."

- In other words, though the activity of mining was not attracting service tax liability prior to 1st June, 2007, service tax was collected on transportation of mined products under the category of 'Goods Transport Agency Service' w.e.f. 1st Jan, 2005 on the ground that it is a separate and distinct activity.
- From the above, it can be adduced that each contract is to be treated as a distinct contract. Since, in the instant case the supply of goods is on "ex-works" basis under the "on-shore supply contract" and that through a separate "Service Contract" the applicant is entrusted with the responsibility of delivery of the goods at Customer's site. The contracts should be treated as two separate contracts and since the applicant does not issue any consignment note, no GST is payable in terms of Serial no. 18 of Notification no. 12/2017 - Central Tax dated 28 June, 2017 and Serial no. 18 in Notification no. 12/2017 - State Tax (Rate) dated 29 June, 2017.

Hence, the applicant is of the view that the charges recovered by them in terms of the underlying contract with its customer, wherein no consignment note is issued by the applicant, should not be subject to levy of GST under the Central and respective State GST legislation.

Further the applicant would also like to highlight that the onshore service contract was revised on 14/03.2018 (copy Attached as 'Annexure – 14'). It could be seen that the contract is predominantly for transportation/ freight charges only and other charges (insurance and other charges) are incidental to transportation/ freight charges. Circular - F. No. 354 / 98/20015-TRU issued by CBEC in this regard is attached herewith as 'Annexure - 15'.

**D. GST Council had decided to continue the same rate of GST on services as were applicable in pre GST regime**

- In para 8 and 9 of our application, we have quoted a few judicial precedents from the pre-GST regime, wherein the various Tribunals have upheld that issuance of a 'consignment note' is a mandatory condition to qualify a person as 'Goods Transport Agent'.
- In para 10 of our application, we have also quoted the extract of the minutes of the 14th GST Council meeting wherein the Council has decided to continue with similar rates of GST on services which existed prior to introduction of GST. The applicant states that the decision of the GST Council is binding on the authorities.
- We request your good self to take the above submissions on records and in case any further information or clarification is required, we will be duty bound to submit the same.



## CONTENTION – AS PER THE CONCERNED OFFICER

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

### STATEMENT CONTAINING THE APPLICANT'S UNDERSTANDING OF RATE OF TAX/EXIGIBILITY IN RESPECT OF THE AFORESAID CLARIFICATION(S) / TRANSACTION(S)

The submission of applicant is that, in terms of Serial no. 18 of Notification no. 12/2017 – Central Tax Rate F. No. 334/1/2017, dated 28 June 2017, an exemption from Central GST has been provided for services by way of transportation of goods except services of- by road except the services of-

- i. a goods transportation agency;
- ii a courier agency;

The term GTA has been defined under the aforesaid notifications by way of an explanation as:

*“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.”*

Since the applicant has not issued any consignment notes to the service recipient he is not a GTA hence he is covered by the scope of said notification. According to the applicant the person can be categorized as a GTA only when he issues consignment note. For this he has placed reliance upon following decisions on the applicability of service tax on services rendered by a GTA:-

1. M/s Om Telecom Logistics vs. CCE, Delhi (2018-TIOL-1430), Delhi – CESTAT
2. CCE Guntur vs. Kanaka Durga Agro Oil Products Pvt. Ltd. (2009) 15 STR 399 – Bangalore CESTAT
3. South Eastern Coal Fields Ltd. vs. CCE, Raipur (2016-TIOL- 2773) – Delhi CESTAT
4. Birla Ready Mix vs. CCE, Noida (2012-TIOL-2200) – Delhi CESTAT
5. Northern Coal Fields vs CCE, Allahabad (2015-TIOL-2459) – Allahabad CESTAT
6. Nandganj Sihori Sugar Co. Ltd. vs. CCE (MANU/CE/0194/2014) – Delhi CESTAT

It is further submitted that the applicant has already discharged service tax on the freight payments made by it to the transporters who have issued consignment notes to the applicant and transported the goods to customer. The Applicant has not claimed credit of input service tax on such services assuming that the subsequent charge of transportation charges by it from the customer will not be subject to further tax.

In short since no consignment note is issued by the applicant to its customer the applicant should not be subject to levy of GST under the Central and respective State GST legislation being covered by the scope of notification as mentioned above .

### REPLY TO APPLICANT'S SUBMISSION—

The applicant as an associate of the Joint Venture of M/S SIEMENS AG, GERMANY(lead partner) and M/S SUMITOMO INDUSTRIES LIMITED , JAPAN ( other partner)has been awarded, “Notification of Award” (NOA) vide reference no.CC-CS/698-SR2/HVDC-3249/7/G10/R/NOA-V/7217 dated 22-03-2017 for VSC (voltage source converters) based HVDC Terminals between Pugalur and North Trichur. This involves supply of equipment and services both on off-shore as well as on-shore basis.

For certain reasons the JV has proposed the division of scope into six contracts as given below:

1. off shore supply contract (VSC part)
2. off shore supply contract (cable system part)
3. on shore supply contract (VSC part)
4. on shore supply contract (cable system part)
5. on shore services contract (VSC part)
6. on shore services contract (cable system part)

The applicant is concerned with contract number 3 with respect to on shore supply contract (VSC part) and contract number 5 with respect to on shore services contract (VSC part)

The above mentioned division is as proposed by JV executing the entire contract. In the para 2.2 of the contract it is mentioned that, "Notwithstanding the award of work under six separate contracts, the JV shall be overall responsible to ensure the execution of all the six contracts to achieve successful completion and taking over of the works covered under the package and operational acceptance by the employer as per the requirements stipulated in the bidding documents. It is expressly understood and agreed by the JV that any default or breach by the JV partners under the first contract and or second contract and or the fourth contract and or the sixth contract and or beach by the associate of JV Siemens-I under the fifth contract shall automatically be deemed as a default or breach of this third contract also and vice versa, and any such default or breach or occurrence giving us a right to terminate the first contract and or second contract and or the fourth contract and or the fifth contract and or the sixth contract, either in full or part and or recover damages under those contracts , shall give us an absolute right to terminate this Contract at your risk, cost and responsibility, either in full or in part and/or recover damages under this 'Third Contract' as well. However, such default or breach or occurrence in the 'First Contract' and/or 'Second Contract' and/or 'Fourth Contract' and/or 'Fifth Contract' and/or the 'Sixth Contract', shall not automatically relieve you any of your obligations under this 'Third Contract'. It is also expressly understood and agreed by you that the equipment/materials supplied by you under this 'Third Contract', by SIEMENS AG on behalf of JV under the 'First Contract', by SUMITOMO on behalf of JV under the 'Second Contract' and 'Fourth Contract', as per identified scope of works in respective Contracts, when erected, installed *and* commissioned by you under the 'Fifth Contract'/ by SUMITOMO under the 'Sixth Contract' shall give satisfactory performance in accordance with the provisions of the Contract(s).

In clause 3.2 it is mentioned that, "Notwithstanding the break-up of contract price, the contract shall at all times be construed as a **single source responsibility contract** and **any breach in any part of the contract shall be treated as breach of the entire contract.**

Thus it is seen that,

- i. The contract awarded in substance and essence is a composite contract as defined in section 2(30) of the C.G.S.T. Act, 2017 for supply of goods and services.
- ii. The third contract cannot be executed by the applicant independent of fifth contract that is the goods cannot be supplied and used in the contract unless they are transported and delivered to the site, in other words, the third contract has no legs unless tied with fifth contract.

- iii. The contractee is aware of the interdependence of the two contracts as it is a single source responsibility contract.
- iv. The contracts are covered by the cross fall breach clause that is breach of one will be deemed as breach of other.

The decisions relied upon by the applicant in support of his claim are not applicable to the facts of the case considering the fact that the nature of contract is composite.

Further the question that the services rendered are not liable to GST on the ground that applicant is not a Good Transport Agency and no consignment note has been issued by the applicant has already been decided by the West Bengal authority for Advance Ruling on 12/02/2018 in case of M/S EMC Limited. In this case the applicant was stated to be a supplier of materials and allied services for erection of towers, testing and commissioning of transmission lines and setting up sub-stations collectively called the tower package. The applicant entered into two contracts one for supply of materials at ex-factory price and the other for supply of allied services like survey and erection of towers, testing and commissioning of transmission lines which included inland or local transportation, in transit insurance, loading unloading for delivery of material and storage at contractees site. The applicant transported the goods to the contractee by hiring the services of a transport agency and raised separate freight bills on the contractee as per the second contract. The West Bengal authority for Advance Ruling after considering the argument's and terms of the contract held that the applicant is a supplier of 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 @ 18% on the entire value of the composite supply, including supply of materials freight and transportation, erection, commissioning etc.

In another case decided by the West Bengal authority for Advance Ruling on 27/02/2018 in case of M/S IAC Electricals private limited. It is held that services of transportation, in transit insurance and loading / unloading being ancillary to the principal supply of goods the same shall be treated to taxation under section 8(a) of the GST act and the consideration receivable on that account be taxed accordingly.

Incidentally in the both the cases cited above the awarder of the contract is M/S Power Grid Corporation of India and the contracts have been divided as proposed by the applicants into one for supply of goods and the other is for supply of services but the contracts in essence are composite.

Though the application is maintainable as stated by the applicant since the question is not decided in any proceeding in the case of applicant under any provisions of the GST Act but the same is no longer res-Integra in view of decisions of West Bengal authority for Advance Ruling cited earlier. Hence the question should be decided against the applicant that is applicant should not be held to be eligible for exemption from CGST as prescribed in Serial no. 18 of Notification no. 12/2017 – Central Tax Rate F. No. 334/1/2017, dated 28 June 2017 and also for exemption from SGST as prescribed in Serial no. 18 in Notification no. 12/2017 – State Tax (Rate) no. MGST 1017/C.R.103 (11)/Taxation-1 dated 29 June 2017 and should be held liable to tax as a works contract service

#### **04. HEARING**

The case was taken up for Preliminary hearing on dt. 12.09.2018 when Sh. Vikas Garg, Director Indirect Tax, Sh. Mahesh Parmerkar, Chief Indirect Tax along with Ms. Kajal Bhadra, Senior Executive appeared and requested for admission of application as per contentions in their ARA. Jurisdictional Officer, Sh. N. G. Deshmukh, Dy. Commr. of S.T.(RAI-VAT-E-004) C.B.D., Belapur appeared and made written submissions.

The application was admitted and called for final hearing on 07.08.2018, Sh. Vikas Garg, Director Indirect Tax, along with Ms. Kanchan appeared and argued case on merit. Jurisdictional Officer, Sh. N. G. Deshmukh, Dy. Commr. of S.T.(RAI-VAT-E-004) C.B.D. Belapur appeared and stated that they have already made written submissions. We heard from both the sides on this matter.

#### **05. OBSERVATIONS---**

We have gone through the facts of the case, oral and written submissions made by the applicant as well as the jurisdictional officer and the applicable provisions of the GST laws in this regard.

The applicant is a registered person under GST LAW and is a leading manufacturer and distributor of a wide range of power and control cables in India. In the present application the applicant has stated 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. One of the major Public Sector Undertaking in the state of Haryana (In short ' the consumer') has placed an order on the Joint Venture (JV) of M/s. Siemens AG, Germany (Lead Partner) and M/s. Sumitomo Electric Industries Ltd, Japan (other Partner) through their ' Notification of Award (NOA) for VSC based HVDC Terminal between Pugalur and North Trichur. Basis the above applicant is of opinion that an exemption from payment of GST has been provided for services by way of transportation of goods by road other than services of GTA and a courtier agency in terms of the said notification. Applicant in support of his exemption claim has strongly relied on the fact that he has not issued consignment notes to the service recipient and thus not a GTA as defined in the said notification. Before we discuss the questions raised in this application, we feel it necessary first to decide whether there exist six different contracts undertaken by the applicant or one entire contract. However, with respect to the activity, we find two different views. The applicant is of the view that the charges recovered by it in terms of the contract from its customer constitute a separate 'services contract' executed through local transporter on payment of GST, whereas the local transportation charges recovered from the customer as per terms of the contract without the consignment note issued by the applicant exempt from levy of GST.

Per contra Jurisdictional Officer is of the view that impugned contract is a composite supply of services of works contract as defined u/s 2(119) of the GST Act, of which transportation / freight is merely a component and not a separate supply and thereby applicants supply is not covered by the exemption at Sr. No. 18 of Notification No. 12/2017 Central Tax (Rate), F No. 334/1/2017 dated 28th June, 2017.

In this view of the matter, the issue raised before us is related to the applicability of rate notification entry Sr. 18 of notf.12/2017 to the transaction carried out as per the contract made by the applicant. The issue is very limited. Before deciding the applicability of notification entry, it is necessary to examine the terms of contract made between the parties, its nature of transaction and intention of the

customer .We find that, there are two separate contracts provided by the applicant which represent the nature of transaction .The relevant portion of the contracts are reproduced here for the understanding of the transaction as under,

**(i) The Frist contract – for On-Shore Supply Contract-I--**

Sub.: Notification of Award for On-Shore Supply Contract-I for 320KV, 2 X 1000MW VSC based HVDC Terminals and DC XLPE Cable system between Pugalur and North Trichur associated with HVDC Bipole link between Western region (Raigarh, Chhattisgarh) and Southern region (Pugalur, Tamil Nadu-North Trichur, Kerala)

Specification No: CC-CS/698-SR2/HVDC-3249/7/G10/R International Competitive Bidding.

Clauses -

**2.0 AWARD OF CONTRACT AND ITS SCOPE –**

2.1 We confirm having accepted the Bid of the JV of SIEMENS AG and SUMITOMO (referred to at para 1.4, 1.7 and 1.9 above) read in conjunction with all the specifications, terms and conditions of the Bidding Documents including Record Notes of Clarification Meetings referred to at para 1.3, 1.5 and 1.6 above (hereinafter referred to as "Bidding Documents") and specific confirmations recorded in the Record Notes of Post Bid Discussions (referred to at para 1.10 above), and award on you, the '**On-Shore Supply Contract-I**' (also referred to as the '**Third Contract**') for the subject package, for supply of equipment and materials including mandatory spares except +320kV HVDC Cable (including some of its associated items) from within India and Type Testing (as applicable), required for the complete execution of +320KV, 2X1000MW VSC based HVDC Terminals and DC XLPE Cable system between Pugalur and North Trichur associated with HVDC Bipole link between Western region (Raigarh, Chhattisgarh) and Southern region (Pugalur, Tamil Nadu- North Trichur, Kerala), as detailed in the Bidding Documents referred to hereinabove. The scope of work under this Contract inter-alia includes the following:

Design, Ex-works supply of equipment and materials including mandatory spares from within India, Type Testing (as applicable), required for the complete execution of the 1320KV, 2X1000MW VSC based HVDC Terminals and DC XLPE Cable system between Pugalur and North Trichur associated with HVDC Bipole link between Western region (Raigarh, Chhattisgarh) and Southern region (Pugalur, Tamil Nadu-North Trichur, Kerala),

The scope of work under this Notification of Award (NOA) shall also include all such items which are not specifically mentioned in the Bidding Documents and/or the JV's bid but are necessary for the successful completion of the scope under the Contract for 1320KV, 2X1000MW VSC based HVDC Terminals and DC XLPE Cable system between Pugalur and North Trichur associated with HVDC Bipole link between Western region (Raigarh, Chhattisgarh) and Southern region (Pugalur, Tamil Nadu- North Trichur, Kerala), unless otherwise specifically excluded in the Bidding Documents or in this NOA.

2.2 As per para 1.4 above and as tied up in Clarification Meetings, we have also notified the following Notifications of Awards:

- (a) on the Lead Partner of JV i.e. SIEMENS AG on behalf of JV of SIEMENS AG and SUMITOMO vide our Notification of Award Ref. No. CC-CS/698 SR2/HVDC-3249/7/G10/R/NOA-17213 dated 22.03.2017 for award of 'Off-Shore Contract-I (also referred to as the **'First Contract'**) for the subject package, covering inter-alia, all works to be performed in countries outside India including CIF supply of all equipment and materials including mandatory spares except  $\pm 320$ kV HVDC Cable (including some of its associated items), to be supplied from abroad including corresponding type tests and training to be conducted abroad, required for the complete execution of the + 320KV, 2X1000MW VSC based HVDC Terminals and DC XLPE Cable system between Pugalur and North Trichur associated with HVDC Bipole link between Western region (Raigarh, Chhattisgarh) and Southern region (Pugalur, Tamil Nadu- North Trichur, Kerala), as set forth in the Bidding Documents.
- (b) on the Other Partner of the JV i.e. SUMITOMO on behalf of the JV of SIEMENS AG and SUMITOMO, vide our Notification of Award Ref. No. CC-CS/698-SR2/HVDC-3249/7/G10/R/NOA-11/7214 dated 22.03.2017 for award of '**Off-Shore Contract-II (also referred to as the 'Second Contract')**' for the subject package, for design, engineering, manufacture and CIF supply of  $\pm 320$ kV HVDC Cable and some of its associated items **including mandatory spares (if any), Type Testing and Training to be conducted outside India**, required for the complete execution of the +320KV, 2X1000MW VSC based HVDC Terminals and DC XLPE Cable system between Pugalur and North Trichur associated with HVDC Bipole link between Western region (Raigarh, Chhattisgarh) and Southern region (Pugalur, Tamil Nadu- North Trichur, Kerala), as set forth in the Bidding Documents;
- (c) on the Other Partner of the JV i.e. SUMITOMO on behalf of the JV of SIEMENS AG and SUMITOMO vide our Notification of Award Ref. No. CC-CS/698-SR2/HVDC-3249/7/G10/R/NOA-IV/7216 dated 22.03.2017 for award of '**On-Shore Supply Contract-II (also referred to as the 'Fourth Contract')**' for the subject package, for supply of some items including mandatory spares (if any) for  $\pm 320$ kV HVDC Cable system from within India and Type Testing (as applicable), required for the complete execution of +320KV, 2X1000MW VSC based HVDC Terminals and DC XLPE Cable system between Pugalur and North Trichur associated with HVDC Bipole link between Western region (Raigarh, Chhattisgarh) and Southern region (Pugalur, Tamil Nadu- North Trichur, Kerala), as set forth in the Bidding Documents. .
- (d) on you vide our Notification of Award Ref. No. CC-CS/698 SR2/HVDC-3249/7/G10/R/NOA-V/7217 dated 22.03.2017 for award of '**On-Shore Services Contract-I (also referred to as the 'Fifth Contract')**' for the subject package, for performance of all other activities inter-alia including port handling of the Plant and Equipment including mandatory Spares (except +320kV HVDC Cable and some of its associated items) to be supplied from abroad, loading, inland transportation and insurance for delivery at site, insurance, unloading, storage and handling at site, installation including civil works, testing and commissioning including Performance Testing in respect of all Plant and Equipment supplied under both '**First Contract**' and '**Third Contract** and any other services specified in the Bidding Documents;



(e) on the Other Partner of the JV i.e. SUMITOMO on behalf of the JV of SIEMENS AG and SUMITOMO vide our Notification of Award Ref. No. CC-CS/698-SR2/HVDC-3249/7/G10/R/NOA-VI/7218 dated 22.03.2017 for award of 'On-Shore Services Contract-II (also referred to as the **Sixth Contract**) for the subject package, for performance of all other activities inter-alia including port handling of the Plant and Equipment including mandatory Spares for  $\pm 320$ kV HVDC Cable and some of its associated items to be supplied from abroad, loading, inland transportation and insurance for delivery at site, insurance, unloading, storage and handling at site, **installation including civil works, testing and commissioning including Performance Testing in respect of all Plant and Equipment supplied under both 'Second Contract and 'Fourth Contract** and any other services specified in the Bidding Documents,

Notwithstanding the award of work under six separate Contracts in the aforesaid manner, **the JV shall be overall responsible to ensure the execution of all the six Contracts to achieve successful completion and Taking Over of the works covered under the package and Operational Acceptance by the Employer as per the requirements stipulated in the Bidding Documents.** It is expressly understood and agreed by the JV that any default or breach by the JV partners under the 'First Contract' and/or 'Second Contract and/or the 'Fourth Contract and/or the 'Sixth Contract and/or breach by the Associate of JV - SIEMENS-I under the 'Fifth Contract shall automatically be deemed as a default or breach of this 'Third Contract' also and vice-versa, and any such default or breach or occurrence giving us a right to terminate the 'First Contract and/or 'Second Contract and/ or 'Fourth Contract and/ or 'Fifth Contract and/or the 'Sixth Contract', either in full or in part, and/or recover damages under those contract(s), shall give us an absolute right to terminate this Contract at your risk, cost and responsibility, either in full or in part and/or recover damages under this 'Third Contract' as well. However, such default or breach or occurrence in the 'First Contract' and/or 'Second Contract' and/ or 'Fourth Contract and/or 'Fifth Contract and/or the 'Sixth Contract', shall not automatically relieve you any of your obligations under this 'Third Contract. It is also expressly understood and agreed by you that the equipment/materials supplied by you under this 'Third Contract, by SIEMENS AG on behalf of JV under the 'First Contract', by SUMITOMO on behalf of JV under the Second Contract and Fourth Contract identified scope of works in respective Contracts, **when erected, installed and commissioned by you under the 'Fifth Contract'/' by SUMITOMO under the Sixth Contract shall give satisfactory performance in accordance with the provisions of the Contract(s).**

### **3.0 CONTRACT PRICE –**

3.1. The total Contract Price for the entire scope of work under this Contract shall be EURO 82,463,172 + USD 235,584 + INR 8,345,326,393 (Euro Eighty Two Million Four Hundred Sixty Three Thousand One Hundred Seventy Two plus US Dollar Two Hundred Thirty Five Thousand Five Hundred Eighty Four plus Indian Rupees Eight Billion Three Hundred Forty Five Million Three Hundred Twenty Six Thousand Three Hundred Ninety Three only) as per the following break-up:

Sr.NO	Prise Component	Amount
1	Ex-works Price Component	EURO 82,463,172 +USD 235,584 +INR 8,345,326,393
2	Type Test Charges Total for Third Contract (1+2)	Included EURO 82,463,172 +USD 235,584 +INR 8,345,326,393

3.2 .Notwithstanding the break-up of the Contract Price, the Contract shall, at all times, be construed as a single source responsibility Contract and any breach in any part of the Contract shall be treated as a breach of the entire Contract.

5.0. For release of advance payment (admissible as per the Bidding Documents) equal to 10% of the Ex-works Price component of the Contract Price for Main Equipment (excluding spares), you are, inter-alia, required to furnish Bank Guarantee for the equivalent advance amount, as detailed at APPENDIX (NOA)-3. Further, please note that furnishing of all the Contract Performance Securities under the 'First Contract', 'Second Contract', 'Third Contract', 'Fourth Contract', 'Fifth Contract' and 'Sixth Contract' by the JV and Contract Performance Securities under "Third Contract" and 'Fifth Contract' by you (Associate of the JV i.e. SIEMENS-I) shall be one of the conditions precedent for release of advance under this Contract.

7.0 The schedule for Taking Over/Time for Completion of the Facilities by the Employer upon successful completion of the +320KV, 2X1000MW VSC based HVDC Terminals and DC XLPE Cable system between Pugalur and North Trichur associated with HVDC Bipole link between Western region (Raigarh, Chhattisgarh) and Southern region (Pugalur, Tamil Nadu- North Trichur, Kerala) and the Additional Time for Completion for all contractual purposes in line with the provisions of the Bidding Documents shall be as follows:

Sr.No	Completion (Taking Over) of:	Duration from the effective date of contract
Time for completion		
1.	+320KV, two 1000MW Voltage Source Converter (VSC) based HVDC transmission system between Pugalur (Tamil Nadu) and North Trichur (Kerala)	
	a. Monopole 1 and associated Cable system	38 months
	b. Monopole 2 and associated Cable system	38 months
<b>Additional Time for Completion#:</b> 30 weeks		

#Additional Time for Completion shall be subject to levy of Liquidated Damages (LD) as per provisions of Bidding Documents'

\*The Time for Completion (Taking Over) for the Replica along with Real Time Simulator and IPSRTS for real time studies included in the above Facilities will be 45 months.

8.0 This Notification of Award constitutes formation of the Contract and comes into force with effect from the date of issuance of this Notification of Award.

9.0 You shall enter into a Contract Agreement with us within twenty-eight (28) days from the date of this Notification of Award.

**ii) Second contract — for On-Shore Services Contract-I**

**Notification of Award for On-Shore Services Contract-I for + 320KV, 2 X 1000MW VSC based HVDC Terminals and DC XLPE Cable system between Pugalur and North Trichur associated with HVDC Bipole link between Western region (Raigarh, Chhattisgarh) and Southern region (Pugalur, Tamil Nadu-North Trichur, Kerala) Specification No: CC-CS/698-SR2/HVDC-3249/7/G10/R International Competitive Bidding .**

**Clauses--**

**2.0 AWARD OF CONTRACT AND ITS SCOPE. --**

We confirm having accepted the Bid of the JV of SIEMENS AG and SUMITOMO (referred to at para 1.4, 1.7 and 1.9 above) read in conjunct all the specifications, terms and conditions of the Bidding Documents including Record Notes of Clarification Meetings referred to at para 1.3, 1.5 and 1.6 above (hereinafter referred to as "Bidding Documents") and specific confirmations recorded in the Record Notes of Post Bid Discussions (referred to at para 1.10 above), and award on you, the 'On-Shore Services Contract-I' (also referred to as the 'Fifth Contract') for the subject package, for performance of all other activities inter-alia including port handling of the plant and Equipment including mandatory Spares (except +320kV HVDC Cable and some of its associated items) to be supplied from abroad, loading, inland transportation and insurance for delivery at site, insurance, unloading, storage and handling at site, installation including civil works, testing and commissioning including Performance Testing in respect of all Plant and Equipment supplied under both 'First Contract' and 'Third Contract' and any other services specified in the Bidding Documents referred to hereinabove.

The scope of work under this Notification of Award (NOA) shall also include all such items which are not specifically mentioned in the Bidding Documents and/ or the JV's bid but are necessary for the successful completion of the scope under the Contract for \$320KV, 2X1000MW VSC based HVDC Terminals and DC XLPE Cable system between Pugalur and North Trichur associated with HVDC Bipole link between Western region (Raigarh, Chhattisgarh) and Southern region (Pugalur, Tamil Nadu- North Trichur, Kerala), unless otherwise specifically excluded in the Bidding Documents or in this NOA.

2.2 .As per para 1.4 above and as tied up in Clarification Meetings, we have also notified the following Notifications of Awards: ■

- (a) on the Lead Partner of JV i.e. SIEMENS AG on behalf of JV of SIEMENS AG and SUMITOMO vide our Notification of Award Ref. No. CC-CS/698 SR2/HVDC-3249/7/G10/R/NOA-1/7213 dated 22.03.2017 for award of 'Off-Shore Contract-I' (also referred to as the 'First Contract') for the subject package, covering inter-alia, all works to be performed in countries outside India including CIF supply of all equipment and trials including mandatory spares except +320kV HVDC Cable(including some of its associated items), to be supplied from abroad including corresponding type tests and training to be conducted abroad, required for the complete execution of the + 320KV, 2X1000MW VSC based

HVDC Terminals and DC XLPE Cable system between Pugalur and North Trichur associated with HVDC Bipole link between Western region (Raigarh, Chhattisgarh) and Southern region (Pugalur, Tamil Nadu- North Trichur, Kerala), as set forth in the Bidding Documents.

- (b) on the Other Partner of the JV i.e. SUMITOMO on behalf of the JV of SIEMENS AG and SUMITOMO, vide our Notification of Award Ref. No. **CC-CS/698-SR/HVDC-3249/7/G10/R/NOA-11/7214** dated 22.03.2017 for award of 'Off-Shore Contract-II (also referred to as the 'Second Contract') for the subject package, for design, engineering, manufacture and CIF supply of  $\pm 320$ kV HVDC Cable and some of its associated items including mandatory spares (if any), Type Testing and Training to be conducted outside India, required for the complete execution of the +320KV, 2X1000MW VSC based HVDC Terminals and DC XLPE Cable system between Pugalur and North Trichur associated with HVDC Bipole link between Western region (Raigarh, Chhattisgarh) and Southern region (Pugalur, Tamil Nadu- North Trichur, Kerala), as set forth in the Bidding Documents;
- (c) On the Associate of the JV i.e. M/s. Siemens Limited, India (SIEMENS-I), vide our Notification of Award Ref. No. **CC-CS/698-SR2HVDC 3249/7/G10/R/NOA-IV/7215** dated 22.03.2017 for award of 'On-Shore Supply Contract-r (also referred to as the 'Third Contract') for the subject package, for supply of equipment and materials including mandatory spares except  $\pm 320$ kV HVDC Cable (including some of its associated items) from within India and Type Testing (as applicable), required for the complete execution of +320KV, 2X1000MW VSC based HVDC Terminals and DC XLPE Cable system between Pugalur and North Trichur associated with HVDC Bipole link between Western region (Raigarh, Chhattisgarh) and Southern region (Pugalur, Tamil Nadu-North Trichur, Kerala), as set forth in the Bidding Documents;
- (d) On the Other Partner of the JV i.e. SUMITOMO on behalf of the JV of SIEMENS AG and SUMITOMO vide our Notification of Award Ref. No. **CC-CS/698-SR2/HVDC-3249/7/G10/R/NOA-IV/7216** dated 22.03.2017 for award of 'On-Shore Supply Contract-II' (also referred to as the 'Fourth Contract') for the subject package, for supply of some items including mandatory spares (if any) for +320kV HVDC Cable system from within India and Type Testing (as applicable), required for the complete execution of +320KV, 2X1000MW VSC based HVDC Terminals and DC XLPE Cable system between Pugalur and North Trichur associated with HVDC Bipole link between Western region (Raigarh, Chhattisgarh) and Southern region (Pugalur, Tamil Nadu- North Trichur, Kerala), as set forth in the Bidding Documents.
- (e) On the Other Partner of the JV i.e. SUMITOMO on behalf of the JV of SIEMENS AG and SUMITOMO vide our Notification of Award Ref. No. **CC-CS/698-SR2/HVDC-3249/7/G10/R/NOA-VI/7218** dated 22.03.2017 for award of 'On-Shore Services Contract-II' (also referred to as the 'Sixth Contract') for the subject package, for performance of all other activities inter-alia including port handling of the plant and Equipment including mandatory Spares for  $\pm 320$ kV HVDC Cable and some of its associated items to be supplied from abroad, loading, inland transportation and insurance for delivery at site, insurance, unloading, storage and handling at site, installation including civil works, testing and commissioning including Performance Testing in respect of all Plant and Equipment

supplied under both 'Second Contract' and 'Fourth Contract and any other services specified in the Bidding Documents.

Notwithstanding the award of work under six separate Contracts in the aforesaid manner, the JV shall be overall responsible to ensure the execution of all the six Contracts to achieve successful completion and Taking Over of the works covered under the package and Operational Acceptance by the Employer as per the requirements stipulated in the Bidding Documents. It is expressly understood and agreed by the JV that any default or breach by the JV partners under the 'First Contract' and/or 'Second Contract and/ or the 'Fourth Contract' and/ or the 'Sixth Contract and/or breach by the Associate of JV-SIEMENS-I under the 'Third Contract shall automatically be deemed as a default or breach of this 'Fifth Contract also and vice-versa, and any such default or breach or occurrence giving us a right to terminate the 'First Contract' and/ or 'Second Contract and/or 'Third Contract and/or 'Fourth Contract and/or the 'Sixth Contract', either in full or in part, and/or recover damages under those contract(s), shall give us an absolute right to terminate this Contract at your risk, cost and responsibility, either in full or in part and/or recover damages under this Fifth Contract as well. However, such default or breach or occurrence in the 'First Contract' and/ or 'Second Contract and/or 'Third Contract and/or 'Fourth Contract' and/ or 'Sixth Contracts, shall not automatically relieve you any of your obligations under this 'Fifth Contract. It is also expressly understood and agreed by you that the equipment/materials supplied by you under the 'Third Contract, by SIEMENS AG on behalf of JV under the 'First Contract, by SUMITOMO on behalf of JV under the 'Second Contract and Fourth Contract', as per identified scope of works in respective Contracts, when erected, installed and commissioned by you under this 'Fifth Contract/ by SUMITOMO under the 'Sixth Contract shall give satisfactory performance in accordance with the provisions of the Contract(s)..

### 3.0 CONTRACT PRICE –

- 3.1 The total Contract Price for the entire scope of work under this Contract shall be INR 2,797,437,352 (Indian Rupees Two Billion Seven Hundred Ninety Seven Million Four Hundred Thirty Seven Thousand Three Hundred Fifty Two only) as per the following break-up:

Sr. No.	Price Component	Amount
i	Local Transportation, Insurance and other Incidental Services (VSC Portion)	INR 623,073,872
ii	Installation Charges (VSC Portion)	INR 2,174,363,480
iii	Training Charges	Included
	Total for Fifth Contract (i+ii+iii)	INR 2,797,437,352

- 3.2 Notwithstanding the break-up of the Contract Price, the Contract shall, at all times, be construed as a single source responsibility Contract and any breach in any part of the Contract shall be treated as a breach of the entire contract.

- 4.0 You are required to furnish, at the earliest, the Performance Securities for an amount equal to 10% (Ten percent) of the Contract Price as detailed at APPENDIX (NOA)-2, in line with provisions of the Bidding Documents.

- 5.0 All the bank guarantees shall be furnished from eligible bank(s) as described in the Bidding Documents.
- 6.0 The schedule for Taking Over/Time for Completion of the Facilities by the Employer upon successful completion of the +320KV, 2X1000MW VSC based HVDC Terminals and DC XLPE Cable system between Pugalur and North Trichur associated with HVDC Bipole link between Western region (Raigarh, Chhattisgarh) and Southern region (Pugalur, Tamil Nadu- North Trichur, Kerala) and the Additional Time for Completion for all contractual purposes in line with the provisions of the Bidding Documents shall be as follows:

Sr.NO	Completion (Taking Over) of:	Duration from the effective date of contract
Time for completion		
I.	+320KV, two 1000MW Voltage Source Converter (VSC) based HVDC transmission system between Pugalur (Tamil Nadu) and North Trichur (Kerala)	
	a. Monopole 1 and associated Cable system	38 months
	b. Monopole 2 and associated Cable system	38 months
<b>Additional Time for Completion#:</b> 30 weeks		

#Additional Time for Completion shall be subject to levy of Liquidated Damages (LD) as per provisions of Bidding Documents.

\*The Time for Completion (Taking Over) for the Replica along with Real Time Simulator and IPSRTS for real time studies included in the above Facilities will be 45 months.

- 7.0 This Notification of Award constitutes formation of the Contract and comes into force with effect from the date of issuance of this Notification of Award.
- 8.0 You shall enter into a Contract Agreement with us within twenty-eight (28) days from the date of this Notification of Award.

For and on behalf of Power Grid Corporation of India Ltd.,

From the above terms of the contract, we find as under,

- The subject NOA is awarded to the JV of SIEMENS AG and SUMITOMO. The applicant is lead partner of this contract.
- The contracts are for supply of goods and services or both.
- There are total six types of contracts which covers the Scope of supply of goods and service on shore and off shore basis to complete the project.
- All the contracts are interdependent.
- The scope of work is a package, for performance of all other activities inter-alia including port handling of the plant and Equipment including mandatory Spares (except +320kV HVDC Cable and some of its associated items) to be supplied from abroad, loading, inland transportation and insurance for delivery at site, insurance, unloading, storage and handling at site, installation

including civil works, testing and commissioning including Performance Testing in respect of all Plant and Equipment supplied .

6. The contract is awarded for total Contract Price for the entire scope of work under this Contract. It means, it is awarded for single price which covers all activities as required for completion of the project.
7. Notwithstanding the award of work under six separate Contracts in the aforesaid manner, the JV shall be overall responsible to ensure the execution of all the six Contracts to achieve successful completion and Taking Over of the works covered under the package and Operational Acceptance by the Employer as per the requirements stipulated in the Bidding Documents.
8. we find that there is no a break-up of the Contract Price, the Contract shall, at all times, be construed as a single source responsibility Contract and any breach in any part of the Contract shall be treated as a breach of the entire Contract.
9. The work of Taking Over/Time for Completion of the project and handing over to the Employer upon successful completion is to be completed within 38 months.
10. Applicant is one the contract party in this JV to complete the work in stipulated time who is supply of goods and services to complete the project undertaken. He is also equally responsible to this contract to achieve the target within time, otherwise it is breach of contract.

Considering above facts and the essence of the contract we find that that the First Contract includes on shore ex works supply of all equipment's and materials. The scope of the works includes testing and supply of Cable Package required for Successful commissioning of VSC based HVDC Terminal and DC XLPE cable system. The second contract includes on shore services i.e. all other activities like transportation , insurance and all incidental services , installation , training required to be performed for complete execution of the VSC based HVDC Terminal and DC XLPE 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) and (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 breakup 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 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, for 320 KV , 2 X 1000MW VSC based HVDC Terminals and DC XLPE Cable system.

For the proposition of law as above , we find support from the judgment of Hon. Supreme Court in case of M/s. Indure Ltd. and Anr vs Commercial Tax Officer and 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 we have no doubt to rule that both the contracts having cross fall breach provisions are in the nature of 'Composite supply of Works Contract' which is a service and would be taxable @ 18% in terms of Notification No. 11/2017 – Central tax (Rate) dated 28.06.2017. This is our consistent view as evidenced from the ruling Order No. GST-ARA-36/2017-18/B-43 dated 04.06.2018 in case of Shri Dinesh Kumar Agarwal and the reasoning and decision as arrived in that case is as below.

*From the conjoined and harmonious reading of various clauses of first contract and second contract, it can be safely concluded that the agreement for setting up for + 320KV, 2 X 1000MW VSC based HVDC Terminals and DC XLPE Cable system between Pugalar and North Trichur associated with HVDC Bipole link between Western region (Raigarh, Chhattisgarh) and Southern region (Pugalar, Tamil Nadu-North Trichur, Kerala) Specification No: CC-CS/698-SR2/HVDC-3249/7/G10/R International Competitive Bidding Project is a single indivisible contract. As the contract consists of two or more taxable supplies of goods and services and their combination, is a composite supply as defined w/s 2(30) of the GST Act. For the proposition of law that the first contract and the second contract is one single individual contract, we may find support from the decision of Supreme Court of India in case of M/s. Indure Ltd. and Anr vs. Commercial Tax Officer and Ors on 20 September, 2010 C.A. No. 1123 of 2003.*

In view of all above deliberations, the questions can be answered thus –



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-69/2018-19/B- 164 Mumbai, dt. 19/12/2018

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

**Question:-1.** Whether the freight charges recovered by the Applicant under the aforesaid contract from the customer without issuance of consignment note will be eligible for exemption from CGST as prescribed in Serial no. 18 of Notification no. 12/2017 - Central Tax Rate F. No. 334/1/2017, dated 28 June 2017?

**Answer: - Answered is in negative.**

**Question: - 2.** Whether the freight charges recovered by the Applicant under the aforesaid contract from the customer without issuance of consignment note will be eligible for exemption from SGST as prescribed in Serial no. 18 in Notification no. 12/2017 - State Tax (Rate) no. MGST 10/7/C.R.103 (11)/Taxation-1 dated 29 June 2017.

**Answer: - Answered is in negative.**



sd  
**B. V. BORHADE**  
(MEMBER)

sd  
**B. TIMOTHY**  
(MEMBER)

**CERTIFIED TRUE COPY**

**Copy to:-**

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

sd  
**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, 15<sup>th</sup> floor, Air India building, Nariman Point, Mumbai – 400021.