



ODISHA AUTHORITY FOR ADVANCE RULING

GOODS AND SERVICE TAX (GST)

RAJASWAVIHAR, BHUBANESWAR-751007(ODISHA)

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING

U/S.98 OF THE GOODS AND SERVICE TAX ACT, 2017

Members Present:

1. Sri Gopal Krishna Pati, IRS, Additional Commissioner, Office of the Chief Commissioner, GST, Central Excise & Customs, Bhubaneswar
2. Sri P K Mohanty, OFS(SS), Special Commissioner of CT&GST, Commissionerate, CT&GST, Odisha, Baniyakar Bhawan, Cantonment Road, Cuttack-753001-Odisha.

1	Name and Address of the Applicant	M/s SHREEJIKRUPA PROJECT LIMITED. 165/1526, KHATA-184/753, Mouza- Ramachandrapur, Infront of Jatni High School, Jatni, Khordha, Odisha, 752050.
2	GSTIN or User ID	21AALCS6689K1ZP
3	Date of Filing of Form GST ARA-01	13.09.2021
4	Present for the Applicant in the E- hearing/Virtual hearing	J K Gupta, CA Aamir Memon, CA
5	Date of Personal Hearing	12.11.2021

ORDER NO.04/ODISHA-AAR/2021-22/DATED 30/03/2022

Subject: M/s SHREEJIKRUPA PROJECT LIMITED, 165/1526, KHATA-184/753, Mouza- Ramachandrapur, Infront of Jatni High School, Jatni, Khordha, Odisha, 752050 (herein after referred to as the 'Applicant') having GSTIN : 21AALCS6689K1ZP, a company has filed an application for Advance Ruling under Section 97 of CGST Act.

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2017 and Section 97 of the OGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs. 5,000/- each under the CGST Act and the SGST Act.

Note: The applicant or jurisdictional officer, if aggrieved by the ruling, may appeal to the Odisha State Appellate Authority for advance ruling under Section 100 of the CGST/OGST Act, 2017 within 30 days from the date of receipt of the advance ruling.

1.0 The Applicant sought for an advance ruling in respect of the following questions.

- (a) Whether the works contract service of construction of IIT Bhubaneswar Campus allotted to the applicant company under the sub contract basis, covered under clause (ix) of Sr. No. 3 (classification code 9954) of the table in the Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017 read with clause (vi) of Sr. No. 3 (classification code 9954) of the table in the Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017. And for the matter, the applicable rate of tax is 12% (including State GST Rate).
- (b) Or otherwise if the works contract service is not covered under clause (ix) of the entry 3 of the aforesaid notification, in the facts and circumstances of the appellant company, then what will be applicable clause under entry No. 3 and what will be the rate of GST.
- (c) If the ruling of Question 1 is affirmative, from which date, the 12% rate of tax will be applicable i.e. from date when said notification became effective or the date of order of Advance ruling.
- (d) Where the ruling of Question 3 provides the effective date as the date of notification, whether the applicant is required to revise the invoices already issued to NBCC (India) limited and required to make amendments in GST returns already filed.

1.1 At the outset, we would like to make it clear that the provisions of both the CGST Act and the OGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the OGST Act.

2.0 Submission of the Applicant

2.1 That the applicant has undertaken the work for Construction of efficiency hostel extension of school of basic science, extension of mechanical science & extension

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of school of infrastructure of IIT at Argul Campus Bhubaneswar, Odisha & Construction of New infrastructure 2nd phase of IIT Bhubaneswar in permanent at Argul, Khurda, Odisha as a sub-contractor of NBCC (India) Limited who has procured the work from IIT Bhubaneswar.

- 2.2 That IIT Bhubaneswar is an educational institution and which is a Government entity as ruled by AAR, Odisha in its order dated 23.11.2020 in the case of M/s NBCC (India) Limited.
- 2.3 That as per serial 3(vi)(b) of Notification 11/2017 Central Tax (Rate), any services provided to Government entity by way of construction of educational institution will be leviable to tax @ 12%. Therefore, the impugned services provided by the applicant to NBCC (India) limited is taxable as 12% and not 18%.
- 2.4 That the applicant is a sub-contractor providing construction service to M/s NBCC (India) Limited (principal contractor) who in turn providing service to IIT, Bhubaneswar a Government entity and therefore, serial No. 3(ix) of Notification No. 11/2017-Central Tax (Rate) read with serial no. 3(vi) of Notification No. 11/2017-Central Tax (Rate) is very much applicable to the applicant. As per the said entry serial of the notification, the activity performed by the applicant should attract 12% GST.
- 2.5 That NBCC (India) Limited has already taken clarification from the AAR, Odisha about the applicability of tax rate for service provided to IIT Bhubaneswar under main contract, wherein the Authority for advance ruling vide their Order no. 01/Odisha-AAR/2020-21 dated 23.11.2020 has already clarified that the GST was applicable at 12% on the impugned activity and not 18%. Once the main contract is covered under entry no. 3(vi) and attracts 12%, then the subcontract activity will also be covered under entry No. 3(ix) of Notification No. 11/2017-Central Tax (Rate) to attract GST at the rate of 12%.
- 2.6 That as far as effective date for applicability of rate of 12% is concerned, as per the applicant's understanding, the rate of 12% shall be applicable from the date when the Notification came into effect and not from the date of order of the advance ruling.

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- 2.7 That the ruling done by the Advance ruling is also clarificatory in nature wherein the Authority for advance ruling has only interpreted the law and based on such interpretation and nature of transaction of assessee, the AAR has ruled the judgment. Such ruling passed by AAR can never be construed as amendment in law but gives the applicability of existing law on that particular assessee and therefore, such ruling shall be applied retrospectively from the date when the Law/provision or relevant notification has come into force and not from the date of ruling.
- 2.8 That as far as revision of bill is concerned, the applicant states that the Government department has under no right to retain any amount in the name of tax which was actually not payable as tax. Therefore, if the rate of tax in the present case will be decided to be 12%, then the invoices already issued to NBCC (India) Limited will be required to be revised to charge the correct tax amount and accordingly, NBCC (India) Limited will be required to reverse the Input Tax Credit, already claimed earlier.
- 3.0 The personal hearing was fixed on 12.11.2021 under due intimation to the applicant, the jurisdictional officer of State GST & jurisdictional officer of Central GST (intimated through their respective Commissionerates along with a copy of application and the written submission of the applicant). The applicant through its representatives i.e. Shri J K Gupta, CA & Shri Aamir Memon, CA appeared through E-hearing/Virtual hearing. They re-iterated the submissions already furnished in the annexure to the application. However, they also submitted a fresh written submission on 22.11.2021 wherein it was submitted that Notification No.01/2018-Central Tax (Rate) has been made effective with effect from 25.01.2018. Both the members of Odisha Authority for advance ruling, GST namely Sri Gopal Krishna Pati, IRS, Additional Commissioner, Office of the Chief Commissioner, GST, Central Excise & Customs, Bhubaneswar and Sri Hrushikesh Mishra, OFS(SS), Special Commissioner of CT&GST, Office of the Commissioner of CT&GST, Odisha (At Cuttack-753001) had conducted personal hearing on 12.11.2021 in the matter of Advance Ruling Application filed by M/s SHREEJIKRUPA PROJECT LIMITED, However, Special Commissioner

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(Policy), Commissionerate of CT and GST, Odisha, Cuttack vide his letter No. PEI-POL-0079-2021-928/CT&GST dated 15.01.2022 has informed that Sri P K Mohanty, Spl. Commissioner of State Tax has been nominated as the member (AAR), Odisha in place of Sri Hrushikesh Mishra, Spl. Commissioner of State Tax. With the joining of the new member, it was decided to hold a fresh personal hearing before the order is passed. Accordingly, the applicant was informed to attend the Personal Hearing. But the applicant had not appeared for the PH on the appointed date. Further, vide their letter dated 15.03.2022 (sent through e-mail), the applicant requested to pass the order on the basis of submission which has already been filed before the AAR. Therefore, as per the request of the applicant Advance Ruling Order is passed without conducting further personal hearing.

Discussion & findings

- 4.0** We have gone through the advance ruling application along with all the annexures submitted by the applicant & the additional written submission of the applicant submitted on 22.11.2021. We find that the questions before us essentially pertain to the rate of GST applicable on supply of goods/service, particularly the applicability of concessional rate of tax in terms of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017. We, therefore observe that most of the issues before us are squarely covered under Section 97(2) of the CGST Act, 2017 and therefore we admit the application for consideration.
- 4.1** It has been contended by the applicant, through the written submission that the impugned supply is construction of efficiency hostel, extension of school of basic science, extension of mechanical science & extension of school of infrastructure of IIT at Argul Campus Bhubaneswar, Odisha & Construction of New infrastructure 2nd phase” of IIT Bhubaneswar in permanent at Argul, Khurda, Odisha which is being supplied to a Government Entity i.e. IIT, Bhubaneswar and accordingly the same would merit entitlement for concessional rate of GST @ 12% [CGST @ 6% + SGST @ 6%] in terms of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 (as amended).

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4.2 In their submission, the applicant contended that their supply would merit classification under serial no. 3(vi) (b) of Notification No.11/2017-Central Tax (Rate) dated 28.06.2017, as amended from time to time. For deciding the issue, it is necessary to examine the relevant entry of the said notification. The relevant entry reads as under.

Sl No.	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
(1)	(2)	(3)	(4)	(5)
3(vi)	9954 (Construction services)	Services 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-	6	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
		(a) civil structure or any other original works meant predominantly for use other than for commerce, industry, or		

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		any other business or profession; (b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural, establishment; or (c) Explanation.		
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4.3 On plain reading of the entry, it is clear that following pre-requisites are to be satisfied in order the supply to qualify for the notified exemption.

- (a) Service provided or to be provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a structure meant predominantly for use as (i) an educational (ii) a clinical, or (iii) an art of cultural, establishment.
- (b) Services are provided to Central Government, State Government, Union Territory, a local authority, Governmental Authority or Government Entity
- (c) If the services provided to Government Entity, then the services must have been procured by the Government entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority.

4.4 As regards the first pre-requisite as stated above, it was submitted that the Applicant has been awarded the work for "Construction of efficiency hostel, extension of school of basic science, extension of mechanical science & extension of school of infrastructure of IIT at Argul Campus Bhubaneswar, Odisha & Construction of New infrastructure 2nd phase" of IIT Bhubaneswar in permanent at Argul, Khurda, Odisha (herein after referred to as the "Project"). It was also stated that M/s NBCC (India) Limited has awarded the contract for the Project in its letter of intent No. NBCC/CGM(CPG)/2018/1292 dated 04.12.2018, which has procured the work from IIT Bhubaneswar. The applicant submitted that it has undertaken the Project of Indian Institute of Technology, which is admittedly an educational

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institution and which is a Government entity [as ruled by AAR, Odisha in the case of M/s NBCC (India) Limited].

- 4.5 We examined the documents submitted by the applicant and found that M/s NBCC (India) Ltd had invited e-tender No. NBCC/ CPG/ IIT/ BBSR/ ARGUL/ODISHA/2018/180 dated 04.11.2018 for the Project. Pursuant thereto, the applicant had participated in the above referred tender and M/s NBCC has accepted their tender and awarded the contract of the said Project in its letter of intent No. NBCC/CGM/CPG/2018/1292 dated 04.12.2018 to the applicant. We also see that the agreement has been made on 14.01.2019 between the applicant and M/s NBCC (India) Ltd for the Project. From the documents submitted, it is apparent that the nature of the works is towards construction of buildings/structures of IIT Bhubaneswar, Odisha which can be categorized under entry (b) of item (vi) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 (as amended) that provides for construction of a structure meant predominantly for use as an educational establishment. We find that IIT Bhubaneswar is an autonomous public institution of higher education and governed by the Institutes of Technology Act, 1961; therefore, the said construction for IIT, Bhubaneswar cannot said to be used for commerce, industry, or any other business or profession. Hence, 1st pre-requisite for the supply to qualify for the notified concession is satisfied/ful-filled.
- 4.6 Coming to the second pre-requisite of the entry whether the Services are provided to Central Government, State Government, Union Territory, a local authority, Governmental Authority or Government Entity. The applicant contended that their supply is being made to a 'Government Entity'. They pleaded that M/s NBCC is merely acting as an Executing Agency and ensuring smooth completion of the project on behalf of IIT, Bhubaneswar. Actually, the aforesaid construction services are being provided to IIT, Bhubaneswar which is a Government entity and not to M/s NBCC. The applicant further stated that in the event, if the Learned Authority is of other view, even then the services undertaken by them would fall under Serial No. 3(ix) of Notification No. 11/2017 amended by Notification No. 1/2018, which



provides 12% GST on sub-contractor providing services specified in item (vi) to a Government Entity.

4.7 On going through the documents submitted by the applicant, we found that work order has been issued by M/s NBCC and the applicant has signed agreement with M/s NBCC for construction of efficiency hostel, extension of school of basic science, extension of mechanical science & extension of school of infrastructure of IIT at Argul Campus Bhubaneswar, Odisha & Construction of New infrastructure 2nd phase” of IIT Bhubaneswar in permanent at Argul, Khurda, Odisha.

4.8 The applicant pleaded that services undertaken by them would fall under Serial No. 3(ix) of Notification No. 11/2017 as amended by Notification No.1/2018, which provides 12% GST on sub-contractor providing services specified in item (vi) to a Government Entity. We would like to mention here that M/s NBCC is the main contractor and the applicant is a sub-contractor who is providing services to M/s NBCC. Further, as per the applicant, ultimate service beneficiary is IIT. Bhubaneswar a Government Entity and the services are provided towards the construction of education establishment. As per entry (ix) of column no.3 of the said notification, if supply of works contract provided by a sub contractor to the main contractor providing services specified in item (iii) or item (vi) of the above notification to a Government Entity then sub-contractor would be liable to pay GST @12%. Now let us examine as to whether IIT, Bhubaneswar is a Government Entity in terms of explanation 4(x) to the aforesaid notification. As per Explanation 4(x), "Government Entity" means an authority or a board or any other body including a society, trust, corporation,

- i) Set up by an Act of Parliament or State Legislature; or
- ii) Established by any Government, with 90 per cent. or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.

4.9 On examining the definition of “Government entity” as per 4(x) of the aforesaid notification, we see two broad conditions that are required to be satisfied. The first

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condition states that a Government Entity means an authority or a board or any other body including a society, trust, Corporation. As we see from clause (c) of section 3 of the Institute of Technology Act, it appears that IIT Bhubaneswar is a registered society known as the Indian Institute of Technology, Bhubaneswar. Therefore, as per the IIT Act, IIT Bhubaneswar is a society and the first condition is satisfied. The second condition is that IIT Bhubaneswar ought to be set up by an Act of the parliament or State Legislature. All the institutions of Indian institutes of Technology are established by the Government of India, Ministry of Human Resource Development. The IITs are recognized as Institutes of National Importance under the Institutes of Technology Act, 1961 which repealed the Indian Institute of Technology (Kharagpur) Act, 1956. From the website of Ministry of Human Resource Development, GoI, it can be further gathered that IITs under the All India Council of Technical Education (AICTE) are the Institutions of national importance established, controlled and owned by the Ministry of Human Resource Development. Beside, Even though each IIT is an autonomous university, linked to others through a common IIT Council, which oversees their administration, the fact remains is that, Government of India have established it. Therefore, IIT, Bhubaneswar is entitled to be termed as 'Government Entity' in terms of Explanation to Notification No. 11/2017-C.T. (Rate), and also as per Notification No. 31/2017-C.T. (Rate), dated 13-10-2017 as it fulfills the necessary and sufficient conditions laid down under notification supra. It therefore leaves no doubt that IIT, Bhubaneswar is a Government Entity for the purpose of provisions of CGST Act, 2017 and OGST Act, 2017.

- 4.10** With regards to the third pre-requisite of the entry (para 4.3 as above), in order to ascertain whether the service as stated above procured by IIT, BBSR is in relation to the work entrusted by the Central Government, we turn to the provisions of the Institutes of Technology Act, 1961 where the Act enshrines the duties and functions entrusted to every IIT. Relevant clauses of section 6 of the Act which read as follows; "6. (1) Subject to the provisions of this Act, every Institute shall exercise the following powers and perform the following duties, namely:.....

(e) to establish, maintain and manage halls and hostels for the residence of students;

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(f) to supervise and control the residence and regulate the discipline of students of the Institute and to make arrangements for promoting their health, general welfare and cultural and corporate life

(j) to deal with any property belonging to or vested in the Institute in such manner as the Institute may deem fit for advancing the objects of the Institute..

(n) to do all such things as may be necessary, incidental or conducive to the attainment of all or any of the objects of the Institute.”

- 4.11** On reading of such kinds of duties and works that IIT is entrusted with and then focusing on scope of works and other clauses of the agreement there remains no doubt that the service of construction of building/structures and other infrastructure facilities being procured by IIT BBS clearly are **in relation to** the work entrusted by the Central government which in fact is enshrined in its governing statute and thereby the 3rd pre-requisite of para 4.3 is also satisfied. Therefore, the supply of construction service which is being supplied to M/s IIT, Bhubaneswar for construction of efficiency hostel, extension of school of basic science, extension of mechanical science & extension of school of infrastructure of IIT at Argul Campus Bhubaneswar, Odisha & Construction of New infrastructure 2nd phase” of IIT Bhubaneswar in permanent at Argul, Khurda, Odisha would merit entitlement for concessional rate of GST @ 12% [CGST @ 6% + SGST @ 6%] in terms of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 and as amended vide Notification No. 1/2018-Central Tax(Rate) dated 25.01.2018
- 4.12** As regards question No.3 of the applicant that as far as effective date for applicability of rate of 12% is concerned, we are of the opinion that the rate of 12% is applicable from the date when the aforesaid amended Notification has come into effect or from the commencement date of the said contract whichever is later.
- 4.13** Finally, towards the last question of the applicant regarding revision of bills/invoices is concerned, we are of the opinion that this question does not fall under the provisions of Section 97(2) of the CGST Act, 2017; therefore, the said question does not merit discussion/consideration.



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RULING

- (a) The Works Contract Service of construction of efficiency hostel, extension of school of basic science, extension of mechanical science & extension of school of infrastructure of IIT at Argul Campus Bhubaneswar, Odisha & Construction of New infrastructure 2nd phase" of IIT Bhubaneswar in permanent at Argul, Khurda, Odisha allotted to the applicant under sub contract basis would merit entitlement for concessional rate of GST @ 12% [CGST @ 6% + SGST @ 6%] in terms of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 (and as amended).
- (b) As regards question No.3 of the applicant that as far as effective date for applicability of rate of 12% is concerned, we are of the opinion that the rate of 12% is applicable from the date when the Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018 has come into effect or from the commencement date of the said contract whichever is later.
- (c) Regarding revision of bills/invoices is concerned, we are of the opinion that this question does not fall under the provisions of Section 97(2) of the CGST Act, 2017; therefore, the said question does not merit discussion/consideration.

(Signature)
30/3/2022
(G K Pati)

Member, CGST

(Signature)
30/3/2022
(P K Mohanty)

Member SGST



C. No. V (01) ARA/ODISHA/BBSR/2021/03 / 4958-60 A

Dated: 01/4/22

To

M/s SHREEJIKRUPA PROJECT LIMITED, 165/1526, KHATA-184/753, Mouza-Ramachandrapur, Infront of Jatni High School, Jatni, Khordha, Odisha, 752050.

Copy forwarded to:

1. The Principal Commissioner, CGST & Central Excise, Bhubaneswar Commissionerate, C R Building, Rajaswa Vihar, Bhubaneswar-751007 (Odisha)
2. The Commissioner, SGST Odisha, Baniyakar Bhawan, Old Secretariat Compound, Cuttack-753001, Odisha.
3. Office copy.

