

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, 8th floor, H-Wing, Mazgaon, Mumbai - 400010.

(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)

(2) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id	27AACES8719B12C
Legal Name of Applicant	Sterlite Technologies Limited.
Registered Address/ Address provided while obtaining user id	E1, E2, E3, MIDC WALUNJ, AURANAGABD, MAHARASHTRA - 431136.
Details of application	GST-ARA, Application No. 106 Dated 04.01.2019
Concerned officer	Dy. Commr. of S.T.(E-003) LTU-Aurangabad Division.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Service provision
B Description (in brief)	The activities of Applicant <i>inter alia</i> involve manufacture of telecom products such as optic fiber optic fiber cable, etc.; laying these optic fiber cables (either underground or hung overhead) to create a network, setting up of control centers, installation of equipment necessary to operate the network for desired purpose, commissioning of network and any other ancillary activity that may be necessary for creation of network infrastructure for its customers in telecom industry.
Issue/s on which advance ruling required	(i) classification of goods and/or services or both (ii) applicability of a notification issued under the provisions of the Act
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by Sterlite Technologies Limited, the applicant, seeking an advance ruling in respect of the following questions.

- Whether the supply of goods or services for 'setting up of network' would qualify as 'works contract' as defined in Section 2(119) of the CGST Act?
- If supplies contemplated as per the contract with BSNL are not treated as works contract, can these continue to qualify as composite supply? if yes what is the principle supply? and
- What is the rate of tax applicable to the supplies made under the contract?

At the outset, we would like to make it clear that the provisions of both the CGST Act & the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

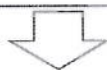
02 FACTS AND CONTENTION - AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus-

STATEMENT OF THE RELEVANT FACTS HAVING A BEARING ON THE QUESTION(S) ON WHICH THE ADVANCE RULING IS REQUIRED

1. This Application is being preferred by Sterlite Technologies Limited ("Company" / "Applicant"), a company incorporated in India under the provisions of the Companies Act, 1956. having its registered office at E-1,E-2,0-3, MIDC Waluj, Aurangabad-431136, Maharashtra, India..
2. Applicant is engaged in providing goods and services which qualify as 'supply' as per provisions of the Central Goods and Service Tax Act, 2017 ("CGST Act") and is duly registered thereunder bearing GSTIN 27AAECS8719B12C. The activities of Applicant *inter alia* involve manufacture of telecom products such as optic fiber optic fiber cable, etc.; laying these optic fiber cables (either underground or hung overhead) to create a network, setting up of control centers, installation of equipment necessary to operate the network for desired purpose, commissioning of network and any other ancillary activity that may be necessary for creation of network infrastructure for its customers in telecom industry. The scope of these activities is contractually stipulated and are typically recognized as a 'turnkey contract' in the industry.
3. Indian Navy, governed by Ministry of Defence ("Navy"), intends to establish countrywide IP/MPLS based multiprotocol converged network, Naval Communication Network (collectively referred as "network"); as core infrastructure for supporting strategic and operational needs of Navy, Setting up of these networks have been entrusted by Navy to Bharat Sanchar Nigam Limited ("BSNL"); which in-turn has floated a tender inviting detailed bids for the same.
4. The tender document specifically contemplated creation of IP/MPLS based multiprotocol converged network based on existing terrestrial optical fiber cables to be made available by BSNL. The network to be so created mainly involves following key activities which are narrated below stepwise:

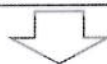
Construction of h Construction of holdings and raising civil structures, necessary to house data centres, nearline data centres, disaster recovery station, satellite data centre and connectivity equipment at Naval ports across mainland and coastal region in India



Installing rack, stack in the buildings and other civil infrastructures necessary to house the equipment and enable operation of all the centres/ports



Assemble /install all equipment and powering it up by connecting with power supply and back-up generators



Interconnecting and configuring all the equipment in all the data centres, nearline data centres, disaster recovery station, satellite data centre, etc. with each other to enable information exchange across the network as desired

5. Relevant clauses of the contract which stipulate the requirement of an exhaustive civil work to be undertaken by Applicant to house the said network are reproduced below:

Network Architecture

Tier I. Tier I would interconnect 11 major locations of the Indian Navy across the country over defence owned OFC and DWDM network infrastructure

...

Tier II. The remaining 33 locations of the Indian Navy would be connected over defence owned OFC and DWDM network infrastructure

...

Tier III. Tier III consists of the regional metro aggregation network at Delhi, Mumbai, Vizag, Kochi, God, Chennai and Port Blair. The regional metro aggregation network for Tier III shall be present at few locations at various metro cities across the country. These locations would be connected over a DWDM infrastructure that the bidder will have to provide

Civil Infrastructure

1. A central building would need to be built at very site to house Type 1/Type 2 Type 3 Infrastructure, Telepresence equipment Networking Equipment Optic fibre Equipment, Staging and other operational and administrative buildings. The scope of work includes civil construction, water supply, sanitary and plumbing, electrical installation, landscaping, air conditioning, roads, and fire fighting and interior works. All the buildings should be constructed with RCC (Reinforced Concrete Construction) Partition walls (non-load bearing walls) may be of high quality bricks. The construction would be governed by the latest standards Indian Standards for construction of buildings. The minimum distance between this complex and the data center building etc should be governed by the TIA 942 standards. The bidder is to ensure that standards followed for construction of buildings, electrical fittings, plumbing etc should also meet the minimum specifications published by BSNL. On completion of construction, the buildings would have to be handed over to the MES/CPWD.

...

2. Along with the building the following additional infrastructure for the complex would also be required: -

2.1 Approach road to building within Naval Station, Provision of security lights around the complex, Security cameras inside and outside building, Guard post including rest room, Automatic Barrier at main/emergency gates. Access Control Mechanism at entrances to the building, Smoke detector, provisioning of small fire fighting appliances, PA system.

...

2.5 Underground electrical wiring will be done as per the requirement. All switches, cutout, CBS and wires, cables are to be supplied and fitted. All electrical fittings including air conditioners, fans, tube lights, CFL, exhaust fans, call bells, lightning arrester etc is to be provided and fitted. False roofing with 2x2 meshed tube light fittings and wall panelling with synthetic enamel paints.

...

3. In addition, a power room to house the silent generators also needs to be constructed. Provisioning of DG sets, along with control panel, day tank and other accessories required for operation of the power plant. OG Sets should be in weather proof shelters. Electrical wiring and associated equipment from power house to UPS room.

6. The said network comes into existence when the building, civil structures are erected, and all the equipment are installed and interconnected with each other through its data centers, nearline data centers, disaster recovery station, etc. Such network cannot be



moved to another place in 'as is' form but it requires the optical fiber cables to be disengaged, existing civil structures to be demolished, all the equipment to be removed and undertake altogether a fresh activity to re-erect the civil structure and re-install all the necessary equipment and re-engage the same with the optical fiber cables at such other place.

7. In furtherance of the tender bid, BSNL has entered into a contract with Applicant which stipulates Applicant's responsibility to set up the network including the responsibility to supply all the material and services required for setting up of network, training services to operate the same and supply of satellite connectivity vehicles [i.e., a mobile vehicle mounted with various satellite equipment) required for ensuring seamless connectivity during breakdown of network.
8. The entire project as per contract between Applicant and BSNL is bifurcated into different packages and the purchase order is presently raised by BSNL with reference to cost break up of each of the material and services required to be supplied by Applicant under these packages. Such cost break-up for indigenous procurements relating to imports as well as domestic procurement is specified in annexures to the purchase order.
9. Based on the above facts, the present application is being preferred before the Hon'ble Authority for Advance Ruling to determine the issue referred in Annexure II.

STATEMENT CONTAINING THE APPLICANT'S INTERPRETATION OF LAW AND/OR FACTS, AS THE CASE MAY BE, IN RESPECT OF THE QUESTION(S) ON WHICH THE ADVANCE RULING IS REQUIRED

1. ISSUE FOR DETERMINATION

Whether the supply of goods or services for 'setting up of network' would qualify as 'works contract' as defined in Section 2(119) of the CGST Act?

OUR SUBMISSIONS

SUPPLY TO BE MADE AS PER THE CONTRACT RESULTS IN CREATION OF AN IMMOVABLE PROPERTY AND THUS QUALIFIES AS A WORKS CONTRACT

- 1.1. Determination of the contract between Applicant and BSNL *qua* works contract merits analysis of the term 'works contract' which is defined under Section 2(119) of the CGST Act and is reproduced below for easy reference:

Section 2 (119): "*works contract*" means 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;

- 1.2. On a bare perusal of the definition, we submit that works contract is essentially a contract covering any or all activities referred in definition which relate to an immovable property and execution of such contract involves transfer of property in the goods,
- 1.3. In the present facts, the contract entered between Applicant and BSNL indeed involves transfer of property and is covered by the activities referred to in definition of works contract. It is in these circumstances that if the network to be set up qualifies as 'immovable property', then the composite supply underlined in the contract would partake the character of a works contract.
- 1.4. *Immovability of network*: In absence of any definition of the term 'immovable property' under the CGST Act, nature of the network *qua* immovability merits analysis of judicial precedents in this regard. The concept of immovability has been subject matter of intense judicial scrutiny over the years and the judicial precedents laid time and again refer to following parameters to determine immovability of a structure:

- i. Whether it is a permanent fixture attached to building/land or not;



- ii. Whether dismantling of the parts is mandatory for movement or not;
- iii. Whether the functionality of the system depends upon its installation or not,

- 1.5. It is submitted that the activity of setting up of network envisages, constructing various types of *buildings* and civil infrastructures which can house all the equipment necessary to provide the connectivity. The scope of the entire set up to be developed by Applicant also covers in its fold creating the ancillary infrastructure such as water supply, plumbing, electricity supply, access roads, back-up power generator etc. it is important to note that the entire set up together contributes to effective and seamless operation of the network for information exchange. Based on the infrastructure to be developed in the course of setting up of network, all the determinative parameters referred above are answered in positive which are elaborated in ensuing paragraphs.

Network to be set up comes into existence as permanently affixed to land

- 1.6. Applicant submits that network to be set up comes into existence only when all the equipment's are installed in the data centers, nearline data centers, disaster recovery station, satellite data center and are inter connected with each other. Thus, network, as it comes into existence through all the buildings and civil structures erected, is firmly attached to ground and permanently becomes a part of the land itself.

- 1.7. In such a case, owing to permanency of the entire structure, the network merits treatment as an immovable property. Applicant submits that the test of immovability is no *res integra* and places its reliance in the decision of *IN RE: OTIS Elevator Company (India) Limited* (1981 (8) ELT 720 (G.0.1.)) relevant portion of which is reproduced below:

3(1) elevators and escalators do not come into existence until they are fully erected or installed, adjusted, tested and commissioned in a building and that on complete erection and installation the elevators and escalators become a part of immovable property.

4. Government find considerable force in the petitioner's contention referred to the para 3(i) above that elevators and escalators erected and installed by them become a part of immovable property

- 1.8. Reference is also drawn from Hon'ble Supreme Court's decision in the case of *Triveni Engineering & Industries Ltd. vs. CCE* [2000 (120) ELT 273], wherein installation of turbo alternator which included installing its constituent parts viz. 'steam turbine' and 'alternator' together in a permanent form was evaluated. It was observed that turbo alternator comes into existence only when steam turbine and alternator is fixed together permanently to earth. Based on such observation it was held that turbo alternator as it came into existence was in the nature of immovable property.

- 1.9. Accordingly, since the network which comes into existence only when the data centers, nearline. data centers, disaster recovery station, etc. are set up as firmly attached to the ground, it comes into existence in the form of an immovable property.

The network cannot be moved in 'as is' form from one place to other

- 1.10. Network to be set up by Applicant cannot be moved to another place in 'as is' form, but it requires the *optical* fiber cables to be disengaged, existing civil structures to be demolished, all the equipment to be removed and undertake altogether a fresh activity to re-erect the civil structure, re-install all the necessary equipment and re-engage the same with the optical fiber cables to interconnect the same. Such nature of the structure has time and again been recognized as an immovable structure by various judicial precedents.

- 1.11. Reliance in this regard, is placed on the decision of the Hon'ble Supreme Court in the case of *Municipal Corporation of Greater Bombay vs Indian Oil Co. Ltd.* (AIR 1991 SC 686) relevant portion of which is reproduced below:

Permanency is the test. The chattel whether is movable to another place of use in the same position or liable to be dismantled and re-erected at the later place? If the answer is yes to the former it must be a moveable property and thereby it must be held that it is not attached to the earth. If the answer is yes to the latter it is attached to the earth.

- 1.12. Reliance in this regard is also placed on the decision of Hon'ble Supreme Court in the case of *T.T. G. Industries Ltd. v. Collector of Central Excise* [(2004) 4 SCC 751] wherein a machine was treated as immovable owing to permanency in its installation. Relevant portion is reproduced below:

"We are not impressed by this reasoning, because it ignores the evidence brought on record as to the nature of processes employed in the erection of the machine, the manner in which it is installed and rendered functional, and other relevant facts which may lead one to conclude that what emerged as a result was not merely a machine but something which is in the nature of being immovable, and if required to be moved, cannot be moved without first dismantling it, and then re-erecting it at some other place. Some of the other decisions which we shall hereafter notice clarify the position further."

- 1.13. Reference is also drawn to the definition of immovable property as provided in Black's Laws Dictionary which is as under:

"Immovable property means a property. that cannot be moved; an object so firmly attached to land that it is regarded as a part of land"

- 1.14. Based on the above Applicant submits that; the 'network' to be set up in accordance with the contract partakes the character of an immovable property inasmuch as the network as it comes into existence is firmly attached underground and cannot be moved in 'as is' from one place to the other.

The network falls short to attain its desired functionality unless it is permanently erected in the form of data centers, nearline data centers, disaster recovery station, satellite data centers, etc.

- 1.15. Applicant submits that the network cannot perform its desired functions unless each of the equipment is systematically installed in data centers, nearline data centers, disaster recovery station, satellite data centers, etc. and are interconnected to facilitate exchange of information.

- 1.16. Unless the entire setup is erected in its totality as explained in paragraph:4 of the statement of facts of the present application, in which case it becomes permanently affixed to the earth, such set up cannot perform as a network envisaged in the contract. In other words, setting up the equipment in the form of permanently affixed to the earth is the essential necessity of the network, and thus the entire network partakes the character of an immovable property.

- 1.17. In this context, reference is made to the Hon'ble Supreme Court judgment in the case of *Kone Elevator India Private Limited Vs. State of Tamil Nadu* [2014 (304) ELT 161 (SC)] wherein the issue of immovability of lift was discussed. Relevant extract of the judgment is reproduced below;

"The lift basically comprises components like lift car, motors, ropes, rails, etc. having their own identity even prior to installation. Without installation, the lift cannot be mechanically functional because it is a permanent fixture of the building having been so designed."

- 1.18. Based on the judicial precedents referred above Applicant submits that, the 'network' to be set up by it partakes the character of an immovable property in as much as the network as it comes into existence is firmly attached underground and permanently becomes a part of the land itself, in such a case, the activities to be undertaken by, applicant as outlined in the contract are: classifiable as 'composite supply of works contract as per Section 2(119) of the CGST Act and attract the assessment of GST liability accordingly,

- 1.19. The submissions in the forgoing, paragraphs are also supported by the decisions of Hon'ble Appellate Authorities for Advance Ruling in the case of Giriraj Renewables Private Limited - (TS 461- AAAR-2018-NT) wherein a turnkey contract involving engineering, design, procurement, supply, development, testing and commissioning is held to be composite supply of works contract under Section 2(119) of the CGST Act: Relevant portion of the said ruling is reproduced below:

Order

1. Whether supply of turnkey engineering, procurement and construction ("EPC") contract for construction of a solar power plant wherein both goods and services are supplied can be constructed to be a composite supply in terms of Section 2(30) of the Central Goods and Services Tax Act, 2017?

The Appellant poses before us to decide if engineering, procurement and construction contract falls within the definition of composite supply' as found in the GST Act. The question is answered in the positive as supply of the said turnkey EPC contract is a composite supply' u/s 2(30) of the CGST ACT, 2017. The said composite supply falls within the definition of works contract u/s 2(119) of the CGST Act, 2017.

- 1.20. In view of the above, it is just and within the four corners of law that authorities may issue a ruling to clarify that the network to be set up by the Applicant in accordance of its contract with BSNL results in creation of an immovable property and thus qualifies as a works contract as per Section 2(119) of the CGST Act and attract the assessment of GST liability accordingly.

2. ISSUE FOR DETERMINATION

If supplies contemplated as per the contract with BSNL are not treated as works contract, can these continue to qualify as composite supply? if yes what is the principle supply?

OUR SUBMISSION

WITHOUT PREJUDICE, EVEN IF THE CONTRACT WITH BSNL IS NOT TREATED AS WORKS CONTRACT, SUPPLIES TO BE MADE AS PER THE CONTRACT ARE NATURALLY BUNDLED AND QUALIFY AS A COMPOSITE SUPPLY

- 2.1. The scope of contract between Applicant and BSNL in principal involves supply of material and services for setting up of network, supply of satellite connectivity vehicle and supply of training service by imparting training services. Since supplies under the contract are to be made in conjunction with each other, these would be treated as a bundled supply and needs to be further analysed *qua* 'composite supply as defined under Section 2(30) of the CGST Act to determine taxability thereof. We have reproduced below provisions of Section 2(30) for easy reference:

Section 2 (30): "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply

- 2.2. On a bare perusal of the definition it can be inferred that a composite supply is a supply of two or more naturally bundled supplies made in conjunction with each other. We note that determinant factor to analyse a supply *qua* composite supply is whether the supplies when made together are naturally bundled or not. If the bundled supply answers affirmative, it qualifies as a composite supply.
- 2.3. In the present case we note that supply of material and services for setting up of network, supply of satellite connectivity vehicle and supply of service by imparting training services are to be made in conjunction with each other with a purpose of setting up and effective operation of network and to ensure seamless connectivity. This purpose is also



evident from the overview and scope of contract as provided in the tender document, relevant portion of which is reproduced below:

Plan and Design a secure and reliable Navy-wide voice, video and data networking environment that meets the war fighter's needs to enable information exchange across the full spectrum of current and future naval operations. This network must connect all Users at all Naval Stations, Distributed Network operation Centers, Security Operations Centers, Data centers, Near Line Data Centers, Disaster Recovery Center, Training Lab, Testing Lab, Mobile Satellite Terminals, etc. spread across the country. The Tri Services OFC backbone and Naval Access OFC network at these stations is being implemented separately and would be provided by BSNL.

- 1.1. *Overview of the Tender: - The tender is intended to setup a Next Generation Network which will support net-centric operations a key enabler for the administrative operations/ war fighting operations of the Indian Navy.*
- 2.4. Further, the supply of satellite connectivity vehicle and supply of training services also aid the objective to provide seamless connectivity through the network so set up: Relevant clauses of the contract in this regard are reproduced below:

24.2 *in addition to the primary connectivity, Transportable Satellite Terminals would be provided at all the locations to provision connectivity in case of damage to the Optic Fibre Cable. This mobile vehicle should also be provisioned with a high definition camera and associated equipment for streaming of live video.*

36.1 *The successful bidder and his OEMs directly shall provide training to 100 officials from Indian Navy in India for installation, Operation, Testing, Maintenance of System and Software. The quality and content of the training shall be so designed that the Indian Navy officials will be sufficiently exposed to all the aspects of planning, engineering; installation, testing, provisioning, operations of the networks.*

2.5. Thus, supply of material and services for setting up of network, supply of satellite connectivity vehicle and training service being made in pursuance of setting up and effective operation of the network itself, are indeed naturally bundled. As a matter of fact, it is a globally accepted practice in the turnkey contracts that a contractor undertakes wholistic responsibility of all the activities relating to the contract. In these circumstances, that all the activities required to be undertaken by the Applicant as per the contract merit treatment as a 'naturally bundled supply and thus qualifies as 'composite supply'.

2.6. The submissions in the forgoing paragraphs is also supported by the decisions of Hon'ble Appellate Authorities for Advance Ruling in the case of Giriraj Renewables Private Limited (*supra*) wherein a turnkey contract involving engineering, design, procurement, supply, development, testing and commissioning is held to naturally bundled and therefore in the nature of a composite supply under Section 2(30) of the CGST Act. Relevant portion of the said ruling is reproduced below:

39. *The contract fulfills the conditions of composite supply. There is a supply of goods and services. They are naturally bundled in the sense that the goods and services may be required to fulfill the intention of the buyer in giving the contract. The supply of goods and services are provided as a package and the different elements are integral to flow of supply...*

... Thus, from reading the entire contract as well as from the definition of composite supply, what can be easily gathered is that the buyer has given a contact for setting up solar power generating supply to the appellant and therefore it is single composite supply of goods and services and installation thereof.

40. *In order to understand the scope of a composite supply' and also to know what may be the criteria to judge a supply as a 'composite supply', the CBIC has published on e-flier on the subject: As per the E-flier, composite supply' entails the concept of 'naturally*

bundled supply and whether services are bundles in the ordinary course of business would depend upon the normal or frequent practice followed in the area of business,

- 2.7. In view of the Appellate order referred above, the activities to be undertaken by Applicant under the contract involving supply of material and services for setting up of network, supply of satellite connectivity vehicle and training service are naturally bundled, and merit being treated as a composite supply
- 2.8. It is further submitted that, a composite supply, needs to be assessed for liability to pay tax thereon based on the levy as applicable to the principal supply contained thereunder. Such principal supply is defined to mean a supply which constitutes, pre-dominant element of a composite supply. Applicant submits that, in a contingency where setting up of network is not treated as works contract, then based on the substantial quantity and value of the material required to be supplied as per the contract, supply of material constitutes as predominant element of the entire contract and therefore merits being treated as a principal supply.
- Determination of principal supply if the activity of setting up the network qualifies as works contract
- 2.9. In the present facts, supply of material and services for setting up of network, supply of training services and supply of satellite connectivity vehicles amongst all the other ancillary activities required under the contract are aimed at creation of a network and its operations.
- 2.10. in such a case, if the activity of setting up of network *per se* qualifies as 'works contract'; then such works contract constitutes the pre-dominant element of the entire contract and partakes the character of a 'principal supply'.

3. ISSUE FOR DETERMINATION

What is the rate of tax applicable to the supplies made under the contract?

OUR SUBMISSION

RATE OF TAX APPLICABLE FOR SETTING UP OF THE NETWORK

- 3.1. A composite supply of works contract is stipulated to be treated as a 'supply of services in terms of Sr. No. 6 of Schedule II of the CGST Act and thus all the supplies of material as well as services underlying such works contract is to be treated as supply of service itself. The rate of GST applicable for supply of services are notified *vide Notification No. 11/2017 - Central Tax (rate) dated June 28, 2017 (as amended from time to time)* ('rate Notification') which prescribes rate of GST on works contract services depending upon the nature of work to be carried out
- 3.2. Based on the nature of works contract services and its usage by Indian Navy, Entry no. 3(vi)(a) of rate Notification merits analysis which is reproduced below for easy reference:

SL. N O.	CHAPTER, SECTION OR HEADIN G	DESCRIPTION OF SERVICE	RATE (PERCE NT.)	CONDITION
3	Heading 9954 (Construct ion services)	<u>(vi). Services provided to the Central Government, State Government, Union Territory, a local authority, a governmental authority or a government entity by way of construction,</u>	6%	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in

	erection; commissioning, <u>installation, completion, fitting out, repair, maintenance, renovation, or alteration of -</u> <u>(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;</u> (b)	relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be
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3.3. It is submitted on a bare perusal that, services of works contract are covered by Entry no. 3(vi)(a) of rate Notification if following conditions are fulfilled:

- i. recipient must be either of Central Government, State Government, Union Territory, a local authority, a governmental authority or a government entity;
- ii. resultant civil structure or any other original works must be used predominantly for other than commerce, industry, or any other business or profession

3.4. Applicant submits that network is to be built by Applicant for BSNL which qualifies as a government entity inasmuch as 100% of its equity is held by Central Government. A copy of annual report which evidences such shareholding is enclosed as Exhibit A with this application. Further, the network to be set up by Applicant is eventually intended to be used for activities relating to defense. In such a case Applicant's activity would partake the character of 'supply of works contract services to Government entity meant predominantly for use other than for commerce, industry, or any other business or profession' and would accordingly attract GST at the rate of 12% (CGST and SGST each at the rate of 6%; or IGST at the rate of 12%).

PRAYER

In view of the submissions made above, it is most humbly prayed that Hon'ble authorities may kindly pass a ruling to clarify as follows:

- a. Bundled supply as per the contract qualify as 'Composite supply of works contract' as defined in Section 2(119) of the CGST Act
- b. The composite supply of works contract attracts GST at the rate of 12% *vide* Entry No. 3(vi)(a) of the Notification No. 11/2017-CGST (Rate) dated June 28, 2017

Additional submissions of applicant on 25.03.2019

During the personal hearing the Applicant advanced its submissions relating to applicability of Entry No. 3(vi)(a) of Notification No. 11/2017 - Central Tax (rate) dated June 28, 2017 ('Notification No. 11/2017'), to the services required to be provided by Applicant in accordance with its contract with Bharat Sanchar Nigam Limited ('BSNL').

As such Entry No. 3(vi)(a) of Notification No. 11/2017 prescribes GST at rate of 12% (CGST at the rate of 6% and SGST at the rate of 6%) for services which *inter alia* qualify as 'original works'. Accordingly, in furtherance of the submissions advanced earlier, the Applicant herein wishes to make further additional submissions in support of its contention that service to be provided by it qualify as 'original works' and is indeed covered by Entry No. 3(vi)(a) of Notification No. 11/2017. These additional submissions made in the ensuing paragraphs are being made without prejudice to each other, as well as Applicant's earlier submissions:

THE TERM 'ORIGINAL WORKS' AS DEFINED UNDER NOTIFICATION NO. 12/2017 CENTRAL TAX (RATE) POSSESSES PERSUASIVE FORCE AND CAN BE REFERRED TO DETERMINE SCOPE OF THE TERM 'ORIGINAL WORKS' AS REFERRED IN NOTIFICATION NO. 11/2017 CENTRAL TAX (RATE)

1.1. Applicant submits that the term 'original works' as referred in Entry No. 3(vi)(a) of Notification No. 11/2017 is neither defined under Notification No. 11/2017 nor under the Central Goods and Service Tax Act, 2017 ('CGST Act'). In these circumstances, the Applicant refers to the Notification No. 12/2017 Central Tax (Rate) dated June 28, 2017

('Notification No. 12/2017') which *inter alia* defines the term 'original works'. Relevant portion of the said exemption notification is reproduced below:

2. Definitions. - For the purposes of this notification, unless the context otherwise requires, - (zs) "original works" means- all new constructions;

- (i) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
- (ii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

- 1.2. On a bare perusal, Applicant submits that even though the definitions provided in paragraph 2 of the said Notification are applicable only for the purpose of the Notification No. 12/2017, these provisions bear persuasive force to determine the scope of an identical term *viz.* 'original works' as used in Entry No. 3(vi)(a) of Notification No. 11/2017.
- 1.3. Applicant submits that both the Notification, *viz.* Notification No. 11/2017 as well as Notification No. 12/2017 are issued by the Central Government in exercise of its powers conferred under CGST Act and as such contents of both these notifications form part of the same statutory framework which further supports the persuasive force of the definition of 'original works' as provided under Notification No. 12/2017 to determine the scope of 'original works' as referred in Entry No. 3(vi)(a) of Notification No. 11/2017.
- 1.4. Reference is also drawn from the ruling *Rajasthan Authority for Advance Ruling* in the Application of *Tata Projects Limited - SUCG Consortium* wherein the Authorities deliberated Applicability of Entry No. 3(vi)(a) of Notification No. 11/2017 to the activities of Applicant therein and referred to Notification No. 12/2017 to Rule that recipient of service *viz.* Jaipur Development Authority qualified as 'Governmental Authority'.

Without prejudice to the above, in absence of the definition of original works' under Notification No. 11/2017, reference may also be drawn from the definition as provided in the Service Tax (Determination of Value) Rules, 2006 ('Service tax valuation rules') as notified under Finance Act, 1994. Said definition is identically worded as the definition under Notification No. 12/2017 and thus also possesses persuasive force to determine the meaning of 'original works' as referred to in Entry No. 3(vi)(a) of Notification No. 11/2017.

- 1.6. In view of the above Applicant further submits that the term 'original works' as defined in Notification No. 12/2017 as well as Service tax valuation rules *inter alia* covers activities in the nature of erection, commissioning or installation of machinery or structure. At this juncture the Applicant refers to the scope of contract which *inter alia* necessitates the Applicant to build structures in the form of buildings, roads, etc. and undertake the activity of installing the equipment therein. Relevant portion of the contract is reproduced below for easy reference:

CLAUSES OF THE CONTRACT

Civil Infrastructure:

1. A central building would need to be built at very site to house Type 1/Type 2 Type 3 Infrastructure, Telepresence equipment, Networking Equipment, Optic fibre Equipment, Staging area and other operational and administrative buildings.

The scope of work includes civil construction, water supply, sanitary and plumbing, electrical installation, landscaping, air conditioning, roads, and firefighting and interior works All the buildings should be constructed with RCC (Reinforced Concrete Construction) Partition walls (non-load bearing walls) may be of high-quality bricks.

2. Along with the building the following additional infrastructure for the complex would also be required: -

2.1 Approach road to building within Naval Station

2.5 Underground electrical wiring will be done as per the requirement

3. In addition, a power room to house the silent generators also needs to be constructed.

- 1.7. It is therefore submitted that, activities to be undertaken by the Applicant are indeed in the nature of erection, commissioning, installation of structure, machinery etc. and is therefore duly covered by the term 'original works' as referred to under Entry No.3(vi)(a) of Notification No. 11/2017

WITHOUT PREJUDICE, IT IS AGAINST THE PRINCIPALS OF INTERPRETATION OF STATUTE TO DETERMINE THE SCOPE OF A TERM USED IN ONE STATUTE BASED ON THE DEFINITION OF THAT TERM AS PROVIDED IN OTHER STATUTE

- 1.8. Without prejudice to the persuasive force of the definition of 'original works' as contained in the Notification No. 12/2017 and Service tax valuation rules and that these form part of the same statutory framework, the Applicant further submits that even though the term 'original works' is not defined under Notification No. 11/2017 or CGST Act *per se*, the authorities are not at liberty to refer to any other statute to determine the scope of 'original works' as referred under Notification No. 11/2017.
- 1.9. In this regard, Applicant submits that, in absence of a definition within the statute, a term needs to be understood in its common parlance and in the context in which it appears. Reliance in this regard is placed in the decision of Hon'ble Supreme court in the case of *Commissioner of Sales Tax, Madhya Pradesh vs. Jaswant Singh Charan Singh* AIR 1967 SC 1454 wherein Hon'ble Supreme Court while laying its unambiguous ratio in the said case addressed contentions of the counsel for the Appellant who sought to draw reference from the Colliery Control Order, 1945 to ascertain the meaning of 'coal as used in the Madhya Pradesh General Sales Tax Act, 1958; and referred the fallacy to import meaning of a term from another statute as 'a terror in the construction of Acts of parliament'. Relevant portion of the decision is reproduced below:

9. Counsel then relied upon section 5 of the Colliery Control Order, 1945, in order to show that the Legislature there had dealt with coal in its strict and technical meaning. He also relied upon certain other statutory provisions with a view to show that the Legislature has all along been using the word 'coal' as a mineral product only. The Colliery Control Order deals with collieries and obviously, therefore, the term 'coal' there is used as mineral product. It is a well-settled principle that in construing a word in an Act caution is necessary in adopting a meaning ascribed to that word in other statutes. As Lord Loreburn stated in *Macbeth v. Chislett* (1910) A.C. 220,

"it would be a new terror in the construction of Acts of Parliament if we were required to limit a word to an unnatural sense because in some Act which is not incorporated or referred to such an interpretation is given to it for the purposes of that Act alone!"

- 1.10. Hon'ble Supreme Court noted that use of a word in another statute may have its etymological or scientific meaning attuned to that statute and thus would not be applicable to any other statute. Accordingly, it held the reference of Colliery Control Order, 1945 to ascertain the
- 1.11. meaning of coal as used in the Madhya Pradesh General Sales Tax Act, 1958, as inadmissible. Relevant portion of the decision is reproduced below:

The strict sense in which such a word is to be found in another statute may mean the etymological or scientific sense and would not in the context of another statute be applicable. From the Colliery Control Order, 1945 or the other provisions to which our attention was drawn, it would neither be possible nor safe to adopt the meaning of the word 'coal' given in those provisions for the purposes of the Act under construction. Nor can we infer that there is a Legislative policy consistently followed by the Legislature merely because the word 'coal' has been used as meaning a mineral product in the context of these statutes. It would not, therefore, be possible to discard the meaning of the word 'coal' in this statute as understood in its commercial or popular sense and to adopt its connotation from other statutes passed for different purposes or in context of different objects.

- 1.12. The Hon'ble Supreme court in the said case also analyzed at length prior jurisprudence in the case of *Ramavtar Budhaiprasad, etc. vs. Assistant Sales tax officer, Akola* (1962] 1SCR 279; *His majesty the King v. Planters Nut and Chocolate company Limited* (1951) C.L.R. 122; *Attorney General v. Winstanley* (1831] 2 D & Cl. 302.; *Grenfell v Inland Revenue Commissioner* (1876] 1 Ex-D. 242. and categorically noted that while interpreting a term in a statute, resort must be made to its popular meaning or the commercial meaning attached to it by those dealing in them. Relevant portion of the decision is reproduced below:

5. ...But it is now well-settled that while interpreting items in statutes like the Sales Tax Acts, resort should be had not to the scientific or the technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense.

...In his majesty the king v Planters Nut and Chocolate company Limited (1951) C.L.R. 122 ... It also held that It also held that what constitutes a 'fruit' or 'vegetable' within the meaning of the Excise Tax Act is what would ordinarily in matters of commerce in Canada be included therein and not what would be a botanist's conception of the subject matter. If a statute uses the ordinary words in every days use, such words should be construed according to their popular sense.

7. The result emerging from these decisions is that while construing the word 'coal' in Entry I of Part III of Schedule II, the test that would be applied is what would be the meaning which persons dealing with coal and consumers purchasing it as fuel would give to that word. A sales tax statute is being one levying a tax on goods must in the absence of a technical term or a term of science or art, be presumed to have used an ordinary term as coal according to the meaning ascribed to it in common parlance.

1.13. It is submitted that binding force in 'law of the land' as pronounced by Hon'ble Supreme court in the above referred case has only increased to a great extent as it has time and again adopted the same position of law in its subsequent decisions. We refer few of these decisions being the case of *Union of India (UOI) and Ors. Vs. R.C. Jain and Ors.*, AIR 1981 (SC) 951 wherein Hon'ble Supreme Court noted that it is not a sound rule of interpretation to refer to meaning of a term used in one statute, from the definition of that term used in another statute. Relevant portion is reproduced below:

"2. 'Local Fund' is again not defined in the General Clauses Act. Though the expression appears to have received treatment in the Fundamental Rules and the Treasury Code, we refrain from borrowing the meaning attributed to the expression in those rules as it is not a sound rule of interpretation to seek the meaning of words used in an Act, in the definition clause of other statutes. The definition of an expression in one Act must not be imported into another. "It would be a new terror in the construction of Acts of Parliament if we were required to limit a word to an unnatural sense because in some Act which is not incorporated or referred to such an interpretation is given to it for the purposes of that Act alone" (per Loreburn L.C. in *Macbeth v. Chislett* (1910) AC 220. For the same reason we refrain from borrowing upon the definition of 'Local Authority' in enactments such as the Cattle Trespass Act 1871 etc. as the High Court has done."

- 1.14. Reliance is also placed on decision of Hon'ble Supreme court in the case of *State of Uttar Pradesh and Ors vs Kores India Ltd* AIR 1977 (SC) 132 wherein Hon'ble Supreme Court owing to absence of definition within the statute, referred to the meaning of 'paper' as commonly or generally understood. Relevant portion of the said definition is reproduced for easy reference:

"7. The word 'paper' admittedly not having been defined either in the U.P. Sales Tax Act, 1948 or the Rules made thereunder, it has to be understood according to the aforesaid well established canon of construction in the sense in which persons dealing in and using the article understand it. It is, therefore, necessary to know what is paper as commonly or generally understood.

- 1.15. In view of law of the land as referred above, which has only been time and again strengthened by decisions of Hon'ble Supreme Court, Applicant submits that it is not open for the Authorities to refer to the definition of 'original works' as provided in any other statute to determine scope of original works' as referred in Notification No. 11/2017, and in absence of any definition of 'original works' under Notification No. 11/2017 as well as CGST Act, it is pertinent to refer the meaning of the term 'original works' in its common parlance.
- 1.16. Applicant therefore refers to the 'Oxford Advanced Learner's Dictionary' which explains the term 'original' to mean 'existing at the beginning' while the term 'works' is explained to mean activities or putting efforts to use materials and achieve a desired result. Relevant portion of the dictionary is reproduced below:

Original, Adj.:

1 [only before a noun) existing at the beginning of a particular period, process or activity

Works,

HAVE RESULT/EFFECT 10 (VN) to cause or produce something as a result of efforts;
USE MATERIAL 11 (VN) sth (in to sth) to make a material into a particular shape of form by pressing, stretching, hitting it, etc.

EFFORT 6 [U] the use of physical strength or mental power in order to do or make something
PRODUCT OF WORK 7 [U] a thing or things that are produced as a result of work

- 1.17. In view of the above, the term 'original works' together would refer to an activity of creating something that is being brought to existence at the first instance. Having derived the meaning of 'original works' in common parlance, Applicant refers to the scope of contract which requires it to perform activities to bring structures in the form of buildings, roads, etc. into existence. Applicant therefore submits that since its activities result in bringing a new structure into existence, it indeed qualifies as 'original works' as referred in Entry No. 3(vi)(a) of the Notification No. 11/2017.

WITHOUT PREJUDICE, ACTIVITIES UNDERTAKEN BY THE APPLICANT QUALIFY AS ORIGINAL WORKS' EVEN IF THE SCOPE OF THE TERM 'ORIGINAL WORKS IS TO BE CONSTRUED BASED ON ITS DEFINITION AS PROVIDED UNDER CPWD MANUAL.

- 1.18. The term 'original works' is also defined under the Central Public Works Department's manual ('CPWD manual') for the purpose of activities to be undertaken by Central Public Works Department which is an arm of Ministry of Housing and Urban Affairs, Government of India. As such the provisions of CPWD manual have no bearing on interpretation of the provision of Goods and Service Tax law. Without prejudice to the submissions above, even if the term 'original works' as defined under CPWD manual is referred to determine the scope of original works under Notification No. 11/2017, the activities of Applicant continue to be covered under Entry No. 3(vi)(a) of the Notification No. 11/2017.
- 1.19. The definition of 'original works' under CPWD manual *inter alia* covers in its fold 'all new constructions' and such term is not appended with any other condition. In other words, any activity that qualifies as a 'new construction' would *ipso facto* be covered by the definition of 'original works'. The term 'new construction' is not defined under any of the provisions of the Goods and Service Tax law. Accordingly, reference is made to understanding of the said term in common parlance.
- 1.20. Applicant refers to the 'Oxford Advanced Learner's Dictionary' which explains the term 'new' to mean 'not existing before' or 'recently made' while the term 'construction' is

explained to mean a process of making something. Relevant portion of the dictionary is reproduced below:

New: (adj.)

1. Not existing before; recently made, invented, introduced, etc.

Construction: (noun)

1. The process or method of building or making something,

2. The way that something has been built or made

3. A thing that has been built or made

- 1.21. Reference is also drawn from the explanation as provided in the Black's Law Dictionary, ninth edition, which explains the term 'new' to mean 'something that came recently into being'; while the term construction is explained to mean the act of combining or arranging parts or elements; relevant portion of the dictionary is reproduced below:

New, adj:

1. (Of a person, animal or thing) recently came into being

Construction, n:

1. The act of building by combining or arranging parts or elements, the thing so built

- 1.22. In view of the above, the Applicant submits that the term 'new construction' covers in its fold an act or process by which a thing or a structure is brought into existence. The use of the adjective 'new' essentially refers to such structure to be something that did not exist earlier but came into existence only as a result of the act or process referred to.

- 1.23. At this juncture the Applicant refers to the scope of contract which *inter alia* necessitates the Applicant to build structures in the form of buildings, roads, etc. and undertake the activity of installing the equipment thereunder. Accordingly, the activity to be undertaken by the Applicant indeed results in building a structure, which would come into existence only due to the process of construction and installing equipment therein would be undertaken by the Applicant.

- 1.24. As such the activity of Applicant qualifies as 'new construction', and without prejudice to the above, even if the Authorities refer to the definition of 'original work' as provided under the CPWD manual, activities of Applicant are covered thereunder.

WITHOUT PREJUDICE, USE OF THE TERM ORIGINAL WORKS INDEPENDENTLY FROM 'CIVIL STRUCTURE' IS INDICATIVE THAT ORIGINAL WORKS' COVERS IN ITS FOLD THINGS OTHER THAN 'CIVIL STRUCTURE'

- 1.25. Applicant submits that Entry No. 3(vi)(a) of Notification No. 11/2017 covers in its fold 'civil structure' as well as 'original works', relevant portion of the entry is reproduced below for easy reference:

(vi) 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 -

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

- 1.26. Applicant submits that use of the term 'original work independent of 'civil structure' is indicative that the term 'original work covers in its fold things other than 'civil structure'. In such a case, an attempt to interpret the term original works limited to construction of building, road or any other civil infrastructure leaves the term 'original work' as redundant. It is a cardinal principal of law that intention of the Legislature is primarily to be gathered from the language used and a construction which results in rejection of words as meaningless has to be avoided.

- 1.27. Reliance in this regard is placed in the decision of Hon'ble Supreme Court in the case of *Aswini Kumar Ghose v. Arabinda Bose*, AIR 1952 SC 369, wherein the then Chief Justice of India, Shri. *Patanjali Shastri* noted 'It is not a sound principal of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute'
- 1.28. In view of the above, the term 'original work' necessarily needs to be interpreted to also cover in its fold things other than civil structure. In such a case, the services of Applicant which cover in its fold activities relating to developing civil structure as also installation and commissioning of equipment to set up the network, is duly covered within the scope of the term 'original work'. Accordingly, the activities of Applicant are indeed covered by Entry No. 3(vi)(a) of the Notification No. 11/2017 and merits GST at the rate of 12% (CGST at the rate of 6% and SGST at the rate of 6%).


PRAYER

In view of the submissions made above, it is most humbly prayed that Hon'ble authorities may kindly pass a ruling to clarify as follows:

- a. The Activities to be undertaken by Applicant in accordance with its contract with BSNL attracts GST at the rate of 12% *vide* Entry No. 3(vi)(a) of the Notification No. 11/2017-CGST (Rate) dated June 28, 2017

03. CONTENTION - AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-
The application can be accepted U/s. 98(2) of MGST Act, 2017.



Particular	Remarks	HSN CODE & GST TAX RATE
CLASSIFICATION OF GOODS & SERVICES	SINGLE MODE OPTICAL FIBER	HS CODE 9001100, TAX RATE - 18%
	OPTICAL ELEMENT SILICA PREFORM	HS CODE 70140020, TAX RATE - 18%
	SUPPLY OF WORKS CONTRACT SERVICES TO GOVERNMENT ENTITY MEANT PREDOMINANTLY FOR USE OTHER THAN FOR COMMERCE, INDUSTRY OR ANY OTHER BUSINESS OR PROFESSION	GST - 12% & 18%

04. HEARING

Preliminary hearing in the matter was held on 06.02.2019, Sh. Rohit Jain, Advocate, Economic Laws Practice appeared and requested for admission of application as per contentions made in their application. Jurisdictional Officer Sh. R. B. Jogdand, Dy. Commr. of S.T.(AUR-VAT-E-003) Aurangabad division appeared and made written submissions.

The application was admitted and called for final hearing on 05.03.2019, Sh. Rohit Jain, Advocate, Economic Laws Practice appeared and made both, oral and written submissions. The Jurisdictional Officer was not present.

05. OBSERVATIONS

We have gone through the facts of the case, documents on record and submissions made by both, the applicant as well as the jurisdictional office.

The Applicant, engaged in providing goods and services, is registered under GST Laws with registration number GSTIN 27AAECS8719B12C. Their activities include manufacture of telecom products such as optic fiber optic fiber cable, etc.; laying of these optic fiber cables (either underground or hung overhead) to create a network, setting up of control centers, installation of equipment necessary to operate the network for desired purpose, commissioning of network and any other ancillary activity that may be necessary for creation of network infrastructure for its customers in telecom industry.

The Indian Navy, which intends to establish a countrywide IP/MPLS based multiprotocol converged network, Naval Communication Network (collectively referred as "network"); as core infrastructure for supporting strategic and operational needs of Navy, has entrusted the setting up of these networks to Bharat Sanchar Nigam Limited ("BSNL") who in turn has floated a tender inviting detailed bids for the same. The applicant is desirous of applying for the tender and has therefore filed the subject application raising the questions which pertain to a proposed transaction that is to be undertaken by them.

The applicant has submitted that the said network to be so created mainly involves activities like : Construction of holdings and raising of civil structures necessary to house data centers, nearline data centers, disaster recovery station, satellite data center and connectivity equipment at various Naval ports; Installing rack, stack in the buildings and other civil infrastructures necessary to house the equipment and enable operation of all the centers/ports; Assemble /install all equipment and powering it up by connecting with power supply and back-up generators; and Interconnecting and configuring all the equipment in all the data centers, nearline data centers, disaster recovery station, satellite data center, etc. with each other to enable information exchange across the network as desired.

The applicant has also submitted that BSNL has entered into a contract with them stipulating Applicant's responsibility to set up the network including the responsibility to supply all the material and services required for setting up of network, training services to operate the same and supply of satellite connectivity vehicles [like, a mobile vehicle mounted with various satellite equipment) required for ensuring seamless connectivity during breakdown of network. The applicant has further submitted that the entire project as per the contract is bifurcated into different packages and the purchase order is presently raised by BSNL with reference to cost break up of each of the material and services required to be supplied by Applicant under these packages. Such cost break-up is also for indigenous procurements relating to imports as well as domestic procurement.

The applicant is of the view that the network to be set up by them in accordance of its contract with BSNL results in creation of an immovable property and thus qualifies as a works contract as per Section 2(119) of the CGST Act. Alternatively they have also submitted that if supplies contemplated as per the contract with BSNL are not treated as works contract, in that case can these continue to qualify as composite supply? If yes what is the principle supply?

Perusal of clauses of the agreement reveals that the applicant supplies more than two taxable supplies of goods or services or combination thereof. Hence we are convinced that the various supplies as contemplated by the contract constitutes composite supply as defined u/s 2(30) which read as follow-

Section 2(30): "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

The next issue to be decided by us is whether this composite supply is 'Works Contract as defined in clause (119) of section 2 of the GST Act.

2(119)) "works contract" means 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.

Works contract is essentially a contract of service which may involve supply of goods in the execution of the said contract. However, under the GST Act 'Works Contract' has been restricted to any work undertaken for an immovable property which is a complete departure from the erstwhile VAT and Service tax regime where the provisions were applicable to both movable and immovable property.

Thus what we need to find out is whether the applicant in the subject case is dealing in any immovable property which is transferred in the execution of the contract. The salient features in respect of the subject supply includes as under :-

The tender envisages (a) construction of a central building at every site to house Type 1/Type 2/Type 3 Infrastructure, Telepresence equipment Networking Equipment Optic fibre Equipment, Staging and other operational and administrative buildings and the scope of work includes civil construction, water supply, sanitary and plumbing, electrical installation, landscaping, air conditioning, roads, and fire fighting and interior works, etc. (b) construction of approach road to buildings within Naval Station, Provision of security lights around the complex, Security cameras inside and outside building, Guard post including rest room, Automatic Barrier at main/emergency gates. Access Control Mechanism at entrances

to the building, Smoke detector, provisioning of small fire fighting appliances, PA system, (c) doing of underground electrical wiring, supply of switches, cutout, CBS and wires, cables, air conditioners, fans, tube lights, CFL, exhaust fans, call bells, lightning arrester, false roofing, wall paneling etc. (d) construction of a power room to house the silent generators, provisioning of DG sets along with control panel, etc. which are required for operation of the power plant.

Thus the present contract in our view is a works contract as it involves provision of services and goods, but it is for us to decide whether it is works contract as defined under the GST Act.

Section 3(26) of General Clauses Act, 1897 defines 'Immovable property' as follows:

"Immovable property' shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;"

It is evident from above that they are constructing civil structure to house various equipment, electrical installation, infrastructure, etc. We further find from the Project Schedule submitted by the applicant that their work involves Construction buildings for housing the equipment room, Data centers, Nearline data centers, Disaster Recovery Center, Training of Project Management Team, Supply of Equipment at a central site of bidder and segregated as per site, Staging of Equipment, Joint Testing, Delivery of Equipment to sites, Installation of equipment, Certification of Network by a Certifying Authority, Commissioning of the Network, Training for trainers and Completion of Warranty.

Thus from a reading of the terms of the contract is for a surveillance system to be put into place for which the most important items are the equipments which are requires for the system to function. This is the principal requirement and after supply of these equipments the same are required to be put to use. Hence the equipments have to be installed, connected with wires to various components etc, as submitted by the applicant and since the same cannot be kept in the open they are to be housed in buildings consisting of operational areas, etc.

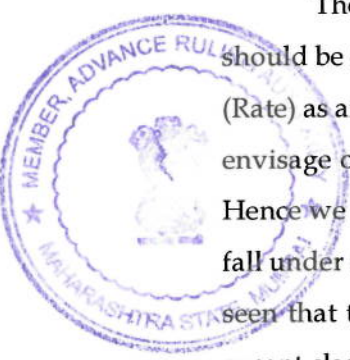
We now discuss whether the nature of the works undertaken by the applicant are in the nature of 'Original Works'. Applicant has submitted that the contracts to be undertaken by them are original works.

The term original works has not been defined in GST Act. Under the erstwhile Finance Act, 1994 original work was defined as i) *All new constructions*, ii) *All types of additions and alterations to abandoned or damaged structures on land that are required to make them workable*; iii) *Erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise. Taking into consideration the nature of contracts.* As per para 1.3.1 of CPWD Manual, 2014, "original works" means (i) all new constructions, (ii) all types of additions, alterations and/or special repairs to newly acquired assets, abandoned or damaged assets that



are required to make them workable. (iii) major replacements or remodeling of a portion of an existing structure or installation or other works, which results in a genuine increase in the life and value of the property.

We find from the proposed contracts that the tender is intended to setup a Next Generation Network which will support net-centric operations a key enabler for the administrative operations/ war fighting operations of the Indian Navy. The term 'original works' as defined in Notification No. 12/2017 covers activities in the nature of erection, commissioning or installation of machinery or structure. The scope of the subject proposed contract necessitates the Applicant to build structures in the form of buildings, roads, etc. and undertake the activity of installing the equipment therein, etc as mentioned aforesaid. However we find that the equipments which are installed by the applicant are first supplied by them. Thus it is seen that it is not a fact that the applicants are only involved in erection, commissioning or installation of machinery belonging to some other person but are installing and commissioning the equipments supplied by them. Hence primarily what they are doing is supplying goods i. e. equipments. Thus the works to be undertaken by them cannot be considered as "original work".



The applicant has made submissions to support their contention that the subject contract should be considered as falling under clause (vi) (a) of Section 5 of Notification No 11/2017 - CT (Rate) as amended. However in view of the discussions we find that the subject contract does not envisage original works and it is also seen that the contract is not in respect of a civil structure. Hence we find that the applicant's contention cannot be accepted and the said contract does not fall under clause (vi) (a) of Section 5 of Notification No 11/2017 - CT (Rate) as amended. It is also seen that the subject contract does not satisfy the descriptions mentioned in clauses (i) to (xii) except clause (ii) of Section 5 of Notification No 11/2017 - CT (Rate) as amended.

We now reproduce clause (ii) of Section 5 of Notification No 11/2017 - CT (Rate) as amended as under:-

(ii) *composite supply of works contract as defined in clause 119 of section 2 of the Central Goods and Services Tax Act, 2017.*

From the discussions made above we find that the subject work to be undertaken by the applicant is a composite supply of works contract, since it includes supply of both, goods and services and does not fall in any of the clauses (i) to (xii) except clause (ii) of Section 5 of Notification No 11/2017 - CT (Rate) as amended. Hence in our opinion the subject contract is taxable and the tax rate to be applied is 18% GST.

05. In view of the extensive deliberations as held hereinabove, we pass an order as follows :

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA-106/2018-19/B-

34

Mumbai, dt.

28/03/2019

For reasons as discussed in the body of the order, the questions are answered thus -

Question :- Whether the supply of goods or services for 'setting up of network' would qualify as 'works contract' as defined in Section 2(119) of the CGST Act?

Answer :- The supply of goods or services for 'setting up of network' would qualify as a Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017.

Question :- If supplies contemplated as per the contract with BSNL are not treated as works contract, can these continue to qualify as composite supply? if yes what is the principle supply?

Answer :- Not answered in view of answer to Question No. 1 above.

Question :- What is the rate of tax applicable to the supplies made under the contract?

Answer :- The rate of tax applicable to the supplies will be 18% GST.



—sd—
B. TIMOTHY
(MEMBER)

—sd—
B. V. BORHADE
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Jurisdictional Commissioner of Central Tax, Churchgate Mumbai
5. Joint commissioner of State Tax, Mahavikas for Website.

CERTIFIED TRUE COPY

MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai - 400021.