

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICE TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560 009**

Advance Ruling No. KAR ADRG 03 / 2018

Dated: 21st March, 2018

Present:

1. Sri. Harish Dharnia,
Joint Commissioner of Central Tax,
Bangalore West Commissionerate,
Bengaluru.
. . . . Member (Central Tax)
2. Dr.RaviPrasad.M.P.
Joint Commissioner of
Commercial Taxes (Vigilance)
Bengaluru
. . . . Member (State Tax)

1.	Name and address of the applicant	M/s Skilltech Engineers & Contractors Private Limited, 2 nd Floor, 2904 CH 67, Saraswathipuram, Mysuru – 570 009.
2.	GSTIN or User ID	29AACCS5478F1Z0/ 291700000105ARW
3.	Date of filing of Form GST ARA-01	05-12-2017
4.	Represented by	L Arunkumar, Executive Director
5.	Jurisdictional Authority – Centre	Vijayanagar Division, Mysuru- 570 011
6.	Jurisdictional Authority – State	LGSTO-190, Mysuru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged Rs.10,000-00 CGST : Rs.5,000-00 and SGST: Rs.5,000-00 CIN: ICIC17122900004271 dated 01-12-2017

**ORDER UNDER SUB-SECTION (4) OF SECTION 98 OF CENTRAL GOODS
AND SERVICE TAX ACT, 2017 AND UNDER SUB-SECTION (4) OF SECTION
98 OF KARNATAKA GOODS AND SERVICES TAX ACT, 2017**

M/s Skilltech Engineers & Contractors Private Ltd., (hereinafter referred to as 'Applicant') holding GSTIN number 29AACCS5478F1Z0, having registered address at 2nd Floor, 2904 CH 67, Saraswathipuram, Mysuru – 570 009, are registered taxable person, have filed an application, on 05.12.2017, for advance ruling under Section 97 of CGST Act, 2017, KGST Act, 2017 & IGST Act, 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01. They enclosed copy of challan for Rs.10,000/- bearing CIN number ICIC17122900004271 dated 01-12-2017 towards the fee for advance ruling and hence the instant application is admitted.

2. The applicant is engaged in execution of works awarded by M/s Karnataka Power Transmission Corporation Limited (hereinafter referred to as "KPTCL"), for construction of power lines, erection of transmission towers and transformers. The contract with KPTCL is a single composite contract, but with three connected agreements for Supply of Materials, Erection & Civil Works respectively. All the three agreements were awarded to the applicant in response to a single tender notification & the general terms and conditions are commonly applicable to all the three agreements.

3. The applicant sought advance ruling on the following questions / issues that

1. **"Whether the contract, executed by them for KPTCL, is a divisible contract [Supply of goods & Supply of Services] or an indivisible contract [works contract]?"**

2. **"Whether the tax rate of 12% [CGST-6% + SGST-6%] is applicable to the above contract, in pursuance of Notification No.24/2017-Central Tax (Rate) dated 21.09.2017?"**

PERSONAL HEARING PROCEEDINGS HELD ON 09.01.2018.

4. Sri. L Arun Kumar, Executive Director of the applicant concern appeared and presented the following:

- (a) That a single bid / tender was called for by KPTCL, for composite activities of Supply of material, Erection of the same & Civil Works associated with the erection.
- (b) That three separate agreements were entered into for the three different activities, after identifying the successful bidder.
- (c) That the question on which advance ruling has been sought for is with regard to divisibility of the contract into three agreements.
- (d) That the clarification is required as to whether KPTCL is a Government body or not so as to claim the concessional rate of GST @ 12% in pursuance of Notification No. 24/2017-Central Tax (Rate) dated 21.09.2017.

FINDINGS & DISCUSSION:

5. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri L Arun Kumar, Executive Director, during the personal hearing. We also considered the questions / issues on which advance rulings have been sought for by the applicant, relevant facts having bearing on the questions / issues raised, the applicant's understanding / interpretation of law in respect of the issue.

6. The Applicant sought advance ruling on the two questions i.e (1) “Whether the contract, executed by them for KPTCL, is a divisible contract [Supply of goods & Supply of Services] or an indivisible contract [works contract]?” and (2)“Whether the tax rate of 12% [CGST-6% + SGST-6%] is applicable to the above contract, in pursuance of Notification No.24/2017-Central Tax (Rate) dated 21.09.2017?”

7. In view of the above the issues before us to decide are (1) whether the contract entered by the applicant falls under works contract or not and (2) Whether the applicant is entitled for concessional rate of GST under Notification No.21/2017-Central Tax (Rate).

8. Section 2 clause 119 of CGST Act’2017 defines “works contract” as **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;**

9. The composite supply of works contract as defined at Section 2 clause 119 of CGST Act’2017 is treated as supply of service in terms of serial no.6, Schedule II of CGST Act’2017.

10. In the instant case, the applicant, being the successful bidder, got the single composite contract, but with three connected agreements for Supply of Materials, Erection & Civil Works respectively. All the three agreements were awarded to the applicant in response to a single tender notification & the general terms and conditions are commonly applicable to all the three agreements. The applicant is supplying the material and providing the erection of towers service and also civil works service. Therefore the contract entered by the applicant is of the nature of ‘indivisible’ and squarely falls under the works contract, which is a service.

11. The second question is whether the applicant is entitled for the concessional rate of GST @ 12% as per Notification No.24/2017 Central Tax (Rate) dated 24.09.2017 or not. The Applicant at point II of Annexure A has reproduced a portion of the Notification No.24/2017 Central Tax (Rate) dated 24.09.2017 and highlighted the words ‘State Government’. Also on the next page they have submitted a bullet point “KPTCL is covered under the definition of State Government”.

12. The Applicant therefore contends that they are providing services to ‘State Government’ and are thus eligible for the tax rate enumerated in the aforesaid notification.

13. A statutory body, corporation or an authority created by the Parliament or a State Legislature is neither ‘Government’ nor a ‘local authority’. Such statutory bodies, corporations or authorities are normally created by the Parliament or a State Legislature in exercise of the powers conferred under article 53(3)(b) and article 154(2)(b) of the Constitution respectively. It is a

settled position of law (Agarwal Vs. Hindustan Steel AIR 1970 Supreme Court 1150) that the manpower of such statutory authorities or bodies do not become officers subordinate to the President under article 53(1) of the Constitution and similarly to the Governor under article 154(1). Such a statutory body, corporation or an authority as a juridical entity is separate from the State and cannot be regarded as the Central or a State Government and also do not fall in the definition of 'local authority'. Thus, regulatory bodies and other autonomous entities would not be regarded as the government or local authorities for the purposes of the GST Acts. Therefore M/s KPTCL can not be a State Government

14. Further M/s KPTCL, who awarded the contract to the applicant, are registered under Companies Act'1956 as a company and is a separate entity. Therefore it can not be considered as the State Government or a State Government Authority. Hence the applicant is not entitled for the benefit of the concessional rate of GST @ 12%, in terms of Notification No.24/2017-Central Tax (Rate) dated 21.09.2017.

15. In view of the foregoing, we pass the following

R U L I N G

1. The contract contract entered by the applicant is of the nature of 'indivisible' and squarely falls under the works contract, which is a service.
2. The Applicant is not entitled for the benefit of concessional rate of GST @12% in terms of Notification No.24/2017-Central Tax (Rate) dated 21.09.2017

(Harish Dharnia)
Member

(Dr.RaviPrasad.M.P.)
Member

Place : Bengaluru,
Date : 21.03.2018

Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 at 2(zf) stipulates that “governmental authority” has the same meaning as assigned to it in the *Explanation* to clause (16) of section 2 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), which is as under:

Explanation.—For the purposes of this clause, the expression “governmental authority” means an authority or a board or any other body,—

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;

the services provided by the Central Government, State Government, Union Territory or local authority are exempt from tax. These include services provided by government or a local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under Article 243W of the Constitution and services by a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution.

: Local authority is defined in clause (69) of section 2 of the CGST Act, 2017 and means the following: • a “Panchayat” as defined in clause (d) of article 243 of the Constitution; • a “Municipality” as defined in clause (e) of article 243P of the Constitution; • a Municipal Committee, a ZillaParishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund; • a Cantonment Board as defined in section 3 of the Cantonments Act, 2006; • a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution; • a Development Board constituted under article 371 of the Constitution; or • a Regional Council constituted under article 371A of the Constitution; Q

As per section 2(53) of the CGST Act, 2017, ‘Government’ means the Central Government. As per clause (23) of section 3 of the General Clauses Act, 1897 the ‘Government’ includes both the Central Government and any State Government. As per clause (8) of section 3 of the said Act, the ‘Central Government’, in relation to anything done or to be done after the commencement of the Constitution, means the President. As per Article 53 of the Constitution, the executive power of the Union shall be vested in the President and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution. Further, in terms of Article 77 of the Constitution, all executive actions of the Government of India shall be expressed to be taken in the name of the President. Therefore, the Central Government means the President and the officers subordinate to him while exercising the executive powers of the Union vested in the President and in the name of the President. Similarly, as per clause (60) of section 3 of the General Clauses Act, 1897, the ‘State Government’, as respects anything done after the commencement of the Constitution, shall be in a State the Governor, and in an Union Territory the Central Government. As per Article 154 of the Constitution, the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution. Further, as per article 166 of the Constitution, all executive actions of the Government of State shall be expressed to be taken in the name of Governor. Therefore, State Government means the Governor or the officers subordinate to him who exercise the executive powers of the State vested in the Governor and in the name of the Governor.

A statutory body, corporation or an authority created by the Parliament or a State Legislature is neither ‘Government’ nor a ‘local authority’. Such statutory bodies, corporations or authorities are normally created by the Parliament or a State Legislature in exercise of the powers conferred under article 53(3)(b) and article 154(2)(b) of the Constitution respectively. It is a settled position of law (Agarwal Vs. Hindustan Steel AIR 1970 Supreme Court 1150) that the manpower of such statutory authorities or bodies do not become officers subordinate to the President under article 53(1) of the Constitution and similarly to the Governor under article 154(1). Such a statutory body, corporation or an authority as a juridical entity is separate from the State and cannot be regarded as the Central or a State Government and also do not fall in the definition of ‘local authority’. Thus, regulatory bodies and other autonomous entities would not be regarded as the government or local authorities for the purposes of the GST Acts.

(z) “electricity transmission or distribution utility” means the Central Electricity Authority; a State Electricity Board; the Central Transmission Utility or a State Transmission Utility notified under the Electricity Act, 2003 (36 of 2003); or a distribution or transmission licensee under the said Act, or any other entity entrusted with such function by the Central Government or, as the case may be, the State Government;

Article 243W in The Constitution Of India 1949

243W. Powers, authority and responsibilities of Municipalities, etc Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow

[\(a\)](#) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to

[\(i\)](#) the preparation of plans for economic development and social justice;

[\(ii\)](#) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

[\(b\)](#) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule