

APPELLATE AUTHORITY FOR ADVANCE RULING - CHHATTISGARH
3rd & 4th Floor, Vanijyikar GST Bhawan, Sector-19, Atal Nagar,
Raipur (C.G.) 492002

PROCEEDING OF THE APPELLATE AUTHORITY FOR ADVANCE RULING
U/s. 101 OF THE CHHATTISGARH GOODS AND SERVICES TAX ACT, 2017

Members Present are

Smt. Ranu Sahu
Commissioner, State Tax,
Chhattisgarh, Raipur

Shri Vinod Kumar Saxena,
Chief Commissioner,
CGST & Central Excise, Bhopal Zone

Sub:- Chhattisgarh GST Act, 2017 - Advance Ruling U/s 101 :-

Regarding the applicability of GST Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017 regarding GST exemption to an entity registered under section 12-AA of Income Tax Act, 1961 with regard to services provided by CREDA, scrap battery sale and sale of tender forms.

Read:- Application dated 05-05-2020 from Chhattisgarh State Renewable Energy Development Agency (Hereinafter referred to as CREDA), Raipur C.G. (GSTIN- 22AAAJC0190K2ZM)



PROCEEDINGS

U/s 101 of the Chhattisgarh Goods & Services Tax Act, 2017 (herein- after referred to as CGGST Act, 2017)]

Raipur, Dated 16/7/2020

No.STC/AAAR/04/2020 / 5156

The appellant Chhattisgarh State Renewable Energy Development Agency (Hereinafter referred to as CREDA), Raipur C.G. (GSTIN- 22AAAJC0190K2ZM) has filed this appeal u/s 100 of the Chhattisgarh Goods & Services Tax Act, 2017 requesting advance ruling in respect of the following questions:-

1. Applicability of GST Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017 regarding GST exemption to an entity registered under section 12-AA of Income Tax Act, 1961 with regard to services provided by CREDA, scrap battery sale and sale of tender forms.

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2. Facts of the case:-

The appellant CREDA is the nodal agency of the State Government for tapping the renewable sources of energy and for implementation of various project of public interest and for research, development and popularization of non-conventional & renewable sources of energy with Central Finance Assistance provided by the Ministry of New and Renewable Energy, Govt. of India, New Delhi. CREDA was registered on 25/05/2001, under the Society's Registration Act, 1973.

- i. CREDA is also registered under Section 12AA of the Income Tax Act, 1961.
- ii. Notification No.12/2017-Central Tax (Rate) dated 28th June, 2017, Sr.No.1 provides for exemption from whole of GST on "services by an entity registered under Section 12AA of Income-Tax Act, 1961 by way of charitable activities".
- iii. The Notification supra, stipulates that "charitable activities" means / include activities relating to preservation of environment including watershed, forests and wildlife.

2.1 It has been the contention of the appellant that Chhattisgarh State Renewable Energy Development Agency (CREDA) is working extensively as a State Government nodal body for research, development and popularization of non-conventional & renewable sources of energy as the State has greater sources of solar energy, which has substantial environmental benefits as under:

i. Cut Carbon Emissions

Residential and commercial buildings contribute up to 39 percent of all carbon emissions in the country. The U.S. Environmental Protection Agency estimates that the average household emits around 20 metric tons of carbon pollution per year. Once you switch to a solar power system, the numbers can be reduced by three to four tons annually. This is because it is a clean green electricity and renewable source of energy. It is not dependent on burning fossil fuel.

ii. Reduce Water Usage

Choosing solar energy can actually help in conserving water. Traditional energy sources like coal and nuclear plants can draw up to 60 gallons of water for every kilowatt-hour of electricity produced. Solar technology uses little to no water to operate.

iii. Improve Public Health

Solar energy does not release toxic gases like sulfur oxide and nitrous oxides into the atmosphere. These chemicals are linked to several respiratory health problems. By cutting down carbon emissions and ecosystem pollution levels, solar energy improves the life expectancy and reduces mortality rates of surrounding communities.



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It was thus appellant's contention that from the facts it is clear that the services provided by them is resulting extensively for preservation of environment and having significant contribution to welfare of society at large.

2.2 The appellant also effect sale of tender forms and scrap battery as an ancillary activity as part of rendering above services.

2.3 M/s CREDA has applied for advance ruling on the following issue:

1. Regarding applicability of GST Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017 regarding GST exemption to an entity registered under section 12-AA of Income Tax Act, 1961 with regard to services provided by CREDA, scrap battery sale and sale of tender forms.

On the above issue, the AAR has ruled that " the said supply of goods or services as brought about by the appellant, Chhattisgarh State Renewable Energy Development Agency, Raipur C.G, under their application dated 13-11-2019 are not exempted from the payment of GST under Sr. No. 1 of the Notification No. 12/2017 - Central Tax (Rate) dated 28.06.2017 and parallel notifications under CGGST and IGST. Hence, the appellant is liable to pay GST on the impugned supply of goods or services."

2.4 The Appellant preferred an appeal on the issue as mentioned in para 2.3 above, before the Appellate Authority for Advance Ruling in Chhattisgarh, Atal Nagar, Raipur.

2.5 As per Section 100(1) of CGST Act, appeal against the advance ruling can be presented before the Appellate Authority.

3. Contention of the Appellant:

- a) The Appellant states that it is a Nodal Agency of Government of Chhattisgarh, registered under Section 12AA of the Income Tax Act, 1961 and formed for implementing Solar and Renewable Energy Projects in the State having significant impacts on Preservation of environment. As a part of implementing its major projects, it provides allied services as ancillary and necessary, to perform its work more efficiently with the best of the resources, vendors, suppliers available in the country.
- b) From the above services, appellant is in receipt of consideration in the form of Registration fees, Supervision/Service Charges, Processing fees, RVE Connection

Charges, Processing fees (Sour-Sujila), Entry fees to Energy Park, Penalty Charges received, RE Issuance Charges etc.

- c) It's main contention is that since the appellant is an entity registered under Section 12AA of the Income Tax Act, 1961 and engaged in charitable activities as defined in the Notification, they are eligible for exemption under Notification No.12/2017-Central Tax (Rate), dated 28th June 2017.
- d) It also contended that the "Charitable activities" has been defined in the notification which includes serial no. (iv) preservation of environment including watershed, forests and wildlife. Since appellant is working extensively for research, development and popularization of Non-Conventional & Renewable sources of energy which have substantial environment benefits such as Carbon Emission Cut, Water Usage Reduction, Public Health Improvement, hence they are eligible for the exemption under the foresaid notification.
- e) That, the Government with the intention to reduce cost of such projects, encourage its implementation at large scale and in the nation interest, came out with the foresaid notification and granted exemption, which would be otherwise taxable.

4) Personal hearing:-

In accordance with the established principles of natural justice, personal hearing in the matter was extended to the authorized representative of the appellant and accordingly, Mr. Vikas Golcha, CA, Mr.G.D.Choukhande (Contoller Finance and Accounts, CREDA) and Mr. Sanjeev jain(Chief Engineer) appeared for hearing on 22.06.2020 .

The appellant reiterated their contention and sought advance ruling on, whether Notification No.12/2017-Central Tax (Rate) dated-28.06.2017 granting exemption to an entity registered under Section 12-AA of Income Tax Act, 1961 and engaged in charitable activities as defined in above Notification is applicable to them. They submitted that the appellant is the nodal agency of state government for implementation of solar energy projects having significant impact on preservation of environment and the same is covered under charitable activities as defined in above mentioned Notification.

5) Legal position, Analysis and Discussion:-

The provisions for implementing the CGST Act and CGGST Act, 2017 are similar. Now we sequentially discuss the provisions that are applicable in the present case.

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The appellant seeks ruling as regards the exemption of GST as under Notification No.12/2017-Central Tax (Rate), dated 28th June 2017, with regard to services rendered by them, being an entity registered under Section 12AA of the Income Tax Act, 1961 by way of activities claimed to be charitable activities, on the services provided by CREDA like registration fees, supervision/service charges, processing fees, RVE connection charges, processing fees (Sour-Sujila), entry fees to energy park, penalty charges received, Re issuance charges, scrap battery sale & sale of tender forms. To have a better perspective of the matter, it is of paramount importance to have a detailed analysis on all the related aspects of the above Notification like entity registered under Section 12AA of the Income Tax Act, 1961, the services / activities under taken by the appellant claimed to be "charitable", definition of 'Charitable activities', Memorandum of Association, rules-regulation and activities into which CREDA is involved in.

5.1 Notification No.12/2017-Central Tax (Rate), dated-28-06-2017:-

Serial No.1, chapter 99 of the above notification exempts "the services by an entity registered under Section 12AA of the Income tax Act, 1961 (43 of 1961) by way of charitable activities."

Under the definitions mentioned in point 2(r) of the above notification, for the purpose of this notification, unless the context otherwise requires-

2(r) "Charitable activities" means activities relating to-



- (i) Public health by way of,
 - (A) Care or counseling of
 - (I) Terminally ill persons or persons with severe physical or mental disability;
 - (II) Persons afflicted with HIV or AIDS;
 - (III) Persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or
 - (B) Public awareness of preventive health, family planning or prevention of HIV infection;
- (ii) advancement of religion, spirituality or yoga;
- (iii) advancement of educational programmes or skill development relation to,
 - (A) abandoned, orphaned or homeless children;

- (B) Physically or mentally abused and traumatized persons;
- (C) prisoners; or
- (D) persons over the age of 65 years residing in a rural area;
- (iv) preservation of environment including watershed, forests and wildlife;

5.2

Status of CREDA:-

(a) Chhattisgarh State Renewable Energy Development Agency (CREDA), Raipur C.G. is the nodal agency of the Government of Chhattisgarh (C.G) for the implementation of solar energy projects in the state having GSTIN No.22AAAIC0190K2ZM.

(b) To implement various programmes /schemes of Government of India and State Government for development of renewable energy sources in the State of C.G., State Government has constituted CREDA on 23-05-2001.

(c) CREDA is also registered as a society under Madhya Pradesh Society Registration Act, 1973 on 25-05-2001.

(d) The appellant has also been registered under Section 12AA of the Income Tax Act, 1961 and has been granted registration with effect from 25-05-2001 by Income Tax Department, Raipur, C.G. after being satisfied about the objects and genuineness of the activities of the appellant.

5.3

Objectives of CREDA:-

The objective of CREDA is to promote the research, development and popularization of non-conventional and renewable sources of energy. In particular, the objectives are:

- (a) To identify small canal heads and drops, in streams and there after generate power through Mini/Micro Hydel projects with a view to augmenting the energy sources of the state and for making power available in the rural areas.
- (b) To identify, formulate proposals and set up units (including demonstration) of all non-conventional & renewable energy devices specifically to encourage, develop and extend the use of-
 - (i) Bio-energy including energy plantations.
 - (ii) Devices for utilizing wind energy.
 - (iii) Devices for utilizing solar energy including photo-voltaic systems.



(iv) Devices for utilizing Geothermal energy.

(c) To undertake or sponsor studies on renewable and non-conventional energy generation, distribution and utilization including its environmental effects, socio-economic feasibility, cost benefit analysis and techno-economic feasibility.

(d) To formulate and implement a broad based energy conservation programme and a programme for future energy use.

(e) To take special steps to train and encourage young scientists and technologists working in the field of energy resources and plan for their proper involvement in the development of alternate and renewable energy sources.

(f) To establish and maintain a technical library and information center for collecting, collating and dissemination information on renewable energy resources.

(g) To undertake all such other things as may be incidentally conducive to the attainment of the above objectives.

5.4 Activities of CREDA:-

To achieve the above mentioned objectives, CREDA implement various schemes relating to solar energy, wind energy, mini/micro hydel, biomass, biogas and solid waste management. Some of the major activities include Sour Sujila yojna, solar drinking water pumping scheme, Saubhagya yojna, solar community irrigation scheme, solar high mast, Saur Shakti yojna, solar on grid and roof top scheme, solar cold storage scheme, solar highmast, solar water purification, solar electrification of Govt. buildings, solar water heating systems, National biogas and manure management programme, solar rural electrification/majaratola scheme, energy conservation programe, energy education park etc.

The above schemes are funded by the grants received from the Central Government and State Government. CREDA creates empanelment of systems integrators, vendors and contractors to work as channel partner for implementing various solar photovoltaic/solar thermal applications in market mode in the state.

- a) **For system integrator (SI)** - The system integrator shall be the agency for integration and installation of Solar PV/Solar Thermal Systems. Their scope of work will be marketing, survey, preparation of DPR / formulation of proposal, designing, installation, commissioning of these systems and comprehensive operation and maintenance of these systems for five years as per guidelines of CREDA.

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- b) **For Vendors** - The vendors will be the registered suppliers for supply of batteries, SPV Modules, Inverters, PCUs, VFD, Controlling and Monitoring Instruments, Electrical Material such as cables, conductors, earthing and LA, switches, luminaries and allied material etc., poles and other fabrication items such as brackets, stay sets, Structures for SPVPP, SPV Pumps and Dual Pumps etc. They will supply the material of approved make and specifications to registered Sis for installation / integration of SPV Systems in the state. A vendor must be a manufacturer or its authorized dealer of manufacturer (of a product related to SPV confirming to specifications of MNRE/CREDA) with OEM Contract with the manufacturer.
- c) **For Contractors**- The contractors means civil and electrical contractors to be engaged for carrying out various small construction and repair civil works and works of laying of power distribution network at various sites as per requirement of CREDA.

5.5 Analysis and discussion:-

- (i) On the basis of Notification No.12/2017-Central Tax (Rate), dated-28-06-2017, the appellant desires to know the applicability of GST exemption for the services mentioned below:-

- a) Registration Fees
- b) Supervision / Service Charges
- c) Processing Fees
- d) RVE CONNECTION Charges
- e) Processing Fees (Sour-Sujila)
- f) Entry Fees to Energy Park
- g) Penalty Charges Received
- h) RE issuance Charges

The appellant also seeks ruling as regards their activities of Scrap battery sale and from sale of tender forms.

- (ii) The appellant undertakes various schemes in the State of C.G. by way of tender works being granted to system integrators, vendors and contractors. In the above tendering process, CREDA collects registration Fees, Supervision / Service Charges, Processing Fees, RVE CONNECTION Charges, Processing Fees (Sour-Sujila), Entry Fees to Energy Park, Penalty Charges Received, RE issuance Charges etc. from




the prospective tenderers and are also engaged in scrap battery sale and sale of tender forms.

(iii) Thus the issue before us for consideration is whether the said activities of the appellant are covered under Sr. No. 1 of Notification No. 12/2017 - Central Tax (Rate) dated 28.06.2017 under which services supplied by the entities registered under Section 12AA of the Income Tax Act, 1961 are fully exempted from payment of CGST/CGGST/IGST provided that the said services are by way of any charitable activity.

(iv) For the sake of brevity, the text of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 is re-produced here under, which reads as under:-

In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-state supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-



No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent)	Condition
(1)	(2)	(3)	(4)	(5)
1	Chapter 99	Services by an entity registered under section 12AA of the Income Tax Act, 1961 (43 of 1961) by way of Charitable activities.	Nil	Nil

(v) It also needs special mention here that section 12A (a) read with Section 12AA (1) (b) does not confirm any right of exemption upon the appellant under Section 11, 12 and 13 of the Income Tax, 1961. Such exemption from taxation will be available only after the Assessing Officer is satisfied about the genuineness of the

activities promised or claimed to be carried on in each financial year relevant to the assessment year and at the provision of law acted upon.

(vi) The exemption under Section 12A / 12AA of the Income Tax Act, 1961 does not cover all incomes or activities of the appellant. The exemption under said provisions are admissible based on the nature of activity and source of such incomes. Hence, exemption under CGST Act, 2017 on income is admissible only if the same is towards any charitable activity.

(vii) As discussed in the preceding para, it is observed that vide clause (r) of para 2 of the said Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, the expression "charitable activities" has been defined as follows:-

(r) "charitable activities" means activities relating to -

(i) public health by way of , -

(A) care or counselling of

(I) terminally ill persons or persons with severe physical or mental disability,

(II) persons afflicted with HIV or AIDS,

(III) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol;

(B) public awareness of preventive health, family planning or prevention of HIV infection;

(ii) advancement of religion , spirituality or yoga;

(iii) advancement of educational programmes or skill development relating to,-

(A) abandoned, orphaned or homeless children;

(B) physically or mentally abused and traumatized persons;

(C) prisoners; or

(D) persons over the age of 65 years residing in a rural area;



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(iv) preservation of environment including watershed, forests and wildlife;

(viii) The expression 'Charitable Purpose' as defined in Section 2(15) of the Income Tax Act, 1961 is as follows:-

2(15) 'charitable purpose' includes relief of the poor, education, medical relief, preservation of environment (including watershed, forests and wildlife), and preservation of monuments or places or objects of artistic or historic interest and the advancement of any other object of general public utility.

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying of an activity in the nature of trade, commerce or business or any activity of rendering service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use, or application, or retention, of the income from such activity.

Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is ten lakh rupees or less in the previous year.

(ix) Primarily it has been the contention and claim of the appellant that the services rendered by them and in which they are engaged in are activities which are covered under clause (iv) of the above definition of charitable activities. Hence, such activities would be covered under S.No. 1 of Notification no. 12/2017 - Central Tax (Rate) dated 28.06.2017.

(x) However, it is mandatory that for the said services to be covered in clause (iv) of the above definition of charitable activities, these must be relating to the preservation of environment.

(xi) In the instant case as discussed in the preceding para, CREDA implements various schemes relating to solar energy, wind energy, mini micro hydel, biomass, biogas and solid waste management. Some of the major activities include sour sujla yojna, solar drinking water pumping scheme, saubhagya yojna, solar community irrigation scheme, solar high mast, saur shakti yojna, solar on grid and roof top scheme, solar cold storage scheme, solar highmast, solar water purification, solar electrification of Government Buildings, solar water heating systems, National biogas and manure management programme, solar rural electrification/majaratola scheme, energy conservation programme, energy education park etc. The above schemes are funded by the grants received from the Central Government and State Government. CREDA creates empanelment of systems integrators, vendors and contractors to work as channel partner for implementing various solar



photovoltaic/solar thermal applications in market mode in the state. The system integrator shall be the agency for integration and installation of Solar PV/Solar Thermal Systems. Their scope of work will be marketing, survey, preparation of DPR / formulation of proposal, designing, installation, commissioning of these systems and comprehensive operation and maintenance of these systems for five years as per guidelines of CREDA. The vendors will be the registered suppliers for supply of Batteries, SPV Modules, Inverters, PCUs, VFD, Controlling and Monitoring Instruments, Electrical Material such as cables, conductors, earthing and LA, switches, luminaries and allied material etc, Poles and other fabrication items such as brackets, stay sets, Structures for SPVPP, SPV Pumps and Dual Pumps etc. They will supply the material of approved make and specifications to registered Sis for installation / integration of SPV Systems in the state. A vendor must be a manufacturer or its authorized dealer of manufacturer (of a product related to SPV confirming to specifications of MNRE/CREDA) with OEM Contract with the manufacturer. The contactors means civil and electrical contractors to be engaged for carrying out various small construction and repair civil works and works of laying of power distribution network at various sites as per requirement of CREDA.

(xii) Thus for the above schemes funded by the grants received from the Central Government and State Government CREDA, the appellant creates empanelment of systems integrators, vendors and contractors to work as channel partner for implementing various solar photovoltaic/solar thermal applications in market mode in the state of C.G and further the aforesaid activities are being undertaken by the Integrators, vendors, contractors. Further for implementation of these schemes, the appellant receives consideration for the allied services rendered by them from their clients / channel partners, in the form of Registration Fees, Supervision / Service Charges, Processing Fees, RVE CONNECTION Charges, Processing Fees (Sour-Sujila), Entry Fees to Energy Park, Penalty Charges Received and RE issuance Charges. This apart they also receive consideration for activities such as Scrap battery sale and from sale of tender forms. Thus the said activities of CREDA the appellant, per se cannot be merely or primarily for the preservation of environment so as to qualify being considered under clause (r) of para 2 of the said Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. Even if environment friendly technologies are used and that too by the appellant's empanelled systems integrators, vendors and contractors who work as channel partner for implementing the said schemes, the primary purpose in the instant transaction of the appellant for a consideration, is not protection of environment but to provide allied facilities at the specified target locations.

(xiii) In view of the above discussion and analysis we come to the considered conclusion that the aforesaid activities of the appellant cannot be treated as charitable activities as envisaged under the statute, as the above mentioned fees/ charges are being collected from the channel partners/ contractors/consumers as a consideration for tender work/supply of services, provided to them.

Hence, the said supplies being not covered under the definition of charitable activities as envisaged, the impugned services / supply of goods rendered by the



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appellant are not covered under Sr.no.1 of Notification No. 12/2017 - Central Tax (Rate) dated 28.06.2017.

Having regard to the facts and circumstances of the case and discussions as above, we dispose of the instant appeal filed by M/s NMDC, the Appellant by passing the following order:-

ORDER

(Under Section 101(1) of the CGST Act, 2017 and Chhattisgarh Goods and Services Tax Act, 2017)

No.STC/AAAR/04/2020 5157

Raipur Dated16/7/2020

The ruling so sought by the Appellant is accordingly answered as under:-

In view of the above, there is no merit in the appeal filed by the Appellant M/s CREDA having GSTIN 22AAAJC0190K2ZM, against the Advance Ruling order No. STC/AAR/07/2019, dated 10th February 2020 passed by the AAR, Chhattisgarh and accordingly the said order is upheld.

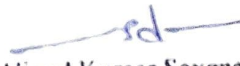


Place:- Raipur

Date:-

Seal:-


Ranu Sahu
Commissioner
(Member)


Vinod Kumar Saxena
Chief Commissioner
(Member)

TRUE COPY

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MEMBER

APPELLATE AUTHORITY FOR
ADVANCE RULING, CHHATTISGARH


MEMBER

APPELLATE AUTHORITY FOR
ADVANCE RULING, CHHATTISGARH

Copy to:-

1. Appellant,
2. The Commissioner, (SGST)
3. The Chief Commissioner, (CGST)
4. The Jurisdictional officer, Raipur Circle-3.



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