
 सत्यमेव जयते	RAJASTHAN AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX KAR BHAWAN, AMBEDKAR CIRCLE, C-SCHEME JAIPUR - 302005 (RAJASTHAN)	
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ADVANCE RULING NO. RAJ/AAR/2018-19/32



J.P.Meena Additional Commissioner	:	Member (Central Tax)
Hemant Jain Joint Commissioner	:	Member (State Tax)
Name and address of the applicant	:	Mr. Kailash Chandra (M/s Mali Construction) Mali Vas, Maandava, Mandwa, Sirohi, Rajasthan - 307001
GSTIN of the applicant	:	08ALVPC2862Q1ZA
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	a. classification of goods and/or services or both; e. determination of the liability to pay tax on any goods or services or both;
Date of Personal Hearing	:	11.01.2019
Present for the applicant	:	Mr. Mudit Jain, (Authorised Representative)
Date of Ruling	:	31.01.2019

Note: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.

The issue raised by Mr. Kailash Chandra, (M/s Mali Construction), situated at Mali Vas, Maandava, Mandwa, Sirohi, Rajasthan – 307001 (hereinafter called as the applicant) is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2)(a) and (e), given as under :

- a. classification of goods and/or services or both
- e. determination of the liability to pay tax on any goods or services or both

Further, the applicant being a registered person (GSTIN is 08ALVPC2862Q1ZA, as per the declaration given by him in Form ARA-01) the issue raised by the applicant is neither pending for proceedings nor proceedings were passed by any authority. Based on the above observations, the applicant is admitted to pronounce advance ruling.



1. SUBMISSION AND INTERPRETATION OF THE APPLICANT:

1.1. The applicant is engaged in providing the comprehensive water services to the clients by way of water conservation, water distribution, water purification, water supply management, etc. That currently the applicant is in the process of bidding for tender floated by P.H.E.D., a unit of Rajasthan Government for designing, providing, installation, commissioning, operation and maintenance of solar energy based bore well water pumping systems, Reverse Osmosis Plant and operation and maintenance of Fluoride Control Project on ESCO and O & M contract.

1.2. That in relation to such tender the applicant is required to quote a rate for undertaking all the aforesaid activities which shall be inclusive of all the costs of site visits on the part of the applicant, packaging, forwarding, spare parts, insurance and taxes& duties as may be

applicable. Hence, in view of the same the applicant is desirous of knowing its liability of GST in relation to the said activity and therefore seeks the ruling of the advance ruling authority on the below mentioned transaction:

- i. The applicant is willing to bid for a tender supposed to be floated by P.H.E.D. for designing, providing, installation, commissioning, operation and maintenance of solar energy based bore well water pumping systems.
- ii. In connection to the said tender, the scope of the to be undertaken by the contractor shall commence from designing, economically and efficiently best suited to site conditions including depth of water table and safe yield of bore well, finalizing alignment of SPV Plant, providing and installation of complete Solar power operated water pumping system including de-fluoridation unit and all other components and accessories as per specification, drawing and design and making it operational and keeping operational up to complete O&M period of 7 years.
- iii. The above mentioned work shall comprise the following major activities:
 - a) Carrying out work at locations finalized at the time of award of work.
 - b) Designing of Solar Water Pumping Systems for the habitation(s) as per award of work. Providing, installation, Commissioning & Testing of Solar Water Pumping System as per design within stipulated time as mentioned in letter of award of contract.
 - c) The PV modules shall be mounted on metallic structures of adequate strength and appropriate design, which can



withstand load of modules, live loads if any and high wind velocities up to 200 km per hour.

- d) Support structure should be designed keeping in view local site conditions and generalized soil formation. All codes and provisions for RCC design should be followed. The minimum depth of foundation should be 1.50 metre.
- e) The structure is to be designed in such a way so as to allow easy replacement and inclusion of any additional module.
- f) PV water pumping system must qualify (enclose test reports/ certificate from IEC/NABL accredited laboratory) as per relevant IEC standard. The performance of PV water pumping system shall be tested at STC conditions by any laboratory approved by IEC / MNRE/ accredited by NABL / Solar Energy Centre. The material (of different makes) shall be acceptable only on receipt of satisfactory test report by the Engineer-In-charge.
- g) IEC activities like distribution of pamphlets/ posters/ paintings containing PHED al promotional Slogan for using fluoride free water and water saving on prime places like gram panchayat bhawan/ office, school/ govt. building/ main choraha as approved by Engineer-in charge.
- h) Providing potable water to villagers regularly free of cost at site of SPV plant during and up to end of O&M period
- i) Complete system shall be under comprehensive warranty of contractor for a period of seven years from the date of commissioning against any defects.
- j) The operation and maintenance of complete system shall be responsibility of the contractor during this entire period of 7

years wherein the applicant shall keep the plants operational regularly with specified flow/ quantity of water.

- k) That on the expiry of the O&M period, the applicant may remove the plant at its own cost and vacate the land subject to prior intimation to PHED and shall take the possession of the plant.

1.3. Since composite supply of works contract has been explicitly classified as supply of service under Schedule II, tax liability on works contract service has been expressly prescribed. Therefore, the concept of works contract should to be discussed and settled first. However under GST, there is a monumental shift in concept of Works Contract which was prevalent under erstwhile VAT and Service Tax regime. In GST, as per definition of works contract service if *construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning* is for immovable property only, then it will classify as works contract. Hence it means that aforesaid activities if they are undertaken for a movable property then it will not be works contract service.

1.4. On the given issue, CBEC has also clarified in its circular number 58/1/2002-CX dated 15/1/2002 where in para (e) it was clarified that

- e) *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.*

1.5. In the given case, the facts have been first perused to understand that it is a supply constituting more than one taxable supply including supply, design, installation, commissioning and testing of solar energy



based water pumping systems to provide potable water to the villagers and operation and maintenance of the system for a period of 7 years.

1.6. That the applicant will not be only responsible for providing, installation, erection and commissioning of the system but also for the smooth functioning of the system for a period of 7 years and any defect in the system during such period shall be rectified by the applicant. Therefore, the business operandi of the said transaction is such that the applicant is required to undertake the operation and maintenance of the installed system for a period of 7 years.



1.7. Thus, on the basis of above submissions, it is amply clear that these supplies are naturally bundled in the ordinary course of business and therefore same shall fall under the ambit of composite supply thereby liable to tax at the rate applicable on the principal supply.

1.8. Further to determine the principal supply in the given case, it has been explained through facts and the conduct of parties that the main intent of the supply is provision of the solar power based water pumping system which consists of various components such as SPV panels, structures, storage tank, Solar pumping sets, controller, pipe, cables and de-fluoridation units and thus it is the predominant element of the composite supply, to which its installation, commissioning, operation and maintenance is ancillary since these services are provided for better functioning of the system supplied.

1.9. In addition to this, the proportion of the consideration for both supplies as per the payment schedule of the contract indicate that providing the solar energy based water system is the predominant supply.

1.10. On the basis of above facts and interpretation, in the given contract the principal supply is supply of solar power based water system and since such system is a movable property, thus the given work is a composite supply where principal supply is supply of goods and thus, applicant understands that the given work should be treated as a supply of goods and cannot be treated as supply of service.

1.11. Since solar power based water pumping system is a system, consisting of various individual components such PV modules, pumps interconnected by various cables and other transmission devices, intended to contribute for filtering or purification of water, thus, it should be classified under the heading 8421 and further under tariff item 8421 21 90 in the First Schedule to the Customs Tariff Act, 1975.



1.12. However, under Notification No. 01/2017 – Central Tax (Rate), solar power based devices have been specifically listed in Entry 234 of Schedule I having prescribed CGST rate of 2.5%. Hence, according to applicant it would be most appropriate to classify solar energy based water pumping system under Entry 234 of Notification No. 1/2017-CT (Rate) as solar power based device. Thus the rate of tax shall be 5% on supply of given Solar Power Based Devices.

1.13. Activities like civil construction, IEC activities, provision of real time online management and monitoring system for reporting key data/parameters and operation and maintenance of the system are merely incidental to provision of such goods and form an ancillary part of the supply. The service portion of the contract is minimal and the substantial part is supply of goods. This also substantiates the fact that provision of services is incidental to supply of goods and hence, the supply of goods

should form the principal supply and the entire contract should be taxed as supply of goods itself.

1.14. Since the given activity undertaken by the applicant culminates into a plant for water supply or treatment and since work is undertaken for PWD which is Government Department, hence according to applicant the rate of tax applicable on given service (if it is a works contract service) shall fall under Entry 3(iii) with HSN Code 99544 and it should be 12%.



That based on the above submission, the applicant is of the understanding that in case of above transaction, the entire work to be awarded shall be composite supply wherein the principal supply shall be supply of goods i.e. solar power water pumping station and the same should be taxable at the rate of 5%.

If in case, it is considered as composite supply of works contract, then it should be classified under S. No. 3(iii) of the Notification No. 11/2017-CT (Rate) and should be taxable at the rate of 12%.

2. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT

Whether the activity of supply, design, installation, commissioning and testing of solar energy based water pumping systems supply of goods or supply of services and what shall be the rate of GST on it?

3. PERSONAL HEARING

In the matter personal hearing was given to the applicant on 11.01.2019 at Room no. 2.22 NCRB, Statue Circle, Jaipur. Mr. Mudit Jain (Authorised

Representative) of applicant appeared for PH. During the PH, he reiterated the submissions made in the application. He further submitted an additional document and requested that the case may be decided at the earliest.

4. COMMENTS OF THE JURISDICTIONAL OFFICER

The jurisdiction officer has stated that on the basis of submissions submitted it is found that the activities undertaken by the applicant is a composite supply of goods and GST is as applicable to it.

5. FINDINGS, ANALYSIS & CONCLUSION:

a. According to Section 8 of Central Goods and Services Tax Act, 2017

8. The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(b)

b. As per Section 2(30) composite supply is defined as

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

c. Further principal supply is defined under Section 2(90) as



(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;

d. Further, clause 6 of the Schedule II is read as under

The following composite supplies shall be treated as a supply of services, namely:—

i. works contract as defined in clause (119) of section 2

e. The term works contract has been defined under Section 2(119) as

(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;

f. We observe that the supply is a composite supply which is ascertained from following:

- a. 2 or more taxable supplies of goods or services or both;
- b. The taxable supplies are naturally bundled;
- c. The taxable supplies are supplied in conjunction with each other;
- d. One of the taxable supplies is a principal supply.

g. However, since composite supply of works contract has been explicitly classified as supply of service under Schedule II, the concept of works contract follows that:-



1. Works contract in itself is a composite supply in which *construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning* etc are involved along with transfer or property in goods.
2. In GST, as per definition of works contract service if *construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning* is for immovable property only, then it will classify as works contract. Hence it means that aforesaid activities if they are undertaken for a movable property then it will not be works contract service.
3. Now whether a supply is a works contract or not is dependent on whether the plant or device or property is a movable or immovable property. To decide whether a property is movable or immovable, the given terms have not been defined under the Act and hence the reliance needs to be placed on other laws and judicial precedents.

Under the General Clauses Act 1897 the term immovable property has been defined under Section 3(26) as "*immovable property*" shall include *land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;*

4. On the given issue, CBEC has also clarified in its circular number 58/1/2002-CX dated 15/1/2002 where in para (e) it was clarified that



e) *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.*

Though the concept of excisable is not applicable here but the inference can be drawn what is movable and what can be immovable from given clarification.



5. As mentioned in the facts above, that in brief, following activities are covered under the scope of works proposed to be undertaken by the applicant:

- Design, supply, install, test and commission of solar energy based water pumping systems along with construction of housing structure for this plant and all the necessary works for operation for such work.
- A comprehensive operation and maintenance of the installations for a period of 7 years.

6. On the basis of concepts discussed above, the supply of solar energy based water pumping systems along with its installation, commissioning and operation and maintenance is a single supply owing to the following factors:-

- A single tender shall be floated for the supply, installation and operation and maintenance of the plant.
- Special conditions of the contract generally specify that the contractor shall be bound to carry out the O & M maintenance of the installed plants for seven years.

- Designing, providing, installation, Commissioning & Testing of Solar energy based Water Pumping System and all the necessary works to make the system operational.
 - A comprehensive operation and maintenance of the installations for a period of 7 years.
 - Providing potable water to villagers regularly free of cost at site of SPV plant during and up to end of O & M period.
- I. According to definition of works contract under GST regime, the supply of goods and services are done by the supplier simultaneously which is for immovable property. Hence in works contract supply of goods and services together is compulsory.

Thus, based on above facts and concept such contract shall be a single supply and cannot be treated as distinct supplies. Since all the conditions of composite supply are satisfied, it is a composite supply.

- J. We observe that the activity proposed to be undertaken is a composite supply of works contract, the rate of tax in given service shall be determined in accordance with the Notification No 11/2017-CT (Rate) dated 28.06.2017, as amended from time to time.

On perusal of said Notification under S. No. 3(iii), for schedule of rate of Tax on works contract Services, following is mentioned:-

Heading 9954 (Construction services)		CGST Rate %	SGST Rate %	IGST Rate %	Remarks
	(iii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied 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) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958); (b) canal, dam or other irrigation works; (c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.	6	6	12	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;



K. It is therefore, the activity of supply, design, installation, commissioning and testing of solar energy based water pumping systems along with construction and O & M work by the applicant is a Works Contract of Composite Supply. This composite supply is a mixed of goods and services and predominant supply is supply of services. Since this supply is undertaken for a Government Department viz. PHED which is a Government of Rajasthan Department, hence the rate of tax applicable on given service (as it is


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a works contract service) shall fall under Entry 3(iii) with HSN Code 99544 and it should be IGST@12%(CGST@6%, SGST@6%).

6. Based on above facts along with provision of law the ruling is as follows:-

RULING

The activity of supply, design, installation, commissioning and testing of solar energy based water pumping systems and O & M work by the applicant is a Works Contract of Composite Supply. This composite supply is a mixed of goods and services and predominant supply is supply of services. Since this supply is proposed to be undertaken for a Government Department, hence the rate of tax applicable on given service (as it is a works contract service) shall fall under Entry 3(iii) with HSN Code 99544 and it should be IGST@12%(CGST@6%, SGST@6%).


J.P. MEENA
Member
(Central Tax)




HEMANT JAIN
Member
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SPEED POST

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o/c

F.No. IV (4) 32/AAR/RAJ/2018-19/147-150

Dated: 31.01.2019

Copy to:-

1. The Commissioner, SGST & Commercial Taxes, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005
2. Commissioner, CGST and Central Excise Commissionerate, Jodhpur G-105, New Jodhpur industrial Area, Basani, Jodhpur 342003.
3. Deputy Commissioner, Circle- Sirohi, Ward-3, Commercial Taxes Dept., Sirohi (Rajasthan) 307026.


Superintendent