

**GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2022/15
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2021/AR/9)

Date : 12.07.2022

Name and address of the appellant	:	M/s. Apar Industries Limited, Survey No.189/P1, GIDC Road, Tal. Umbergaon, Valsad, Gujarat-396171
GSTIN of the appellant	:	24AAACG1840M1ZR
Advance Ruling No. and Date	:	GUJ/GAAR/R/03/2021 dated 20.01.2021
Date of appeal	:	04.03.2021
Date of Personal Hearing	:	31.05.2022
Present for the appellant	:	Shri Amal Dave, Advocate

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act, 2017' and the 'GGST Act, 2017') are in *pari materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean reference to the corresponding similar provisions in the GGST Act, 2017.

2. The present appeal has been filed under Section 100 of the CGST Act, 2017 and the GGST Act, 2017 by M/s. Apar Industries Ltd (hereinafter referred to as Appellant) against the Advance Ruling No. GUJ/GAAR/R/03/2021 dated 20.01.2021.

3. The appellant has submitted that they are manufacturer and supplier of various goods such as Power/Electric cables, House wire cables, Marine/pressure tight cables and non-pressure tight cables, Solar DC cables, XLPE (HT/LT) cables etc. falling under Chapter Heading 8544 of the Customs Tariff Act and that they received purchase orders from Solar Power Generating Projects such as M/s Adani Green Energy Ltd, Adani's Mundra Solar PV Ltd etc. for supply of "Solar HT XLPE & LT XLPE Cables" for use as parts in the manufacture of Solar Power Generating System.

4. The appellant has raised the following questions for advance ruling in the application for Advance Ruling filed by it.

"Whether the applicability or determination of liability to pay Tax on our said goods at 5% GST rate is legally correct and in order in terms of Schedule I of Notification No. 1/2017- Integrated Tax (Rate) or not?"



5. The appellant has submitted that Entry at Sr.No. 234 of Schedule-I of Notification No. 01/2017- Integrated Tax (Rate) dated 28.06.2017 provides that goods, falling under Chapter 84, 85 or 94, if used as Parts for the manufacture of renewable energy devices such as Solar Power Generating System, will attract concessional rate of 5% of IGST [or 2.5% each of CGST & SGST]. The appellant further submitted that CBIC vide Circular No. 80/54/2018-GST dated 31.12.2018 at Para 11.2 clarified that the notification specifically applies only to the goods falling under chapters 84, 85 and 94 of the Tariff: that therefore, this concession would be available only to such machinery, equipment, etc. which fall under 84, 85 and 94 and used in initial setting up of renewable energy plants and devices including WTEP; that this entry does not cover goods falling under other chapters, say a transport vehicle falling under chapter 87 that may be used for movement of waste to WTEP; that the goods HT XLPE & LT XLPE Cables, manufactured and designed by them for use as parts in the manufacture by Solar Power Projects falls under Chapter 85 which is covered under Sr.No. 234 of Notification No. 01/2017- Integrated Tax (Rate) and benefit of concessional rate of GST at 5% is admissible to them. The appellant also submitted that they are accredited by International Authority 'TuV' to manufacture as per EN-50618:2014 specs which is exclusively for the products for Solar Power applications.

6. The Gujarat Authority for Advance Ruling (herein after referred to as 'the GAAR'), vide Advance Ruling No. GUJ/GAAR/R/03/2021 dated 20.01.2021, *inter-alia* observed that appellant's product viz. HT XLPE & LT XLPE Cables, classifiable under Chapter Heading 8544, do form an integral part of the Solar Power Generating System, however, as to whether HT/LT XLPE Cables manufactured and supplied by appellant will be in Solar Power Generating System, GAAR observed that appellant did not provide supply contracts/order, original purchase order dated 25.12.2018 but submitted amendment of purchase order dated 16.02.2019 which is not legal document and on going through the amendment of purchase order dated 16.02.2019, there is a distinct possibility of supply or services involved alongwith goods.

In view of the foregoing, the GAAR ruled as follows:-

"Whether the applicability or determination of liability to pay Tax on our said goods at 5% GST rate is legally correct and in order in terms of Schedule-I of Notification No. 1/2017- Integrated Tax (Rate) or not?"

Ans: In view of non-submission of copies of contract/agreement/tender as mentioned above, by the applicant M/s Apar Industries Ltd, Plot No.189/P1, GIDC Road, Tal: Umbergaon, Valsad, it would not be possible for us to give a decision in the matter for the reasons discussed hereinabove."

7. Aggrieved by the aforesaid advance ruling, the appellant has filed the present appeal.

7.1 The appellant in the ground of appeal has submitted that the GAAR observed that to avail the benefit entry at Sr.No. 234 of Notification No. 01/2017- Integrated Tax (Rate) appellant has to satisfy two conditions, first, the goods must be covered under Chapter Heading 84, 85 or 94 and second, the goods shall satisfy the description 'renewable energy devices & parts for their manufacture i.e. Solar Power Generating System; GAAR observed that appellant's product indeed covered under Chapter 85 and, after going through the technical write-up submitted by appellant, form an integral part of Solar



Power Generating System; GAAR, due to unavailability or non-submission of copies of contract/agreement/tender/technical specification, erred in restraining itself to give its decision.

7.2 The appellant stated that they already submitted the original purchase order No. 4500293305 dated 25.12.2018 in original application to GAAR under covering letter dated 16.09.2020 (copy submitted with present appeal). The appellant also submitted that in this digital world of paperless economy, demanding documents such as tender/contract/agreement/technical specification which are not readily available or parted with the appellant by Project Authority as the process of tendering were done through E-mail correspondence and in commercial sale/purchase, the legal documents placed on supplier/vendors/sub-contractors by main contractor/project developers/project authority is 'purchase order' or 'sales order' which were already submitted before GAAR.

7.3 As regards to GAAR's observation that purchase order is not a legal document enforceable by law, appellant relied upon Indian Contract Act, 1872 which says that "all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void." The appellant submitted that in present case, the purchase order is placed by the purchaser, with free consent, by both parties to contract, for lawful consideration with a lawful object and expressly accepted by mail confirmation and the same was recorded in Para 7 of ruling of the GAAR, which proves that the purchase order is the legal document enforceable by law.

7.4 The appellant submitted that GAAR, despite holding that appellant's product fulfill both the mandatory conditions that the product/ goods supplied to Solar Power Project are falling within notified/ admissible ITC (HS) Code 85 and the said goods are essential and integral parts of the Solar Power Generating System, did not give any ruling, observing one irrelevant general clause of purchase order and claiming that there is possibility or likelihood of service also being provided by appellant to the buyer/project authority, which is unjustified and baseless. The appellant submitted that in every sale/purchase contract, multiple elements of services are involved at the sellers/suppliers end which includes as mentioned in purchase order i.e. "Design, Engineering, manufacturing, assembly, inspection and testing at works, supply, packing and forwarding, transportation and transit insurance" which are essential to meet customer's specifications and also arrange delivery either at ex-factory gate basis or for destination basis. The appellant had not provided any after sale service viz. no erection, installation, construction etc. in respect of solar power generating system and therefore, the above referred services are inbuilt and naturally bundled with principal supply of goods and not provided beyond the sale of goods and hence cannot be treated separately.

7.5 The appellant submitted that there is no element of 'works contract service' involved or performed by appellant as sub-contractor to the Solar Power Generating System as the works contract service was rendered by project developer after buying goods from appellant and the appellant sold the goods to project developer on outright arms and length sale basis after manufacturing as per design, specification, engineering, packing, prior sale testing at appellant works and then delivery was given at FOR destination basis including transportation and transit insurance. Therefore services listed



in purchase order are inbuilt and naturally bundled with sale of goods in terms of Sale of Goods Act, 1930 and CGST Act, 2017 and have to be performed in order to manufacture the goods as per the specification provided by buyer.

7.6 The appellant submitted that they already placed on record an "Undertaking/Indemnity/End Use Certificate" before GAAR, confirming by project authority that XLPE cables will be purchased from appellant on outright purchase basis where no elements of works contract service is provided by appellant. The appellant also submitted an affidavit dated 26.02.2021 issued by Adani Green Energy Limited, confirming that the appellant, in the present case, had supplied only the goods on outright sale basis and had not provided any service to project authority.

FINDINGS :-

8. We have carefully gone through and considered the appeal and written submissions filed by the appellant, submissions made at the time of personal hearing, Advance Ruling given by the GAAR and other material available on record.

9. The main issue to be decided, on the basis of advance ruling sought by the appellant is, whether the benefit of concessional rate of GST in terms of Sr. No. 234 of Schedule-I to Notification No. 1/2017-IT (Rate) dated 28.06.2017 will be applicable to the HT/LT XLPE Cables designed, manufactured and supplied by the appellant for use as parts in the manufacture of Solar Power Generating System/ Solar Power Projects.

10. To decide the issue we find it necessary to go through the Entry No. 234 appearing under Schedule-I to the Notification No.01/2017-IT (Rate) dated 28.06.2017 which provides applicable rate of GST at 5% and which reads as under:

Sr. No.	Chapter/Heading/Sub-Heading/Tariff Item	Description of Goods
234.	84, 85 or 94	<p><i>Following renewable energy devices & parts for their manufacture</i></p> <p><i>(a) Bio-gas plant</i></p> <p><i>(b) Solar power based devices</i></p> <p><i>(c) Solar power generating system</i></p> <p><i>(d) Wind mills, Wind Operated Electricity Generator (WOEG)</i></p> <p><i>(e) Waste to energy plants/devices</i></p> <p><i>(f) Solar lantern/solar lamp</i></p> <p><i>(g) Ocean waves/tidal waves energy devices/plants</i></p>

On going through the provisions of the above entry, we find that in order to avail benefit of above notification, appellant has to satisfy two conditions, first, the goods must be covered under Chapter Heading 84, 85 or 94 and second, the goods shall satisfy the description 'renewable energy devices & parts for their manufacture' i.e. Solar Power Generating System.

10.1 As regards to first condition, after going through the appellant's submission, we agree with the observation of GAAR that XLPE cables are covered under Chapter Heading 8544 of the Customs Tariff Act, 1975.



10.2 As regards to second condition, we find that the GAAR while discussing, in detail, about Solar Power Generating System at Para 15 of ruling held that XLPE Cables form an integral part of the Solar Power Generating System as without these interconnecting cables, the components like Solar Panels and others cannot generate usable power. Based on the technical write up submitted by appellant before GAAR and before this appellate authority we are in agreement with the findings of the GAAR.

Further, there is no departmental appeal against the above findings of GAAR.

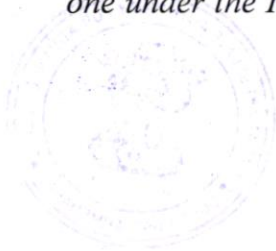
11. Further, GAAR observed that to avail the benefit of Entry at Sr.No. 234 of the Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017, it is necessary to confirm that XLPE cables are indeed used as parts of Solar Power Generating System. Further in view of Board Circular No. 80/54/2018-GST dated 31.12.2018 appellant has to satisfy himself with the requisite document from the buyer such as supply contract/order from the concerned authorities before supplying goods claiming concession under entry No.234. The GAAR observed that appellant had not submitted any supply contracts or orders but submitted only amendment dated 16.02.2019 to Original Purchase Order No. 4500293305 dated 25.12.2018 which is not a legal document. The appellant stated that they already submitted Original Purchase Order No. 4500293305 dated 25.12.2018 before GAAR, which is also submitted before present appellate authority. The appellant also submitted "Undertaking/Indemnity/End Use Certificate" dated 01.03.2019 issued by M/s Adani Green Energy Ltd, confirming that XLPE cables purchased under Order No. 4500293305 dated 25.12.2018 will be used only for initial set up of Solar Power Generating System.

12. We find that Section 10 of Chapter II of Indian Contract Act, 1872, as referred by appellant, says that "all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void." The purchase orders submitted by appellant may be treated as contract if they follow conditions prescribed under Indian Contract Act, 1872 i.e. they are made for lawful consideration and with a lawful object and made by the free consent of both parties. The GAAR in Para 7 of ruling observed that appellant submitted copies of various e-mails exchanged between parties to show that purchase order had been duly accepted by appellant and that emails enclosed a copy of sales order for these transactions which proves that the purchase order was accepted. Further Board in its Circular No. 31/2013-Cus dated 6th August 2013 has held as under:

"In regard to the scope of the terms "deed of contract" it is seen that as per Section 10 of the Indian Contract Act, 1872 a valid contract is one that contains the following ingredients:-

- (i) it is entered into by free consent of parties competent to contract;*
- (ii) there should be lawful consideration;*
- (iii) there should be a lawful object; and*
- (iv) it is not expressly declared to be void (i.e. void under the statute).*

3. In view of the aforementioned legal position it is evident that a purchase order that contains all the essential ingredients of a valid contract must be treated as one under the Indian Contract Act, 1872."



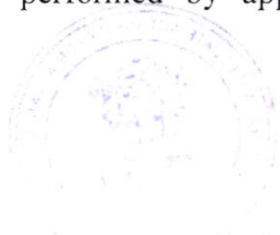
After conjoint reading of above observation of GAAR, provisions under Indian Contract Act, 1872, and above referred Board's Circular dated 6.8.2013, it can be said that purchase orders, submitted by appellant would amount to a valid contract and hence appellant fulfills the condition prescribed in Board Circular No. 80/54/2018-GST dated 31.12.2018 for availing benefit under entry 234.

13. We refer to Para 11.3 of Circular No. 80/54/2018-GST dated 31.12.2018 which states as under:

11.3 Another related doubt raised is as to how would a supplier satisfy himself that goods falling under Chapter 84, 85 and 94, say a turbine or a boiler, required in a WTEP, would be used in the WTEP. In this context it is clarified that GST is to be self-assessed by a taxpayer. Therefore, he need to satisfy himself with the requisite document from a buyer such as supply contracts/order for WTEP from the concerned authorities before supplying goods claiming concession under said entry 234.

On perusal of above para of the circular, it is clearly expressed that (i) GST is self assessed which means if a taxpayer is claiming exemption/concession under any notification issued under GST Act, he has to satisfy himself that he fulfills the mandatory conditions for claiming the same, onus to prove that he is eligible for such exemption/concession lies on that taxpayer, and (ii) the words used in above para of circular "...he need to satisfy himself with the requisite document from a buyer such as supply contracts/order..." provides examples, using word 'such as', of documents required from buyer, for satisfaction of taxpayer that goods are indeed used in WTEP. Therefore, we find that meaning of above para cannot be construed to include only 'supply contracts/order' but it will include all such documents which can satisfy the supplier regarding usage of their goods by their buyers. In the present case we find that appellant has received purchase order No. 4500293305 dated 25.12.2018 from M/s. Adani Green Energy Ltd., for supply of XLPE Cables. They have accepted the said purchase order and as discussed above the said purchase orders are a valid contract based on which the appellant can claim exemption/concession for their supplies under referred entry no.234.

14. As regards to GAAR's observation that there appears to be a distinct possibility of supply of services, appellant submitted that in every sale/purchase contract, multiple elements of services are involved at the sellers/suppliers end which includes as mentioned in purchase order and they had not provided any after sale service viz. no erection, installation, construction etc in respect of solar power generating system and therefore, the above referred services are inbuilt and naturally bundled with principal supply of goods and not provided beyond the sale of goods. The appellant also submitted an affidavit dated 26.02.2021 issued by Adani Green Energy Limited, confirming that the purchase orders placed with appellant involve only supply of goods and does not involve any kind of service which can be separately taxed under the CGST Act, 2017. On going through the abovementioned Affidavit dated 26.02.2021 and appellant's submission, we find that these services are essential for manufacturing of goods as per buyer's specification and make the goods marketable and scope of these services is not beyond the sale of goods and that there is no element of 'works contract service' involved or performed by appellant as sub-contractor to the Solar Power Generating System.



Therefore, amendment made to Sr.234 of Notification No. 01/2017-Integrated Tax (Rate) vide Notification No. 25/2018- Integrated Tax (Rate) dated 31.12.2018 and Notification No. 28/2018-Integrated Tax (Rate) dated 31.12.2018, for deciding value of services and rate of GST thereon, will not be applicable as there is no provision of service supplied by the appellant with respect to Solar Power Generating System.

15. Further we find that the Entry No. 234 appearing under Schedule-I to the Notification No.01/2017-IT (Rate) dated 28.06.2017 which provides applicable rate of GST at 5% on supplies of renewable energy devices & parts for their manufacture viz. Solar power generating system, falling under Chapter 84,85 or 94, was omitted vide Notification No. 8/2021-IT (Rate) dated 30.09.2021. The description of goods covered under Entry No.234 now appears at Entry No.201A under Schedule-II to the Notification No. 01/2017-IT(Rate) dated 28.06.2017, amended vide Notification No. 8/2021-IT (Rate) dated 30.09.2021 w.e.f. 1.10.2021, which provides for applicable rate of GST at 12%. The description of renewable energy devices & parts for their manufacture viz. 'Solar power generating system' appearing at entry No. 234 of schedule-I now stands amended as 'Solar power generator' under Entry No. 201A of schedule-II.

15.1 Therefore we find that the product in question viz. Solar LT/HT XLPE Cables supplied for Solar Power Generating System, classified under Chapter 85, forms integral part of Solar Power Generating System is eligible for benefit of entry at Sr.No. 234 appearing under Schedule-I to Notification No.01/2017- Integrated Tax (Rate) dated 28.06.2017 and liable to be taxed @ 5% GST upto 30.09.2021. Thereafter the same will be covered under entry Sr.No. 201A appearing under Schedule-II to the Notification No.01/2017-IT (Rate) dated 28.06.2017 amended vide Notification No. 08/2021-IT (Rate) dated 30.09.2021 and liable to be taxed @12% GST w.e.f. 01.10.2021.

16. In view of the foregoing, we modify the Advance Ruling No. GUJ/GAAR/R/03/2021 dated 20.01.2021 of the Gujarat Authority for Advance Ruling in the case of M/s. Apar Industries Limited and hold that –

- (i) The product Solar HT/LT XLPE Cables to be used in the manufacture of Solar Power Generating System/ Solar Power Generator is eligible for benefit of Entry at Sr.No. 234 under Schedule-I of Notification No.01/2017- Integrated Tax (Rate) dated 28.06.2017 and liable to be taxed at 5% GST upto 30.09.2021 and thereafter under Entry at Sr.No.201A of Schedule-II of Notification No.01/2017-IT (Rate) dated 28.06.2017 amended vide Notification No. 08/2021-IT (Rate) dated 30.09.2021 and liable to be taxed at 12% GST w.e.f. 01.10.2021.

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(Milind Torawane)
Member



Seema Arora
(Seema Arora)
Member

Place : Ahmedabad

Date : 12.07.2022