

HARYANA APPELLATE AUTHORITY FOR ADVANCE RULING

(Constituted under Section 99 of the Haryana Goods and Services Tax Act, 2017 read with Central Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

Sh. Manoj Kumar Srivastava, IRS (C&IT), Chief Commissioner, Central Goods and Service Tax Zone, Panchkula Member, Appellate Authority for Advance Ruling, Haryana	Sh. Ashok Kumar Meena, IAS, Commissioner, Excise & Taxation Department, Haryana Member, Appellate Authority for Advance Ruling, Haryana
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HAAAR ORDER-In-APPEAL No.: HAAAR/ 2020-21/15

Dated: 23.07.2024

(Passed by Haryana Appellate Authority for Advance Ruling under Section 101(1) of the Haryana Goods and Services Tax Act, 2017 read with Section 101(1) of the Central Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Central Goods & Services Tax, Act 2017/Haryana Goods & Services 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 Appellant within a period of six months from the date of the Order.
2. In terms of 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 Appellant who had sought it in respect or 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 Appellant.
3. In terms of Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the said advance ruling have changed.
4. In terms of 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 the Act or the rules made there-under shall apply to the Appellant as if such advance ruling has never been made.

DETAILS OF THE APPELLANT:

Name and Address of the Appellant	Commissioner, CGST, Rohtak
GSTIN/User id of the Appellant	NA
Advance Ruling Order against which appeal is filed	HR/HAAR/R/2019-20/26 dated 28.08.2020
Date of Filing of Appeal	15.01.2021
Represented By	Ms. Sofia Martin Joy, Commissioner, CGST, Rohtak (Haryana)
Jurisdictional Authority-Centre	CGST Commissionerate- Rohtak
Jurisdictional Authority-State	Deputy Excise & Taxation Commissioner (ST), Bhiwani
Whether payment of fees for filing appeal is discharged. If yes, the amount and Challan No.	NA, Departmental Appeal

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Order under Section 101 of Central Goods and Services Tax Act, 2017 / Haryana Goods and Services Tax Act, 2017

1. The present appeal has been filed by the Commissioner, CGST, Rohtak (hereinafter referred to as 'the Appellant') under Section 100 (1) of Central Goods and Services Tax Act, 2017/Haryana Goods and Services Tax Act, 2017 (hereinafter referred to as "the Act") against the Advance Ruling No. HR/HAAR/R/2019-20/26 dated 28.08.2020.

2. A copy of order of the Advance Ruling Authority issued on 28.08.2020 was received by the 'Appellant' on 19.11.2020 and the appeal has been filed on 15.01.2021 which is NOT within time in terms of Section 100(2) of the CGST Act, 2017/HGST Act, 2017. The appellant has also requested for the condonation of delay in filing the appeal.

1. BRIEF FACTS OF THE CASE:

1.1 M/s KSC Buildcon Private Limited(hereinafter also referred to as "KBPL" in short) are holding GST registration in Haryana State vide GSTIN-06AAECK5780G1ZF and their principal place of business is at 1st floor, near Kajal Nursing Home, KSC Tower, Circular Road, Meham Gate, Bhiwani, Haryana-127021.'KBPL' are engaged in supply of goods as well as services.

1.2 The Department of Mines & Geology, Govt. of Haryana is responsible for systematic development [exploration and, exploitation] of the mineral resources in the State. It operates the stone mines through Haryana State Industrial Infrastructures Corporation (HSI IDC), a public sector undertaking.

1.3 HSI IDC awarded a contract dated 27.07.2017 to M/s KBPL for supply of machinery with manpower for excavation of stones at its (HSI IDC's) mining project at village Khanak, Tehsil Tosham, distt. Bhiwani under various terms and conditions as mentioned in the said Contract:

1.4 In the aforesaid gamut of facts and terms of Contract, M/s KBPL filed an application on 17.01.2020 under Section 97 of the CGST/SGST Act, 2017 seeking advance ruling from the Authority for Advance Ruling, Panchkula(Haryana) [AAR] on the following question:

"Whether the Sl. No.3 of Notf. No. 31/2017-Central Tax (Rate) dated 13th October, 2017 issued under the GST Act, being Composite supply of work contract as defined in clause 119 of Sec-2 of the CGST Act, 2017, involving predominantly earth work i.e. constituting more than 75% of the value of work in contract provided to Central Government, State Government, Union Territory, Local Authority, a government authority or Government Entity having GST rate of 5% applicable to the applicant".

1.5 On the aforesaid question, the AAR gave its advance ruling dated 28.08.2020 that "As per serial No. 3, heading 9954 of the Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017 under the CGST Act, 2017 and as per Notification No. 31/2017- Central Tax (Rate), dated 13.10.2017 under the CGST Act, 2017 and the corresponding State Tax notification under HGST Act, 2017, the work carried by the applicant is a composite supply of work contract involving pre dominantly earth work provided to a Government Entity and thus attract 5% GST (2.5% CGST + 2.5% HGST). Thus, the Serial No. 3 of Notification No. 31/2017- CentralTax (Rate), dated 13.10.2017 under the CGST Act, 2017 is applicable to the applicant."

1.6 The aforesaid ruling of the AAR is based on its findings recorded in para10, 20 and 21 of the Advance Ruling in so far as the nature of work is concerned.

1.7 Being aggrieved by the advance ruling of the AAR, the Appellant filed the present appeal under Section 100 of the CGST Act, 2017 for consideration by the Ld. Appellate Authority for Advance Ruling.

2. QUESTION(S) ON WHICH ADVANCE RULING WAS REQUIRED:

Whether the Serial No. 3 of Notification No. 31/2017-Central Tax (Rate) dated 13th October,2017 issued under the GST Act, being Composite supply of work contract as defined in clause 119 of Sec-2 of the CGST Act, 2017, involving pre dominantly earth work (i.e. constituting more than 75% of the value of work in contract) provided to Central Government,

State Government, Union Territory, Local authority, a government authority or a Government Entity having GST rate of 5% applicable to the applicant.

3. **ADVANCE RULING AUTHORITY PASSED ORDER ON ABOVE QUESTION AS UNDER:**

As per Serial No. 3, Heading 9954 of Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017 and as per Notification No. 31/2017-Central Tax (Rate), dated 13.10.2017 both under the CGST Act, 2017 and the corresponding State Tax notification under HGST Act, 2017, the work carried by the applicant is a Composite supply of work contract involving predominantly earth work provided to a Government Entity and thus attract 5% GST- (2.5% CGST + 2.5% HGST). Thus, the Serial No. 3 of Notification No. 31/2017 Central Tax (Rate) dated 13.10.2017 under the CGST Act, 2017 is applicable to the applicant.

4. **PRAYER OF 'APPELLANT':**

- a) Set aside/modify the impugned advance ruling passed by the Authority for Advance Ruling as prayed above;
- b) Grant a personal hearing; and
- c) Pass any such further or other order(s) as may deem fit and proper in the facts and circumstances of the case.

5. **GROUND OF APPEAL:**

The Ruling given by the AAR, Panchkula was appeared improper, illegal and unsustainable on the following grounds of appeal which are in the alternative, independent of and without prejudice to each other:

5.1 AAR has recorded a factually incorrect finding that Respondent's activities constitute a composite supply under Works contract:

5.1.1 It is submitted that concessional rate of tax under Sl. No.3(vii) of Notification No. 11/2017-CT(R), dated 28.06.2017 as amended by Notification No. 31/2017-CT(R) dated 13.10.2017 is applicable to "Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, involving predominantly earth work (that is, constituting more than 75 per cent of the value of the works contract) provided to the Central Government, State Government, Union territory, local authority, a Governmental Authority or a Government Entity."

5.1.2 As per clause (119) of Section 2 of the Act *ibid*, '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 the execution of such contract;'

5.1.3 As can be observed from a plain reading of the aforesaid definition of 'works contract', it applies to construction of structures, fabrication of goods, completion, erection, commissioning and installation of goods like plant and machinery and related activities such as improvement, modification, repair, maintenance, renovation, alteration of the existing structures or plant and machinery. As against this, as can be observed from the "Scope of Work" given in PART-III of the Contract dated 27.07.2017 reproduced in Brief Facts of the Case, M/s KBPL are engaged in supply of mining machinery and manpower to HSIIDC for mining operation at HSIIDC's mine site at village Khanak District-Bhiwani. On their part, there is nothing as such which can be construed as construction service, except construction and maintenance of approach road/ramp/benches for safe movement of transport vehicles, which M/s KBPL have to undertake as per MMR 1961 and the guideline of the Director General of Mines Safety. Its cost is minimal (0.5%) of the entire supply of machinery. It is merely an ancillary work and therefore, does not detract the contract from being a contract for supply of machinery and does not take the entire contract in to the fold of 'works contract' as defined under Section 2 (119).

5.1.4 In view of above, their activities under the aforesaid contract agreement are not composite supply of works contract relating to any construction service classifiable under Head No.9954 eligible for concessional rate of tax under Sl. No. 3 of Notification No. 11/2017-CT(R) dated 28.06.2017 as amended by Notification No. 31/2017-CT(R) dated 13.10.2017. The Advance Ruling of the AAR is, therefore, liable to be set aside on this ground itself.

5.2 The AAR failed to appreciate that the nature of the respondent's activities is renting of machinery classifiable under Heading No. 9973 (Group-99731)

5.2.1 It is submitted that while applying for tender, M/s KBPL had quoted the rate of Rs. 41 per MT in response to the said tender and they were shortlisted as successful bidder as their quoted rate i.e. Rs. 41 per MT (inclusive of all taxes) was lowest and accordingly, they were issued work order. They entered in to agreement dated 27.07.2017 with HSIIDC. The scope of work as per the said agreement reads as follow:

"Whereas the Employer is desirous that the contractor shall rent the various mining machineries with manpower to produce 5 lakh Metric Ton (MT) Stones from port of its Mining Project of HSIIDC at village-Khanak, Distt.- Bhiwani, Haryana."

5.2.2 As is evident, the basic intent and purpose of executing the agreement is to hire mining machinery and equipment along with manpower. Therefore, supply of mining machinery and equipment, being the principal supply, is classifiable under Head No. 9973(group 99731) which relates to "Leasing or rental services concerning machinery and equipment with or without operator" and it is not eligible for concessional rate of tax under Sl. No. 3(vii) of Notification No.11/2017-CT(R), dated 28.06.2017 as amended by Notification No. 31/2017-CT(R) dated 13.10.2017.

5.3. The AAR has further recorded an erroneous finding that the said work order/agreement is in the nature of Composite supply of work contract involving predominantly earth work, i.e. more than 75% of the work involves earth work-

5.3.1 It is submitted that concessional rate of tax on construction services under Sl. No. 3(vii) of Notification No.11/2017-CT(R), dated 28.06.2017 as amended by Notification. No. 31/2017-CT (R) dated 13.10.2017 is available if Composite supply of works contract involves predominantly earth work (that is constructing more than 75 per cent, of the value of the works contract). The said criteria is not met in the given case of M/s. KBPL in as much as, as submitted above, they are the suppliers of machinery and equipment and are in no way involved in doing any earth work at the mining site, like leveling of uneven surface of earth, removal of earth, making embankments by use of earth or digging of earth. The mining site at village Khanak is a barren hillock which is blasted by HSIIDC to get stones/boulders. There is no reshuffling of sand/soil before such blasting as the hillock is not covered by sand/soil. In any case, blasting of hill by no stretch of reasoning be construed as earth work. Hence, finding recorded by the AAR that the value of earth work constitutes more than 75 percent of the value of the works contract is wholly erroneous. On this ground also, ruling given by the AAR is liable to be set aside.

5.4. Reliance on the advance Ruling of the Jharkhand AAR in the case of P. K. AGARWALA 2019 (20) G.S.T.L.605 (A.A.R. - GST) is out of context.

5.4.1. It is submitted that the Advance Ruling Authority of Jharkhand has given ruling in favour of P.K. AGARWALA in specific facts of the said case. In this case, work order was awarded for raising of western site tailings dam by Government entity and Major part of contract involved earth related to clearing of earth, excavation, supplying and laying of earth and impervious clay. Hence, it was held by the AAR that work order qualifies for benefit under serial No. 3 of Notification No. 39/2017-I.T. (Rate) being composite supply of works contract. Relevant paras of the order are reproduced below:

12.1 The term "Earth Work" has not been defined under any GST provisions. The Webster Dictionary defines Earth Work as "an embankment or construction made of earth specially one used as a field fortification. The Collins Dictionary defines Earth Work

as "excavation of earth, as in engineering construction; a fortification made of earth. The Wikipedia defines Earth Work as "Earth work are engineering works through the processing of parts of earth surface involving quantities of soil or unformed rocks. After going through different definitions of earth work, we find that Bulk earth works include the removal, moving, or adding Large Quantities of soil or rock from a particular area to another. They are done in order to make an area of suitable height and level for a specific purpose.

12.2 It is evident that the work order is for supply of services with material. It is also seen from the work order that the first four part of the work order is related with clearing of earth, excavation, supplying and laying of earth and impervious clay. The major part of the contract involves earth work i.e. more than 75% of the work involves earth work, we hold the same.

12.3 Since the major part of the work order, i.e., about 96%, is 'Earth Work', we find that the said work order qualifies for the benefit of Serial No. 3 of Notification No. 39/2017, dated 13-10-2017 issued under the GST Act, being composite supply of works contract as defined in clause (119) of Section 2 of the CGST Act, 2017, involving predominantly earth work i.e. constituting more than 75% of the value of work in contract provided to Central Government, State Government, Union territory, local authority, a Government authority or a Government Entity. GST will be applicable at the rate of 5%.

5.4.2 Since the facts of the case of M/s KBPL are different, their reliance on the advance ruling of the Jharkhand AAR is wholly out of place.

5.5 The respondent has suppressed the material fact that the question raised in their application for advance ruling is not pending decision with the CGST authorities.

5.5.1 It is submitted that as per first proviso to Section 98(2) of the CGST Act, 2017 the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceeding in the case of an applicant under any of the provisions of this Act.

5.5.2 It is further submitted that M/s KBPL filed application for advance ruling on 17.01.2020 whereas on the very same issue (whether M/s KBPL are eligible for concessional rate of tax under sl. No. 3 of Notification No. 11/2017-CT (R), dated 28.06.2017 as amended by Notification No. 31/2017-CT(R) dated 13.10.2017), proceedings were initiated against them by the Gurugram Zonal Unit of the Directorate General of Goods & Service Tax Intelligence on 06.03.2019, which later on culminated into show cause notice. While filing the application for advance ruling on 17.01.2020, M/s KBPL suppressed this fact. Therefore, the AAR had wrongly admitted the application of the said party and gave its ruling. The order passed by the AAR is *ab initio* void in terms of the provisions of Section 104 of the CGST Act, 2017 and needs to be set aside on this ground also.

5.6 In the light of submissions made above, Advance Ruling given by the AAR, Panchkula (Haryana) is improper, illegal and unsustainable. Hence, it is liable to be set aside.

6. RECORD OF PERSONAL HEARING:

Smt. Sophia Martin Joy, Commissioner, CGST Rohtak, the 'Appellant' appeared for personal hearing on 19.06.2024 through virtual mode. She informed that investigation had already been initiated by DGGI on the same issue much before filing of application for advance ruling and that the AAR has already held its earlier Ruling as Void *ab initio*.

7. DISCUSSIONS AND FINDINGS:

7.1 We have gone through the records of the case and considered the submissions made by the 'Appellant' in the grounds of appeal as well as at the time of the personal hearing.

7.2 Briefly stated, M/s KSC Buildcon Private Limited (herein after referred to as 'KBPL') approached the Advance Ruling Authority on the question-

"Whether the Serial No. 3 of Notification No. 31/2017-Central Tax (Rate) dated 13th October, 2017 issued under the GST Act, being Composite supply of work contract as defined in clause 119 of Sec-2 of the CGST Act, 2017, involving pre-dominantly earth work i.e. constituting more than 75% of the value of work in contract provided to Central Government, State Government, Union Territory, Local authority, a government authority or a Government Entity having GST rate of 5% applicable to the applicant."

7.3 The Advance Ruling Authority gave its ruling dated 28.08.2020 and held that the work carried by 'KBPL' is a Composite supply of work contract involving pre dominantly earth work provided to a Government Entity and thus attract 5% GST (2.5% CGST + 2.5% HGST). Thus, the Serial No. 3 of Notification No. 31/2017 Central Tax (Rate) dated 13.10.2017 under the CGST Act, 2017 is applicable to 'KBPL'. Being aggrieved, the CGST Commissionerate Rohtak (Appellant) preferred present appeal against the order dated 28.08.2020 of the Advance Ruling Authority.

7.4 It was observed that the Appellant vide letter dated 13.01.2021 informed the Members of the Authority of Advance Ruling that M/s. KBPL has mis-stated the facts in their application filed before the Authority of Advance Ruling as they tick marked against S. No. 17 (at point 'a') that *the question raised in the application was not already pending in any proceedings in their case under only of the provisions of the Act*, WHEREAS proceedings on the same issue had already been commenced by the Gurugram Zonal Unit of the DGGI on 06.03.2019 which later culminated into Show Cause Notice dated 09.10.2020. Thus 'KBPL' has suppressed the material facts from the Authority of Advance Ruling.

7.5 As per proviso to Section 98(2) of the CGST Act, 2017,

'the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.'

7.6 Further, as per Section 104 of the Act *ibid*,

'where the Authority or the Appellate Authority [or the National Appellate Authority] finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 [or under section 101C] has been obtained by the applicant or 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 there under shall apply to the applicant or the appellant as if such advance ruling had never been made.'

7.7 The appellant requested the AAR to exercise the powers under Section 104 of the Act *ibid* and the advance ruling given vide office Memo No. 1066/AAR dated 28.08.2020 may please be declared void *ab initio*.

7.8 On being Informed by the Appellant about the suppression of facts by 'KBPL', the Advance Ruling Authority vide Ruling under Memo No. 28 dated 22.03.2021 declared the Ruling dated 28.08.2020 as void *ab initio*.

7.9 From above it is clear that M/s KBPL had mis-declared the facts before the Authority for Advance Ruling for obtaining the ruling; that the Appellant had filed the instant appeal before this authority (Appellate Authority for Advance Ruling); that thereafter informed the AAR about such mis-declaration of facts; that on being informed by the Appellant, the AAR had declared the Ruling to be VOID *ab initio* in terms of powers given under Section 104 of the Act. Since Ruling given has been held Void *ab initio* by the AAR, the appeal filed by the Appellant appears infructuous and merits to be dismissed.

7.10 Thus, in view of the above discussions, we are of the view that the Appellant's appeal is Infructuous.

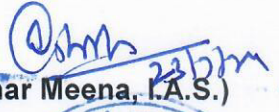
ORDER

The appeal filed by the Commissioner, CSGT, Rohtak is dismissed as Infructuous.


(Manoj Kumar Srivastava, I.R.S.)

Member
Chief Commissioner
Central Goods and Service Tax Zone
Panchkula
केन्द्रीय माल और सेवा कर, पंचकुला क्षेत्र
Central Goods & Services Tax, Panchkula Zone

Place:- Panchkula


(Ashok Kumar Meena, I.A.S.)

Member
Commissioner
Excise & Taxation Department
Haryana



Copy to(Regd AD/Speed Post/Email):-

The Commissioner
(Central Goods & Services Tax)
GST Bhawan, Sector-3,
Rohtak-124001
Haryana

Copy for information and necessary action to: -

1. The Member, GST, CBIC, North Block, New Delhi-110001
2. The Special Secretary, Goods and Services Tax Council, 5th Floor, Tower-II, Jeevan Bharti Building, Connaught Place, New Delhi- 110001
3. The Chief Commissioner, Central Goods and Service Tax Zone, Panchkula.
4. The Commissioner, Excise & Taxation, Haryana
5. The Deputy Commissioner, Excise & Taxation (ST), Bhiwani
6. The Master/Guard File- 2023-24.
7. The GST-III branch in the Head office with the direction to get it uploaded on the website of GST Council Secretariat.

Registrar,
Appellate Authority for Advance Ruling,
Haryana