



**BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH
Goods and Service Tax**

D. No. 5-56, Block-B, R.K. Spring Valley Apartments, Eedupugallu, Vijayawada-521151

Present:

1. Sri. D. Ramesh, Additional Commissioner of State Tax (Member)
2. Sri. M. Sreekanth, Joint Commissioner of Central Tax (Member)

AAR No. 02/AP/GST/2020 dated:17.02.2020

1	Name and address of the applicant	M/s. DEC Infrastructure and Projects (I) Pvt. Ltd., Sy.No.156/8, Madhurawada GVMC Limits, Paradesipalem, Visakhapatnam-530048, Andhra Pradesh.
2	GSTIN	37AACCD9619D1ZN
3	Date of filing of Form GST ARA-01	12.10.2019
4	Date of Personal Hearing	19.12.2019
5	Represented by	Sri B. Laxman, Chartered Accountant
6	Jurisdictional Authority –State	Assistant Commissioner (ST) China Waltair Circle, Visakhapatnam Division.
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	b) applicability of a Notification issued under the provisions of this Act; and e) determination of the liability to pay tax on any goods or services or both;

ORDER

(Under Sub-Section (4) of Section 98 of Central Goods and Services Tax Act, 2017 and Sub-Section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to CGST Act and APGST Act respectively) by M/s DEC Infrastructure and Projects (I) Pvt. Ltd., (hereinafter referred to as applicant), registered under the Goods & Services Tax.
2. The provisions of the CGST Act and APGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the APGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or AP GST Act would be mentioned as being under the GST Act.



3. Brief Facts of the case:

M/s DEC Infrastructure and Projects (I) Pvt., Ltd., executes the construction work namely "Construction of Building for Office space/IT space at IT park, Mangalgiri, which was awarded by the APIIC, vide agreement No. 10/CE-APIIC/2016-17, dated 16.06.2016. The applicant states that the APIIC had paid them 18% of Goods and Service Tax for the bill numbers 11 & 12 from 06.09.2017 to 16.10.2017 i.e., after implementation of Goods and Service Tax regime by thinking that above construction activity falls under commercial in nature.

The applicant further states that Government of AP has directed all the departments and Corporations not to add any amount towards GST on work contract bills through Memo No.47027/297/2017 dt: 13.09.2017. Hence APIIC authority has not paid the applicant any amount towards the GST and paid the 8 number of bills from 01.11.2017 to 25.5.2018 (From the bill no 13 to 20) amounting to Rs. 35,62,04,838.

The applicant submits that they had paid 18% on all the bills received from APIIC while filing the GST returns. But with the issue of G.O.Ms. No.58 dated 08.05.2018 by the AP State Government declaring that "As per the provisions of SGST/CGST Act 2017 all the Government work contract executed from 01.07.2017 to 21.08.2017 attract GST @18% with input tax credit and from 22.08.2017 GST @12% with input tax credit", the scenario has changed and the APIIC authorities has taken a stance saying that they will pay 12% GST Amount on Government works executed after 22.08.2017.

4. Questions raised before the authority:

- 1) Whether the above work of APIIC executed by the applicant after 22.08.2017 falls under the 18% rate of tax or 12% rate of tax?
- 2) If the work falls under 18% Rate of tax, then can the advance ruling authority guide the APIIC authority to reimburse the GST amount to the construction agency?
- 3) If the work falls under 12% Rate of Tax, then can we claim the refund of the GST amount which was paid excess while filing the GST returns from the CGST and SGST authority? (While filing the GST returns Tax paid @18%)

On Verification of basic information of the applicant, it is observed that the applicant falls under State jurisdiction of Assistant Commissioner (ST), China Waltair Circle, Visakhapatnam. Accordingly, the application has been forwarded to the jurisdictional officer and a copy marked to the State tax authorities to offer their remarks as per the Sec. 98(1) of CGST /APGST Act 2017.

In response, remarks are received from the jurisdictional officer concerned stating that there are no proceedings lying pending or passed relating to the applicant on the issue, for which the Advance Ruling sought by the applicant.



5. Record of Personal Hearing:

Sri B. Laxman, the authorized representatives of the applicant appeared for Personal Hearing on 19.12.2019 and they reiterated the submission already made in the application.

6. Discussion and Findings:

We have examined the specific issues raised in the application classification of the service and applicable rate of tax thereon for the agreed works under the provisions of respective GST Acts.

Classification of Service and rate of tax

As seen from the application, the applicant agreed for construction work namely "Construction of Building for Office space/IT space at IT park, Mangalgiri as awarded by APIIC. The activity of construction includes both supply of goods and also services.

The Section 2 (119) of CGST Act, 2017 / APGST 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;

The composite supply of works contract under Section 2 (119) of CGST Act, 2017 / APGST Act, 2017 is treated as supply of service in terms of Serial No.6 (a) of Schedule II of CGST Act '2017 / APGST Act, 2017.

The Government of India, vide notification No. 11/2017 - Central Tax (Rate), dated - 28th June 2017 notified the rate of GST applicable on supply of services. Under this notification for heading 9954 the applicable rate of GST is 9%.

The said notification has been amended from time to time and the following notifications are issued by the Government of India and the said amendment Notifications are as follows -

- 1) Notification No- 20/2017 - Central Tax (Rate), Dated - 22/08/2017.
- 2) Notification No- 24/2017 - Central Tax (Rate), Dated - 21/09/2017.
- 3) Notification No- 31/2017 - Central Tax (Rate), Dated - 13/10/2017.
- 4) Notification No- 46/2017 - Central Tax (Rate), Dated - 14/11/2017.
- 5) Notification No- 01/2018 - Central Tax (Rate), Dated - 25/01/2018.

Vide Notification No. 24/2017 - Central Tax (Rate), Dated - 21.09.2017, Government of India by inserting entry No. (vi) notified concessional GST rate of 6% for the construction services provided to Central Government, State Government, Union Territory, a local authority or a Governmental Authority 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;
- b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or
- c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.

This context necessitates the examination of two issues

- 1) Primarily, whether APIIC which awarded construction work to the applicant would qualify for a Governmental Authority/entity or not
- 2) Consequently whether the construction work taken up by the applicant is meant for business or otherwise.

- 1) Initially we examine whether M/S. APIIC is a Government Authority / Entity or otherwise

The para 4 of clauses (ix) & (x) of Notification No.11/2017 – CT (Rate) dated 28.06.2017 as amended by Notification No.31/2017 – CT (Rate) dated 13.10.2017 is as hereunder;

(ix) “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 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243 W of the Constitution or to a Panchayat under article 243 G of the Constitution.

(x) “Governmental 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 a State Legislature; or

(ii) established by any Government, with 90% or more participation by way of equity or control, to carry out any function entrusted by the Central Government, State Government, Union Territory or a local authority.

Andhra Pradesh Industrial Infrastructure Corporation Ltd. (APIIC) was formed in 1973 by the GO No: 831 dated 10-SEP-1973 issued by Government of Andhra Pradesh. As seen from the share holding ratios of the 41st Annual Reports for the years 2013-14 as made available by APIIC website <https://www.apiic.in>, the Government of Andhra Pradesh including its nominees is having 100% of share holding and thus it is covered under the definition of ‘Government Entity’ under the above said provisions. Therefore, we conclude that M/s APIIC is a “Government Entity” for the purpose of GST matters.



2) Now we examine whether the construction work in which the applicant is engaged in is meant for any business or otherwise.

As seen from the 41st Annual Report for the year 2013-14 as made available by APIIC in their website <https://www.apiic.in/Annualreports.html>, they are engaged in land acquisition and development and allotment of plots and sheds to various industrial ventures in the State making investments in joint venture, in associate companies, in related party companies, in subsidiary companies etc., and the income they are getting is revenue from operations like sale of land, houses, interest on hire purchase and long term borrowings etc.,

In this context, it is worthwhile to make a reference to an aspect in page no. 25 of the above mentioned Annual Report regarding "Land Conversion Charges"

"The state investment promotion Committee (SIPC) in its meeting held on 26.04.2013, decided not to provide exemption to the corporation from payment of land conversion fee for non-agricultural purposes foregoing state revenues since APIIC would pass on any costs to the end client".

It is evident from the above statement that the activities of M/s APIIC are business activities and not otherwise. Moreover, the applicant did not provide any information or documentary proof evidencing that the construction/ building is for use other than for commerce, industry, or any other business or profession to be eligible for concessional rate of 12% (6% CGST + 6% SGST) available under Notification No.24/2017 - CT (Rate) dated 21.09.2017.

In this case, the contract entered by the applicant is classifiable under SAC Heading No. 9954 under construction services, and it falls under entry no (ii) of serial No.3 of notification no. 11/2017 Central Tax (Rate) dated 28.06.2017 i.e., Composite Supply of Works Contract as defined in clause 119 of Section 2 of Central Goods and Services Act, 2017 and the applicable rate of tax is 18% (9% under Central tax and 9% State tax).

RULING

(Under Section 98 of Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017)

Question: Whether the above work of APIIC executed by the applicant after 22.08.2017 falls under the 18% rate of tax or 12% rate of tax?

Answer: The activities of the transaction referred by the applicant are classifiable under SAC Heading No. 9954 under construction services, which fall under entry no (ii) of serial No.3 of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 and the applicable rate of tax is 18% (9% Central Tax + 9% State Tax).



Question: If the work falls under 18% Rate of tax, then can the advance ruling authority guide the APIIC authority to reimburse the GST amount to the construction agency?

Answer: It is not under the purview of Section 97(2) of CGST Act, 2017.

Question: If the work falls under 12% Rate of tax, then can we claim the refund of the GST amount which was paid excess while filing the GST returns from the CGST and SGST authority? (While filing the GST returns Tax paid @18%)

Answer: It is not under the purview of Section 97(2) of CGST Act, 2017.

**Sd/-D. RAMESH
MEMBER**

**Sd/- M.SREEKANTH
MEMBER**

//t.c.f.b.o//


Assistant Commissioner(ST)
U/o. Chief Commissioner of State Tax,
Andhra Pradesh, Vijayawada.

TO

1. M/s DEC Infrastructure and projects (I) Pvt., Ltd Sy.No.156/8, Madhurawada GVMC Limits, Paradesipalem, Visakhapatnam-530048, Andhra Pradesh **(By Registered Post)**
2. M/s DEC Infrastructure and projects (I) Pvt., Ltd., D.No. 2-1-434/1, Dabla Sadan, Street No.4, Nallakunta, Hyderabad-500044, Telangana. **(By Registered Post)**

Copy to

1. The Assistant Commissioner of State Tax, China Waltair Circle, Visakhapatnam Division. **(By Registered Post)**
2. The Superintendent of Central Tax, Madhurawada Range, CGST Division Visakhapatnam North. **(By Registered Post)**

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Eedupugallu, Vijayawada.



2. The Chief Commissioner (Central Tax), O/o Chief Commissioner of Central Tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035
(A.P) (By Registered Post)

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, with in a period of 30 days from the date of service of this order.

