


GUJARAT AUTHORITY FOR ADVANCE RULING, GOODS AND SERVICES TAX, A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380009.	
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ADVANCE RULING NO. GUJ/GAAR/R/2022/10

(In Application No. Advance Ruling/SGST&CGST/2019/AR/51)

Dated: 07.03.2022

Name and address of the applicant	:	M/s.Tecsidel India Private Limited, C/7 Haji Park, 1st Floor, Akota, Vadodara, Gujarat-390020
GSTIN of the applicant	:	24AADCT7879A1Z9
Date of application	:	30/12/2021
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(e)
Date of Personal Hearing	:	18/2/2022
Present for the applicant	:	Shri Naveen Gupta, CA

Brief facts:

M/s.Tecsidel India Private Limited (hereinafter referred to as Tecsidel for the sake of brevity) submits that it is primarily engaged in the development and integration of advanced information systems oriented to the management, efficiently and securely, of the mobility of vehicles, goods and information flows and engaged in trading of goods along with installation & commissioning of Toll management systems.

2. Tecsidel was awarded the project by M/s. Adani Road Transport Ltd. (ARTL) for project of Tolling, Operation, Maintenance & Transfer of National Highway stretch from Palanpur – Randhanpur – Samkhiyali, Section of NH-27 in the State of Gujarat. Tecsidel has received Service Order for performance of Design, engineering, supply, testing, freight & transit insurance, erection, installation and commissioning and Trial run of Toll Management System (TMS) as per Tender Specification in complete along with associated civil works, supply of mandatory spares and on Site manpower support for maintenance of TMS for twenty four (24) months for the project of Tolling, Operation, Maintenance & Transfer of National Highway stretch from Palanpur – Randhanpur – Samkhiyali, Section of NH-27 in the State of Gujarat.

3. Tecsidel has submitted copy of Service Order SO No.: ARTL/TIPL/SO/C/MJ/52/21 dated 29.12.2021, Annexure-II General Terms and Condition, Annexure-V Specification and Annexure-VI Service Level Agreement.

4. Question on which Advance Ruling sought:

- (i) Whether the composite supply of works contract provided by Tecsidel to M/s. Adani Road Transport Ltd. shall be classified under Entry (vi) of Serial No. 3 of the Notification No. 11/2017-C.T. (R), dated 28th June, 2017 (hereinafter referred to as ‘the CGST Rate Notification’) liable to effective rate of GST (‘Goods and

Services Tax') @ 12% including CGST and GGST?

- (ii) Whether the composite supply of works contract provided by the Applicant to M/s. Adani Road Transport Ltd. shall also be classified under Entry (iv) to Serial No. 3 of the CGST Rate Notification read with the GGST Rate Notification liable to effective rate of GST @ 12% including CGST and GGST?
- (iii) Whether the rate of GST with respect to the services rendered by the sub-contractor to the main contractor i.e. Tecsidel would be applicable @ 12% in view of Entry (vi) and (iv) of the CGST Rate Notification read with the GGST Rate Notification or @ 18%?

Personal Hearing

5. Personal hearing granted on 18-2-22 was attended by Shri Naveen Gupta, CA and he reiterated the submission.

Revenue's submission:

6. Revenue has neither submitted its comments nor appeared for hearing.

Findings

7. At the outset we would like to make it clear that the provisions of CGST Act and GGST Act are in parimateria 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 would also mean reference to the corresponding similar provisions in the GGST Act.

8. We have carefully considered all the submissions made by Tecsidel.

9. Tecsidel cited Entries No. 3 (iv) and 3(vi) of Notification No. 11/2017-CT (Rate) dated 28-6-2017. We refer to both the said entries, which reads as follows:

*"3(iv) Composite supply of **works contract** as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, -*

(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;"

Whereas the Entry No. (vi) of the said Notification reads as:

*(vi) "Composite supply of **works contract** as defined under clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, provided to the Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -*

*(a) a civil structure or any other original works meant predominantly for use **other than for commerce, industry, or any other business or profession;***

Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.”

9.1.A We hold that for being eligible to be covered vide serial number 3 (vi) of said NT, the following criteria is to be satisfied:

- i. Supply shall be composite supply of works contract.
- ii. Supply provided to the Central Government, the State Government, the Union Territory, a local authority, a Government Authority or a Government Entity.
- iii. The civil structure or original works must be predominantly meant for use other than for commerce, industry, or any other business or profession.

9.2.B We find that the TMS works is supplied by Tecsidel to M/s Adani and not to any Central/ State Government, Union Territory, local authority, Government Authority or Government Entity. Further, the activity of collection of Toll excludes the TMS works from the category of ‘predominantly meant for use other than for commerce, industry, or any other business or profession’. The word Business has a wide inclusive definition vide Section 2(17) CGST Act including, inter alia, any trade, commerce, or any other similar activity, whether or not it is for a pecuniary benefit, including activities in connection with/ incidental/ ancillary to it, whether or not there is regularity of such transactions. We find that the conditions of this sr. no 3(vi) of said NT is not satisfied in subject matter.

10.1.A We hold that for being eligible to be covered vide serial number 3 (iv) of said NT, the following criteria is to be satisfied:

- i. Supply shall be composite supply of works contract.
- ii. Supply by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of-
 - a. a road,**
 - b. bridge,**
 - c. tunnel, or**
 - d. terminal for road transportation for use by general public.**

10.2.B We find that the subject Service order is for supply of Toll Management System (TMS) to be erected and commissioned, on an expressway. Supply does not include construction of expressway/ road/ terminal but is for limited purpose of supply of TMS simpliciter. The purpose will be for collection of the tolls/ toll fee and not for control/ management of the traffic on road.

- i. TMS does not provide real time information about traffic conditions, pollution, weather conditions and status of expressway to road users

- ii. TMS is not a road.
- iii. TMS is not a bridge.
- iv. TMS is not a tunnel.
- v. TMS is not a terminal for road transportation.

10.3 We find that the conditions of this sr no 3(iv) of said NT is not satisfied in subject matter.

11. Now, we take up the applicant third question for discussion with reference to service provided by sub contractor to main contractor liable to @ 12% in respect of entry No. (iv) and (vi) of Not. No. 11/2017-CT (Rate).

11.1 During Personal Hearing, Shri Naveen Gupta, CA was asked to clarify question no.3 and as to who is referred to as sub-contractor and main contractor in this matter. Tecsidel vide email dated 22-2-22 submitted that it received contract from M/s Adani and M/s Adani initially received contract from NHAI for Road construction. Tecsidel submitted that it is providing TMS service to Adani as a contractor and assumed itself as sub contractor of NHAI as all the terms of work will be as per NHAI. Tecsidel submits that since its services will become part of Road contract it seeks clarification regarding the rate at which it shall invoice to Adani, as rate of GST in case of Road contract is 12%

11.2. Further, we find that entry no. (ix) of the Notification No. 11/2017-CT (Rate) covers the such category of service supplied by sub-contractor to main contractor which is read as under:

“(ix) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (iii) or item (vi) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.

Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.

11.3 Vide para 9.2.B, we had discussed that subject supply does not merit to be covered under 3(vi) of subject NT. The contract between Tecsidel and Adani is for TMS supply and not Road supply. If the contract was for road supply along with TMS supply that would have been an altogether different scenario. However, said contract between Tecsidel and Adani is for TMS supply only. In paragraph **9.2.B**, we have detailed our findings that TMS in subject case does not fall under the category of ‘predominantly

meant for use other than for commerce, industry, or any other business or profession’. Thus supply is not covered at 3(vi) of subject Notification.

Further, 3(iii) of said NT pertains to work contract service of construction of historical monuments, canal dam etc. which is different from subject supply.

12. We note that Tecsidel placed reliance on Uttar Pradesh Advance Ruling in the case of M/s Sice-Vaan JV[2020 (2) TMI 550].The facts of the case of the cited Ruling is different from the present set of facts. In the present matter, only the supply of TMS is under consideration but in the cited Ruling supply of ‘Intelligent transport system installation project which includes Advanced Traffic Management system (AMTS), TMS and Digital Transmission system along with operation and maintenance of AMTS for 4 years to provide real time information about traffic conditions, pollution, weather conditions and status of expressway to road users making road travels convenient, faster and safer’ was considered. The present case does not involve supply of Road along with TMS, but simply supply of TMS itself on an already constructed national highway stretch. Also Toll management system is different from an intelligent transport system per the cited Ruling. Further, as per Section 103 of CGST Act, 2017 the Ruling pronounced by the Authority is binding on the respective applicant only. Therefore, the cited Ruling cannot be relied upon in the present case.

13. In conspectus of aforementioned findings, we pass the Ruling:

RULING

1. The subject supply does not fall under 3(vi) of said NT.
2. The subject supply does not fall under 3(iv) of said NT.
3. As discussed at para 9.1 A to 10.3, subject supply is not covered at sr no 3(iv/vi) of said NT. Further, as per discussion at para 11.3, sr no 3(ix) of said notification is not attracted in subject case. GST is leviable at 18% vide Sr. No. 3 (xii) of Not. No. 11/2017-CT (Rate) dated 28-6-17 as amended.

(ATUL MEHTA)
MEMBER (S)

(ARUN RICHARD)
MEMBER (C)

Place: Ahmedabad
Date: 07.03.2022