

 <p>सत्यमेव जयते</p>	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/2018-19/16

Nitin Wapa Joint Commissioner	:	Member(Central Tax)	
Sudhir Sharma Joint Commissioner	:	Member(State Tax)	
Name and address of the applicant	:	M/s. Solairedirect India LLP. 224-225-226, Anand Plaza, A-Block, 2 nd Floor, University Road, Near Ayad Bridge, Udaipur (Raj) 313001.	
GSTIN of the applicant	:	08ADEF55194G1ZR	
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;	
Date of Personal Hearing	:	15.09.2018	
Present for the applicant	:	Mr Sumit Rahi (C.F.O) and Ms Sagar Shah (G.S.T.P)	
Date of Ruling	:	15.09.2018	

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), it is given as under:

(a) Classification of any goods or services or both;

Further, M/s Solairedirect India LLP the applicant being a registered person, GSTIN is 08ADEF5194G1ZR, 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:

- 1.1 Solairedirect India LLP undertakes Engineering, Procurement and Construction ('EPC') activities for Group companies as well as third parties for setup of solar power generating system where contract for commissioning of solar power generating system involves simultaneous supply of goods and services.
- 1.2 The solar power generating system installed by the Applicant under the EPC contracts consists of various components like solar photovoltaic panels , solar inverters, transformers, module mounting structure, cables, connectors and other accessories where solar panels which account for approximately 70% to 75% of the total cost.
- 1.3 In a typical contract, the customers of the applicant acquire the land for the set-up of the solar power generating system and access is granted to the Applicant for executing the project on turnkey basis.
- 1.4 The steps involved in execution of a contract by the Applicant are as below:

1.4.1 Planning for the project

The Applicant submits the Implementation schedule which is approved by the purchaser. The Applicant remains responsible for ensuring compliance with the documentation, related drawings, data sheets, technical specifications, measurements while discharging obligations under the contract.

1.4.2 Procurement of materials

The solar panels and other ancillary materials are then procured by the Applicant and delivered to the power generating system's site. The risk of loss for all equipment and material is transferred to the purchaser on delivery at the project site.

1.4.3 Civil works at the site

Post receiving the access to the project site, applicant starts with the civil works which involves creating of foundations for erection of the solar panels.



1.4.4 Erection, commissioning and installation of the solar panels

Post completion of the foundations, the solar panels is erected on these foundations. Post erection of the solar panels, other related equipment like inverters, wiring and other connections are completed.

1.4.5 Project management services

While executing a contract, the Applicant is also expected to undertake the Project Management services, which typically includes:

- Engineering services of layout and foundation
- Erection of the structure
- Installation services of all components
- Pre-commissioning
- Commissioning
- Performance tests
- Defect rectification



1.4.6 Generation of electricity and connection with the grid

The last step in the contract execution is the commencement of production of electricity and successful connection of the power generating system with the grid for transfer of electricity.

- 1.5 The essence of the contracts is generation of electricity using solar power. The essential deliverable therefore, under the contracts in question is a working solar power generating system, duly connected with the grid for transmission of electricity and the electricity being generated seamlessly as per the technical specifications (like voltage, etc) of the Applicant's customer.
- 1.6 Applicant has sought to classify the supply of solar power generating system as a composite supply with solar panels being the principal supply under HSN 8541 basis the nature of the product and after considering relevant chapter notes and section notes. Notification No 1/2017 – Integrated Tax (Rate) dated June 28, 2017 prescribes applicable rate of IGST). Photovoltaic cells supplied by Applicant classifiable under Chapter Heading 8541 are covered under Schedule I of the said Notification and accordingly liable to 5% IGST.
- 1.7 Applicant wishes to understand whether the solar panels could be said to be the principal supply and the supply of solar power generating system along with all components could be said to composite supply and could get classified under Schedule I of the above referred notification.

2. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT

Applicant has sought ruling to be pronounced under section 97(2) (a) of the CGST Act 2017, on the following questions:

Whether EPC contract for set up of solar power generating system be considered as a composite supply with PV modules being the principal supply and be taxed at a rate of 5% (i.e. tax rate applicable on the P.V. modules)?

3. APPLICANTS INTERPRETATION OF LAW IN RESPECT OF THE QUESTION RAISED

3.1 The Applicant has made a detailed submission to demonstrate eligibility of solar modules to be classified as principal supply in the composite supply of solar power generating system and requests a ruling to be pronounced.

The applicant has stated that the EPC Contract for the supply of solar power generating system should be considered as composite supply 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 . According to him in the instant case, the individual components (like solar panels, inverters, cables, etc.) are not being sold individually. The intention of the parties is to enter into a contract for set up of a power generating system and not for the purchase of the individual components as such. Also, the individual components would not be of use as such unless they are assembled at the site (which would involve element of service) to work as a unit resulting in set up of the power generating system. This implies that the individual components or the services are supplied in conjunction with each other as these are not being sold as such but as a complete unit.

The Applicant submitted that the contract undertaken is for supply of goods to customer and setting up power generating system wherein the installation/ assembly services are also included for the supply of goods. Accordingly, it can be seen that the goods and services are naturally bundled in the ordinary course of business with the primary intention being to get a complete and operational solar power generating system. He stated that in composite supply one supply should be a principal supply. The term principal supply is defined under Section 2 (90) of CGST Act as the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

In the instant case, the individual components (like solar panels, inverters, cables, etc.) are not being sold individually. The intention of the parties is to enter into a contract for set up of a power generating system and not for the purchase of the individual components as such. Also, the individual components would not be of use as such unless they are assembled at the site (which would involve element of service) to work as a unit resulting in set up of the power generating system. This implies that the individual components or the services are supplied in conjunction with each other as these are not being sold as such but as a complete unit.

The Applicant submitted that the contract undertaken is for supply of goods to customer and setting up power generating system wherein the installation/ assembly services are also included for the supply of goods. Accordingly, it can be seen that the goods and services are naturally bundled in the ordinary course of business with the primary intention being to get a complete and operational solar power generating system.

The Applicant in support of his submission has also stated certain overseas GST and VAT jurisdictions like United Kingdom ('UK'), European Union ('EU') and Australia.

3.2 The Applicant submitted that the supply of solar panels is the principal supply in the composite supply of solar power generating system hence the tax rate applicable on the solar panels is 5% under the heading 8541 should be applicable to the entire contract value and has relied on the following Entry:

Entry number 234 of Schedule I of IGST Rate Notification reads as under:

Sr. No.	Chapter/ Heading/ Sub- heading/ Tariff item	Description of Goods
	84, 85 or 94	<p><i>Following renewable energy devices & parts for their manufacture</i></p> <p><i>(a) Bio-gas plant</i></p> <p><i>(b) Solar power based devices</i></p> <p><i>(c) Solar power generating system</i></p> <p><i>(d) Wind mills, Wind Operated Electricity Generator (WOEG)</i></p> <p><i>(e) Waste to energy plants / devices</i></p> <p><i>(f) Solar lantern / solar lamp</i></p> <p><i>(g) Ocean waves/tidal waves energy devices/plants</i></p> <p><i>(h) Photo voltaic cells, whether or not assembled in modules or made up into panels</i></p>

The Applicant stated that Entry 234 given above is applicable to solar power generation system which includes all the components of a solar power generation system i.e. solar panels/modules, solar inverter, transformer, module mounting structure and the cables, connectors and other accessories. Accordingly, it could be construed that all such components would fall within the purview of entry 234 and hence would be liable to 5% IGST.

- 3.3 The Applicant has further submitted that if the contract is not to be considered as composite supply, it should be considered as two separate supplies of goods and services with goods being taxed at the rate of 5% and services being taxed at the rate of 18%.

The two parts in the contract in question are the supply of solar panels and ancillary equipment like invertors, transformer, wires, cables, etc and the allied services supplied under the contract. He submitted that applicable tax rates on these products should be 5% under heading 8541 as detailed in our submissions in Para 3.

Another element of the contract is the allied services. The services involved in the contract in question should be taxed at 18% in terms of the notification no 8/2017 – Integrated Tax (Rate) dated 28 June 2017.

- 3.4 The Applicant stated that the EPC Contract cannot be classified as a works contract in relation to immovable property or a mixed supply but as a composite supply.

The Applicant stated that a contract to qualify as works contract, it must be for or in relation to an immovable property. As per section 3(26) of the General Clauses Act, 1897 “immovable property” shall include land, benefits arising out of land, and things attached to the earth, or permanently fastened to anything attached to the earth. As per Section 3 of the Transfer of Property Act, 1882, the expression “immovable property” which means

- a) Rooted in the earth, as in the case of trees and shrubs;
- b) Embedded in the earth, as in the case of walls and buildings;
- c) Attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached.

- 3.5 For determination of whether solar generating system is movable or immovable property the Applicant has placed reliance on the following judicial precedents :

- Commissioner of Sale Tax Vs Bombay Sound Service (and others).
- Sri Velayuthaswamy Spinning Mills (P) Ltd Vs The Inspector General of Registration.
- Commissioner of Central Excise, Ahmedabad Vs Solid & Correct Engineering Works.
- Selvel Advertising Private Limited Vs Commercial Tax Officer, Alipore Charge.
- Jaiprakash Industries Limited Vs Commissioner of Commercial Taxes, Uttarakhand.
- Sirpur Paper Mills Ltd. Vs Collector of Central Excise, Hyderabad.
- Essar Telecom Infrastructure Pvt. Ltd. Vs Union of India etc.

In the light of the above discussion, the Applicant submitted that that the solar power generating system cannot be said to be “attached to the earth” within the meaning of that expression as defined in section 3 of the Transfer of Property Act. Further it is attached to the land for its effective functioning and not for the beneficial use and setting up of the solar power generating system itself is not intended to be permanent at a given place. The equipment used in setting up of a solar power generating system (solar panels, inverters, transformer, cables can be removed and relocated to another location without incurring substantial damage to the equipment. Based upon the above analysis, the Applicant submits that the solar power generating system is not an immovable property. Therefore, the EPC contract under consideration cannot be said to be



“works contract” as defined under the CGST Act since the same is not in relation to immovable property.



3 Personal Hearing (PH)

4.1 In the matter personal hearing was given to the applicant, Mr. Sumit Rathi (CFO) and Mr. Sagar Shah (GSTP) of applicant appeared for personal hearing on 15.09.2018. During the PH they submitted additional statement in connection with their Application. During hearing applicant put forth two more queries and sought clarification on them . He wanted to know that in case the above contract is not considered as composite supply , can it be split into two i.e. one of supply of goods and another of service and taxed accordingly. Secondly he wanted to know which goods would fall under entry no. 234 of the rate notification as solar generating system. They submitted few judicial precedents in support of their argument. Both these additional queries have been addressed in detail under the 5. *Findings, Analysis and Conclusion* of the order. Further they reiterated the submission already made in Advance Ruling Application pleaded that the case may be decided as per above submissions and requested the issue to be decided at the earliest.

4.2 The jurisdictional officer in his comments has stated that the applicant is executing the project on turnkey basis which involves planning, procurement, civil work, erection, commissioning, installation and project management services. Hence the nature of contract is that of “works contract services” and thus to be taxed under SAC 9954.

5. Findings , Analysis and Conclusion:

Various kind of contracts usually prevalent for execution of nature of work specified by the applicant can be categorised 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 a 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.

As per submissions made in Advance Ruling Application the applicant undertakes Engineering, Procurement and Construction (‘EPC’) activities for Group companies as well as third parties for setup of solar power generating system where contract for commissioning of solar power generating system involves simultaneous supply of goods and services.



- a) Applicant has not submitted copy of any specific EPC contract along with the Advance Ruling Application on which he would like to seek the Ruling. 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 the project.
- c) As per submission given by the 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 composite EPC turnkey contracts the intention of the owner is not to procure **goods of solar power generating system** but to procure **a completely functional solar power plant as a whole** wherein applicant undertakes end to end responsibility of supply of equipments of solar power plant including designing, engineering, supplies, installation to technical specification, testing and commissioning of a functional solar power plant as well as 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 Plant as per specific demands of owner. So it is not something sold out of shelf.
- g) Under these kinds of contracts there is a single lump sum price for the entire 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 EPC contract he is supplying *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 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 of supply of solar power generating system or its parts but an EPC 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 goods of solar power generating system or their parts 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 for immovable property only, 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 plant, once installed is capable of being removed and transferred from one place to another without substantial damage hence same should qualify as movable property. Hence 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 doesn’t end with the procuring 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. 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 is

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 ratable 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 cannot 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 excisability 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 twofold. One, that any article, must be 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 Excisability 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 eligible 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 eligible 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) Applicant has further submitted that if the contract is not to be considered as composite supply, it should be considered as two separate contracts of supplies of goods and services with goods being taxed at the rate of 5% and services being taxed at the rate of 18% i.e. division of contract in two, one for supply of material and other for designing, installation, commissioning and maintenance of plant. 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, as there is a single lump sum price for the entire contract. Hence the said EPC contract cannot be split in two separate contracts one of supply of goods and another that of services and taxed accordingly.

- n) Explanations covered under point i) and m) of 5. *Findings, Analysis and Conclusion* satisfactorily addresses additional queries raised by applicant during personal hearing.

6. **Based on above facts along with provision of law it is observed: -**

- 1) That the Solar Power Plant is a big project and 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.
- 2) 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 Power Plant 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) Solar Power Plant 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 these kind are entered on premise to procure a functional Solar Power Plant as per specification of the owner for which there is a single lump sum price for the entire contract. Hence for convenience of contractor the said EPC contract cannot be split in two separate contracts one for supply of goods and another for supply of services and taxed accordingly.
- 6) An Overview of all makes us observe that the impugned transaction for EPC Contract for the Solar Power Plant 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.

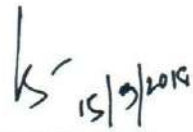
- 7) Since the impugned transaction for EPC Contract for the Solar Power Plant is a works contract under section 2(119) as supply of services hence question of principal supply does not arise and so GST tax rate of Solar power Generating System under notification No 01/2017-CT (Rate) dated 28.06.2017,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

RULING

As per the statement of facts submitted by the applicant, the scope of work in respect of “Turnkey Composite EPC Contract” includes designing, planning civil works, procurement of good, erection, testing and commissioning. Accordingly, “Turnkey EPC Contract” is not covered under Entry 234 of Schedule I of the Notification no. 1/2017 – Integrated Tax (Rate), Entry 234 of Schedule I of the Notification no. 1/2017 – Central Tax (Rate) both dated 28 June, 2017 and Entry 234 of Schedule I of the Notification no 1/2017 – State Tax (Rate) dated 29 June, 2017. The contract for Erection, Procurement and Commissioning of Solar Power Plant falls under the ambit “ Works Contract Services” (SAC 9954) of Notification no. 11/2017 Central Tax (Rate) dated 28 June, 2017 and attracts 18% rate of tax under IGST Act, or 9% each under the CGST and SGST Acts.


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