

CGST : Where applicant entered into a contract with RUMS, a solar park developer, for construction of new 33/220 KV Pooling Substation along with associated 220 KV DCDS Transmission Line and associated feeder bay work, work involves both supply of goods and supply of services, which are naturally bundled, and accordingly, applicant is providing a composite supply within meaning of section 2 and HSN code for supply of composite service in nature of Works Contract under agreements entered into with RUMS, shall be 9954/995423 taxable at rate of 9 per cent GST

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AUTHORITY FOR ADVANCE RULINGS, MADHYA PRADESH**

Swati Dubey, *In re*

**RAJIV AGRAWAL AND MANOJ KUMAR CHOUBEY, MEMBER
CASE NUMBER 02 OF 2018 AND ORDER NO. 03 OF 2018
JUNE 22, 2018**

Sandeep Mukherjee, CA *for the Applicant.*

RULING

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and MP Goods & Services Tax Act, 2017 (hereinafter also referred to as CGST Act and MP GST Act respectively) by Vihan Enterprises (hereinafter also referred to as applicant), registered under the Goods & Services Tax.

2. The provisions of the CGST Act and MP GST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MP GST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

3. Facts of the case as per the Applicant:

3.1 The applicant is engaged, inter alia, in Construction, Erection, Commissioning and Installation of projects relating to Electrical Transmission Lines, Sub-Stations and Line Shifting.

3.2 Rewa Ultra Mega Solar Limited (hereinafter referred to as RUMS) is developing Solar Parks in the state of Madhya Pradesh. This work involves, inter alia, the work of internal evacuation infrastructure.

3.3 At present the applicant has entered into a contract with RUMS for:

- construction of new 33/220 kV Pooling Substation at Badwar, REWA along with associated 220 kV DCDS Transmission Line and associated feeder bay work on total Turnkey basis against Bid Identification No. RUMS/2016-17/372/014 (LoM) under World Bank Financing;
- construction of new 33/220 kV Pooling Substation at Barsita Desh, REWA along with associated 220 kV DCDS Transmission Line and associated feeder bay work on total Turnkey basis against Bid Identification No.

RUMS/2016-17/372/014 (Lot - II) under World Bank Financing; and

- construction of new 33/220 kV Pooling Substation at Ramnagar Pahad, REWA along with associated 220 kV DCDS Transmission Line and associated feeder bay work on total Turnkey basis against Bid Identification No. RUMS/2016-17/372/014 (Lot - III) under World Bank Financing.

3.4 Under the agreements with the RUMS, the scope of work involves supply of all Transmission Line material and sub-station Equipments (excluding Power Transformers, it's associated accessories and oil), Station Transformers, Fabricated, Galvanized sub station Structures and other materials, with related civil works, erection work and testing/commissioning for construction of new 33/220 kV pooling sub-stations, transmission lines and feeder bay work on total turnkey basis. The scope of the contract also involves construction of 33/220kV pooling sub-station, Transmission Lines and Feeder Bay Work.

3.5 The contract allotted to Vihan Enterprises is for a work which is part of evacuation infrastructure being exclusively for Solar Power, for a Solar Park and is being developed by Solar Project Park Developer.

3.6 The contracts in question were entered into by RUMS and the applicant prior to the introduction of GST. The rates quoted by the applicant for the contract included elements of MP VAT, CST, Entry Tax, Central Excise and Service Tax.

4. The question on which advance ruling sought is as follows :-

- (i) What is HSN in which the service of construction of new 33/220 kV Pooling i Substation at Badwar, REWA along with associated 220 kV DCDS Transmission Line and associated feeder bay work on total Turnkey basis against Bid Identification No. RUMS/2016-17/372/014 (Lot-I) under World Bank Financing shall fall?
- (ii) What is HSN in which the service of construction of new 33/220 kV Pooling Substation at Barsita Desh, REWA along with associated 220 kV DCDS Transmission Line and associated feeder bay work on total Turnkey basis against Bid Identification No. RUMS/2016-17/372/014 (Lot - II) under World Bank Financing shall fall?
- (iii) What is HSN in which the service of construction of new 33/220 kV Pooling Substation at Ramnagar Pahad, REWA along with associated 220 kV DCDS Transmission Line and associated feeder bay work on total Turnkey basis against Bid Identification No. RUMS/2016-17/372/014 (Lot - III) under World Bank Financing shall fall?
- (iv) What shall be the applicable rate of CGST and SGST on the supply being made under the contract?

5. Record of personal hearing - The matter was taken up for hearing on 08.06.2018 where CA Sandeep Mukherjee attended the hearing for the Applicant. He submitted copies of the letters written by RUMS to the Applicant and MP Power Transmission Co. Limited and requested that the documents be taken into record and reiterated their submissions made in the application.

6. Discussing and findings:

6.1 the application, it was stated by the applicant that as per RUMS, the rate of GST should be 5% since the work is part of evacuation infrastructure being exclusively for Solar Power, for a Solar Park and is being developed by Solar Project Park Developer. Also, as per the letter written to the applicant by RUMS, submitted during the course of the hearing, RUMS has agreed to pay GST @ 5% to applicant

till such time as clarification in this regard is not received from the GST Council.

6.2 The submission made by the applicant regarding classification of the work is that the work being done by the applicant under contract with RUMS is construction of new 33/220 kV Pooling Substation along with associated 220 kV DCDS Transmission Line and associated feeder bay work, is in the nature of a Composite Supply, since it involves supply of goods as well as services. Also, as per the provisions of the CGST Act, this work is in the nature of a Works Contract and is classifiable as supply of service. In support of this contention, the applicant refers to SI.No. 6 of Schedule II to the CGST Act, 2017.

6.3 Regarding the applicable rate of GST, the applicant submits that the rate of GST on Works Contract on the nature of work being done for RUMS shall be taken from Notification for Services, i.e. Notification No. 11/2017 - Central Tax (Rates), para 3, clause (ii) for CGST and that the rate of GST comes to 18%.

6.4 We have perused the contents of the agreement between the applicant and RUMS, more specifically the scope of work in the agreement at para 4 of the agreement. On a reading of the scope of work, it is clear that the work involves both supply of goods and supply of services, which are naturally bundled. Accordingly, the under this agreement, the applicant is providing a composite supply within the meaning of Section 2 of the CGST Act, 2017.

6.5 The agreement involves construction of Pooling Sub-station on Turnkey Basis and falls under the definition of a "Works Contract" within the meaning of Section 2 of the CGST Act, 2017. The definition is as under:

"works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;"

6.6 Perusal of the agreements that the applicant has entered into with RUMS shows that the scope of work in all the three agreements are identical, accordingly, all the three agreements shall have the same classification for the purpose of taxation under the GST Laws.

Further, we concur with the submission of the applicant regarding applicability of SI.No. 6 of Schedule II of the CGST Act, 2017 and MPGST Act, 2017, to the work being done by the applicant. The work being done by the applicant being a Composite Supply and Works Contract u/s 2 is clearly a supply of service.

6.7 Regarding the averment of RUMS that since the work is part of evacuation infrastructure being exclusively for Solar Power, for a Solar Park and is being developed by Solar Project Park Developer, it is observed that the rate of 5% on activity relating to Solar Power is the rate of GST for supply of Goods. The GST rate of 5% advalorem under Chapter Heading 84 and 85, as given in SI.No. 234 of Schedule I of Notification No. 1/2017 - Central Tax (Rates) is for supply of goods. The relevant para of the Notification is as under:

"G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the rate of the central tax of-

- (i) 2.5 per cent, in respect of goods specified in Schedule I,
- (ii) 6 per cent, in respect of goods specified in Schedule II,
- (iii) 9 per cent, in respect of goods specified in Schedule III,

- (iv) 14 per cent, in respect of goods specified in Schedule IV,
- (v) 1.5 per cent, in respect of goods specified in Schedule V, and
- (vi) 0.125 per cent, in respect of goods specified in Schedule VI

appended to this notification (hereinafter referred to as the said Schedules), that shall be levied on intra-State supplies of goods, the description of which is specified in the corresponding entry in column (3) of the said Schedules, falling under the tariff item, subheading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedules

The entry at SI. No. 234 is as under:

"S.No.	Chapter/ Heading/ Sub-heading/ Tariff item	Description of Goods
234.	84 or 85	Following renewable energy devices Et parts for their manufacture (a) Bio-gas plant (b) Solar power based devices (c) Solar power generating system (d) Wind mills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants/devices (f) Solar lantern/solar lamp (g) Ocean waves/tidal waves energy devices/plants"

6.8 It is seen that Notification No. 11/2017 - Central Tax (Rates) and corresponding notification under MPGST has prescribed 2.5% as CGST, meaning 5% GST on the following works -

- a. Under para3, clause (vii) for Composite supply of works contract as defined in clause of section 2 of the Central Goods & Services Tax Act, 2017, involving predominantly earth work (that is, constituting more than 75% of the value of the works contract) provided to the CG,SG,UT, local authority, a Governmental authority or a Government entity
- b. Under para3, clause (x) for Composite supply of works contract as defined in clause (119) of section 2 of the CGST Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (vii) above to the CG, SG, UT, a local authority , a Governmental Authority or a Government Entity.
- c. Under para3, clause (xi) for Services by way of house-keeping , such as plumbing, carpentering, etc. where the person supplying such service through electronic commerce operator is not liable for registration under sub- section (1) of section 22 of the CGST Act,2017

None of the above activities are contemplated in the scope of work under the agreement entered into by the applicant with RUMS.

6.9 It is notable that under the CGST and SGST Acts, Rules and Notifications issued till the date of making of the application, no provision has been made for carving out an exception in case of supply of service in the nature of a Works Contract for creating infrastructure which is to be exclusively used for Solar Power or in a Solar Park for or by a Solar Project Park Developer.

7. Order u/s 98 of the CGST Act, 2017 and MPGST Act, 2017:

In view of deliberations above, we pass the Advance Ruling:

7.1 The HSN Code for the supply of composite service in the nature of Works Contract under the all the three agreements entered into with RUMS, referred to in para 3.3 supra shall be 9954/995423, as detailed hereunder:

Annexure : Scheme of Classification of Services

S. No.	<i>Section, Chapter, Heading or Group</i>	<i>Service Code (Tariff)</i>	<i>Service Description</i>
..... 15.	Group 99542	995423	General construction services of long-distance underground/overland/submarine pipelines, communication and electric power lines (cables); pumping stations and related works; transformer stations and related works

7.2. The rate of CGST on the supply being made under the contract referred to in para 3.3 supra shall be according to Notification No. 11/2017 - Central Tax (Rates), extract where of is reproduced hereunder:

<i>Sl. No.</i>	<i>Chapter, Section or Heading</i>	<i>Description of Service</i>	<i>Rate (per cent.)</i>	<i>Condition</i>
3.	Heading 9954 (Construction services)	(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.	9	-

7.3 The rate of MPGST on the supply being made under the contract referred to in para 3.3 supra shall be also 9 percent as per the corresponding Notification to the Notification No. 11/2017- Central Tax (Rates), issued under MPGST Act,2017.

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