

SPEED POST

	ODISHA APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICE TAX C.R. BUILDING (GST BHAWAN), RAJASWA VIHAR, BHUBANESWAR-751 010, ODISHA Ph: 0674-258 9935, 258 8672. Fax: 0674-258 9938, E-mail. ccu-cexbbr@nic.in	
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**(CONSTITUTED UNDER SECTION 99 OF THE ODISHA GOODS AND
SERVICES TAX ACT, 2017)**

ORDER NO. 01/ODISHA-AAAR/Appeal/2021-22/ DATE: 15-03-2022

BEFORE THE BENCH OF

- (1) Shri R Manga Babu, Member (Chief Commissioner, GST, Central
Excise and Customs, Bhubaneswar Zone)
- (2) Shri Sushil Kumar Lohani, Member (Commissioner, Commercial
Taxes & GST, Odisha)

Legal Name and address of the Applicant	M/s. NBCC(INDIA) Limited, Plot No.G/1, NBCC Imperia, New Govt. Colony, Press Chhak, Bhubaneswar-751017, Odisha
GSTIN Number	21AAACN3053B1ZC
Details of appeal	Appeal against the Advance Ruling order no. No.02/ODISHA-AAR/2021-22 dated 12-11-2021
Date of personal hearing	07-03-2022
Present for the Applicant (P.H. attended through Video Conference)	Sri Tarun Kumar Agarwalla, C.A. Ms. Nupur Chopra, C.S.
Jurisdictional Officer	(JURISDICTION-STATE) State-Odisha, Range-Cuttack 1 Circle-Cuttack-1 West Circle



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At the outset, we would like to make it clear that the provisions of both the Central GST Act, 2017 and of Odisha GST Act, 2017 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 OGST Act.

2. The present appeal has been filed under section 100 of the Central Goods and Service tax Act, 2017 and Orissa Goods & Services Tax Act 2017[hereinafter referred to as the CGST Act and OGST Act] by M/s NBCC (INDIA) Limited, Plot No. G/1, NBCC Imperia, New Govt Colony, Press Chhak, Bhubaneswar, Odisha-751017 (herein after referred to as the 'applicant') against the Advance Ruling order no. No. 02/ODISHA-AAR/2021-22 dated 12-11-2021 pronounced by the Odisha Authority for Advances Ruling (OAR). The date of receipt of the appeal application is 17-12-2021.

3.0 BRIEF FACTS OF THE CASE:

3.1 M/s NBCC (INDIA) Limited, Plot No.G/1, NBCC Imperia, New Govt Colony, Press Chhak, Bhubaneswar, Odisha-751017 (herein after referred to as the 'applicant') bearing a GSTIN No. 21AAACN3053B1ZC, is a Government of India Enterprises under the aegis of Ministry of Urban Development, Government of India. The Applicant entered into an agreement dated 02.05.2016 with the Indian Institute of Technology, Bhubaneswar (hereinafter referred to as "IIT-Bhubaneswar") to construct the IIT Bhubaneswar Campus on turnkey basis. The applicant in turn have appointed various agencies/contractors to carry out the project towards its desired completion and awarded the work for construction of various buildings, infra facilities, educational blocks to various parties as per the Tender/ Bill of Quantity (BOQ) specifications, based on the CPWD Code and Practices. As the Project was continuously continuing since 2016, the Applicant have applied 18% (tax rate of 9 % as Central GST and 9% as State GST) on its tax invoices starting from 01.07.2017 for the agreement with IIT-Bhubaneswar. However, IIT-Bhubaneswar "the



client", advised the applicant to seek clarity on the applicability of correct rate of tax on the ongoing Project. Therefore, the applicant made an Advance Ruling application before the Authority for Advance Ruling, Odisha.

3.2 Then, Authority for Advance Ruling has pronounced its ruling vide Order No. 01/ODISHA-AAR/2020-21 dated 01.10.2020 and passed the ruling that the works entrusted to the Applicant by IIT, Bhubaneswar under contract/agreement dated 02.05.2016 cannot be termed as composite supply and thus entire work under the said contract shall not be entitled to concessional rate in terms of Notification No. 11/2017-CT (R), dated 28-6-2017. However, the Authority for Advance Ruling also hold that the supply of goods and/or services or both which squarely fall within the ambit of scope of work entrusted to IIT, Bhubaneswar by Government of India shall be entitled for concessional rate under Sr. No. 3(vi) to Notification No. 11/2017-CT(R). Accordingly, each and every supply under the subject contract shall be treated separately for determining the rate of 12% under the CGST Act, 2017 read with the provisions of GST Tariff and respective exemption notifications. In the said order, the Hon'ble Authority denied the specific rate of tax, i.e., 12% on specific component of the entire Project.

3.3 Aggrieved, by the above ruling of the Authority of Advance Ruling, the applicant filed an appeal before Appellate Authority for Advance Ruling on 23-12-2020 seeking clarity on two issues, namely;

- (i) Whether the works executed by them can be treated as composite supply or not; and
- (ii) Whether concessional rate of GST under Sl. No. 3(vi) of notification 11/2017-CT (CR) dated 28.06.2017 would be applicable to their case.

3.4 The Appellate Authority for Advance Ruling, Odisha pronounced the Ruling vide Order No. 02/ODISHA-AAAR/Appeal/2020-21 dated



19.03.2021 and held that the works entrusted to M/s. NBCC(India) Ltd. Bhubaneswar by IIT-Bhubaneswar can be treated as composite supply and consequently the Faculty Quarters, Staff Quarters and Director's Bungalow shall be entitled for concessional rate under Sl.No.3(vi) of the Notification No. 11/2017-C.T. (Rate) dt.28.06.2017.

3.5 In order to have more clarity on the order of the above Appellate Authority with respect to (i) applicability of the tax rate of 12% for the period prior to the date of the Order of the Appellate Authority of Advance Ruling, (ii) eligibility for refund of excess tax of 6% paid by them and (iii) procedure of claiming the excess amount, the applicant filed another application before Authority for Advance Ruling on 26-07-2021.

The Authority for Advance Ruling have rejected the said application vide order no. No.02/ODISHA-AAR/2021-22 dated 12-11-2021 stating that the questions raised by them do not fall under any of the provision of Section 97(2) of CGST Act, 2017.

3.6 Aggrieved by the above order of the Authority for Advance Ruling dated 12-11-2021, the applicant has filed the present appeal application on 17.12.2021 under Section 100 of CGST Act, 2017. The moot questions raised by the applicant before this Appellate Authority are as under:

(a) Whether the classification and rate of taxes so determined by the Appellate Authority for Advance Ruling in its order no. 02/ODISHA-AAAR/Appeal/2021 dated 19.03.2021 would be applicable to the entire value of the works contract executed between the applicant and IIT Bhubaneswar vide agreement dated 02.05.2016?

(b) Whether the value of supplies taxable under GST, on or after 01.07.2017 would liable to the tax rate of 12% vide clause 3(vi) (b) of the rate notification 11/2017 dated 28.06.2017 made effective from 01.07.2017 i.e., appointed date under GST laws?



(c) As M/s. NBCC (INDIA) Limited, Bhubaneswar, prior to pronouncement of the ruling have paid 18% of tax on its invoices raised to IIT -Bhubaneswar, whether the taxes to the extent of 6 % (18% paid-12% as per order) become taxes paid over and above the liability to pay within the four corners of law and can be regarded as tax in excess?

(d) Whether the excess tax so paid would be eligible to be refunded under Section 54 of Central Goods & Service Tax Act, 2017?

(e) What would be the proper procedure under GST provisions for claiming the excess amount so paid?

(f) Whether the effective date of applicability of the rate of tax of 12% in place of 18% is applicable prospectively or retrospectively for refund purpose?

4.0. Personal Hearing:

4.1 In order to meet doctrine of natural justice, the Odisha Appellate Authority for Advance Ruling provided an opportunity to the applicant for representing their case by way of Personal Hearing on 07.03.2022 at 05.00 P.M. in virtual mode. The applicant attended the Personal Hearing through their authorized representatives Sri Tarun Kumar Agarwalla, C.A., and Ms. Nupur Chopra, CS through Video Conference. During the personal hearing, the authorized representatives have reiterated the submission which already made in their appeal application and also requested to decide the case favorably on merit.

5.0 DISCUSSION & FINDINGS:

5.1 We have carefully gone through the case and submission advanced by the applicant in their application as well as the arguments advanced by Sri Tarun Kumar Agarwalla during the personal hearing, and also taken into account the issues involved on which a ruling was sought by the applicant mentioned in para no. 3.6(a) to (f) of this order.



5.2 With respect to issue raised in Para 3.6(a) whether the tax rate of 12% determined by the Appellate Authority for Advance Ruling in its order dated 19-03-2021 is applicable to entire contract, we find that there is no merit to discuss the matter again and again. The Appellate Authority for Advance Ruling in its order dated 19-03-2021 has clearly ruled that the works entrusted to M/s. NBCC (India) Ltd. can be treated as composite supply and consequently the Faculty Quarters, Staff Quarters and Director's Bungalow shall be entitled for concessional rate under Sl.No.3 (vi) of the Notification No. 11/2017-C.T. (Rate) dt.28.06.2017.

5.3 With respect to issue raised in Para 3.6(b) it is to reiterate state that the Appellate Authority for Advance Ruling in the order supra has clearly stated that the concessional rate under Sl.No.3 (vi) of Notification No. 11/2017-C.T. (Rate) dated 28-06-2017 would be applicable to the work contract service supplied by applicant, M/s NBCC (INDIA) Limited, Bhubaneswar, to IIT-Bhubaneswar. It is also to state that CGST Act, 2017 and SGST Act, 2017, being effective from 01-07-2017 any supplies made on or after appointed date of GST Act, shall attract the rates notified vide the notification no. 11/2017-C.T. (Rate) dated 28-06-2017 as amended.

5.4 The next question raised in Para 3.6(c) in the subject case is that whether the taxes to the extent of 6 % (18% -12%) so paid prior to pronouncement of Appellate Authority's order become tax paid over and above the liability to pay within the four corners of law and can be regarded as tax in excess? It is seen that this question raised does not fall under any of the provisions of Section 97 (2) of the CGST Act, 2017. We find the stand taken by the Authority for Advance Ruling in its order dated 12-11-2021 is Just and fair because such a question does not fall under any provisions of the section 97(2) of Central Goods & Service Tax, Act 2017.

5.5 The next two questions raised by the applicant pertain to refund. The applicant has asked as to whether the excess tax paid to the Government would be eligible for refund and if so, what is the procedure? In this regard, it is stated by the Authority for Advance Ruling that in its order dated 12-



11-2021 at paragraph No. 4.4 that Section 54 of the CGST Act, 2017 deals with refund of taxes, therefore the applicant can go through the procedure/provision of said GST Section for claiming refund. The ruling of Authority for Advance Ruling in this regard found to be just and proper.

5.6. Now coming to the main question of the applicant, which applicant himself believes that neither Authority for Advance Ruling nor Appellate Authority for Advance Ruling has given an answer is ***“What is the effective date of applicability of 12% tax rate and whether this concessional rate shall be applicable prospectively or retrospectively.”***

In this regard, we have the considerate view that unless a specific effective date is mentioned in a notification the date from which rate of tax is applicable is the date of issuance of such a notification. The notification No. 11/2017 CT(R) dated 28-06-2017 which prescribes the applicable tax rate of 12% on work contract service provided to IIT Bhubaneswar which is an educational institution is effective from the date of notification. The said notification being come into force with effect from 1st July 2017, we are of the view that the concessional rate of GST of 12% pertaining to the case of applicant is effective retrospectively.

ORDER

In view of the above findings we are of the view, that the Works Contract Service supplied by M/s. NBCC(India) Ltd. are entitled for concessional rate of 12% of GST vide Sl. No. 3(vi) of the notification No. 11/2017-C.T. (Rate), dated 28.06.2017 and matching State tax notification issued by the Government of Odisha.


(Sushil Kumar Lohani)
Member




(R Manga Babu)
Member



C.No.IV(01)06/CC/ODISHA-AAAR/BBSR/2021-22 ^{4587-91A} date 28/3/22

Copy to:

1. The Chief Commissioner, CGST & C.Ex., Bhubaneswar.
2. The Commissioner, Commercial Taxes & GST, Govt. of Odisha, Cuttack.
3. The Pr. Commissioner/Commissioner, CGST & Central Tax, Bhubaneswar/Rourkela
4. The Jurisdictional CGST Assistant/Deputy Commissioner of Central Tax & State Tax
5. The Web Manager, www.gstcouncil.gov.in
6. Office Copy

