



TELANGANA STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Goods and Services Tax)
1st Floor, Commercial Taxes Complex, M.J. Road, Nampally,
Hyderabad 500 001

A.A.A.R.Com/05/2021

Date.16-07-2022

ORDER- IN- APPEAL NO. AAAR/05/2022 (A.R.)

(Passed by Telangana State Appellate Authority for Advance Ruling Under Section 101 (1) of the Telangana Goods and Services Tax Act, 2017)

preamble

1. In terms of Section 102 of the Telangana Goods & Service Tax Act, 2017(" the Act", in short), this Order may be amended by the Appellate Authority so as to rectify any error apparent on the face of the record, if such error is noticed by the appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the applicant or the appellant has been given an opportunity of being heard.
2. Under section 103(1) of the Act, this advance ruling pronounced by the appellate Authority under Chapter XVII of the Act shall be binding only
 - (a) On the applicant who had sought it in respect of any matter referred to in sub-Section (2) of Section 97 for Advance ruling:
 - (b) On the concerned officer or the jurisdictional officer in respect of the applicant.
3. Under Section 103((2) of the Act, this advance Ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed
4. Under Section 104(1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-Section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

Subject:- GST- Appeal filed by M/s. Medha Servo Drives Private Limited, Hyderabad, under Section 100(1) of TGST Act, 2017 against Advance Ruling TSAAR Order No. 23/2021 dated, 05.11.2021 Passed by the Telangana State Authority for Advance Ruling – Order-in –Appeal Passed – Regarding

1. The subject appeal has been filed under Section 100(1) of the Telangana Goods and Services Tax Act, 2017 (hereinafter referred to as " TGST Act, 2017" Or " the Act", in short) By M/s. Medha Servo Drives Private Limited, Sy No.780,781, Jodimetla X Roads, Chowdaryguda Village, Ghatkeshar, Korremula, Medchal - Malkajgiri, Telangana having GSTIN No. 36AABCM3917A1ZY (hereinafter referred in short as "M/s. Medha Servo Drives Private Limited" or " the appellant") against the Order No. 23/2021 dated 05.11.2021(" impugned order") passed by the Telangana State Authority for Advance Ruling (Goods and Services Tax)("Advance Ruling Authority" / "AAR"/ " Lower Authority") in respect of an Codes and rate of tax in respect of the following question raised by AR as under.
2. Vide impugned order, the Advance Ruling Authority had given the following advance rulings:
 1. HSN/SAC classification?
HSN is 8530.
 2. GST rate applicable?
9% on CGST & SGST respectively.

The present appeal challenges the above(1) and (2) Ruling. before the Appellate Authority for Advance Ruling.

3. Whether the appeal is filed in time

3.1 In terms of section 100(2) of the Act, and appeal against Advance Ruling passed by the Advance Ruling Authority, has to be filed within thirty (30) days from the date of communication thereof to the applicant. The impugned Order dated 05.11.2021 was received by the appellant on 15.11.2021 as mentioned in their Appeal Form GST ARA-02. They filed the appeal on 18.11.2020, which is within the prescribed time-limit.

4. Brief Facts:

4.1 The Facts in brief, are as follows

The applicant Medha Servo Drives are manufacturers of electronics equipments for locomotives and coaches for Indian Railways and Metro Railways. They have submitted that they have entered into contract with south central railway for design, supply, installing, testing & commissioning of train collision avoidance system in locomotives. That as per the agreement they have to supply multiple items and provide services including annual maintenance services with the service code 9954.

The applicant is desirous of ascertaining whether their supplies made for the above purchase order amounts to composite supply and the rate of tax on the same.

5. Aggrieved by the above ruling, the present appeal has been file by the appellant on the following grounds:

1. The order of the Authority of Advance Ruling, Hyderabad dated 05-11- 2021 passed under section 98(4) of the CGST/TGST Act, 2017 is erroneous, contrary to law and facts of the case.

2. Authority of Advance Ruling is not justified in classifying Supplies made against LOA of South Central Railway under HSN code 8530 Electronic Signalling Equipment when all the conditions are met in respect of composite supply of works contract by way of construction, installation and commissioning of original works pertaining to railways and applicable HSN code as 995421 with applicable GST rate 12%.
3. Authority of Advance Ruling is not correct in classifying the contract of work under HSN code 8530 Electronic Signalling Equipment. Since HSN 8530 is applicable only when it is supply of goods in the present case above scope of work is for contract of work and has to be classified under composite supply of works contract service.
4. Further Authority of Advance Ruling has not given any justification in its ruling that why the supplies against LOA of South Central Railway cannot be classified under composite supply of works contract by way of construction, installation and commissioning of original works pertaining to railways and applicable HSN code as 995421 with applicable GST rate 12%.
5. Further, the appellant has submitted certain other grounds as under:
 - 5.1 Invoicing process and bill deductions against the supplies made to South Central Railway, Secunderabad vide LOA dtd 13.11.2019.
 - 5.2 After successful completion of work and inspection by South Central Railway they will submit invoice for claiming the payment, while making the payment the following deductions are made in bill and balance will be paid to them.
 - 5.3 Deductions:
 1. GST TDS @ 2%
 2. Income tax TDS @ 2%/1.50% (as the case may be)
 3. Building Cess @ 1%
 - 5.4 Building cess will be recovered as per Building and other construction workers welfare cess Act, 1996, as per the Act "there shall be levied and collected Cess at such rate on the **cost** of construction incurred by an employer, as notified by the Central Government may, in the Official Gazette, from time to time. cost of construction shall include all expenditure incurred by an employer in connection with the building or other construction work but shall not include--cost of land; - any compensation paid or payable to a worker or his kin under the Workmen's Compensation Act. 1923.
 - 5.5 From the above it clearly indicates that the supplies made to South Central Railway is in the nature of Works Contracts and not supply of signaling equipment's. For reference the applicant has enclosed sample tax invoice copy along with relevant portion of bill deductions statement wherein above is clearly evident.

5.6 Further, the applicant brought to the notice of the Hon'ble members about the case of **Advance Ruling, Karnataka in case of M/s Quatro Rail Tech Solutions Ltd., dated 27-09-2019**

5.7 The applicant contended that the above ruling is very much similar to their case, since the applicant in above ruling is also supplying automated signalling equipment along with works pertaining to Railways in same way, they were also supplying Train Collision Avoidance System (which is an automated signalling equipment) directly to Railways along with the various works. Hence, their supplies to South Central Railway are liable to tax at 6% under CGST Act and at 6% under TGST Act or 12% under IGST Act, 2017. The relevant entry is entry no. 3(v) of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 20/2017 – Central Tax (Rate) dated 22.08.2017

5.8 Hence it was submitted that the Authority of Advance Ruling is not correct and justified in classifying Supplies made against LOA of South Central Railway under HSN code 8530 Electronic Signalling Equipment **when all the conditions in entry no. 3(v) of Notification No .11/2017- Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 20/2017 – Central Tax (Rate) dated 22.08.2017 are met and applicable HSN code as 995421 with applicable GST rate 12%.**

5.9 Based on above it was requested by the applicant to allow the appeal and modify the order by classifying the Supplies made against LOA of South Central Railway under entry no. 3(v) of Notification No .11/2017- Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 20/2017 – Central Tax (Rate) dated 22.08.2017 and applicable HSN code as 995421 with applicable GST rate 12%

6. Personal Hearing

6.1 In terms of Section 101(1) of the Act, the appellant was given personal hearing, in virtual mode on 31-01-2022 Sri K. Lokesh, CA & AR appeared for the appellant. He reiterated the written submission given in their appeal and requested to consider the same.

7. Discussion, Finding and Determination of the Appeal:

7.1 We have gone through the submissions made by the appellant in detail. The main point of contention is with regard to the supply being classified as composite supply of goods and services, where it should have been composite supply of works contract as contended by the appellant. In order to examine the contentions, the definition of works contract may be referred to:

Clause (119) of Sec 2 of the CGST Act, 2017 defines works contract as follows:

"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 execution of such contract."

7.2 As seen from the definition, the essential elements that are required to construe a service as "Works contract service" are :

- a) The contract should be for construction, fabrication, completion, erection, installation, fitting out, improvement, modification repair, maintenance, renovation, alteration or commissioning;
- b) There should be transfer of property in the goods involved in the execution of the contract; and
- c) It should be in respect of an immovable property.

7.3. The applicant contends all the three conditions are satisfied in their case; and thereby the supply should be classified as 'Works Contract'. With regard to the third condition, that work should be in respect of an 'Immovable Property', the applicant contends that the TCAS System being supplied by them has two components, namely the stationery TCAS unit and Loco TCAS unit and by virtue of the Stationery TCAS unit the property is classifiable as immovable (The unit is fixed onto a pole which in turn is imbedded into the earth). In this context, as the term 'Immovable property' has not been defined under the TGST Act, 2017, the appellant has relied on the definition of 'immovable property' as per General Clauses Act, 1897 and Registration Act, 1908 both of which are reproduced as under:

Immovable property includes any land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit arising out of land, and things attached to the earth but does not include standing timber, growing crops or grass. (as per section 2(6) of Registration Act, 1908)

Immovable property shall include Land, benefits to arise out of the land and things attached to the earth or permanently fastened to any thing attached to the earth. (as per section 3(26) of General Clauses Act, 1897)

7.4 The AAR decision relied on by the applicant is distinguishable to the case on hand. In this context, it may be recalled that, it has been highlighted in various pronouncements by the judicial authorities that in cases where an object is installed/fastened to the land for better/improved efficiency running of the said object, and not for the benefit of land, such object will not be considered as immovable property.

7.5 Further, it has been held that if fixing of a plant to a foundation is only for providing stability to the plant, the foundation provided would not change the nature of the plant and make it an immovable property.

7.6 In a judgment by the Hon'ble Supreme Court in the matter of Sirpur Paper Mills Ltd. v. Collector of Central Excise, Hyderabad (MANU/SC/0846/1998 : 1998 1 SCC 400) [1998 (97) E.L.T. 3 (S.C.)], wherein in case of a paper making machine, it was held that merely because the machinery was attached to the earth for operational efficiency, it does not automatically become an immovable property. Relevant extract from the judgment is reproduced below for ease of reference:

The Tribunal held that the machine was attached to earth for operational efficiency. The whole purpose behind attaching the machine to a concrete base was to prevent wobbling of the machine and to secure maximum operational efficiency and also for safety.

The Tribunal further held that the paper making was saleable and observed that "if somebody to purchase, the whole machinery could be dismantled and sold to him in parts".

In view of this finding of fact, it is not possible to hold that the machinery assembled and erected by the appellant at its factory site was immovable property as something attached to earth like a building or a tree. The tribunal has pointed out that it was for the operational efficiency of the machine that it was attached to earth. If the appellant wanted to sell the paper making machine it could always remove it from its base and sell it.

In view of that finding, we are unable to uphold the contention of the appellant that the machine must be treated as a part of the immovable property of the company. Just because a plant and machinery are fixed in the earth for better functioning, it does not automatically become an immovable property.'

7.7 Further, it is worthwhile to note that the Madras High Court in the matter of Sri Velayuthaswamy Spinning Mills v. The Inspector General of Registration and the Sub Registrar [MANU/TN/0164/2013 : 2013 (2) CTC 551], while deciding whether setting up of windmills can be treated as movable property for the purpose of payment of stamp duty, held that windmills were installed on the cemented platform on the land for running of windmills and not for the benefit of the land, and hence the same are to be considered as movable property. The judgment was passed on the basis of the principle that if, in the nature of things, the property is a movable property and for its beneficial use or enjoyment, it is necessary to imbed it or fix it on earth though permanently that is, when it is in use, it should not be regarded as immovable property for that reason.

7.8 Similar principles were also adopted in the matter of Perumal Naicker v. T. Ramaswami Kone and Anr. (MANU/TN/0213/1969 : AIR 1969 Mad 346), wherein the Madras High Court, while deciding whether the engine and pump set were an immovable property, held that the attachment of the oil engine to earth is for the beneficial enjoyment of the engine itself, and hence, such an attachment does not make the engine part of the land and as immovable property. Relevant extracts of the judgment are reproduced below for ease of reference:

'We find ourselves in agreement with the second part of these observations, which is apposite to the instant case. In the case before us, the attachment of the oil engine to earth, though it is undoubtedly a fixture, is for the beneficial enjoyment of the engine itself and in order to use the engine, it has to be attached to the earth and the attachment lasts only so long as the engine is used. When it is not used, it can be detached and shifted to some other place. The attachment, in such a case, does not make the engine part of the land and as immovable property.

7.9 In view of the aforesaid judgments, here the electronic signalling equipment being commissioned, or installed at the premises of the Contractee cannot be termed as 'immovable property' as the signalling equipment or the track side equipment (Stationery TCAS units) is being fixed to the earth only for the purpose of providing support to the said equipment and not for enhancing the value of land on which it is being constructed (Object of Annexation). In the light of the above discussion, the supply fails to qualify as 'Works contract'.

7.10 Further, the case laws relied up on by the Appellant do not offer any support for the reason that works contract has been specifically defined under TGST Act, 2017 bringing in the context of immovable property. Hence, merely because work is to be done (where materials are used for performing such work) in a contract does not render the contract to be 'works contract' as defined under TGST Act, 2017. The appellant has not disputed the classification of supply as 'composite supply'. In view of the above discussions, the supplies made by the appellant to the railways have been rightly classified as composite supply of

goods and services with rate of tax applicable for principal supply by the Advance Ruling Authority.

7.11 Further, the appellant has requested for clarification of supplies made under AMC which were earlier not raised before the Authority for Advance Ruling. Hence the appeal does not stand on this ground as ruling itself was not sought on the same.

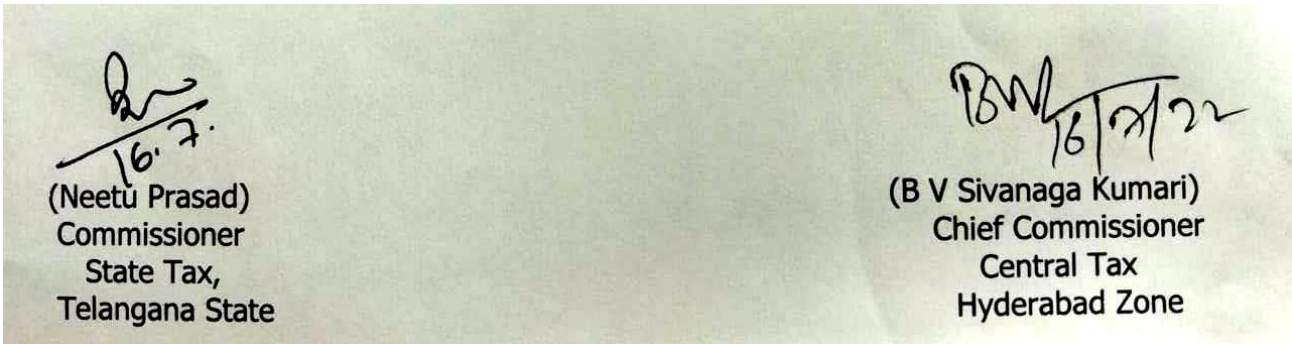
Therefore, the order made by the Advance Ruling Authority is being upheld accordingly.

8. The ruling is given as below:

In view of the above discussion, the questions raised by the applicant are clarified as below:

Questions	Ruling
1. Whether supply is classifiable as composite supply of works contract service	No
2. Whether AMC can be included within the ambit of above composite supply	Question was not raised earlier and hence, not determined by the Authority for Advance Ruling. Can't be raised before this Authority.

The subject appeal is disposed accordingly



To:

M/s. Medha Servo Drives Private Limited
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Chowdaryguda Village, Ghatkeshar,
Korremula, Medchal - Malkajgiri,
Telangana- 500088.

Copy to

1. Telangana Stat Authority for Advance Ruling, CT Complex, MJ Road, Nampally, Hyderabad
2. Chief Commissioner of Central Tax& Customs, Hyderabad Zone-for information and for forwarding copies of the order to the concerned /Jurisdictional officer of Central Tax.
3. Commissioner of State Tax, Telangana State – for information and for forwarding copies of the order to the concerned/ jurisdictional officer of state tax.