

2018-TIOL-38-AAR-GST

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICE TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

**Advance Ruling No. KAR ADRG 3 / 2018
Dated: 21st March, 2018**

Present:

1. Sri. Harish Dharnia,
Joint Commissioner of Central Tax,
Bangalore West Commissionerate,
Bengaluru.

Member (Central Tax)

2. Dr.RaviPrasad.M.P.
Joint Commissioner of
Commercial Taxes (Vigilance)
Bengaluru

Member (State Tax)

1.	Name and address of the applicant	M/s Skilltech Engineers & Contractors Private Limited, 2 nd Floor, 2904 CH 67, Saraswathipuram, Mysuru - 570 009.
2.	GSTIN or User ID	29AACCS5478F1Z0/ 291700000105ARW
3.	Date of filing of Form GST ARA-01	05-12-2017
4.	Represented by	L Arunkumar, Executive Director
5.	Jurisdictional Authority - Centre	Vijayanagar Division, Mysuru- 570 011
6.	Jurisdictional Authority - State	LGSTO-190, Mysuru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged Rs.10,000-00 CGST : Rs.5,000-00 and SGST: Rs.5,000-00 CIN: ICIC17122900004271 dated 01-12-2017

ORDER UNDER SUB-SECTION (4) OF SECTION 98 OF CENTRAL GOODS AND SERVICE TAX ACT, 2017 AND UNDER SUB-SECTION (4) OF SECTION 98 OF KARNATAKA GOODS AND SERVICES TAX ACT, 2017

M/s Skilltech Engineers & Contractors Private Ltd., (hereinafter referred to as 'Applicant') holding GSTIN number 29AACCS5478F1Z0, having registered address at 2nd Floor, 2904 CH 67, Saraswathipuram, Mysuru - 570 009, are registered taxable person, have filed an application, on 05.12.2017, for advance ruling under Section 97 of CGST Act, 2017, KGST Act, 2017 & IGST Act, 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01. They enclosed copy of challan for Rs.10,000/- bearing CIN number ICIC17122900004271 dated 01-12-2017 towards the fee for advance ruling and hence the instant application is admitted.

2. The applicant is engaged in execution of works awarded by M/s Karnataka Power Transmission Corporation Limited (hereinafter referred to as "KPTCL"), for construction of power lines, erection of transmission towers and transformers. The contract with KPTCL is a single composite contract, but with three connected agreements for Supply of Materials, Erection & Civil Works respectively. All the three agreements were awarded to the applicant in response to a single tender notification & the general terms and conditions are commonly applicable to all the three agreements.

3. The applicant sought advance ruling on the following questions / issues that

1. **"Whether the contract, executed by them for KPTCL, is a divisible contract [Supply of goods & Supply of Services] or an indivisible contract [works contract]?"**
2. **"Whether the tax rate of 12% [CGST-6% + SGST-6%] is applicable to the above contract, in pursuance of Notification No.24/2017-Central Tax (Rate) dated 21.09.2017?"**

PERSONAL HEARING PROCEEDINGS HELD ON 09.01.2018.

4. Sri. L Arun Kumar, Executive Director of the applicant concern appeared and presented the following:

- (a) That a single bid / tender was called for by KPTCL, for composite activities of Supply of material, Erection of the same & Civil Works associated with the erection.
- (b) That three separate agreements were entered into for the three different activities, after identifying the successful bidder.
- (c) That the question on which advance ruling has been sought for is with regard to divisibility of the contract into three agreements.
- (d) That the clarification is required as to whether KPTCL is a Government body or not so as to claim the concessional rate of GST @ 12% in pursuance of Notification No. 24/2017-Central Tax (Rate) dated 21.09.2017.

FINDINGS & DISCUSSION:

5. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri L Arun Kumar, Executive Director, during the personal hearing. We also considered the questions / issues on which advance rulings have been sought for by the applicant, relevant facts having bearing on the questions / issues raised, the applicant's understanding / interpretation of law in respect of the issue.

6. The Applicant sought advance ruling on the two questions i.e (1) "Whether the contract, executed by them for KPTCL, is a divisible contract [Supply of goods & Supply of Services] or an indivisible contract [works contract]?" and (2) "Whether the tax rate of 12% [CGST-6% + SGST-6%] is applicable to the above contract, in pursuance of Notification No.24/2017-Central Tax (Rate) dated 21.09.2017?"

7. In view of the above the issues before us to decide are (1) whether the contract entered by the applicant falls under works contract or not and (2) Whether the applicant is entitled for concessional rate of GST under Notification No.21/2017-Central Tax (Rate).

8. Section 2 clause 119 of CGST Act'2017 defines "works contract" as **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;**

9. The composite supply of works contract as defined at Section 2 clause 119 of CGST Act'2017 is treated as supply of service in terms of serial no.6, Schedule II of CGST Act'2017.

10. In the instant case, the applicant, being the successful bidder, got the single composite contract, but with three connected agreements for Supply of Materials, Erection & Civil Works respectively. All the three agreements were awarded to the applicant in response to a single tender notification & the general terms and conditions are commonly applicable to all the three agreements. The applicant is supplying the material and providing the erection of towers service and also civil works service. Therefore the contract entered by the applicant is of the nature of 'indivisible' and squarely falls under the works contract, which is a service.

11. The second question is whether the applicant is entitled for the concessional rate of GST @ 12% as per Notification No.24/2017 Central Tax (Rate) dated 24.09.2017 or not. The Applicant at point II of Annexure A has reproduced a portion of the Notification No.24/2017 Central Tax (Rate) dated 24.09.2017 and highlighted the words 'State Government'. Also on the next page they have submitted a bullet point "KPTCL is covered under the definition of State Government".

12. The Applicant therefore contends that they are providing services to 'State Government' and are thus eligible for the tax rate enumerated in the aforesaid notification.

13. A statutory body, corporation or an authority created by the Parliament or a State Legislature is neither 'Government' nor a 'local authority'. Such statutory bodies, corporations or authorities are normally created by the Parliament or a State Legislature in exercise of the powers conferred under article 53(3)(b) and article 154(2)(b) of the Constitution respectively. It is a

settled position of law (Agarwal Vs. Hindustan Steel AIR 1970 Supreme Court 1150) that the manpower of such statutory authorities or bodies do not become officers subordinate to the President under article 53(1) of the Constitution and similarly to the Governor under article 154(1). Such a statutory body, corporation or an authority as a juridical entity is separate from the State and cannot be regarded as the Central or a State Government and also do not fall in the definition of 'local authority'. Thus, regulatory bodies and other autonomous entities would not be regarded as the government or local authorities for the purposes of the GST Acts. Therefore M/s KPTCL can not be a State Government

14. Further M/s KPTCL, who awarded the contract to the applicant, are registered under Companies Act'1956 as a company and is a separate entity. Therefore it can not be considered as the State Government or a State Government Authority. Hence the applicant is not entitled for the benefit of the concessional rate of GST @ 12%, in terms of Notification No.24/2017-Central Tax (Rate) dated 21.09.2017.

15. In view of the foregoing, we pass the following

R U L I N G

1. The contract contract entered by the applicant is of the nature of 'indivisible' and squarely falls under the works contract, which is a service.
2. The Applicant is not entitled for the benefit of concessional rate of GST @12% in terms of Notification No.24/2017-Central Tax (Rate) dated 21.09.2017


(Harish Dharnia)
Member


(Dr. Ravi Prasad.M.P.)
Member

Place : Bengaluru,
Date : 21.03.2018