



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. A. Syam Sundar, Additional Commissioner of Central Tax (Member)

AAR No.07/AP/GST/2021 dated: 18.01.2021

1	Name and address of the applicant	M/s. Building Roads Infrastructure & Construction Private Limited, D.No. 49-36-21, Akkayapalem, Visakhapatnam- 530016
2	GSTIN	Un -Registered
3	Date of filing of Form GST ARA-01	10.07.2020.
4	Personal Hearing	28.10.2020
5	Represented by	K.V.J.L.N. Sastry, Advocate
6	Jurisdictional Authority	Not applicable
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; d) admissibility of input tax credit of tax paid or deemed to have been paid; f) whether applicant is required to be registered;

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. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and SGST Act, 2017 are in pari materia 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 APGST Act.

2. 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. Building Roads Infrastructure & Construction Private Limited (hereinafter referred to as applicant).

3. Brief Facts of the case:

M/s. Building Roads Infrastructure & Construction Private Limited (applicant) is an unregistered dealer expecting a contract for construction, erection, commissioning, widening of roads and completion of bridges for road transportation for use of general public. They act as a subcontractor to the main contractor who was awarded contract by NHAI to construction, erection, commissioning, widening of roads and completion of bridges and NHAI 16 (old NH 5) in the state of Andhra Pradesh. The execution of work takes place only in Andhra Pradesh.

4. Questions raised before the authority:

1. What is the classification of the 'works contract' services pertaining to construction, erection, commissioning and completion of 'Bridges and Roads' provided by the applicant as a subcontractor to the Contractors who have been awarded the construction contract pertaining to construction/widening of roads by the Government Entities such as National Highway Authority of India?
2. Clarification for rate of tax chargeable on the outward supplies i.e., on the RA bills raised on main contractor.
3. Whether eligible to claim input tax credit on inward supply of the following goods, JCB, Road Roller, Grader, Hydra Crane, Transit Mixer, Generator, Excavator and Sensor Paver

5. Applicant's Interpretation of Law and Facts:

1. The classification and rates applicable on supply of service are provided in Notification No.11/2017- Central Tax (Rate) Dt.28.06.2017.



2. Serial No. 3 of Notification No.11/2017 provided for rate of GST on construction services. The activity of the applicant falls under entry at Serial No.3 (iv) of Notification No.11/2017 which provides as under:

SI. No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
1	Heading 9954 (Construction services)	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, 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..."	6	—

3. The other competing entries are entries at Serial No.3 (ix) and 3 (x) which pertain to works contract services provided by the sub-contractor to the main contractors who were in turn providing services specified in Serial No. 3 (iii), 3 (vi) and 3 (vii) to Government. The entries at Serial No. 3 (ix) and 3 (x) are not applicable to the applicant as they are applicable to services provided by a sub- contractor to main contractor who is in turn providing services specified in Serial No.3 (iii), 3 (vi) and 3 (vii) to the Government. Since the activity of construction of roads and bridges for transportation for use by general public of the Government (NHAI) is not specified in Serial No.3 (iii), 3 (vi) and 3 (vii), the activity of the Applicant is correctly classifiable under entry at Serial No.3 (iv)

4. The Entry at serial No.3 (iv) does not specify that it should be made applicable only to a main contractor. Hence, it can be applicable as well to the subcontractor appointed by the main contractor.

5. Under GST Act the rate of tax should be decided on the nature of services rendered but not on the person who executed the services.

6. The following inward supply of goods will be received from registered GSTIN dealers and will be used in execution of works. The Below goods are received



and used in the course of business and furtherance of business. The applicant is under the opinion that he can claim input tax credit on the following inwards supplies received

JCB, Road Roller, Grader, Hydra Crane, Transit Mixer, Generator, Excavator, Sensor- Paver.

7. It is further submitted that the entry (xii) of 9954 construction service does not apply to the service mentioned in Sl. No. (iv) because of exclusion clause. In the circumstances explained above the applicant approached the Advance Ruling authority for clarification.

6. Personal Hearing:

The authorised representative of the applicant, Sri K.V.J.L.N. Sastry, Advocate appeared in person for Personal Hearing held on 28.10.2020 and he reiterated the submissions already made in the application and requested to pass necessary orders.

7. Discussion and Findings:

We examined the applicant's view of interpretation of Law, facts of the case and the questions placed for Ruling as well as the submissions made at the time of Personal Hearing.

The applicant has stated that they are proposed to be a sub-contractor for construction, erection, commissioning widening of Roads and completion of Bridges for the works awarded by the National Highway Authority of India to the main contractor on the National High Way (erstwhile NH 5).

1. Now we examine the **Classification of Works contract service** rendered by the applicant in construction/widening of Roads to NHAI and its rate of tax.

The classification and rates applicable on supply of service are provided in the serial No.3 of Heading 9954 of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 under construction services. Notification No. 11/2017 was further amended by Notification No. 20/2017-Central Tax (Rate), dated 22-8-2017 and new entries at Serial No. 3(iii), 3(iv), 3(v) and 3(vi) were inserted.



Serial No. 3 (iv) of the Notification No. 11/2017 after amendment reads as;

*"(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.**"*

The GST Council in their 25th meeting on 18.01.2018 has made recommendations at item no.12 as under;

"to reduce GST rate (from 18% to 12%) on the Works Contract Services (WCS) provided by sub-contractor to the main contractor providing WCS to Central Government; State Government, Union territory, a local authority, a Governmental Authority or a Government Entity, which attract GST of 12%. Likewise, WCS attracting 5% GST, their sub-contractor would also be liable to pay @ 5%."

National Highways Authority of India was set up by an act of the Parliament, NHAI Act, 1988, under the administrative control of the Ministry of Road Transport and Highways. It was set up as a central authority to develop, maintain and manage the National Highways entrusted to it by the Government of India.

Hence, the instant case is qualified to fit in the above category.

Accordingly, the principal rate Notification No. 11/2017 was amended vide Notification No. 1/2018-Central Tax (Rate), dated 25.01.2018 to amend the entries at Serial No 3 by inserting new entries at Serial No. 3(ix), 3(x), 3(xi) and 3(xii). The Composite Supply, of Works Contract services provided by a sub-contractor to the main contractor were dealt with in entries at Serial No. 3(ix) & 3(x) of the amended Notification No. 11/2017 dated 25.01.18. But the entry at serial No. 3(iv) was not clubbed in the newly created serial Nos. 3(ix) and 3 (x). Further, the said supply of service is excluded from the 18% tax rate entry newly enumerated at 3(xii) which reads as" (xii) Construction services other than (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x) and (xi) above.

Accordingly the supply of service rendered by the applicant falls under the item 3(iv) of the amended provisions of the notification 11/2017 - Central Tax (Rate) and the Rate of Tax applicable is **12%** (CGST 6% + SGST 6%).



2. Eligibility of Input tax credit on JCB, Road Roller, Grader, Hydra Crane, Transit mixer, Generator, Excavator, Sensor Paver:

We examine whether the applicant is eligible to claim Input Tax Credit on the above listed items as per Section 16(1) which reads as follows;

"16. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person."

The applicant is eligible to claim ITC with subject to the satisfaction of certain pre requisite conditions mentioned in Section 16 (2) such as, being in possession of tax invoice, having actually received goods or services, tax being paid by the supplier, return being filed under Section 39 etc.

In addition to the above, certain restrictions are imposed on availment of Input Tax Credit under Section 17(5) of CGST Act, 2017.

Section 17(5) (c) and (d) of the Act restricting certain credits, is read as under;

"(5) Notwithstanding anything contained in sub-section (1) of section 16 and Subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

- c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;*
- d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business."*

Under Section 17(5) (c), the restriction on claiming Input Tax Credit by a taxable person is applicable on the inward supply of works contract service unless it is an input



service for further supply of works contract service. The restriction applies only if the works contract service is used for the construction of immovable property other than plant and machinery. Further, Clause d of Section 17(5) brings inputs and input services under the ambit of restriction when the recipient of supply is constructing the immovable property on his own account.

In the instant case, the applicant seeks clarification on the claim of input tax credit on inward supply of the following goods, JCB, Road Roller, Grader, Hydra Crane, Transit Mixer, Generator, Excavator and Sensor Paver. The inward supply of the above mentioned goods neither fall under works contract services as per Section 17(5) (c) and these goods received by the applicant are made use of for the construction of an immovable property, which is certainly not on his own account as per section 17(5) (d). As a matter of fact, the applicant carries out construction not on his own account, but as a subcontractor to the main contractor who was awarded contract by NHAI.

In light of the facts submitted by the applicant, thus it is clear that the clauses of blocked credits under section 17(5) (c) & (d) are not applicable to the instant case and thus eligible for claiming Input Tax Credit subject to the requisite conditions as mentioned in the Section 16 (2) of the CGST Act, 2017.

In view of the above foregoing it is ruled as under.

RULING

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

Question: What is the classification of the 'works contract' services pertaining to construction, erection, commissioning and completion of 'Bridges and Roads' provided by the applicant as a subcontractor to the Contractors who have been awarded the construction contract pertaining to construction/widening of roads by the Government Entities such as National Highway Authority of India.

Answer: The service provided by the applicant falls under Serial No 3 (iv) of the Notification No.11/2017 as amended from time to time.



Question: Clarification for rate of tax chargeable on the outward supplies? i.e., on the RA bills raised on main contractor.

Answer: Rate of Tax applicable is **12%** (CGST 6% + SGST 6 %).


Question: Whether eligible to claim input tax credit on inward supply of the following goods namely, JCB, Road Roller, Grader, Hydra Crane, Transit Mixer, Generator, Excavator and Sensor Paver?

Answer: Affirmative.

Sd/-D. Ramesh
MEMBER

Sd/-A. Syam Sundar
MEMBER

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


Deputy Commissioner (ST)
DEPUTY COMMISSIONER (ST)
O/o. Chief Commissioner of State Tax,
Government of A.P., Vijayawada

TO

1. M/s. Buildings Roads Infrastructure Private Limited, D.No. 49-36-21, Akkayyapalem, Visakhapatnam-530016 **(By Registered Post)**.

Copy submitted to

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

