

 सत्यमेव जयते	RAJASTHAN AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX KAR BHAWAN, AMBEDKAR CIRCLE, NEAR RAJASTHAN HIGH COURT JAIPUR – 302005 (RAJASTHAN)	
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ADVANCE RULING NO. RAJ/AAR/2019-20/28

J.P.Meena Additional Commissioner	:	Member (Central Tax)	
Hemant Jain Joint Commissioner	:	Member (State Tax)	
Name and address of the applicant	:	SEVK RAM SAHU, (M/s S.R.S. Enterprises), : 172, Hasanpura C, Khatipura Road, Jaipur, Rajasthan 302006	
GSTIN of the applicant	:	08EIFPS8064B1Z1	
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	b. Applicability of a notification issued under the provisions of this act;	
Date of Personal Hearing	:	28.11.2019	
Present for the applicant	:	Shri P.C.Sharma, C.A. & Shri B.S.Naruka, C.A. (Authorised Representatives)	
Date of Ruling	:	18.12.2019	


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



- At the outset, we would like to make it clear that the provisions of both the CGST Act and the RGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the RGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / RGST Act would be mentioned as being under the "GST Act".
- The issue raised by SEVK RAM SAHU, (M/s S.R.S. Enterprises), 172, Hasanpura C, Khatipura Road, Jaipur, Rajasthan 302006 (hereinafter the applicant) is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2) (b) given as under: -
 - b. Applicability of a notification issued under the provisions of this act;
- Further, the applicant being a registered person (GSTIN is 08EIFPS8064B1Z1 as per the declaration given by him in Form ARA-01) the issue raised by the applicant is neither pending for proceedings nor proceedings were passed by any authority. Based on the above observations, the applicant is admitted to pronounce advance ruling.

1. **SUBMISSION AND INTERPRETATION OF THE APPLICANT:**

- Party 'A' (Sunrise Construction Company) entered into an agreement with Rajasthan Government to construct 270 flats under affordable housing scheme under Pradhan mantra Awas Yojana (including material and labour). Party 'A' further sublets the work to Party 'B' (M/s Banna Ram Choudhary) to construct above 270 flats under a separate work contract (including material and labour).

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- Party 'B' further entered in a sub-contract with Party 'C' (the applicant) for "Pure labour Service" in said project. Scope of work of the applicant will be only "Chunai and Plaster Work only" The applicant will have all the control over labour and responsible for their dues and other concerns.
 - Generally, government does the contract of housing development project including material and labour and not merely for "Pure Labour Service". Main contractor further sublets the work to other sub-contractors for different type of works related to the project.
 - Entry No. 10 of Notification No. 12/2017-CT(R) dated 28.06.2017 provides GST exemption for pure labour contract services, as under-

Services provided by way of pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana.

In applicant's opinion, above notification is "activity based" and accordingly should be applicable for sub-contractors as well. The government too wants to minimize cost of such projects.

2. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT

- Whether the entry number 10 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 is applicable to the applicant and accordingly will the services provided by the applicant?
- If the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 is not applicable, then what will be classification and HSN for services provided by the applicant?

3. PERSONAL HEARING

In the matter personal hearing was granted to the applicant on 28.11.2019 at Room no. 2.29 NCRB, Statue Circle, Jaipur. Shri P.C.Sharma, C.A. & Shri B.S.Naruka, C.A. (Authorised Representatives) of applicant appeared for PH. During the PH, they reiterated the submissions already made in the application. No additional submissions were presented in PH. They requested for early disposal of the application.



4. COMMENTS OF THE JURISDICTIONAL OFFICER

The jurisdictional officer (Assistant Commissioner, State Tax, Circle-I, Jaipur Zone-III, Zonal Kar Bhavan, Jhalana Doongri, Jaipur, Rajasthan 302004) has submitted his comments vide letter dated 04.11.2019 which can be summarized as under:

As directed application has been examined with reference notification No. 12/2017 dated 28-26- 2017 of Central tax rate

1. *Party B M/S Banna Ram Chaudhary has entered into sub contract with Party C M/s SRS Enterprises for pure labour services in a project for construction of 270 flats under affordable housing scheme under Pradhan Mantri Yojna.*

2. *(a) Here applicants wants to know that entry no. 10 for exempt service in notification no. 12/2017 dates 28-06-2017 of Central Tax Rate) is applicable to our firm (S.R.S. enterprises (Sub-Contractor)) as well and accordingly "pure labour service" that we will provide in said project will also be exempt from GST.*

(b) If the said notification is not applicable in our case then what would be the GST rate and SAC code for the pure labour service that we will provide in above project.

3. *As per notification No. 12/2017 dated 28-26-2017 of Central tax rate-*

Services provided by way of pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for all (Urban)

Mission or Pradhan Mantri Awas Yojana is exempt from intra-state supply of services under GST Law.

4 Although Contractor and sub-contractor are not defined in CGST ad 2017 but as per general definition.

A sub-Contractor means a person hired by a general contractor to perform a specific task. As part of overall project or the total project at a specified price for services provided to the project by originating employer.

And when the contractor awards either wholly or partially the contractual obligation to a sub-contractor the contract remains the same and the identity of a contract doesn't change also when the contractor awards either wholly or partially the work to the subcontractor the work to be performed by the contractor as well as subcontractor remains same and identical to what is specify in the contract between the main contractor and the employer.

From Above discussion Prima Facie it appears that Sub contract made by contractor does not change the basic nature of nature of original contract with the employer therefore it appears that exemption available by way of above notification of intra-state supply of services under PMAY should be available to sub-contractor i.e. the applicant.

5. FINDINGS, ANALYSIS & CONCLUSION:

- M/s Sunrise Construction Company (hereinafter Party 'A') entered in to an agreement with Government of Rajasthan for construction of 270 flats under affordable housing scheme under Pradhan Mantri Awas Yojana (including material and labour). Party 'A' further sublets the work to M/s Banna Ram Choudhary (hereinafter party 'B') to construct above 270 flats under a separate work contract (including material and labour).

Party 'B' further entered in a sub-contract with the applicant for "Pure labour Service" in said project. A copy of agreement {between the applicant and party 'B'} dated 12.10.2019 has been provided with the original submissions. These labour services will be used for "Chunai and Plaster Work only" in the above said project. The

applicant will have all the control over labour and responsible for their dues and other concerns.



While going through the above facts, we find that agreement between the applicant and Party B is only for pure labour contract services supplied in construction of 270 flats under Pradhan Mantri Awas yojana (hereinafter PMAY).

- The above said agreement dated 12.10.2019 as discussed above has mentioned the original work and contract i.e. *Rameshwaram Paradise, Bikaner Bypass, Sikar* (a site under PMAY). Therefore, it is clearly evident that the applicant is engaged in supplying of pure labour contract services as a sub-contractor to the Party 'B' for construction of 270 flats under PMAY.
- The pure labour contract services has been exempted vide Entry 10 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (as amended). The relevant portion of the said notification is as below-

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
10	Heading 9954	Services provided by way of pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for All(Urban) Mission or Pradhan Mantri Awas Yojana.	Nil	Nil

While going through the above entry of the notification, we find following elements-

- a. Services by way of *pure labour contract*,
- b. Work related to construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a *civil structure or any other original work*;
- c. **Pertaining to beneficiary-led** individual house construction; or enhancement under the Housing for All (Urban) Mission; or **Pradhan Mantri Awas Yojana**.

❖ Original works has been defined under above said notifications as-

“original works” means- all new constructions;

(i) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(ii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;


In view of the above, we find that scope of above said entry is not person-centric but project-centric. The entry does not speak of contractor or sub-contractor but supply of pure services by way of construction under certain projects. It clearly stipulates that whosoever is supplying the pure labour contract services for the construction of a civil structure or any other original works under PMAY is exempted from GST.

- Therefore, we find that the services of pure labour contract supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works under PMAY is exempted from GST vide Entry 10 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (as amended).


6. In view of the foregoing, we rule as follows: -

RULING

The services provided by way of pure labour contract supplied by the applicant for the construction of flats under Pradhan Mantri Awas Yojana (PMAY) is covered under Entry 10 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 (as amended).


J.P. MEENA
Member
(Central Tax)




HEMANT JAIN
Member
(State Tax)

SPEED POST

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o/c

F.No. AAR/SRS/2019-20/218-221

Date: 19.12.19.

Copy to: -

1. Commissioner, State Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005.
2. Commissioner, Central Tax, CGST and Central Excise Jaipur Commissionerate, NCRB, Statue Circle, Jaipur, Rajasthan 302005.
3. Assistant Commissioner, State Tax, Circle-I, Jaipur Zone-III, Zonal Kar Bhavan, Jhalana Doongri, Jaipur, Rajasthan 302004.