

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan , 8th floor, New building, Mazgaon, Mumbai-400010.
(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)
(2) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)

| | |
|--|--|
| GSTIN Number, if any/ User-id | 27AAECCT9818J1ZS |
| Legal Name of Applicant | M/s. UJJWAL PUNE LIMITED |
| Registered Address/Address provided while obtaining user id | Technology Street, 1102, 11th Floor, Hiranandani Knowledge Park, Powai, Mumbai, Maharashtra - 400076 |
| Details of application | GST-ARA, Application No. 75 Dated 05.09.2018 |
| Concerned officer | Asstt. Commr. Div - III, CGST &C.EX., Navi Mumbai |
| Nature of activity(s) (proposed / present) in respect of which advance ruling sought | |
| A Category | Works Contract |
| B Description (in brief) | Design, Build, Operate, Maintain & Transfer the Project of Implementation of High Impact Street Light by installing Energy Efficiency dimmable LED street lights along with Feeder basis SCADA System. |
| Issue/s on which advance ruling required | (i) classification of goods and/or services or both (ii) applicability of a notification issued under the provisions of the Act |
| 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” respectively] by M/s. UJJWAL PUNE LIMITED, seeking an advance ruling in respect of the following questions.

- The nature of Services provided under the Contract whether covered under Si.no. 3(vi)(a) of notification no. 11/2017 - Central Tax (Rate) dt. 28th June 2017 amended with notification no.24/2017-Central Tax (Rate) dt 21.09.2017 and further amended with notification no. 31/2017 Central Tax (Rate) dt 13.10.2017 and notification no. 17/2018 dt.26.07.2018?*
- What is the Rate of GST applicable for the Project?*

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 any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further, henceforth for the purposes of this Advance Ruling, a reference to “GST Act” would mean CGST Act / MGST Act .

02. FACTS AND CONTENTION – AS PER THE APPLICANT

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

STATEMENT OF FACTS ---

Developer:

Ujjwal Pune Limited ('UPL'), a subsidiary of Tata Projects Limited, is a company incorporated under the provisions of the Companies Act, 2013.

Client:

The Pune Municipal Corporation (PMC) is the civic body established on 15 February 1950. The executive power of the PMC is vested in the Municipal Commissioner, an Indian Administrative Service (IAS) officer appointed by the Government of Maharashtra. The major responsibility of PMC is to look **after** the civic and infrastructural needs of the citizens.

Project:

Pune Municipal Corporation ('PMC') had invited for bids from eligible parties for installation of Energy Efficient dimmable LED Street lights along with pet **feeder** basis SCADA system in Pune on a design, build, finance, operate, maintain & **transfer** basis for a period of 12 (**twelve**) years (**hereafter referred to as the "Project"**).

PMC awarded the project to UPL, vide its standing committee resolution no. 1204 dated September 09, 2016 and issued its Letter of intent no. 1871 dated September 06, 2016 and Work Order/ Letter of Award (Ref. Outward No. 1914) dated September 09, 2016.

Revenue Accruals to UPL:

Contract Value: The quantified energy savings shall be converted into Rupee value in accordance with existing per unit Rate 5.80/-, and PMC shall pay 98.50% of the quantified savings to the UPL every months from the appointed date up to Twelve years (12 years).

As per the contract entered with PMC, UPL earns revenue based on the energy savings made by them through the LED installations.

The Current project has been awarded to UPL for the purpose of Installation and Operation of Energy efficient dimmable LED street lights for a period of 12 years.

As per the contract, UPL is required to handover all the **assets** to PMC at the end of the Project period.

Scope of the works in Contract:

The Developer shall carry out a proper survey of all roads where the Dimmable LED Light Fixtures are to be installed within 3 (three) months period after award of work order.

Submission of implementation plan.

Design of street light shall be done on the basis of samples/sections of each type of roads defined by PMC for evaluation.

Arrangement of inspection and testing of all the fixtures at the factory before its despatch by PMC officials. Supply, Installation and commissioning of Dimmable LED lights to meet the requirement as defined in the specifications, data sheets attached with Technical Bid.

The LED lighting installed to be linked to per feeder through wireless technology. SCADA to street lighting management server software appropriate remote monitoring and verifying system to ensure information on

energy savings.

All the old fixtures are to be taken by Developer and to be disposed of in scientifically and environmentally safe condition.

The Developer shall make all the LED fixtures operational within a period of 12 (twelve) months after award of contract ("Construction Period") as per the schedule submitted by the Developer or as per the instructions of PMC.

Fully responsibility of warranty of LED's/fixture for Contract Period and Warranty will start from the date of successful commissioning of the switching points.

The duration of the Project shall be 12 (twelve) years which shall be deemed as "Contract Period"

After completion on the Project Life all material/accessories installed by the Developer during the Project will be property of PMC. The Developer shall follow procedure detailed in this Tender document to hand over the site in satisfactory and working condition to PMC at the end of the Contract Period. Before handing over the site, the developer has to seek 'handing over certificate and 'no dues' certificate from PMC officials.

Statement containing the applicant's Interpretation of Law and/or facts –

As per the SI.no.3(vi)(a) of notification no. 11/2017 - Central Tax (Rate) dt.28th June 2017 amended with notification no.24/2017-Central Tax (Rate) dt 21.09.2017 and further amended with notification no. 31/2017-Central Tax (Rate) dt 13.10.2017, tax rate of 12% applicable in case of Composite supply of Works Contract as defined in clause(119) of section 2 of the Central Goods and Services Tax Act, 2017, provided to the Central Government, State Government, Union Territory, a Local Authority, A Governmental Authority or a Government Entity by way of Construction, erection, commissioning, installation. Completion, fitting out, repair, maintenance, renovation, or alteration of

- (a) Civil structure or any other original works meant predominantly for use other than for commerce, Industry or any other business or profession;
- (b),
- (c),

Accordingly, to fall under above said SI.3(vi)(a) of notification, Services provided under the Contract should meet the following conditions.

1. PMC shall qualify as Central Government or State Government or Union Territory or a Local Authority or a Governmental Authority or a Government Entity.
2. Supply involved in the Contract shall qualify as Composite supply of works Contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017.
3. Supply involved in the Contract shall fall under ambit of Civil Structure or any other Original Works.
4. Supply involved in the Contract is predominantly meant for use other than for commerce, Industry or any other business or profession.

In view of the above, we have analyzed each of the aforementioned conditions individually.

1. Whether PMC qualifies as Central Government, State Government, Union Territory, a Local Authority, A Governmental Authority or a Government Entity?

As per Section 2 (69) of CGST Act, **local authority has been defined** to include a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund or a Municipality as defined in clause (e) of article 243P of the Constitution.

Since Pune Municipal Corporation is a municipal body established to look after the civic and infrastructural needs of the citizens and the executive power of the PMC is vested in the Municipal Commissioner who is appointed by the Government of Maharashtra, it shall fall under the definition of local authority.

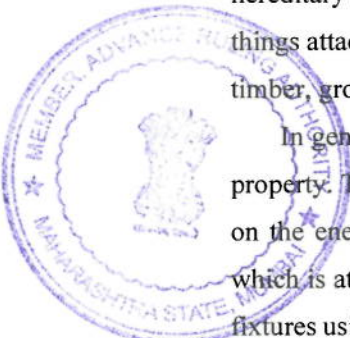
2. Whether Supply involved in the Contract shall qualify as Composite supply of works Contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017?

As per Section 2 (119) Works contract means 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.

Works contract, being composite supply involving both supply of goods and services relating to immovable property would constitute a service and accordingly liable to tax as per the provisions of the Act.

Immovable property is not defined in GST Act. Section 3(26) of The General Clauses Act, 1987, defines, "Immovable Property" shall include land, benefits to arise out of the land, and things attached to earth, or predominantly fastened to anything attached to the earth.

Also, as per Section 2(6) of The Registration Act, 1908, immovable property includes land, buildings, hereditary allowances, rights to way, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to earth, but not standing timber, growing crops or grass.



In general terms, Immovable property cannot be transferred without causing extensive damage to the property. The damage **relates to the** nature of the property. In the present case, UPL earns revenue based on the energy savings through LED installations by replacing existing lighting system on electric pole which is attached to the earth. The existing poles shall be used for installing the LED based street lighting fixtures using the existing cables without compromising on existing **aesthetics** look. The LED fixtures used in the project are not standardized products which is not available in the open market. The manufacturing of LED fixtures itself as per the design and specifications proposed by UPL and approved by PMC for this specific project. Installation and operation of SCADA system is suitable only for the LED fixtures which is installed for this specific purpose. UPL shall not use the Land, street lights or any other parts of the system for any other activity or any other commercial purpose, apart from that permitted under the Contract. Hence, no LED fixtures and SCADA system used in the Contract can be useful for any other purpose and for any other projects. Once it removes from its operations, there will be no commercial value except salvage value.

Therefore, it is construed that since LED fixtures are installed on Electric poles which is attached to earth and removal of such LED fixtures lead to damage and does not have any commercial value due to it's

not usefulness for any other purpose, it shall be treated as immovable property, hence covered under the definition of Works Contract.

3. Whether Supply involved in the Contract fall under ambit of Civil Structure or any other Original Works?

As per Explanation to Section 2 (zs) of Notification 12/2017 - "*original works*" means all new constructions, (i) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(ii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

Scope of work under the Contract includes Installation of equipment such as LED fixtures and SCADA system which is covered in the explanation given above, the nature of supply undertaken by UPL in the Contract shall be treated as Original Works.

4. Whether Supply involved in the Contract is pre-dominantly meant for use other than for commerce, Industry or any other business or profession?

Section 2(17) of CGST Act, defined **business** to include –

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) to (h)

(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.

However, as per the explanation given vide notification no. 17/2018 - Central Tax (Rate), dated 26th July, 2018, For the purposes of item sl.no.3, in column (3), in item (vi) of notification no. 11/2017 - Central Tax (Rate), dated 28.06.17, **the term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities."**

Public Authority has not defined in GST Act. Pune Municipal Corporation is Local Authority, established as civic body with major responsibility to look after the civic and infrastructural needs of the citizens.

Moreover, nature of contract and objectives & benefits accrued from the project is,

- To upgrade existing conventional street light to energy efficient LED light without any additional cost.
- Similar of higher illumination level as per IS - 1944
- Much safer environment by providing better quality of white light
- Maintain street light fittings over the period of 12 years which results in reduction in maintenance cost.
- 30-50% Energy saving
- 10-20% more life
- Most modern and maintenance free lighting system
- Carbon credits
- Complete system along with the lamps and controls.

This project is the first-of-its-kind in a PPP model taken up by any corporation in India where there is no financial burden on either the PMC or citizens for **replacement and maintenance of street lights**. All expenditure will be **taken care** of by the developer.

In view of the above it is clear that the main objective of the project is energy saving/efficiency and non-profit motive with PPP model. Therefore, objective of the project and works involved in the contract is predominantly for use other than for commerce, Industry or any other business or profession.

In view of the all the above conditions are met by the Project, Services undertaken in the Project covered under Sl.no. Sl.no.3 (vi) (a) of notification no. 11/2017 - Central Tax (Rate) dt. 28th June 2017 amended with notification no. 24/2017-Central Tax (Rate) dt 21.09.2017 and further amended with notification no. 31/2017-Central Tax (Rate) dt 13.10.2017 and Rate of GST applicable is @ 12%.

03. CONTENTION – AS PER THE CONCERNED OFFICER

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

It is submitted that, Issue on which advance ruling is required:

In this regard, it is to inform you that the assessee, having GSTIN 27AAECT9818J1ZS is registered at CGST & CX, Navi Mumbai. As per information obtained from AIO, assessee has Service tax registration No. AAECT9818JSD001 that was not registered to this commissionerate, information i.r.o. S.T. registration was obtained from easiest and it is noticed that assessee having Service Tax registration No. AAECT9818JSD001 was previously registered at Secunderabad Commissionerate.

Accordingly, no information i.r.o. assessee are available. This is for your kind information.

04. HEARING

The Preliminary hearing in the matter was held on 04.12.2018, Sh. Santanu Chakravarti, Asstt Vice President along with Sh. Dinesh Mutha, Asstt. General Manager appeared and requested for admission of application as per contentions made in their application. Jurisdictional Officer was not present.

The application was admitted and called for final hearing on 19.12.2018, Sh. Santanu Chakravarti, Asstt. Vice President along with Sh. Dinesh Mutha, Asstt. General Manager appeared made oral and written submissions. Jurisdictional Officer Sh. Mangat Dy. Commr. Div – III, CGST &C.EX., Navi Mumbai appeared but did not make any written submissions.

05. OBSERVATIONS

We have gone through the facts of the case, documents on record and written submission made by the applicant. Based on the same we discuss the issue put before us by the applicant.

The first question raised by the applicant is whether their activity, under the subject contract entered into by them with the PMC, is covered under Entry no. 3(vi) (a) of Notification No. 11/2017 - Central Tax (Rate) dated 28th June 2017 as amended with Notification No.24/2017-Central Tax (Rate) dated 21.09.2017 and further amended with Notification No. 31/2017-Central Tax (Rate) dt 13.10.2017, by which tax rate of 12% is applicable.

To answer this question, we have to decide whether the activity envisaged under the contract is a composite supply as defined under the GST Act and further whether such supplies constitute Works Contract as defined in sub-section (119) of section 2 of the GST Act.

We find that Pune Municipal Corporation ('PMC') had invited for bids from eligible parties for installation and operation of Energy Efficient dimmable LED Street lights along with pet feeder basis SCADA system in Pune on a design, build, finance, operate, maintain & transfer basis for a period of 12 years and the said project was awarded to the applicant vide its standing committee resolution no. 1204 dated September 09, 2016 and Work Order/ Letter of Award dated September 09, 2016. The consideration or, the contract value for the project is based on quantified energy savings converted into Rupee Value @ 5.80 per unit and PMC would pay 98.5% of the quantified savings to the applicant as per the scope of the work.

The applicant has submitted that their work is a Composite supply of Works Contract as defined in sub section (119) of section 2 of the Central Goods and Services Tax Act, 2017, which is provided to a Local Authority, by way of Construction, erection, commissioning, installation. Completion, fitting out, repair, maintenance, renovation, or alteration of a Civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession and therefore liable to tax rate of 12% under Entry no. 3(vi)(a) of notification no. 11/2017 - Central Tax (Rate) dated 28th June 2017 as amended. The relevant notification is reproduced as below:

| Sl. No. | Chapter, Section or Heading. | Description of Service | Rate (per cent.) | Condition |
|---------|---------------------------------|--|------------------|---|
| 1 | 2 | 3 | 4 | 5 |
| 1 | Chapter 99 | All Services | | |
| 2 | Section 5 | Construction Services | | |
| 3 | Heading | (i) | 9 | - |
| | 9954 (Construction services) | (ii) Composite supply of works contract as defined in clause. (119) of section 2 of the Central Goods and Services Tax Act, 2017 | 9 | - |
| | | (iii) Composite supply of works contract | 6 | Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be |
| | | (iv) Composite supply of works contract | 6 | |

| | | | | |
|--|--|--|---|---|
| | | <i>(v) Composite supply of works contract as 6 defined in clause. (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of ORIGINAL WORKS pertaining to, (a) railways, excluding monorail and metro</i> | 6 | |
| | | <i>(vi) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017 provided to the Central 6 Government, State Government, Union Territory, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of – (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession; (b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or (c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017</i> | 6 | Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be |
| | | <i>(vii) Construction services other than (i), (ii), (iii), (iv), (v) and (vi) above</i> | | |



To have a clear understanding of the nature of transaction between the applicant and PMC, we shall now refer to the relevant clauses of the contract as under:-

SCOPE OF WORK FOR LED STREET LIGHTS -

- * The Developer shall carry out & proper survey of all the roads where the Dimmable LED light Fixtures are to be installed within 3(three) months period after award of work order. The survey data available with PMC can be shared with the Developer.
- * Arrange for inspection and testing of all fixtures as the factory before dispatch by PMC officials.
- * All the old fixtures are to be taken by Developer and to be disposed off in scientifically and environmentally safe condition and such certificate from the competent authority shall be submitted to PMC within 3 (three) months after installation.
- * The design and specification of LED Lights will be given by the Developer as compared with old Fittings along with necessary documentation.

- * The Developer will have full responsibility of labelling of information which shall be distinctly and indelibly make on the housing like to include year of manufacturing, batch no, serial no.name of manufacturer, rated wattage and voltage (Input) & rated Limen. The fixture must carry the embossed name of the manufacturer and stickers shall not be allowed.
- * The Developer shall maintain the defined minimum storage space within Pune for storage of standby LED Lighting Fixtures of a minimum 3% of the installed of fittings each type Based on all types of installations. Developers shall be invited to offer suitable fixtures to achieve the defined Lux Levels boards on the lines of National Lighting Code.

From the detailed scrutiny of the terms of the contract aforesaid, following fact emerges:

- a) The project envisages supply, installation, erection, operation and maintenance of Energy Efficient dimmable LED Street lights along with pet feeder basis SCADA system within the limits of the PMC.
- b) The materials necessary for the execution of the project, such as, all necessary fixtures and LEDs to be supplied by the applicant shall be as per the prescribed technical conditions mentioned in the Tender documents.
- c) Further, the material procured by the applicant shall be open to PMC officials for inspection and testing at the factory before its dispatch.
- d) The applicant is responsible for the replacement and maintenance of street lights.
- e) All the old fixtures would be replaced with new LEDs/fixtures and the applicant-developer would be responsible for the disposal of old fixtures in most scientific and environmentally safe condition.
- f) The applicant will have to take full responsibility of warranty of LEDs/fixtures during the contract period and the products used shall carry details, embossed thereon, like year of manufacture, batch number, serial number, name of the manufacturer, rated wattage and voltage, etc.
- g) The applicant-developer is required to maintain minimum storage space for stand by LED Lighting Fixtures to the extent of a minimum of 3% of all types of installations.

From the analysis of the terms of the contract we find that the contract would involve more than two taxable supplies such as supply of LED Dimmable Street lights and fixtures, installation, commissioning, operation etc. We also find that the impugned supplies of goods and services are supplied in conjunction with each other in the ordinary course of business. Thus the transaction in question satisfy the ingredient of composite supply as defined under section 2(30) of the GST Act with supply of LED Dimmable Street lights/ fixtures as principle supply.

We shall now discuss how we arrive at a conclusion that the supply of Dimmable Street lights/fixtures constitute principle supply.

The term 'principal supply' is defined under Section 2(90) of the CGST Act and is as under:-
"(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;"

In the subject case it is seen that, even though the contract covers both, supply of goods and service, the bid and subsequent tender is for **installation of Energy Efficient dimmable LED Street lights along**

with pet feeder basis SCADA system in Pune on a design, build, finance, operate, maintain & transfer basis for a period of 12 (twelve) years. Hence the predominant and principal factor is to supply and install LED and fixtures on the existing street light poles and then to perform the activity of day to day management of the same by operating and maintaining such equipment to achieve energy savings. The activities of day to day management by operating and maintaining such Energy Efficient dimmable LED Street lights along with pet feeder basis SCADA system to achieve energy savings can only take effect after the LEDs/fixtures are installed. As is evident applicant would be providing bouquet of goods and services and if we remove one of the supply i.e. supply of the Dimmable Street lights/fixtures, the other supply would be severely affected or may become meaningless. Without such installation of LEDs/ fixtures, there can be no day to day management in the form of operation and maintenance. Hence in view of the above discussions, we reiterate that the principal supply by the claimant would be a supply of goods.

As a corollary of above finding and in view of entry no. 3 (vi) (a) of Notification 11 /2017 Central Tax (Rate) dated 28/06/2017 as amended, we have to decide whether the impugned composite supply is a works contract as defined u/s 2(119) of the GST Act.

As per Section 2 (119) Works contract means 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. We find that PMC had contracted with the applicant for Supply, Installation and commissioning of Energy Efficient dimmable LED Street lights along with pet feeder basis SCADA system in Pune, on a design, build, finance, operate, maintain & transfer basis for a period of 12 years. The new LED lighting system was to be installed in place of the old fixtures (lighting systems) which would be dismantled and disposed of by the applicant. From an examination of the terms and conditions of the subject contract, we find that the applicant would be making a single supply of providing energy efficient lighting to the PMC for a 12 year period and would primarily include supply and Installation of Energy Efficient dimmable LED Street lights saving equipment on existing street light poles of PMC, its day to day management in order to achieve energy savings and finally, operation and maintenance of the Energy saving equipment. The most important clause in the contract is that even after successful installation of the LEDs / fixtures, for the said period under the contract, there will be no transfer of assets in question, and from the applicant to PMC thus implying that the assets would remain as the property of the applicant for 12 years.

The main question in this case is whether the Energy Efficient dimmable LED Street lights saving equipment can be considered as immovable property for the subject activity to be considered as a Works Contract under the GST laws. The applicant has submitted that since the LED fixtures are installed on Electric poles which is attached to earth and removal of such LED fixtures lead to damage and does not have any commercial value due to its not usefulness for any other purpose, it should be treated as immovable property and hence their activity will be covered under the definition of Works Contract.

We find that the electric poles are attached to the earth, however the LEDs and fixtures which are installed can be removed without damaging the poles. Even in normal cases electric poles are fitted with fixtures using nuts and bolts which are easily removable. In facts their contract mentions that there will be

responsibility on the part of applicant concerning warranty of LED's/ fixture for Contract Period which will start from the date of successful commissioning of the switching points. This would imply that if the LEDs/fixtures malfunction or do not function at any time then it would be the responsibility of the applicant to change the same. These appear to be regular screwdriver technologies where the fixtures are attached to the electric poles and can be replaced as and when required without damage to the poles. An example can be given of light fixtures/ceiling fans, etc which are attached to ceilings/walls etc of houses and leasing of air conditioners in summer. Just because they are attached so does not mean that they become immovable property. This would be extending the definition of immovable property which as per Section 2(6) of The Registration Act, 1908, includes land, buildings, hereditary allowances, rights to way, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to earth, but not standing timber, growing crops or grass and also Section 3(26) of The General Clauses Act, 1987, which defines, "Immovable Property" shall include land, benefits to arise out of the land, and things attached to earth, or predominantly fastened to anything attached to the earth.

Further it is seen that the applicant themselves have submitted that they earn revenue based on the energy savings through LED installations **by replacing existing lighting system** on electric pole which is attached to the earth and the existing poles shall be used for installing the LED based street lighting fixtures using the existing cables without compromising on existing **aesthetics** look. Thus their submissions clearly reveal that the earlier lighting systems are only replaced by the new LEDs/fixtures e LED fixtures without any damage to the electric poles. This goes against their submissions that removal of such LED fixtures lead to damage. They have also argued that their LEDs/fixtures do not have any commercial value due to its non-usefulness for any other purpose and therefore the same shall be treated as immovable property. This is an incorrect argument put forth that their LEDs / fixtures become immovable property because they are not useful for any other purpose. The definition of an immovable property does not envisage the usefulness or non-usefulness of the property in question. We are therefore of the opinion that the supply under the subject contract by the applicant cannot be treated as a Works Contract.

As we have categorically held that the contract in question though in the nature of composite supply and do not qualify as a works contract as defined u/s 2(119) of the GST Act. In this view we would not discuss other arguments of the applicant with respect to original works as mentioned in the notification.

To sum up, in the present case there is supply of both, goods and services made in conjunction with each other in the ordinary course of business and as discussed above considering the provisions of the GST Laws we find that supply of services/goods in the present case is naturally bundled, with the supply of services goods being incidental to the supply of goods and therefore such contract are to be considered as a composite supply of service where the principal supply is of goods and the supply of services is incidental/ancillary to such supply of goods. Thus we find that their activity of supply will not be covered under Sl.no. 3(vi)(a) of Notification No. 11/2017 - Central Tax (Rate) dt.28th June 2017 amended by Notification No.24/2017-Central Tax (Rate) dt 21.09.2017 and further amended by notification no. 31/2017 Central Tax (Rate) dt 13.10.2017 and notification no. 17/2018 dt.26.07.2018 because the said Notification as amended cover supply of services and does not cover supply of goods.

Now that we have found that the present supply is a composite supply where the principal supply is supply of goods, we address the next question which is as under:-

What is the Rate of GST applicable for the Project?

We find the applicant has made the subject application on the premise that they are supplying composite supply amounting to works contract which is not correct. As discussed above, we have already found that theirs is a composite supply where the principal supply is of goods and therefore the applicant will have to discharge their GST liability at a rate which will be the tariff rate for the goods, in this case LEDs and fixtures. To answer the question of the applicant, we need to find the Tariff classification of LEDs/fixtures. We find that 'LED Lights or Fixtures including LED Lamps' are covered under the Sub-Heading 9405 40 90 of the GST Tariff, 2017 which are taxable @ 12% (6% each of CGST and SGST).

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- 75/2018-19/B- 173 Mumbai, dt. 29/12/2018

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

Question 1 :- The nature of Services provided under the Contract whether covered under Sl.no. 3(vi)(a) of notification no. 11/2017 - Central Tax (Rate) dt.28th June 2017 amended with notification no.24/2017-Central Tax (Rate) dt 21.09.2017 and further amended with notification no. 31/2017 Central Tax (Rate) dt 13.10.2017 and notification no. 17/2018 dt.26.07.2018?

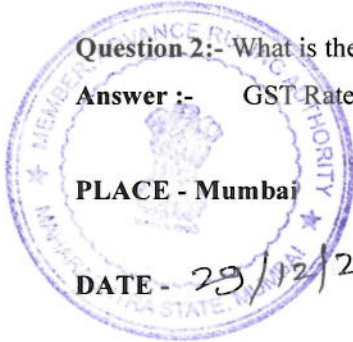
Answer :- Answer is in negative in view of above discussions.

Question 2:- What is the Rate of GST applicable for the Project?

Answer :- GST Rate applicable to the applicant is 12% (6% each of CGST & SGST)

PLACE - Mumbai

DATE - 29/12/2018



—sd—
B. TIMOTHY
(MEMBER)

—sd—
B. V. BORHADE
(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 chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint commissioner of State tax , Mahavikas for Website.


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.