
 सत्यमेव जयते	RAJASTHAN AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX NCR BUILDING, STATUE CIRCLE, C-SCHEME JAIPUR – 302005 (RAJASTHAN)	
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ADVANCE RULING NO.RAJ/AAR/2018-19/19

Nitin Wapa Joint Commissioner	:	Member(Central Tax)
Sudhir Sharma Joint Commissioner	:	Member(State Tax)
Name and address of the applicant	:	M/s. Frizo India Private Limited , 1 st Jeet Appartments, Ratanada, Jodhpur (Raj)
GSTIN of the applicant	:	08AABCF2533P1ZF
Clause(s) of Section 97(2) of CGST / SGST Act, 2017, under which the question(s) raised	:	(a) Classification of any goods or services or both (e) Determination of the liability to pay tax on any goods or services or both
Date of Personal Hearing	:	24.09.2018
Present for the applicant	:	Written submission by Shri Pradeep Jain CA. (Authorised representative)
Date of Ruling	:	24.09.2018

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 the applicant is fit to pronounce advance ruling as it falls under ambit of the Section 97(2) (a) (e) which is as given under:

- (a) Classification of any goods 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 08AABCF2533P1ZF 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 application is '**admitted**' to pronounce advance ruling.

1. Submission Of The Applicant :

1. The present application for advance ruling has been filed to seek decision on the rate of GST applicable on the installation of solar power generating system.
2. M/s. Frizo India Private Limited (hereinafter referred to as the "Applicant") is engaged in supply of solar power generating system and its installation at the site. The applicant submitted that the solar power generating system is covered under entry no. 234 of the notification no. 01/2017-Central Tax (Rate) dated 28.06.2017 which prescribes the CGST rate of 2.5% on the supply of solar power generating system.
3. The applicant stated that if the definition of composite supply of works contract is pursued, it is found that in the GST regime, only works contract services of immovable property are covered under section 2(119) of the CGST Act, 2017.
4. Applicant stated that installation of solar power generating system which is affixed to Earth is not of any immovable property and so cannot be considered as supply of composite works contract attracting GST rate of 18%.
5. The applicant further contents that the GST rate prescribed at serial no. 3(ii) under notification no. 11/2017-Central Tax (Rate) dated 28.06.2017 is with reference to Chapter heading no. 9954 pertaining to construction services. They submit that this indicates that the rate of 18% is not specified for all kinds of composite supply of works contract and rather it is only with respect to construction related composite works contract. The supplicant submits that in the present case, they will supply solar power



generating system which cannot be considered as construction service because in general parlance construction service indicates construction done with respect to land or building and not with respect to any plant and machinery. Likewise, in the present case, installation and commissioning of solar power generating system will attract GST rate of 5% as it is to be considered as composite supply wherein the principal supply is that of solar power generating system and not of installation of the said system. Consequently, it is submitted that it should be pronounced that the GST rate applicable for installation and commissioning of solar power generating system is 5% and not 18% as applicable to composite supply of works contract.

6. The applicant further submits that they are supplying 'solar power generating system' which is specific entry under notification no. 01/2017 Central Tax (Rate) dated 28.06.2017. The applicant submits that the specific entry always prevail over the general description. The applicant submits that the entry no. 3(ii) of notification no. 11/2017 Central Tax (Rate) dated 28.06.2017 is very general entry prescribing GST rate of 'composite supply of works contract as defined in section 2(119) of the CGST Act, 2017.'
7. The applicant further submits that they have made composite supply involving supply of solar power generating system and its installation thereof and so the specific provisions contained in section 8 of the CGST Act, 2017 regarding tax liability on composite supplies would be applicable. It is provided in section 8(a) of the CGST Act, 2017 that 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. In the present case, since the supply of solar power generating system is principal and its installation is ancillary, the GST rate applicable on solar power generating system being 5% is relevant.
8. The applicant further submits that the intention of the government is to promote and encourage use of solar energy for power generation and consequently, lower rates have been prescribed for the solar power generating system. If the interpretation that installation of solar power generating system being affixed to Earth is composite supply of works contract attracting GST rate of 18% is accepted, it will be against the intention of the legislature. In this regard, the applicant places reliance on the following judicial pronouncements:-



BALWANT SINGH VERSUS JAGDISH SINGH [2010(262)E.L.T. 50 (S.C.)]:-

COMMISSIONER OF CENTRAL EXCISE, LUDHIANA VERSUS RALSON INDIA
LTS. [2006(202)E.L.T. 759 (P&H)]

The analysis of above decisions of hon'ble Supreme Court and High Court makes it clear that the intention of the law makers is to be kept in mind while interpreting any provision. If any interpretation defeats the intention of the law makers, it should be avoided. In the present case also, if the interpretation that supply of solar power generating system is works contract attracting GST rate of 18% is taken, it will be against the intention of the government to promote and encourage use of solar energy as means of power generation.

Therefore, the pronouncement as regards applicable GST rate on solar power generation system should be given in favour of the applicant being 5% covered by serial no. 234 of the notification no. 01/2017 – Central Tax (Rate) dated 28.06.2017.

2. Issue Requiring Advance Ruling :

The Applicant submits the following questions for Advance Ruling and its interpretation on the question as under:

“ Applicable GST Rate on supply of Solar Power Generating System.”

7. Personal Hearing (PH):

In the matter, personal hearing was given to the applicant 24.09.2018. Applicant's Authorized Representative Mr. Pradeep Jain, CA showed his inability to appear in person for hearing and instead submitted an online written additional statement containing certain arguments and judicial precedents in support of their application which has been placed on record.

He stated that the installation of solar power generating system should not be considered as works contract so as to attract GST rate of 18% but should be regarded as “System”. As term system includes all goods provided under the contract which help in end to end generation as well as transmission of electricity. Consequently, the concessional GST rate of 5% specified for solar power generating system is applicable and the installation of the plant should not be treated as works contract service.



The Applicant further stated the installation is ancillary to the principal supply of solar power generating system. Consequently, the GST rate applicable to the solar power generating system being 5% should be considered and not the GST rate applicable for works contract services.

On point of solar power generating system being a movable property the Applicant has placed reliance on following judicial pronouncements:

1. SIRPUR PAPER MILLS LTD. VERSUS COLLECTOR OF CENTRAL EXCISE, HYDERABAD [1998(97) E.L.T. 3 (S.C.)]
2. COMMR. OF C. EX., AHMEDABAD VERSUS SOLID & CORRECT ENGINEERING WORKS [2010 (252) E.L.T. 481 (S.C.)]

Applicant argued that solar power generating system is usually accompanied with its installation and so in each and every case if the supply of solar power generating system is considered as works contract service attracting GST rate of 18% then it would lead to the entry no. 234 as redundant.

They reiterated the submission already made in the application for Advance Ruling and further requested that the case may be decided as per the submission made earlier in Advance Ruling Application.

The **jurisdictional officer** in his comments has stated that the contract given to the applicant is of supply, installation, commissioning of Solar power generating system in which the dealer has to deliver a functional solar system which in turn is immovable property. Hence it is to be treated as works contract as per section 2(119) of the RGST Act and taxed @ 18% under GST.

9. Findings and analysis:

Applicant has not submitted any specific copy of contract along with the Advance Ruling Application on which he would like to seek the Ruling. As per submissions made in Advance Ruling Application the applicant has declared that he is engaged in supply of solar power generating system and its installation at the site and involves simultaneous supply of goods and services.

Various kinds of contracts usually prevalent for execution of the nature of work specified by applicant can broadly be categorized as under:



- i) **Turnkey EPC Contract** in which the Applicant is required to undertake all activities ,civil or otherwise, designing, procurement and supply of all equipment / components for the power plant their Assembly, erection, and commissioning and Operations and Maintenance of the plant .
 - ii) **Other EPC Contract** in which the Applicant is required undertakes all activities of turnkey projects except civil work.
 - iii) **In supply contract**, the Applicant is required to supply the power plant on complete knocked down condition in piecemeal at project site. Customer engages third party contractor or the Applicant for assembly, erection and commissioning of the plant under a separate contract.
 - iv) **In balance of plant supply contract**, the Applicant is required to supply goods and services stated above, except solar panels. Solar panels procured by the customer are made available by the customer to the Applicant for assembly and erection.
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- a) Applicant has not submitted any specific copy of contract along with the Advance Ruling Application and as per submission made by applicant in Advance Ruling Application and based on discussions during PH, the nature of work undertaken by applicant clearly falls under category of “Composite turnkey EPC contract “.
 - b) In a composite EPC contract the contractor has to, *inter alia*, design, engineer, procure, transport, deliver, develop, erect, install, test , commission and at times maintain & service the project after installation.
 - c) In contract of these kind applicant has to undertake following activities during execution of Composite Turnkey EPC Contract :
 - i. Planning for the project as per requirements and technical specifications of owner.
 - ii. Procurement of materials i.e. equipments /component needed for installation of the plant .
 - iii. Under take Civil works at the site such as development of site, structure foundation, install structure for transmission , build cable trenches, complete civil work relating to invertors and control buildings,



store rooms , canopies and such other civil structure and related activities as needed

- iv. Erection, commissioning and installation of the solar panels as per technical specification.
 - v. Project management services such as Engineering services of layout and foundation, Erection of the structure, Installation services of all components, Pre-commissioning, Commissioning, Performance tests, Defect rectification.
 - vi. Generation of electricity and connection with the grid i.e. related interconnection facilities and other related infrastructure for evacuation of power (Evacuation Infrastructure).
 - vii. Apart from installation the contractor has to successfully test run the plant over certain period of time to check and ensure the optimum output (generation of electricity) as agreed upon in contract.
 - viii. Final acceptance and payment is done only after successful test run as per condition laid down in contract.
- d) Under these contracts the intention of the owner is not to procure goods (devices and parts) of solar power generating system but to procure a **completely functional solar power generating system as a whole** wherein applicant undertakes end to end responsibility of supply of equipments of solar power generating system including designing, engineering, supplies, installation to technical specification, testing and commissioning of a functional solar power plant as well as at times laying of transmission lines for transmission of the electricity generated up to storage or the grid.
- e) Under contract like these all risk and liabilities accruing in relation of works (temporary or permanent), and of all equipments, machinery, materials, shall be with contractor until occurrence of the Final Acceptance.
- f) In terms and condition of “Composite EPC Contract” contractor has to undertake works of installation, testing and commissioning of solar



power generating system as per specific demands of owner. So it is not something sold out of shelf.

- g) Under these kind of contracts there is a single lump sum price for the entire contract where supply of goods and installation is undertaken by a single person under a single non divisible contract.
- h) The applicant has laid claim under notification No 01/2017-CT (Rate) dated 28.06.2017, at S.No. 234, under HSN Classification 84, 85 and 94 and has argued that under agreement he has to supply *Solar Power Generating System* which is the principal supply in the composite supply where installation services are supplied in conjunction. With the principal supply being the solar panels and accordingly, the tax rate of solar panels (5% under the heading 8541) should be applicable on the entire contract value.
- i) As can be seen, the above entry is under the notification describing the Tax rate on 'Goods'. The entry reads as "*renewable energy devices & parts for their manufacture*". If the transaction is **only** of supply of goods i.e. of "*renewable energy devices & parts* " then the applicable Schedules would have to be seen but the intent of parties is always for supply of Solar Power Generating System **as a whole** which includes supply, installation, testing and commissioning and it is not chattel sold as chattel. It is not a contract which is restricted to supply of *devices & parts* of solar power generating system but is a contract where the contractor has to, *inter alia*, design, engineer, procure, transport, deliver, develop, erect, install, test and commission the project. Under composite EPC turnkey contracts the intention of the owner and the contractor is not to procure **devices & parts of solar power generating system** but to procure **a completely functional solar power plant as a whole**. Hence to classify a Composite turnkey EPC contract as supply of goods of Solar Power Generating System is not rational.
- j) Applicant has submitted that 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 **only for immovable property**, then it will classify as works contract only. Hence it means that aforesaid activities if they are undertaken for a movable property then it will not be a works contract service.

- k) Relying on judgements and citations submitted in Advance Ruling Application the applicant contends that as the solar generating system, once installed is capable of being removed and transferred from one place to another without substantial damage hence same should qualify as movable property. Thus in view of above precedence and facts of the case, the given supply should be treated as supply of Solar Power Plant Only.
- l) As per the terms and conditions usually laid in EPC Contract the contractor i.e. the applicant has to undertake activities from engineering, design, to procurement of the material and has also to test and commission a functional plant before Final Acceptance . In contracts of such a nature, the liability of the contractor does not end with the supplying of materials but it extends till the successful testing and commissioning of the system. The transaction is not of mixed or composite supply but is of a 'work contract' but it is for us to decide whether it is a 'work contract' in terms of GST Act also . So, we come to the crux of the issue , which is as to whether the transaction results into any immovable property. The term 'immovable property' has not been defined under the GST Act. However, there are a plethora of judgments of the Hon. Supreme Court and the Hon. High Courts which have helped understand the term 'immovable property'.
1. In decision of Allahabad High Court in *Official Liquidator v. Sri Krishna Deo and Ors.* [AIR 1959 All. 247], wherein, the Court held that a machinery fixed to their bases with bolts and nuts although easily removable are not movable property when they have been set up with definite object of running an oil mill and not with intention of being removed after a temporary use.
 2. Case laws cited by applicant have to be understood in terms of the facts as available therein. As in the case of **M/S Solid and Correct Engineering Works (cited Supra)** the plant was not intended to be



permanent and was to be shifted after completion of road repair and construction work hence it was regarded as moveable. But in the instant case the solar power generating system has an element of permanency.

3. In decision of **M/S. T.T.G. Industries Ltd., vs Collector of Central Excise, 2004 (167) ELT 501 (SC) on 7 May, 2004**. The facts of the case are as follows:

The facts of the case are not in dispute. The appellant- Company pursuant to the acceptance of its tender, entered into an agreement with M/s SAIL, Bhilai Steel Plant for design, supply, supervision of erection and commissioning of four sets of Hydraulic Mudguns and Tap Hole Drilling Machines required for blast furnace Nos.4 and 6 of the Bhilai Steel Plant. For this purpose, it imported several components and also manufactured some of the components at their factory in Marai Malai Nagar, Chennai. These components were transported to the site at Bhilai where the manufacture and commissioning of the aforesaid machines took place. It is undisputed that duty was paid in respect of the components manufactured at its workshop in Chennai, but no duty was paid on manufacture of the aforesaid Mudguns and Drilling Machines which were erected and commissioned on site

In their reply to the show cause, the respondents explained the processes involved, the manner in which the equipments were assembled and erected as also their specifications in terms of volume and weight. It was explained that the function of the drilling machine is to drill hole in the blast furnace to enable the molten steel to flow out of the blast furnace for collection in ladles for further processing. After the molten material is taken out of the blast furnace, the hole in the wall of the furnace has to be closed by spraying special clay. This function is performed by the mudgun which is brought to its position and locked against the wall for exerting a force of 240 - 300 tons to fill up the hole in the furnace. The blast furnace in which the inputs are loaded is a massive vessel of 1719 m cubic metre capacity and the size of its outer diameter is 10.6 metres, and the height 31.25 metres. Hot air at 1200 degrees centigrade is fed into the blast furnace at various levels to melt the raw materials. With a view to protect the shell against heat, the blast furnace is lined with refractory brick of one metre thickness. Thus, the drilling machine has to drill a hole through one metre thickness of the refractory brick lining. The drilling machine as well as the mudgun are erected on a concrete platform described as the cast house floor which is in the nature of a concrete platform around the furnace. The cast house floor is at a height of 25 feet above the ground level. On this platform concrete foundation intended for housing drilling machine and mudgun are erected. The concrete foundation itself is 5 feet high and it is grouted to earth by concrete foundation. The first step is to secure the base plate on the said concrete platform by means of foundation bolts. The base plate is 80 mm mild sheet of about 5 feet diameter. It is welded to the columns which are similar to huge pillars. This fabrication activity takes place in the cast house floor at 25 feet above ground level. After welding the columns, the base plate has to be secured to the concrete platform. This is achieved by getting up a trolley way with high beams in an inclined posture so that base plate could be moved to the concrete



platform and secured. The same trolley helps in the movement of various components to their determined position. The various components of the mudgun and drilling machine are mounted piece by piece on a metal frame, which is welded to the base plate. The components are stored in a store-house away from the blast furnace and are brought to site and physically lifted by a crane and landed on the cast house floor 25 feet high near the concrete platform where drilling machine and mudgun has to be erected. The weight of the mudgun is approximately 19 tons and the weight of the drilling machine approximately 11 tons. The volume of the mudgun is 1.5 x 4.5 x 1 metre and that of the drilling machine 1 x 6.5 x 1 metre. Having regard to the volume and weight of these machines there is nothing like assembling them at ground level and then lifting them to a height of 25 feet for taking to the cast house floor and then to the platform over which it is mounted and erected. These machines cannot be lifted in an assembled condition.

The judicial member noticing these facts observed that it is a physical and engineering impossibility to assemble mudguns or the drill tap hole machines elsewhere in a fully assembled condition and thereafter erect or install the same at a height of 25 feet on the cast floor of the blast furnace. She found that even the Adjudicating Authority conceded the fact that the equipments have to be assembled/ erected on the base frame projection of the furnace. She also accepted the submission urged on behalf of the appellant that if the machines are to be removed from the blast furnace, they have to be first dismantled into parts and brought down to the ground only by using cranes and trolley ways considering the size, and also considering the fact that there is no space available for moving the machines in assembled condition due to their volume and weight. She considered the authorities on the subject and came to the conclusion that erection of mudgun and tap hole drilling machine results in erection of immovable property. She noticed the judgment of this Court in *Narne Tulaman Manufacturers Pvt. Ltd. (supra)* and also noticed the judgment of the Tribunal in *Gwalior Rayon Silk Manufacturing (Weaving) Co. Ltd. Vs. CCE 1993 (65) ELT 121*; which held that the issue of immovable property was never raised before the Supreme Court in *Narne Tulaman Manufacturers Pvt. Ltd.* She found support for her conclusion in the decision of this Court in *Municipal Corporation of Greater Bombay & Ors. Vs. The Indian Oil Corporation Ltd. (1991) Supp. (2) SCC 18*; and held that the twin tests laid down by this Court to determine whether assembly/ erection would result in immovable property or not were fully satisfied in the facts of this case. She concluded :-

"The test laid down by the Supreme Court is that if the chattel is movable to another place as such for use, it is movable but if it has to be dismantled and reassembled or re-erected at another place for such use, such chattel would be immovable. In the present appeal, even according to the finding of the Collector, mudguns and drill tap hole machines have to be dismantled and disassembled from the cast floor before being erected or assembled elsewhere. We have also arrived at the same conclusion independently, in para 10 above.

Accordingly applying the test laid down by the Supreme Court we hold that the erection and installation of mudguns and drill tap hole machines result in immovable property. In the light of the ratio of the above case law, we hold that the mudguns and tap hole drilling machines do not admit of the definition of goods and, therefore, excise duty is not leviable thereon".

The core question that still survives for consideration is whether the processes undertaken by the appellant at Bhilai for the erection of mudguns and drilling machines resulted in the emergence of goods leviable to excise duty or whether it resulted in erection of immovable property and not "goods".



The appellant has placed considerable reliance on the principles enunciated and the test laid down by this Court in *Municipal Corporation of Greater Bombay (supra)* to determine what is immovable property. In that case the facts were that the respondent had taken on lease land over which it had put up, apart from other structures and buildings, six oil tanks for storage of petrol and petroleum products. Each tank rested on a foundation of sand having a height of 2 feet 6 inches with four inches thick asphalt layers to retain the sand. The steel plates were spread on the asphalt layer and the tank was put on the steel plates which acted as bottom of the tanks which rested freely on the asphalt layer. There were no bolts and nuts for holding the tanks on to the foundation. The tanks remained in position by its own weight, each tank being about 30 feet in height 50 feet in diameter weighing about 40 tons. The tanks were connected with pump house with pipes for pumping petroleum products into the tank and sending them back to the pump house. The question arose in the context of ascertaining the rateable value of the structures under the Bombay Municipal Corporation Act. The High Court held that the tanks are neither structure nor a building nor land under the Act. While allowing the appeal this Court observed :-

"The tanks, though, are resting on earth on their own weight without being fixed with nuts and bolts, they have permanently been erected without being shifted from place to place. Permanency is the test. The chattel whether is movable to another place of use in the same position or liable to be dismantled and re-erected at the later place? If the answer is yes to the former it must be a movable property and thereby it must be held that it is not attached to the earth. If the answer is yes to the latter it is attached to the earth. If the answer is yes to the latter it is attached to the earth".

Applying the permanency test laid down in the aforesaid decision, counsel for the appellant contended that having regard to the facts of this case which are not in dispute, it must be held that what emerged as a result of the processes undertaken by the appellant was an immovable property. It can not be moved from the place where it is erected as it is, and if it becomes necessary to move it, it has first to be dismantled and then re-erected at another place. This factual position was also accepted by the Adjudicating Authority.

The technical member, however, held that the aforesaid decision was of no help to the appellant inasmuch as a leading international manufacturing firm had offered such machines for export to different parts of the world. He further observed that though on account of their size and weight, it may be necessary to shift or transport them in parts for assembly and erection at the site in the steel plant, they must nevertheless be deemed as individual machines having specialized functions. We are not impressed by this reasoning, because it ignores the evidence brought on record as to the nature of processes employed in the erection of the machine, the manner in which it is installed and rendered functional, and other relevant facts which may lead one to conclude that what emerged as a result was not merely a machine but something which is in the nature of being immovable, and if required to be moved, cannot be moved without first dismantling it, and then re-erecting it at some other place. Some of the other decisions which we shall hereafter notice clarify the position further.

In *Quality Steel Tubes (P) Ltd. Vs. Collector of Central Excise, UP 1995 (75) ELT 17 (SC)*; the facts were that a tube mill and welding head were erected and installed by the appellant, a manufacturer of steel pipes and tubes by purchasing certain items of plant and machinery in market and embedding them to earth and installing them to form a part of the tube mill and purchasing certain components from the market and assembling and installing them on the site to form part of the tube mill which was also covered in the process of welding facility. After noticing several decisions of this Court, the Court observed that the twin tests of exigibility of an article to duty under the Excise Act are that it must be a goods mentioned



either in the Schedule or under Item 68 and must be marketable. The word "goods" applied to those which can be brought to market for being bought and sold and therefore, it implied that it applied to such goods as are movable. It noticed the decisions of this Court laying down the marketability tests. Thereafter this Court observed :-

"The basic test, therefore, of levying duty under the Act is two fold. One, that any article, must be a goods and second, that it should be marketable or capable of being brought to market. Goods which are attached to the earth and thus become immoveable do not satisfy the test of being goods within the meaning of the Act nor it can be said to be capable of being brought to the market for being bought and sold. Therefore, both the tests, as explained by this Court, were not satisfied in the case of appellant as the tube mill or welding head having been erected and installed in the premises and embedded to earth they ceased to be goods within meaning of Section 3 of the Act".

In *Mittal Engineering Works Pvt. Ltd. Vs. CCE 1996 (88) ELT 622 (SC)*; this Court was concerned with the exigibility to duty of mono vertical crystallisers which are used in sugar factories to exhaust molasses of sugar. The material on record described the functions and manufacturing process. A mono vertical crystalliser is fixed on a solid RCC slab having a load bearing capacity of about 30 tons per square meter. It is assembled at site in different sections and consists of bottom plates, tanks, coils, drive frames, supports, plates etc. The aforesaid parts were cleared from the premises of the appellants and the mono vertical crystalliser was assembled and erected at site. The process involved welding and gas cutting. The mono vertical crystalliser is a tall structure, rather like a tower with a platform at its summit. This Court noticed that marketability was a decisive test for dutiability. It meant that the goods were saleable or suitable for sale, that is to say, they should be capable of being sold to consumers in the market, as it is, without anything more. The Court then referred to the decision in *Quality Steel Tubes (supra)* and distinguished the judgment in *Narne Tulaman (supra)* holding that the contention that the weigh bridges were not goods within the meaning of the Act was neither raised nor decided in that case. After considering the material placed on the record it was held that the mono vertical crystalliser has to be assembled, erected and attached to the earth by a foundation at the site of the sugar factory. It is not capable of being sold as it is, without anything more. This Court, therefore, concluded that mono vertical crystallisers are not "goods" within the meaning of the Act and, therefore, not exigible to excise duty. In *Triveni Engineering & Indus Ltd. Vs. CCE 2000 (120) ELT 273*; a question arose regarding excisability of turbo alternator. In the facts of that case, it was held that installation or erection of turbo alternator on a concrete base specially constructed on the land cannot be treated as a common base and, therefore, it follows that installation or erection of turbo alternator on the platform constructed on the land would be immovable property, as such it cannot be an excisable goods falling within the meaning of heading 85.02. In reaching this conclusion this Court considered the earlier judgments of this Court in *Municipal Corporation of Greater Bombay, Quality Steel Tubes and Mittal Engineering Works Pvt. Ltd. (supra)* as also the earlier judgment of this Court in *Sirpur Paper Mills Ltd. V. Collector of Central Excise, Hyderabad 1998 (97) ELT 3 (SC)*. This Court observed :-

"There can be no doubt that if an article is an immovable property, it cannot be termed as "excisable goods" for purposes of the Act. From a combined reading of the definition of 'immovable property' in Section 3 of the Transfer of Property Act, Section 3 (25) of the General Clauses Act, it is evident that in an immovable property there is neither mobility nor marketability as understood in the Excise Law. Whether an article is permanently fastened to anything attached to the earth require determination of both the intentions as well as the factum of fastening to anything attached to the earth. And this has to be ascertained from the facts and circumstances of each case".



It was also held that the decision of this Court in Sirpur Paper Mills Ltd. must be viewed in the light of the findings recorded by the CEGAT therein, that the whole purpose behind attaching the machine to a concrete base was to prevent wobbling of the machine and to secure maximum operational efficiency and also safety. In view of those findings it was not possible to hold that the machinery assembled and erected by the appellant at its factory site was immovable property as something attached to earth like a building or a tree.

Keeping in view the principles laid down in the judgments noticed above, and having regard to the facts of this case, we have no doubt in our mind that the mudguns and the drilling machines erected at site by the appellant on a specially made concrete platform at a level of 25 feet above the ground on a base plate secured to the concrete platform, brought into existence not excisable goods but immovable property which could not be shifted without first dismantling it and then re-erecting it at another site. We have earlier noticed the processes involved and the manner in which the equipments were assembled and erected. We have also noticed the volume of the machines concerned and their weight. Taking all these facts into consideration and having regard to the nature of structure erected for basing these machines, we are satisfied that the judicial member of the CEGAT was right in reaching the conclusion that what ultimately emerged as a result of processes undertaken and erections done cannot be described as "goods" within the meaning of the Excise Act and exigible to excise duty. We find considerable similarity of facts of the case in hand and the facts in Mittal Engineering and Quality Steel Tubes (supra) and the principles underlying those decisions must apply to the facts of the case in hand. It cannot be disputed that such drilling machines and mudguns are not equipments which are usually shifted from one place to another, nor it is practicable to shift them frequently. Counsel for the appellant submitted before us that once they are erected and assembled they continue to operate from where they are positioned till such time as they are worn out or discarded. According to him they really become a component of the plant and machinery because without their aid a blast furnace cannot operate. It is not necessary for us to express any opinion as to whether the mudgun and the drilling machines are really a component of the plant and machinery of the steel plant, but we are satisfied that having regard to the manner in which these machines are erected and installed upon concrete structures, they do not answer the description of "goods" within the meaning of the term in the Excise Act.

Thus, it can be seen that the Hon. Supreme Court while holding the machines as immovable property took into account facts such that the machines could not be shifted without first dismantling it and then re-erecting it as another site. It was also sought to distinguish as to how a concrete base meant just to prevent wobbling of the machine would not place the machine in the category of 'immovable property' as something attached to the earth.

- m) The applicant in his Advance Ruling Application and later in additional statement has stated that they are engaged in supply of solar power generating system and its installation at the site which involves simultaneous supply of goods and services under a single contract.. As per submissions made by them the nature of work undertaken by them can be best categorized as Composite turnkey EPC contract . All arguments and submission put forth by applicant categorically classify



the nature of work to be supply of solar power generating system and its installation at the site. But the query raised by Applicant in Advance Ruling Application is regarding “Applicable GST Rate on supply of Solar Power Generating System.” Hence it is not clear whether the applicants wants clarification of GST rate applicable on “supply of Solar Power Generating System” under a supply contract or wants clarification of GST rate applicable on execution of contract of “supply of solar power generating system along with its installation at the site .”

- n) In case, if the clarification is sought for “Applicable GST Rate on supply of Solar Power Generating System.” then the goods should be supplied under a single “Supply Contract” subject to condition of eligibility of them being “devices and parts” of solar generating system and only then it would be covered under Entry 234 under notification No 01/2017-CT (Rate) dated 28.06.2017 and would attract 5% rate of tax .
- o) As per submission made in application the scope of work in instant case is of supply of solar power generating system and its installation at the site which involves simultaneous supply of goods and services under a single contract where Applicant has to *inter alia*, design, engineer, procure, transport, deliver, develop, erect, install, test , commission and at times maintain & service the project after installation. Hence Applicant intends to undertake an “ EPC contract” and not a “Supply Contract”.

6. Based on scope of work to be undertaken along with provision of law it is observed :

- 1) That installation of the Solar Power generating system has a permanent location as it is meant for onward sale of power to the consumer. Contract between an EPC contractor and the counter-party is entered into on the premise that the plant would continue to be situated at the place of construction. Such plant would therefore have an inherent element of permanency.



The output of the project i.e. Electricity would be available to an identifiable segment of consumer. Thus this output supply would involve an element of permanency for which it would not be possible and prudent to shift base from time to time or locate the plant elsewhere at frequent intervals.

- 3) The Solar generating system cannot be shifted to any other place without dismantling the same. Further it is a tailor made system as per technical specification which cannot be sold *as it is* to the other person.
- 4) Installation of solar power generating system necessarily includes civil work such as development of site, structure foundation, building cable trenches, civil work relating to invertors and control buildings, store rooms , canopies and such other civil structure and related activities as set out in Scope of work and the Technical Specifications. Civil structure cannot be dismantled and moved.
- 5) Based on submission made by applicants , instant case is a single composite turnkey EPC contract of design, engineer, procure, transport, deliver, develop, erect, install, test and commission of project. Contracts of this kind are entered on premise to procure a functional solar power generating system as per specification of the owner for which there is a single lump sum price for the entire contract. Hence on demand of contractor to avoid the legitimate tax the said composite EPC contract cannot be split in two separate contracts, one for supply of goods and another that of services and taxed accordingly.
- 6) An overview of all makes us observe that the impugned transaction for EPC Contract for the Solar Power generating system which includes engineering, design, procurement, supply, development, testing and commissioning is a “works contract” in terms of clause (119) of section 2 of the GST Act.

- 7) Since the impugned transaction for EPC Contract for the Solar Power generating system is a works contract under section 2(119) as supply of services hence question of principal supply does not arise and so GST tax rate of Solar power Generating System under notification No 01/2017-CT (Rate) dated 28.06.2017, at S. No. 234, under HSN Classification 84, 85 and 94 is not applicable.


Based on above facts along with provision of law, we pronounce the ruling is as follows:

RULING

In instant case the nature of work is of Erection, Procurement and Commissioning of Solar Generating System which falls under the ambit "Works Contract Services" (SAC 9954) of Notification no. 11/2017 Central Tax (Rate) dated 28 June, 2017 and shall attract 18% rate of tax under IGST Act, or 9% each under the CGST and SGST Acts, aggregating to 18%.

 24/9/18

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