



सत्यमेव जयते

BEFORE THE AUTHORITY FOR ADVANCE RULINGS
For the State of Andhra Pradesh (Goods and Service Tax)
(5th Floor, O/o Chief Commissioner of Commercial Taxes, D.No:5-56, Block-B, R.K Spring Valley
Apartments, Edupugallu, Vijayawada-521151.)

Present:

Sri. J.V.M Sarma (Member)

Sri.Amaresh Kumar (Member)

The 8th day of May 2018

Ruling No. AAR/AP/3(GST)/2018

In

Application No.AAR/05 (GST)/2018

1	Applicant	Mr. Dinesh Kumar Agrawal GSTIN/UIN : 376712832937379
2	Jurisdictional Officer	Not Applicable as the applicant is not a registered Tax Payer.
3	Present for the Applicant	Applicant himself attended
4	Present for the Jurisdictional Officer	No jurisdiction
5	Date of Personal hearing	04.04.2018

Note: Under Section 100 of the APGST Act'2017, an appeal against this ruling lies Before the appellate authority for advance ruling constituted under section 99 of APGST Act'2017, within a period of 30 days from the date of service of this order.

Mr.Dinesh Kumar Agrawal, R/o #501, ACME Regency, 5th floor, SV Road, Vile Parle (West), Mumbai, Maharashtra (hereinafter also referred as an applicant), is an unregistered taxpayer, is engaged in erection and supply of solar power generating system by making an agreement with his customers, has filed an application on 09th February 2018, Vide acknowledgement number VPG736416, for seeking advance ruling for the tax rates applicable to the supplies made by him.

On scrutiny of the application, it is noticed that the applicant is an unregistered person, he paid Rs.10,000/- (5000/- against fee under CGST and Rs.5000/- against fee under SGST) vide CPIN Number 18013700040367, dated; 12-01-2018, and found the payment paid by the applicant is genuine as per common portal. As the applicant is an unregistered person, the application is not forwarded to any jurisdictional authority. To admit and to pronounce advance ruling on this application, this authority feels it is necessary to hear the applicant. Accordingly a personal hearing fixed on 04th April 2018, requested the applicant to attend with all relevant data.

The applicant attended himself before this authority on 04th April, 2018 and made oral submissions on the issue, where advance ruling sought by him. On perusal of application, oral submissions made by the applicant, and read with the provisions of the law, the following are the observations by this authority.

1. The Issues raised by the applicant is as follows.,

- Issue .No 1** Whether supply of solar power plant under 'Turnkey EPC Contract' is supply of 'solar power generating system' under Entry 234 of Schedule I of the Notification No. 1/2017- Integrated Tax (Rate), Entry 234 of Schedule I of the Notification No. 1/2017- Central Tax (Rate) both dated 28 June 2017 and Entry 234 of Schedule I of the Notification No. 1/2017- State Tax (Rate) dated 29 June 2017?
- Issue .No 2** Whether supply of solar power plant under 'Other EPC Contract' is supply of 'solar power generating system' under Entry 234 of Schedule I of the Notification No. 1/2017- Integrated Tax (Rate), Entry 234 of Schedule I of the Notification No. 1/2017- Central Tax (Rate) both dated 28 June 2017 and Entry 234 of Schedule I of the Notification No. 1/2017- State Tax (Rate) dated 29 June 2017?
- Issue No.3** Whether supply of solar power plant under 'Supply Contract' is supply of 'solar power generating system' under Entry 234 of Schedule I of the Notification No. 1/2017- Integrated Tax (Rate), Entry 234 of Schedule I of the Notification No. 1/2017- Central Tax (Rate) both dated 28 June 2017 and Entry 234 of Schedule I of the Notification No. 1/2017- State Tax (Rate) dated 29 June 2017 where the assembly, erection, and commissioning of the solar power plant is undertaken by the Applicant under a separate contract?
- Issue.No.4** Whether supply of solar power plant under 'Supply Contract' is supply of 'solar power generating system' under Entry 234 of Schedule I of the Notification No. 1/2017- Integrated Tax (Rate), Entry 234 of Schedule I of the Notification No. 1/2017- Central Tax (Rate) both dated 28 June 2017 and Entry 234 of Schedule I of the Notification No. 1/2017- State Tax

(Rate) dated 29 June 2017 where the assembly, erection, and commissioning of the solar power plant is undertaken by a third party contractor?

- Issue.No.5** Whether supply of solar power plant under 'Balance of Plant Supply Contract' is supply of 'solar power generating system' under Entry 234 of Schedule I of the Notification No. 1/2017- Integrated Tax (Rate), Entry 234 of Schedule I of the Notification No. 1/2017- Central Tax (Rate) both dated 28 June 2017 and Entry 234 of Schedule I of the Notification No. 1/2017- State Tax (Rate) dated 29 June 2017?
- Issue.No.6** If the Clarification to Issue No. 5 is negative, what would be nature of supply i.e. composite supply or mixed supply?
- Issue.No.7** Whether contract for assembly, erection, and commissioning of the plant undertaken by the Applicant under a separate contract would be a service contract liable to be taxed under Service heading 9954?
- Issue.No.8** Whether the time of supply of power plant shall be determined under Section 31 (4) of the CGST Act/SGST Act read with Section 12(2) thereof?

The Issues raised by the applicant is fit to pronounce advance ruling as they falls ambit of the Section 97(2)(a), (b) and (c), they are as given under

- (a) Classification of any goods or services or both;
- (b) Applicability of a notification issued under the provisions of this Act;
- (c) Determination of time and value of supply of goods or services or both

Further, the applicant being a unregistered person, as per the declaration given by him in Form ARA-01, the issue raised by the applicant is neither pending for proceedings nor proceedings were passed by any authority. Basing on the above observations, the application is 'admitted', to pronounce advance ruling.

As per the submissions given by the applicant

In **Turnkey EPC Contract**, the Applicant is required to undertake all activities, civil or otherwise, to supply the power plant in ready to operate condition. The scope of work typically involves:

- (i) Civil works like leveling of ground and wall boundary, internal roads, building foundations for mounting of panel mounting structures, digging ditch for underground cabling etc, concrete flooring for inverter/transformer/battery pack, control room etc.
- (ii) Designing, procurement and supply of all equipment / components for the power plant
- (iii) Assembly, erection, and commissioning
- (iv) Operations and Maintenance of the plant between 2 to 15 years

In **Other EPC Contract**, the Applicant is required undertake all activities of turnkey projects except civil work. The scope of work typically involves:

- (i) Designing, procurement and supply of all equipment / components for the power plant
- (ii) Assembly, erection, and commissioning

In **Supply Contract**, the Applicant is required to supply the power plant on complete knocked down condition in piecemeal at project site. Customer engages a third party contractor or the Applicant for assembly, erection, and commissioning of the plant under a separate contract.

In **Balance of Plant Supply Contract**, the Applicant is required to supply goods and services stated above, except solar panels. Solar panels procured by the customer are made available by the customer to the Applicant for assembly and erection.

Statement of facts as stated by the applicant in his submissions at the time of personal hearing are as follows..

For Issue number 1, The scope of supply includes:

- a. Civil works
 - i. leveling of ground
 - ii. Wall boundary
 - iii. internal roads
 - iv. concrete foundations for mounting of panel mounting structures
 - v. digging ditch for underground cabling
 - vi. Concrete flooring for inverter/transformer/battery pack,
 - vii. Control room etc.
- b. Detailed designing of power project
- c. Procurement and supply at project site
 - i. Solar photovoltaic modules/panels/array
 - ii. Panel mounting structure
 - iii. Solar tracker
 - iv. Meteorological equipment
 - v. Cables
 - vi. Combiner box
 - vii. Solar power conditioning unit
 - viii. Inverter
 - ix. Isolator
 - x. Transformer
 - xi. Switchbox
 - xii. Conductor
 - xiii. Battery
 - xiv. Transmission tower
 - xv. Steel/plastic tubes & pipes
 - xvi. Pre-fabricated shelter

- xvii. SCADA Software
- d. Assembly & erection
 - i. Assembly & erection
 - ii. Supply of nut, bolts, fasteners and other miscellaneous materials
- e. Test & Commissioning
- B. Equipment and components are delivered at project site and stored at the risk of the Applicant
- C. Ownership is transferred on successful commissioning of the plant
- D. Payment is as per milestone or monthly depending on the % of goods delivered at site
- E. Full payment is released on successful commissioning of the plant with stipulated power generation.
- F. Cost:
 - a. In the case of Ground Base Solar Project: 20% Civil & Erection & 80% Supply.
Roof Top Base Solar Project: 10% Civil & Erection & 90% Supply.

For Issue number 2, the statement of facts are as follows...

The scope of supply includes:

- a. Detailed designing of power project
- b. Procurement and supply at project site
 - i. Solar photovoltaic modules/panels/array
 - ii. Panel mounting structure
 - iii. Solar tracker
 - iv. Meteorological equipment
 - v. Cables
 - vi. Combiner box
 - vii. Solar power conditioning unit
 - viii. Inverter
 - ix. Isolator
 - x. Transformer
 - xi. Switchbox
 - xii. Conductor
 - xiii. Battery
 - xiv. Transmission tower
 - xv. Steel/plastic tubes & pipes
 - xvi. Pre-fabricated shelter
 - xvii. SCADA Software
- c. Assembly & erection
- B. Assembly & erection
 - a. Supply of nut, bolts, fasteners and other miscellaneous materials
 - b. Test & Commissioning

- C.** Equipment and components are delivered at project site and stored at the risk of the Applicant
 - D.** Ownership is transferred on successful commissioning of the plant
 - E.** Payment is as per milestone or monthly depending on the % of goods delivered at site
- Full payment is released on successful commissioning of the plant with stipulated power generation.

For Issue number 3, the statement of facts is follows...

Scope of supply of supply contract includes:

a. Procurement and supply at project site

- i.** Solar photovoltaic modules/panels/array
- ii.** Panel mounting structure
- iii.** Solar tracker
- iv.** Meteorological equipment
- v.** Cables
- vi.** Combiner box
- vii.** Solar power conditioning unit
- viii.** Inverter
- ix.** Isolator
- x.** Transformer
- xi.** Switchbox
- xii.** Conductor
- xiii.** Battery
- xiv.** Transmission tower
- xv.** Steel/plastic tubes & pipes
- xvi.** SCADA Software

- b.** Equipment and components are delivered at project site and risk is transferred to the customer
- c.** Payment is as per milestone or monthly depending on the % of goods delivered at site
- d.** Full payment is released on successful commissioning of the plant with stipulated power generation.

A. Scope of Erection Contract includes:

a. Assembly & erection

- i.** Assembly & erection
- ii.** Supply of nut, bolts, fasteners and other miscellaneous materials

b. Test & Commissioning

- B.** Risk of Equipment and components are acquired by the Applicant during erection till successful handover of the plant to the customer
- C.** Payment is as per milestone or monthly depending on the % of goods delivered at site
- D.** Full payment is released on successful commissioning of the plant with stipulated power generation.
- E.** Supply contract and Erection contract are two independent contract. However,

a. Breach of one contract may be deemed to breach of both in the event of shortfall in timely completion and / or guaranteed performance.
Liquidated Damage Charges will be applicable on the total contract value of Supply Contract + Erection contract.

For Issue number 4, the statement of facts is as follows....

- A.** Scope of supply includes procurement and supply at project site
- i. Solar photovoltaic modules/panels/array
 - ii. Panel mounting structure
 - iii. Solar tracker
 - iv. Meteorological equipment
 - v. Cables
 - vi. Combiner box
 - vii. Solar power conditioning unit
 - viii. Inverter
 - ix. Isolator
 - x. Transformer
 - xi. Switchbox
 - xii. Conductor
 - xiii. Battery
 - xiv. Transmission tower
 - xv. Steel/plastic tubes & pipes
 - xvi. SCADA Software
- B.** Equipment and components are delivered at project site and risk is transferred to the customer
- C.** Payment is as per milestone or monthly depending on the % of goods delivered at site
Full payment is released on successful commissioning of the plant with stipulated power generation.

For Issue number 5, the statement of facts is as follows....

- A.** The scope of supply includes:
- a. Civil works
 - i. leveling of ground
 - ii. Wall boundary
 - iii. internal roads
 - iv. concrete foundations for mounting of panel mounting structures
 - v. digging ditch for underground cabling
 - vi. Concrete flooring for inverter/transformer/battery pack,
 - vii. Control room etc.
 - b. Detailed designing of power project
 - c. Procurement and supply at project site

- i. Panel mounting structure
- ii. Solar tracker
- iii. Meteorological equipment
- iv. Cables
- v. Combiner box
- vi. Solar power conditioning unit
- vii. Isolator
- viii. Transformer
- ix. Switchbox
- x. Conductor
- xi. Battery
- xii. Transmission tower
- xiii. Steel/plastic tubes & pipes
- xiv. Pre-fabricated shelter
- xv. SCADA Software
- d. Assembly & erection
 - i. Assembly & erection
 - ii. Supply of nut, bolts, fasteners and other miscellaneous materials
- e. Test & Commissioning

- B. Equipment and components are delivered at project site and stored at the risk of the Applicant
- C. Ownership is transferred on successful commissioning of the plant
- D. Payment is as per milestone or monthly depending on the % of goods delivered at site
- E. Full payment is released on successful commissioning of the plant with stipulated power generation.
- F. Solar modules are procured /imported by customer and supplied to the Applicant for assembly and erection.

In some contract, scope of supply may not include civil works.

For Issue number 6, the statement of facts is same as given for Issue number 5

For Issue number 7, the statement of facts are as follows..

Scope of works may include:

- a. Civil works
 - i. leveling of ground
 - ii. Wall boundary
 - iii. internal roads
 - iv. concrete foundations for mounting of panel mounting structures
 - v. digging ditch for underground cabling
 - vi. Concrete flooring for inverter/transformer/battery pack,
 - vii. Building of control room etc.

b. Assembly and Erection

- i. Assembly & erection
- ii. Supply of nut, bolts, fasteners and other miscellaneous materials
- iii. Test & Commissioning

A. Risk of Equipment and components are acquired by the Applicant during erection till successful handover of the plant to the customer

B. Payment is as per milestone or monthly depending on the % of goods delivered at site

Full payment is released on successful commissioning of the plant with stipulated power generation.

And for Issue number 8, the statement of facts is as follows...

The contract stipulated successive payment against successive statements depending on the milestone stipulated in the contract.

On analyzing the Issues, with respect to the CGST/SGST Act, rules, and notifications released from time to time, it is to note Entry number 234 of Schedule I (which are taxable @ 2.5%) of notification 01/2017 –Central Tax (Rate), dated :28th June 2017, is relevant to the Issues raised by applicant, Entry 234 reads as ...

S.No	Chapter / Heading / Sub- heading / Tariff item	Description of Goods
234	84 or 85	Following renewable energy devices & parts for their manufacture (a) Bio-gas plant (b) Solar power based devices (c) Solar power generating system (d) Wind mills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants / devices (f) Solar lantern / solar lamp (g) Ocean waves/tidal waves energy devices/plants

II) Further, as per Explanation (iii) of the said Rate Notification, chapter heading shall mean chapter heading as specified under the First Schedule to the Customs Tariff Act, 1975. Chapter Heading 8501 includes Electric motors and generators. As per HSN Explanatory notes to heading 8501, the heading covers photovoltaic generators consisting of panels of photocells combined with other apparatus e.g. storage.

III) As per CGST/SGST Act'2017, section 31(4) reads "In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received".

IV) Section 12(2) reads "The time of supply of goods shall be the earlier of the following dates, namely:—

(a) the date of issue of invoice by the supplier or the last date on which he is required, under sub-section (1) of section 31, to issue the invoice with respect to the supply; or

(b) the date on which the supplier receives the payment with respect to the supply:

Provided that where the supplier of taxable goods receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.

On plain reading of the above facts along with provisions of law, for the clarifications sought by the applicant along with rulings are as follows...

RULING

Issue No:1

Whether supply of solar power plant under 'Turnkey EPC Contract' is supply of 'solar power generating system' under Entry 234 of Schedule I of the Notification No. 1/2017- Integrated Tax (Rate), Entry 234 of Schedule I of the Notification No. 1/2017- Central Tax (Rate) both dated 28 June 2017 and Entry 234 of Schedule I of the Notification No. 1/2017- State Tax (Rate) dated 29 June 2017?

Issue No.2:

Whether supply of solar power plant under 'Other EPC Contract' is supply of 'solar power generating system' under Entry 234 of Schedule I of the Notification No. 1/2017- Integrated Tax (Rate), Entry 234 of Schedule I of the Notification No. 1/2017- Central Tax (Rate) both dated 28 June 2017 and Entry 234 of Schedule I of the Notification No. 1/2017- State Tax (Rate) dated 29 June 2017?

Ruling for Issue 1 & Issue 2 :

As per the statement of facts submitted by the applicant, the scope of work in respect of "Turn key EPC Contract" and "Other EPC Contract" includes civil works, procurement of goods and erection and commissioning. Accordingly, "Turnkey EPC Contracts" and "Other EPC Contracts" are not getting covered under supply of 'solar power generating system' under Entry 234 of Schedule I of the Notification No. 1/2017- Integrated Tax (Rate), Entry 234 of Schedule I of the Notification No. 1/2017- Central Tax (Rate) both dated 28 June 2017 and Entry 234 of Schedule I of the Notification No. 1/2017- State Tax (Rate) dated 29 June 2017.

Issue No.3:

Whether supply of solar power plant under 'Supply Contract' is supply of 'solar power generating system' under Entry 234 of Schedule I of the Notification No. 1/2017- Integrated Tax (Rate), Entry 234 of Schedule I of

the Notification No. 1/2017- Central Tax (Rate) both dated 28 June 2017 and Entry 234 of Schedule I of the Notification No. 1/2017- State Tax (Rate) dated 29 June 2017 where the assembly, erection, and commissioning of the solar power plant is undertaken by the Applicant under a separate contract?

Ruling :

The applicant sought a clarification on the liability of division of contract in to two, one is supply of material and other one is erection, commission and there on., in this regard it is opined that, it depends upon the terms and conditions of the agreements as to whether the split of contract is an artificial and colourable device to avoid the legitimate tax or the requirement of the contractee demands separation of contract for better execution. In case the contract is an artificial split, the Clarification for Issue 2 (two) is applicable. In other case the rate of tax applicable for the supply of goods subject to condition of eligibility of being " device and parts " of the solar power generating system attracts 5% rate of tax as per Entry 234 of Schedule I of Notification No 1/2017 – Central tax (Rate), dated 28th June, 2017. And the supply of service attracts at the rate specified thereon in Notification No. 11/2017 – Central tax (Rate).

Issue No.4:

Whether supply of solar power plant under 'Supply Contract' is supply of 'solar power generating system' under Entry 234 of Schedule I of the Notification No. 1/2017- Integrated Tax (Rate), Entry 234 of Schedule I of the Notification No. 1/2017- Central Tax (Rate) both dated 28 June 2017 and Entry 234 of Schedule I of the Notification No. 1/2017- State Tax (Rate) dated 29 June 2017 where the assembly, erection, and commissioning of the solar power plant is undertaken by a third party contractor?

Ruling :

In this scenario, the goods are supplied by one contractor, and the services were supplied by the other contractor. Therefore the rate of tax applicable for supply of goods as long as it satisfies the condition of being " device and parts " of the solar power generating system attracts 5% rate of tax as per Entry 234 of Schedule I of Notification No 1/2017 – Central tax (Rate), dated 28th June, 2017.

Issue No.5:

Whether supply of solar power plant under 'Balance of Plant Supply Contract' is supply of 'solar power generating system' under Entry 234 of Schedule I of the Notification No. 1/2017- Integrated Tax (Rate), Entry 234 of Schedule I of the Notification No. 1/2017- Central Tax (Rate) both dated 28 June 2017 and Entry 234 of Schedule I of the Notification No. 1/2017- State Tax (Rate) dated 29 June 2017?

Ruling :

The nature of transaction falls under composite transaction as both the goods and services are naturally bundled. Even though the primary commodity has been supplied by the customer, the ancillary goods for

the purpose of service are to be supplied by the applicant only. The principle supply in this context is supply of service and the ancillary goods supplied are in conjunction with the services provided. Hence the rate of tax applicable in such transaction is liable at the rate as per the Entry 25 of 25 (Heading 9987) of Notification No.11/2017 – Central Tax (Rate), dated : 28th June 2017, and attracts 18% rate of tax.

Issue No.6: If the Clarification to Issue No. 5 is negative, what would be nature of supply i.e. composite supply or mixed supply?

Ruling : Ruling covered under clarification in issue number 5 (five)


Issue No.7: Whether contract for assembly, erection, and commissioning of the plant undertaken by the Applicant under a separate contract would be a service contract liable to be taxed under Service heading 9954?


Ruling : The referred contract doesn't fall under the ambit of SAC 9954, but falls under the Entry 25 of 25 (Heading 9987) of Notification No.11/2017 – Central Tax (Rate), dated: 28th June 2017, and attracts 18% rate of tax.

Issue No.8 Whether the time of supply of power plant shall be determined under Section 31(4) of the CGST Act/SGST Act read with Section 12(2) thereof?

Ruling : Yes

Note: All the above rulings are valid, till the amendments have not been taken place in the relevant statutory provisions and any deviation in facts submitted by the applicant the rulings will become null and void.


(J.V. M. SARMA)
Joint Commissioner (State Taxes),
Authority for Advance Ruling,
Andhra Pradesh.


(AMARESH KUMAR)
Joint Commissioner (Central Taxes),
Authority for Advance Ruling
Andhra Pradesh

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Assistant Commissioner(GST),