सत्यमेव जयते	**RAJASTHAN AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX NCR BUILDING, STATUE CIRCLE, C-SCHEME JAIPUR – 302005 (RAJASTHAN)**	राष्ट्र कर बाजार

ADVANCE RULING NO.RAJ/AAR/2018-19/11

Nitin Wapa Joint Commissioner	:	Member(Central Tax)
Sudhir Sharma Joint Commissioner	:	Member(State Tax)
Name and address of the applicant	:	M/S Tag Solar System , B-205, Rajender Marg, Bapu Nagar, Jaipur. 302015
GSTIN of the applicant	:	08AAKFT3688D1ZT
Clause(s) of Section 97(2) of CGST / SGST Act, 2017, under which the question(s) raised	:	(e) Determination of the liability to pay tax on any goods or services or both
Date of Personal Hearing	:	08.07.2018
Present for the applicant	:	Shri Pankaj Ghiya (Authorised Representative).
Date of Ruling	:	18.08.2018

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

The Issues raised by the applicant are fit to pronounce advance ruling as they fall under ambit of the Section 97(2) (e), it is as given under:

(e) Determination of the liability to pay tax on any goods or services or both

Further, the applicant being a registered person, GSTIN: 08AAKFT3688D1ZT, as per the declaration given by him in Form ARA-01, the issue raised by the applicant is neither pending for proceedings nor proceedings was passed by any authority. Based on the above observations, the application is '**admitted**' to pronounce advance ruling.

1. Submission of the Applicant:

Statement of relevant facts having a bearing on the question(s) raised.

1. M/s. Tag Solar System, a partnership firm which is engaged in Supply, Commissioning, Installation, Maintenance of Solar Water Pumping System within a stipulated time period.

2. Such Supplies are given on the instructions of the Rajasthan Horticulture Development Society under subsidy scheme wherein the Solar Water Systems are required to be installed at the farmer's field. The scope of work is reproduced hereunder:

   "supply, installation, commissioning and maintenance of Solar Water Pumping Systems"

3. Accordingly the Applicant Supplies, Installs, Commissions and Maintains the said systems and perform end to end activities in this regard.

4. There may be a consolidated price for all the activities undertaken by the Applicant which involves both the Supply of Goods and Supply of Services.

5. Applicant has no clarity with respect to the rate of tax on such Supply. As per their understanding it will be taxable at the rate of 5% being covered under Chapter 84 / 85 under the item "Solar Power Generating System". Applicant has confusion that whether it would be treated as a Supply of goods and taxable at 5% or will it be treated as a works contract and charged at 18%.

2. Applicant's interpretation of law and/or facts:

RATE OF SOLAR POWER GENERATING SYSTEM

The item "Solar Power Generating Systems and parts for their manufacture" are taxable @ 5% under GST Act, 2017 vide Notification No. 01/2017-CT (Rate) dated 28.06.2017. The entry is reproduced herein below for your kind perusal:

Chapter Heading	Particulars
84 or 85 or 94	Following renewable energy devices and parts for their manufacture
	a) Bio-gas Plant
	b) Solar Power based devices
	c) Solar Power generating System
	d) Wind Mill and Wind Operated electricity generator
	e) Waste to energy plants / devices
	f) Solar lanterns / solar lamps
	g) Ocean waves / tidal waves energy devices / plants
	h) Photo voltaic cells, whether or not assembled in modules or made up into panels

As per the above Entry in the Rate Schedule, the supply of item under consideration i.e. Solar Water Pumping System falls squarely under the definition of "Solar power generating System" and such supply should be taxable at the rate of 5% as they are systems which absorb sunlight and convert it into electricity which can be put to further use.

The above mentioned Entry "Solar Power Based Devices" under Chapter heading 84 or 85 or 95, the item in question i.e. Solar Water Pumping System can also be covered under this category as it is a device run by solar power. Solar Water Pumping System is an apparatus used for pumping water which

runs on solar energy. The dictionary meaning of **"device"** is reproduced as under:

"a thing made or adapted for a particular purpose, especially a piece of mechanical or electronic equipment."

Solar Water Pumping System is an equipment which harnesses solar energy in order to pump water. Therefore, it can also be alternatively classified as a "Solar Power based device" under Chapter 84 or 85.

Applicant has stated that item cannot be termed as an immovable property as these Solar Water Pumping Systems are screwed by nuts and bolts into the ground and can be removed by simply unscrewing the nuts and bolts and in no way do they get attached or affixed to the earth. The pumping sets do not get permanently attached to the ground and can at any time be removed from the fields. They are assembled at the site for maximum operational efficiency. When the item can simply be dismantled and removed from the ground at any given time and is not affixed to the earth permanently, the said goods cannot be categorized as an immovable property. As per applicant Hon'ble Supreme Court of India in the case of Sirpur Paper Mills Ltd. vs. The Collector of Central Excise has held as under:

> *"It is 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. The tribunal has pointed out that it was for the operational efficiency of the machine that it was attached to earth. If the appellant wanted to sell the paper making machine it could always remove it from its base and sell it.*
>
> *Apart from this finding of fact made by the Tribunal, the point advanced on behalf of the appellant, that whatever is embedded in earth must be treated as immovable property is basically not sound. For example, a factory owner or a house-holder may purchase a water pump and fix it on a cement base for operational efficiency and also for security. That will not make the water pump an item of immovable property. Some of the component of water pump may even be assembled on site. That too will not make any difference to the principle. The test is whether the paper making machine can be sold in the market. The Tribunal has found as a fact that it can be sold. In view of that finding, we are unable to uphold the contention of the appellant that the machine must be treated as a part of the immovable property of the company. Just because a plant and*

machinery are fixed in the earth for better functioning, it does not automatically become an immovable property."

The same has also been held in the case of Commissioner of Central Excise vs. Solid & Correct Engg. Works & Ors. as under:

"23. The courts in this country have applied the test whether the annexation is with the object of permanent beneficial enjoyment of the land or building. Machinery for metal-shaping and electro-plating which was attached by bolts to special concrete bases and could not be easily removed, was not treated to be a part of structure or the soil beneath it, as the attachment was not for more beneficial enjoyment of either the soil or concrete. Attachment in order to qualify the expression attached to the earth, must be for the beneficial attachment of that to which it is attached. Doors, windows and shutters of a house are attached to the house, which is imbedded in the earth. They are attached to the house which is imbedded in the earth for the beneficial enjoyment of the house. They have no separate existence from the house. Articles attached that do not form part of the house such as window blinds, and sashes, and ornamental articles such as glasses and tapestry fixed by tenant, are not affixtures.

24. Applying the above tests to the case at hand, we have no difficulty in holding that the manufacture of the plants in question do not constitute annexation hence cannot be termed as immovable property for the following reasons:

(i) The plants in question are not per se immovable property.

(ii) Such plants 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.

(iii) The fixing of the plants to a foundation is meant only to give stability to the plant and keep its operation vibration free.

(iv) The setting up of the plant itself is not intended to be permanent at a given place. The plant can be moved and is indeed moved after the road construction or repair project for which it is set up is completed.

33. ..... In the instant case all that has been said by the assessee is that the machine is fixed by nuts and bolts to a foundation not because the intention was to permanently attach it to the earth but because a

foundation was necessary to provide a wobble free operation to the machine. An attachment of this kind without the necessary intent of making the same permanent cannot, in our opinion, constitute permanent fixing, embedding or attachment in the sense that would make the machine a part and parcel of the earth permanently. In that view of the matter we see no difficulty in holding that the plants in question were not immovable property"

Applicant has contended that in the light of the abovementioned facts and judgments Solar Water Pumping Systems cannot be categorized as Immovable Property and the activity in relation to movable property cannot in any way be categorized as a Works Contract as the definition of Works Contract under CGST Act, 2018 does not cover activities in relation to movable property. Hence, the whole transaction cannot be termed as a Works Contract.

Applicant has stated that the instant case is of " Composite Supply" where in the present scenario, it is very important to see what the Principal Supply is as the rate of tax of such transactions depends on the rate of tax of the Principal Supply.

Applicant has interpreted that predominant element of the Supply being made in the instant case relates to Supply of Solar Water Pumping Systems. There is one single Supply Tender which involves the Supply of the Systems to the recipient and the work of installation, maintenance, commissioning is ancillary to the activity of Supply of the Solar Water Pumping Sets. Since, the scope of Supply of the applicant involves provision of both goods and services, where the entire Supply is one transaction; it would qualify as a composite supply. The principal Supply in the present scenario would be provision of Solar Water Pumping System and so the entire contract should be taxable at the rate of 5%. As the service element forms only about 10% in the whole provision of Supply.

3. Question(s) on which Advance Ruling is required:

1. Whether Supply, commissioning, installation and maintenance of Solar Water Pumping System would be taxable at the rate of 5% considering it as a composite supply where the principle supply being that of goods i.e. supply of Solar Power generating system having HSN Code 84 or 85?

2. Whether separate bills can be raised by the Applicant with respect to Supply and Goods and Supply of Services Purely in respect of the contract of the Applicant with RHDS enclosed herewith?

3. Will the said transaction be classified as a "Works Contract" and taxable at the rate of 18% being Supply of Services?

4.1 Personal Hearing (PH):

In the matter personal hearing was given to the applicant Shri Pankaj Ghiya (Authorised Representative) who appeared for personal hearing on 08.07.2018. During the PH he submitted EOI Document of Empanelment Report, copy of a circular of CBEC dated 15.01.2002 and Supreme court judgment of M/s Sirpur Paper Mills containing the applicant's interpretation of law and facts in respect of the aforesaid questions which was placed on record. 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. Applicant was instructed to submit copy of Work Order and some sample bill which was done by them on a later date.

4.2 The **jurisdictional officer** in her comments has stated that the contract given to the applicant is of supply, installation, commissioning and maintenance of Solar Water pumping system in which the dealer has to deliver a functional solar water pumping system. Hence, it is a one single contract so it is to be treated as works contract and taxed @ 18% under GST. She further stated that separate bills one for supply of goods and other for supply of services cannot be generated as it is a single contract.

5. Findings and analysis:

As per copy of contract submitted by the applicant i.e. M/s Tag Solar System has to execute **"Supply of Solar Photovoltaic (SPV) water pumping system".** After going through the written submissions, copy of contract and other additional statements following findings and analysis are made:

a) M/s Tag Solar System, is a partnership firm is engaged in Supply, Commissioning, Installation, Maintenance of Solar Water Pumping System.

b) Such Supplies are given on the instructions of the Rajasthan Horticulture Development Society under subsidy scheme wherein the Solar Water Systems are required to be installed at the farmer's field.

c) The intention in the instant case is not to procure **goods of Solar Photovoltaic (SPV) water pumping system** but to procure a **completely functional Solar Photovoltaic (SPV) water pumping system as a whole** wherein applicant undertakes end to end responsibility of supply of equipments including installation and commissioning to a defined technical specifications and testing, commissioning of a fully functional **Solar Photovoltaic (SPV) water pumping system.**

d) Under General Condition of Contract (IV) in clause IV.2 of EOI all risk and liabilities (insurance charges) accruing in relation of works (temporary or permanent), and of all equipments, machinery, materials, shall be with applicant until occurrence of the Final Acceptance.

e) Schedule IV –(Scope of works) of EOI clearly spells out the terms and conditions where contractor has to undertake works of supply installation and commissioning of Solar Photovoltaic (SPV) water pumping system as per specific demands of the owner. So it is not the something sold out of shelf.

f) There is a single lump sum price for the entire work undertaken by the applicant.

g) After completing installation and commissioning of system, final payment shall only be made on basis of satisfactory inspection and verification report.

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, for description :

- *Following renewable energy devices & parts for their manufacture*

(c) Solar Power Generating System

The rate of CGST has been mentioned as 2.5%. According to assessee, the correct classification of given supply should be Chapter 84: Solar Power Generating System at the rate of (2.5%+ 2.5%) 5%.

As can be seen, the above entry is under the notification describing the Tax rate on **'Goods'**. If the transaction is supply of goods then the applicable Schedules would have to be seen but the intent of parties is always for supplying **a Functional Solar Photovoltaic (SPV) water pumping system as a whole** which includes supply, installation and commissioning and it is not chattel sold as chattel.

i) 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** , then only it would classify as works contract service . Hence it means that if aforesaid activities are undertaken for a movable property then it will not be works contract service.

j) Applicant has relied upon following judgment and Circular in furtherance of their arguments of Solar Photovoltaic (SPV) water pumping system being movable property and not immovable:

i) **Sirpur Paper Mills Ltd. v. Collector — 1998 (97) E.L.T. 3 (S.C.)**

ii) **CBEC circular number 58/1/2002-CX dated 15/1/2002**

iii) **Commissioner of Central Excise, Ahmedabad v. Solid and Correct Engineering Works [(2010) 5 SCC 122**

Relying on aforesaid judgements and citations the applicants contention is that as the Solar Photovoltaic (SPV) water pumping 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. Hence in view of above precedence and facts of the case, the given supply should be treated as supply of Solar Photovoltaic (SPV) water pumping system.

k) As per the terms and condition laid in EOI the applicant has to undertake activities of procurement of the material and has also to 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 and further has a obligation of maintenance for a certain period. The transaction is a 'work contract' but it is for us to decide whether it is a 'work contract' in terms of GST Act. So, we come to the crux of the issue and 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) 4 SCC 751 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 exgibility 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 crystaliser 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 PaperMills 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.

6. **In light of above judgments and scope of work it is observed :**

1) That Solar Photovoltaic (SPV) water pumping system has a permanent location (at specified farmer's field in Rajasthan) as its works is undertaken on instructions of the Rajasthan Horticulture Development Society under subsidy scheme wherein the Solar Water Systems are required to be installed at the farmer's field meant for supply of water using solar energy. Such plant would therefore have an inherent element of permanency.

2) The output of the project i.e. water, using solar energy would be available to an identifiable 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 Photovoltaic (SPV) water pumping system cannot be shifted to any other place without dismantling the same. Further it is tailored made system which cannot be sold ***"as it is"*** to the other person.

4. Contract also includes civil work such as development of site, structure foundation for mounting PV modules on metallic structures and fencing of the system to ensure security and safety and such other civil structure related activities as set out in Scope of work and in the Technical Specifications. Civil structure cannot be dismantled and moved away.

5. Schedule IV Scope of work, clearly states "Commissioning of solar pumping infrastructural facility and its maintenance and after sales services for 10 years (It includes 5 years guarantee period)." The applicant has himself agreed to be bound by this clause which reflects permanency of the installed Solar Photovoltaic (SPV) water pumping system. Contract between applicant and the counter-party is entered into on the premise that the system would continues to be situated at the place of construction.

6. Case laws citied by applicant has to be understood in terms of the facts as available therein. As in the case of M/S Solid and correct Engineering Works (citied Supra) the plant was not intended to be permanent and was to be shifted after completion of road repair and Construction work hence was regarded as moveable. But in instant case the solar power water pumping system has an element of permanency.

7. 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 regarded the instant transaction as supply of i) "Solar Power Generating System and also at the same time he regards it as supply of ii) "Solar Power Based Devices" treating such supplies to be taxable at the rate of 5%.

8. The applicant has to supply a " **Functional Solar Photovoltaic (SPV) water pumping system" <u>as a whole</u>** which includes supply, installation

and commissioning , maintenance for 10 years , hence instant transaction is neither a supply of i) "Solar Power Generating System" and nor a supply of ii) "Solar Power Based Devices" .

9. As can be seen, the above entry under the notification describes the Tax rate on **'Goods'**. If the transaction is supply of goods i.e. supply of either "Solar Power Generating System" or supply of "Solar Power Based Devices" then the applicable Schedules would have to be seen but the intent of parties in instant case is always for supply of a **" Functional Solar Photovoltaic (SPV) water pumping system" as a whole** which includes supply, installation and commissioning at the site of farmer along with maintenance for 10 years and is not chattel sold as chattel. Hence cannot be treated as "Composite Supply" as contended by the applicant.

10. An overview of all makes us observe that the impugned transaction for supply of Solar Photovoltaic (SPV) water pumping system which includes procurement, supply, development, testing , commissioning and providing maintenance service for 10 years is a "works contract" in terms of clause (119) of section 2 of the GST Act.

11. Since the impugned transaction for supply and commissioning of Solar Photovoltaic (SPV) water pumping system is a "works contract" u/s 2(119) as supply of services, hence question of principal supply does not arise and so GST tax rate of Solar power Generating System or Solar Power Based Devices 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 the ruling is as follows:

RULING

1 As per the statement of facts submitted by the applicant, the scope of work includes procurement, supply, development, testing , commissioning and providing maintenance service for 10 years in respect of supply of a **Solar Photovoltaic (SPV) water pumping system**. Accordingly it is not getting covered under supply of 'Solar Power Generating System' under Entry 234 of Schedule I of the Notification no. 1/2017 – Central Tax (Rate), dated 28th of June, 2017 under HSN code 84 or 85. "Supply, installation, commissioning and maintenance of Solar Water Pumping Systems" falls under the purview of Works Contract as per Section 2(119) of GST Act.

2 The applicant has sought a clarification on division of contract in two, one for supply of material and other for installation, commissioning and maintenance of Solar Water Pumping Systems. In this regard it is opined that in instant case as per terms and conditions of agreement, it is a single contract of supply, installation, commissioning and maintenance of Solar Water Pumping Systems and hence cannot be split in two separate contracts. Hence in instant case separate bills for supply of goods and supply of services cannot be raised.

3 The contract for "supply, installation, commissioning and maintenance of Solar Water Pumping Systems" falls under the ambit of " Works Contract Services" which comes under the purview of Works Contract as per Section 2(119) of CGST Act and attracts 18% rate of tax under IGST Act, or 9% each under the CGST and SGST Acts, aggregating to 18%.

18/8/18

NITIN WAPA
Member
(Central Tax)

18/08/2018

SUDHIR SHARMA
Member
(State Tax)

SPEED-POST
M/S Tag Solar System,
B – 205, Rajender Marg,
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F.No. IV(4)11/AAR/RAJ/2018-19/ 51-55 Dated: 27/8/2018

Copy to:-

1. The Chief Commissioner of CGST & Central Excise (Jaipur Zone) & Member, Appellate Authority for Advance Ruling, NCR Building, Statue Circle , Jaipur-302005.

2. The Commissioner of SGST & Commercial Taxes Rajasthan & Member, Appellate Authority for Advance Ruling, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme, Jaipur-302005.

3. STO, Ward-II, Circle-J, Jaipur Zone-II. Divisional Kar Bhawan, Commercial Taxes Dept., Jhalana Institutional Area, Jaipur.

4. Dy./Asstt. Commissioner, GST Division –E, Jaipur, GST Range –XXIV, Jaipur.

Superintendent

o/c
(CGST)