

CGST/Madhya Pradesh GST: Where applicant has entered into three agreements with one 'R' for construction of 33/220 KV pooling sub-station, transmission line and associated feeder bay work and supply of all transmission line material and sub-station equipments, etc., HSN Code for supply of composite service in nature of work contract shall be 9954/995423

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AUTHORITY FOR ADVANCE RULINGS, MADHYA PRADESH**

Vihan Enterprises (Swati Dubey), *In re**

**RAJEEV AGRAWAL AND MANOJ KUMAR CHOUBEY, MEMBERS
CASE NO. 2 OF 2018
ORDER NO. 3 OF 2018
JUNE 22, 2018**

Classification of services (NR) - Service Code No. 9954/995423 - General construction services - Applicant entered into three agreements with one 'R' for construction of three 33/220 KV pooling sub-station, transmission line and associated feeder bay work - Under agreements with 'R', scope of work involves supply of all transmission line material and sub-station equipments (excluding power transformers, its associated accessories and oil), station transformers, fabricated, galvanized sub-station structures and other materials - Whether HSN Code for supply of composite service in nature of work contract under all three agreements shall be 9954/995423 - Held, yes - Whether rate of CGST/Madhya Pradesh GST on supply being made under agreements shall be 9 per cent + 9 per cent - Held, yes [Paras 7.1, 7.2 and 7.3] [In favour of revenue]

Circulars and Notifications: [Notification No. 1/2017-Central Tax \(Rates\), dated 28-6-2017](#) and [Notification No. 11/2017-Central Tax \(Rates\), dated 28-6-2017](#)

FACTS

- The applicant is engaged, *inter alia*, in construction, erection, commissioning and installation of projects relating to electrical transmission lines, sub-stations and line shifting.
- One 'R' is developing Solar Parks in the State of Madhya Pradesh. This work involves, *inter alia*, the work of internal evacuation infrastructure.
- The applicant has entered into three contracts/agreements with 'R' for construction of three new 33/220 kV pooling sub-station along with associated 220 kV DCDS transmission line and associated feeder bay work on total turnkey basis.
- Under the agreements with 'R', the scope of work involves supply of all transmission line material and sub-station equipments (excluding power transformers, its associated accessories and oil), station transformers, fabricated, galvanized sub-station structures and other materials.
- The contract allotted to the applicant 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.

- The contracts in question were entered into by 'R' and the applicant prior to the introduction of GST.
- The applicant filed an application before the Authority for Advance Ruling seeking ruling on the following questions:
 - (i) What is HSN in which the service of construction of three new 33/220 kV pooling sub-station along with associated 220 kV DCDS transmission line and associated feeder bay work on total turnkey basis shall fall.
 - (ii) What shall be the applicable rate of CGST and SGST on the supply being made under the contract.

HELD

- 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, under the agreements, the applicant is providing a composite supply within the meaning of section 2(30) of the CGST Act, 2017. [Para 6.4]
- The agreements involve construction of pooling sub-station on turnkey basis and fall under the definition of a 'works contract' within the meaning of section 2(119) of the CGST Act, 2017. [Para 6.5]
- Perusal of the agreements shows that the scope of work in all the three agreements is identical. Accordingly all the three agreements shall have the same classification for the purpose of taxation under the GST Laws. The work being done by the applicant being a composite supply and works contract is clearly a supply of service. [Para 6.6]
- Regarding the averment of 'R' 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 per cent on activity relating to Solar Power is the rate of GST for supply of goods. The GST rate of 5 per cent *ad valorem* under Chapter Headings 84 and 85, as given in Sl. No. 234 of Schedule I of Notification No. 1/2017-Central Tax (Rates), dated 28-6-2017, is for supply of goods. [Para 6.7]
- It is seen that Notification No. 11/2017-Central Tax (Rates), dated 28-6-2017 and corresponding Notification under Madhya Pradesh GST has prescribed 2.5 per cent as CGST, meaning 5 per cent GST on the following works —
 - a. Under para 3, clause (vii) for composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, involving predominantly earth work (that is constituting more than 75 per cent of the value of the works contract) provided to the CG, SG, UT, local authority, a Governmental authority or a Government entity.
 - b. Under para 3, 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 para 3, 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 agreements entered into by the applicant with 'R'. [Para 6.8]

- It is notable that under the CGST and Madhya Pradesh GST 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. [Para 6.9]
- In view of the deliberations above, the HSN Code for the supply of composite service in the nature of work contract under all the three agreements entered into with 'R' shall be 9954/995423. [Para 7.1]
- The rate of CGST on the supply being made under the agreements shall according to Notification No. 11/2017-Central Tax (Rates), dated 28-6-2017 be 9 per cent. [Para 7.2]
- The rate of Madhya Pradesh on the supply being made under the agreement shall be also 9 per cent as per the corresponding Notification to the Notification No. 11/2017-Central Tax (Rates) dated 28-6-2017 issued under Madhya Pradesh GST Act, 2017. [Para 7.3]

Sandeep Mukherjee, CA *for the Appellant.*

ORDER

1. Ruling: 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 CGST Act and MPSGT 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 MPGST 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 MPGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MPGST 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 Sub-station 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, its 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 Sub-station 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 8-6-2018 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 CST @ 5% to applicant till

such time as clarification in this regard is not received 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 us construction of new 33/220 kV Pooling Sub-station along with associated nature of 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 Sl. 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, 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 Sl. 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% ad valorem under Chapter Headings 84 and 85, as given in Sl. 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, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedules....."

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

| <i>"S. No. Chapter/Heading/Sub-heading/Tariff item</i> | <i>Description of Goods</i> |
|--|---|
| 234. 84 or 85 | Following renewable energy devices Et parts for their manufacture <ul style="list-style-type: none"> (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 para 3, 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 para 3, 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 para 3, clause (xi) for Services by way of house-keeping, such as plumbing, carpenting, 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 Work 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 :

| <i>Annexure: Scheme of Classification of Services</i> | | | |
|---|---|------------------------------|--|
| <i>S. No.</i> | <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 per cent as per the corresponding Notification to the Notification No. 11/2017-Central Tax (Rates), issued under MPGST Act, 2017.

s.k. jain

*In favour of revenue.