

**PUNJAB AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICE TAX, BHUPINDRA ROAD,
PATIALA - 147001 (PUNJAB)**

ORDER NO. AAR/GST/PB/0/0

DATED: 06/09/2019

(An Appeal against this order lies with the Appellate Authority in terms of Section 99 and Section 100 of the CGST Act, 2017 and Section 99 and Section 100 of the PGST Act, 2017 within a period of thirty days from the date of communication of this order.)

I. DETAILS OF THE APPLICANT:

GSTIN	03AACGS5778B1ZK
Legal Name	S.P. Singla Constructions Pvt. Ltd
Trade Name	S.P. Singla Constructions Pvt. Ltd. House No. 4408, Sunami Gate, Sangrur - 148001
Issue(s) on which advance ruling is sought	Classification of the 'Works Contract' services pertaining to construction, erection, commissioning and completion of 'Bridges' provided by the applicant as a sub-contractor to the Contractors who have been awarded the construction contract pertaining to construction / widening of roads by the Government Entities such as National Highway Authority of India..
Personal Hearing Date	02.08.2019
Hearing attended by	Sh, Mohinder Kumar, Taxation Head, Sh. Rajan Mittal, Advocate.
Order Date	06/09/2019


II. BRIEF FACTS OF THE CASE:

1. M/s S.P. Singla Constructions Pvt. Ltd. (Applicant) is engaged in the business of construction, erection, commissioning and completion of bridges. The Applicant is situated in the State of Punjab in Sangrur at its premises H No. 4408, Sunami Gate, Sangrur – 148001 and is registered under the Central Goods and Service Tax Act, 2017 (CGST Act) vide GSTIN No 03AAGCS5773B1ZK.

2. The Applicant is engaged as a sub-contractor to the main Contractors who have been awarded the construction contracts pertaining to construction/widening of roads by the Government/ Government Entities such as National Highway Authority of India (NHAI). In some cases, the Applicant is also appointed as the main Contractor for carrying out the activity of construction, erection, commissioning, installation of bridges by the Government/ Government Entities. However, vide the present application, the Applicant is seeking Advance Ruling on the

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classification of services supplied by it under the contracts for construction, erection, commissioning, installation of bridges wherein it has been engaged as a sub-contractor.

3. For the purpose of present Application, the Applicant has placed reliance on the contract awarded by the NHAI to M/s M.G. Contractors Pvt. Ltd. for four-laning of Kharar-Kurali section of NH-21 from KM 15.765 to Km 29.900 (existing chainages) (New NH – 205) in the State of Punjab on EPC mode vide Letter of Award (LOA) NHAI/K-K/PB/NH-21/2015/2367 dated 24.09.2015 on terms and conditions stated therein.

4. The contract awarded by the NHAI to M.G Contractors Pvt. Ltd. involved construction of road-over-bridge (ROB) which was sub-contracted by M.G Contractors Pvt. Ltd. to the Applicant vide work order dated 08.09.2017 (for construction of ROB at CH-26+880 crossing SHRIND – MORINDA – KURALI – NANGAL Railway line) on the terms and conditions specified therein.

5. In this background, the Applicant has sought advance ruling on the question as to what is the appropriate classification & applicable rate of GST to be discharged on supplies made by it as a sub-contractor to the main contractor who has been awarded the construction contracts pertaining to construction/widening of roads by the Government/ Government Entities such as NHAI.

III. QUESTION(S) ON WHICH ADVANCE RULING IS SOUGHT:

What is the classification of the 'Works Contract' services pertaining to construction, erection, commissioning and completion of 'Bridges' provided by the applicant as a sub-contractor to the Contractors who have been awarded the construction contract pertaining to construction / widening of roads by the Government Entities such as National Highway Authority of India.

IV. ELIGIBILITY OF THE APPLICATION FOR ADVANCE RULING:

The Section 97(2) of the Central Goods and Services Tax Act, 2017, read with Section 97(2) of the Punjab Goods And Services Tax Act, 2017, provides for the issues on which advance ruling can be sought.

97 (2) *The question on which the advance ruling is sought under this Act, shall be in respect of,–*

- (a) classification of any goods or services or both;*
- (b) applicability of a notification issued under the provisions of this Act;*
- (c) determination of time and value of supply of goods or services or both;*
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;*
- (e) determination of the liability to pay tax on any goods or services or both;*
- (f) whether applicant is required to be registered;*

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(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

It is observed that the queries of the applicant in para III is related to the question of classification of the 'Works Contract' services pertaining to construction, erection, commissioning and completion of 'Bridges' provided by the applicant as a sub-contractor to the Contractors who have been awarded the construction contract pertaining to construction / widening of roads by the Government Entities falls under the ambit of Section 97(2) (a) - classification of any goods or services or both. Hence, the application of the applicant is eligible for a ruling by the Punjab State Advance Ruling Authority.

V. SUBMISSIONS BY THE APPLICANT:

The applicant has submitted as under:

1. The classification and rates applicable on supply of service are provided in Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017.
2. Serial No. 3 of Notification No. 11/2017 provided for rate of GST on construction services. The activity of the applicant falls under entry at Serial No. 3(iv) of Notification No. 11/2017 which provides as under:

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 9954 (Construction services)	iv) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and 6 - 2 Services Tax Act, 2017, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,- (a) a road, <u>bridge</u> , tunnel, or terminal for road transportation for use by general public ..."	6	-

3. That the other competing entries are entries at Serial No. 3(ix) and 3(x) which pertain to works contract services provided by the sub-contractor to the main contractors who were in turn providing services specified in Serial No. 3(iii), 3(vi) and 3(vii) to Government. The entries at Serial No. 3(ix) and 3(x) are not applicable to the Applicant as they are applicable to services

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provided by a sub-contractor to main contractor who is in turn providing services specified in Serial No. 3(iii), 3(vi) and 3(vii) to the Government. Since the activity of construction of bridge for the Government is not specified in Serial No. 3(iii), 3(vi) and 3(vii), the activity of the Applicant is correctly classifiable under entry at Serial No. 3(iv).

4. The entry at serial No. 3(iv) does not specify that it should be made applicable only to a contractor and not a sub contractor. In the absence of such specification, it should apply to the services provided by sub-contractor also.

5. In this regard, the applicant has placed reliance on the following:

i) Ruling dated 11.07.2018 of the Authority of Advance Ruling, Maharashtra in the Application filed by Shree Constructions.

ii) Ruling of the Authority for Advance Ruling, Kerala in the application filed by M/s Mary Matha Construction Company

iii) Recommendation of the GST Council vide its 25th Meeting wherein as per Serial No. 12 in the Press Report it was resolved that sub-contractors would pay tax at the same rate as principal.

iv) Decision of the Hon'ble Supreme Court of India in the case of State of Andhra Pradesh Vs. Larsen & Toubro [Civil Appeal No. 5239 of 2008]

VI. HEARING:

The case was taken up for hearing on 02.08.2019. Sh, Mohinder Kumar, Taxation Head and Sh. Rajan Mittal, Advocate attended the personal hearing on behalf of the applicant. They provided a detailed submissions relying on Notification No. 11/2017 dated 28.06.2017. They also submitted two Advance ruling's from Maharashtra AAR and Kerala AAR pertaining to similar issue. Moreover, a judgement from Supreme Court (Civil Appeal No. 5239 of 2008 arising out of SLP (C) No. 12482 of 2007) was also presented to clarify the parity between contractor and sub contractor for tax purpose. They requested to take into view all these submissions and pass a suitable ruling.

VII. DISCUSSIONS AND FINDINGS

1. From the analysis of the applicant's submissions and statements, the following issue merit careful consideration for the favour of the final decision :

"Classification of the 'Works Contract' services pertaining to construction, erection, commissioning and completion of 'Bridges' provided by the applicant as a sub-contractor to the Contractors who have been awarded the construction contract pertaining to

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construction / widening of roads by the Government Entities such as National Highway Authority of India.”

2. The applicant is engaged in the activity of erection, construction, installation, completion and commissioning of Bridges which is an immovable property, the supplies made by the Applicant as a sub-contractor qualifies as a works contract under the CGST Act, 2017 which has been deemed as a service in terms of Para 6(a) of the Schedule II of the CGST Act, 2017.

3. Section 2(119) of the CGST Act, 2017 defines ‘works contract’ as under:

"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;

4. The Central Government notified rates applicable on the services vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 and Serial No. 3 of Notification provided for rate of GST on construction services as under:

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 9954 (Construction services)	(i) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	9	-
		(ii) composite supply of works contracts as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.	9	-
		(iii) construction services other than (i) and (ii) above.	9	-

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5. Serial No. 3 of Notification No. 11/2017 was amended by Notification No. 20/2017-Central Tax (Rate) dated 22.08.2017 and new entries at Serial No. 3(iii), 3(iv), 3(v) and 3(vi) were inserted. Serial No. 3 (iv) of the Notification No. 11/2017 after amendment vide Notification dated 22.08.2017 read:

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
3	Heading 9954 (Construction services)	(iv) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and 6 - 2 Services Tax Act, 2017, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of:- (a) a road, bridge, tunnel, or terminal for road transportation for use by general public; ...	6	

6. GST Council in their 25th meeting on 18.01.2018 has made the following Recommendations on GST Rate changes on services

(A) Exemptions / Changes in GST Rates / ITC Eligibility Criteria

12	To reduce GST rate (from 18% to 12%) on the Works Contract Services (WCS) provided by sub-contractor to the main contractor providing WCS to Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity, which attract GST of 12%. Likewise, WCS attracting 5% GST, their sub-contractor would also be liable @ 5%.
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7. Accordingly, the principal rate Notification No. 11/2017 was amended vide Notification No. 1/2018- Central Tax (Rate) dated 25.01.2018 to amend the entries at Serial No. 3(iv), 3(v) and inserted new entries at Serial No. 3(ix), 3(x), 3(xi) and 3(xii). The Composite Supply of Works Contract services provided by a sub-contractor to the Main Contractor were dealt in entries at Serial No. 3 (ix) & 3 (x) of the amended Notification No. 11/2017 and the same read as under:

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)

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3	Heading 9954 (Construction services)	<i>(ix) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (iii) or item (vi) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.</i>	6	<i>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>
		<i>(x) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (vii) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.</i>	2.5	<i>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>

8. The said entries at Serial No. 3(ix) and 3(x) pertained to works contract services provided by the sub-contractor to the main contractors who were in turn providing services to Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity. The new entries at Serial No. 3(ix) and 3(x) inserted vide Notification dated

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25.01.2018 prescribed GST rate for sub-contractor services pertaining only to the services provided by the main contractor to the Governments/ Government entity which were covered in Serial No. 3(iii), Serial No. 3(vi) and Serial No. 3(vii) of the principal rate Notification No. 11/2017.

9. The entry at Serial No. 3(iii) concerned with works contract services provided by a sub-contractor to the main contractor where the main contractor is providing works contract services to a Government Entity by way of construction, erection, commissioning, installation, completion of a historical monument/ archaeological site, canal/dam or other irrigation works, pipeline, conduit or plant for water supply/ water treatment, etc.

The entry at Serial No. 3(vi) concerned with works contract services provided by a sub-contractor to the main contractor where the main contractor is providing works contract services to a Government Entity by way of construction, erection, commissioning, installation, completion 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.

The entry at Serial No. 3(vii) concerns with works contract services provided by a sub-contractor to the main contractor where the main contractor is providing works contract services to a Government Entity which involves predominantly earth work (that is, constituting more than 75 per cent. of the value of the works contract) provided to the Central Government, State Government, Union territory, local authority, a Governmental Authority or a Government Entity.

10. In the present case, the Applicant has sought advance ruling only in respect of a situation where the main contractor is providing works contract services in respect of construction/ widening of roads for NHAI, which are not covered by entry at Serial No. 3 (iii), (vi) and (vii) but are covered only under entry at Serial No. 3(iv). Moreover, before amendment vide Notification dated 25.01.2018 introducing specific entry on rate of services provided by the sub-contractor to main contractor, the activity of the Applicant was covered under the scope of Serial No. 3(iv) of the Notification No. 11/2017 (as amended), which provided the rate of GST on the services supplied by way of construction of road/ bridges. Thus, the services provided by the Applicant as sub-contractor to principal contractors continues to be covered under the Serial No. 3(iv) of the principal rate Notification No. 11/2017 which was inserted vide Notification No. 20/2017-Central Tax (Rate) dated 22.08.2017.

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11. In view of the foregoing, we rule as under: -

RULING

Question: What is the classification of the 'Works Contract' services pertaining to construction, erection, commissioning and completion of 'Bridges' provided by the applicant as a sub-contractor to the Contractors who have been awarded the construction contract pertaining to construction / widening of roads by the Government Entities such as National Highway Authority of India.

Answer: The services pertaining to construction, erection, commissioning and completion of 'Bridges' provided by the applicant as a sub-contractor in respect of construction contract pertaining to construction / widening of roads by the National Highway Authority of India falls under the scope of Serial No. 3(iv) of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 (as amended) and attracts GST @ 12% (CGST 6% + SGST 6%).

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1c *Navdeep Bhinder*
Member, SGST 4/9/2019

Parul Garg
4/9/19
Member, CGST

Through Registered Post

PB/AAR/19/ 426

Dated: 09/9/19

To

M/s S.P. Singla Constructions Pvt. Ltd.
House No. 4408, Sunami Gate,
Sangrur - 148001
Mob. No. 81466-68866

PB/AAR/19/ 427 - 32

Dated: 09/9/19

Copy to:

1. The Special Secretary, Goods and Service Tax Council, 5th floor, Tower-II, Jeevan Bharti Bldg., Connaught Place, New Delhi w.r.t. F. No. 193/Advance Ruling/ GSTC/2017 dated 01.05.2018.
2. The Chief Commissioner, CX & CGST, Chandigarh Zone, Central Revenue Building, Plot NO. 19, Sector 17-C, Chandigarh - 160017
3. The Commissioner of State Taxes, Punjab.
4. The Commissioner, CGST, Ludhiana, GST Bhawan, F-Block, Rishi Nagar, Ludhiana.
5. The Assistant Commissioner of State Tax, Sangrur
6. The Assistant Commissioner CGST Division, Sangrur.

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