

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, 8th floor, H wing, new building, 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		URD
Legal Name of Applicant		Technip UK Limited
Registered Address/Address provided while obtaining user id		One St Paul's Churchyard-London- EC4M 8AP-UK Juju Mathew Unit 602, Wing A and Unit Nos. 601 & 602, Wing B-1, Boomerang, Chandivli Farm Road, Near Chandivli Studio, Andheri East, Mumbai- 400072.
Details of application		GST-ARA, Application No. 77 Dated 18.09.2018
Concerned officer		Commissioner of CGST/CX, Mumbai East Commisionerate, Mumbai Zone.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Service provision, Works Contract
B	Description (in brief)	Tenders issued by ONGC normally relates to erection, commissioning and installation of plant and machinery for ONGC. In terms of the NIT, bids are invited for overall responsibility of entire project.
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 (v) determination of the liability to pay tax on any goods or services or both
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 M/s. Technip UK Limited, seeking an advance ruling in respect of the following questions.

- (a) Whether the terms of the NIT, in particular its self-styled description as 'lump sum turnkey' contract, renders it as a 'works contract as understood under the GST law?
- (b) In the event the answer to (a) is in the affirmative, does it imply that each and every supply made to ONGC under the contract would be subject to rate of tax as applicable to a 'works contract'?
- (c) In the event the answer to (a) is in the affirmative;

- (A) Will the position change if the members of the consortium raise distinct invoices and ONGC also pays directly to the members?
- (B) Can it be said that in such circumstances the individual invoices will not be affected by the overall description as a 'works contract'?
- (d) In the event the answer to (a) is in the affirmative and only one single rate of tax applies to the entire contract, can the members of the claim rate of tax in terms of Notification No. 39/2017 - Integrated Tax (Rate) dated 13.10.2017?
- (e) In the given facts of the instant application, can the member of the consortium supplying goods alone claim concessional rate of tax of 5% in terms of Notification No. 3/2017-Integrated Tax (Rate) dated 28.06.2017?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

02. FACTS AND CONTENTION - AS PER THE APPLICANT

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

STATEMENT OF FACTS

The relevant facts leading to the application are set out as under:

1. We, M/s Technip UK Limited (hereinafter referred as 'we' / 'Technip' or 'Applicant') are making this application under the provisions of Section 97 of the Maharashtra Goods and Service Tax Act, 2017 (MGST Act) read with (i) Section 97 of the Central Goods and Services Tax Act, 2017 (CGST Act) and (ii) Section 20 of the Integrated Goods and Services Tax Act, 2017 (IGST Act).


FACTUAL BACKGROUND

2. The present application has been filed before this Hon'ble Authority to seek clarity on the applicable rate of tax on the transaction proposed to be executed in relation to tenders issued by the Oil and Natural Gas Corporation of India Ltd. ('ONGC') for executing erection, commissioning and installation work on turnkey basis for petroleum operations.
3. In this regard, a sample Notice Inviting Tender ('NIT') issued by ONGC is enclosed with this application as **ANNEXURE - 3**. Further, the 'General Conditions of Contract (GCC)' appended to the NIT is also enclosed herewith as **ANNEXURE - 4**. Bid Evaluation Criteria released by ONGC is enclosed as **ANNEXURE - 5**.
4. For ease of reference of this Hon'ble Authority, in the following paragraphs the Applicant is herein summarizing the relevant clauses and also reproducing appropriate clauses of the NIT and BEC in so far as it is relevant for this application.
5. Tenders issued by ONGC normally relates to erection, commissioning and installation of plant and machinery for ONGC. In terms of the NIT, bids are invited for overall responsibility of entire project. Further, as per the NIT and its accompanying Annexures, the bidders are required to give an 'overall lump sum price' towards carrying out the obligations under the NIT. A detailed breakup of the price is also required by the ONGC.
6. It is also pertinent to point out that the NIT permits a consortium of members to bid as well. In this regard, the following may be noted:
 - i) With respect to certain tenders, the Applicant would like to participate not individually but as part of a consortium. This consortium would comprise of the Applicant and another member, and there will be a joint bid.
 - ii) In the above scenario, the members of the consortium will separately supply the goods and services i.e. one member will supply the goods and other member will supply the service.
 - iii) In terms of the NIT, the members of the consortium are required to (i) make separate supplies to the ONGC and (ii) can raise invoices upon ONGC directly for their respective supplies.

- iv) These invoices will be separately and directly paid by the ONGC to the respective member of the consortium.
7. In the aforesaid background a question has arisen as to the applicable rate of GST to be charged on the respective invoices of the members of the consortium which would be raised upon ONGC. The question has arisen *inter alia* in view of the characterization of the NIT in consideration. The precise issue is whether in the facts of the NIT described above and taking into account its relevant clauses the NIT (when it is eventually executed into a contract) render it into (i) a 'works contract under GST law taking into consideration the supplies of both the members of the consortium conjointly, or (ii) the supplies made by the respective members would be treated as distinct supplies for GST purposes.
8. The reason for this confusion *inter alia* stems from the provisions of the GST laws which are discussed below.

RELEVANT PROVISIONS OF THE 'GST' LAW

9. The Applicant understands that certain provisions of the GST legislations may be relevant, though not conclusive, in respect of the inquiry at hand. These are discussed in conjunction with the relevant factual aspect of the NIT in the following paragraphs below.
10. The definition of 'works contract under CGST Act, which corresponds to the definition under the MGST Act, is to the following effect;
 "(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;"
11. The above definition may be relevant to determine whether the lump-sum-turnkey contract that will be executed by ONGC will be a works contract or not.
12. Schedule II to CGST Act, deems 'works contract as defined in Section 2(119) as a 'service'. We further understand that **Notification No. 39/2017 - Integrated Tax (Rate) dated 13.10.2017** 'offshore works contract services' for oil and gas exploration and production attract a GST rate of 12 percent. As per this Notification, 'onshore works contract services' for oil and gas exploration and production attract a GST rate of 18 percent. Entry no 3(viii) and 3(ix) of the Notification are to this effect.
13. Besides the above, it is also relevant to point out that **Notification No. 3/2017 Integrated Tax (Rate) dated 28.06.2017** may also be applicable in the present case. The said Notification provides for a concessional rate of GST i.e. 5% on specified goods supplied in relation to petroleum projects. Relevant entry of the said Notification is extracted below:



S. No	Chapter/Heading/Subheading/Tariff item	Description of Goods	Rate
1	Any Chapter	Goods specified in the List annexed to this Table required in connection with: (1) Petroleum operations undertaken under petroleum exploration licenses or mining leases, granted by the Government of India or any State Government to the Oil and Natural Gas Corporation or Oil India Limited on nomination basis, or (2) Petroleum operations undertaken under specified contracts, or (3) Petroleum operations undertaken under specified contracts under the New Exploration Licensing Policy, or (4) Petroleum operations undertaken under specified contracts under the Marginal Field Policy (MFP), or (5) Coal bed methane operations undertaken under specified contracts under the Coal Bed Methane Policy	5%

14. The Applicant is desirous of knowing whether such contract shall be considered as a works contract for the purpose of GST and accordingly the rate of tax applicable on such work contract shall apply on each and every invoice raised by them. Alternatively, whether the members of the consortium supplying goods alone can claim concessional rate of tax of 5% in terms of Notification No. 3/2017-Integrated Tax (Rate) dated 28.06.2017.

15. It is in the aforesaid background, that the instant application is being filed for a ruling from this Hon'ble Authority so as to ascertain the rate of tax applicable for supplies under the terms of the said proposed contract. It is requested that this Hon'ble Authority may issue its ruling (/s) on the following questions:
- Whether the terms of the NIT, in particular its self-styled description as 'lump sum turnkey contract, renders it as a 'works contract as understood under the GST law?
 - In the event the answer to (a) is in the affirmative, does it imply that each and every supply made to ONGC under the contract would be subject to rate of tax as applicable to a 'works contract?
 - In the event the answer to (a) is in the affirmative;
 - Will the position change if the members of the consortium raise distinct invoices and ONGC also pays directly to the members?
 - Can it be said that in such circumstances the individual invoices will not be affected by the overall description as a 'works contract'?
 - In the event the answer to (a) is in the affirmative and only one single rate of tax applies to the entire contract, can the members of the claim rate of tax in terms of Notification No. 39/2017 - Integrated Tax (Rate) dated 13.10.2017 ?
 - In the given facts of the instant application, can the member of the consortium 16. Supplying goods alone claim concessional rate of tax of 5% in terms of Notification No. 3/2017-Integrated Tax (Rate) dated 28.06.2017?
16. It is submitted that the instant application is maintainable. The present Applicant is an eligible applicant as it is desirous of obtaining registration under the CGST Act. The said application relates to a question specified in terms of clause (e) of Section 97 (2) of the MGST Act / CGST Act read with Section 20 of the IGST Act. The Applicant further submits that there is no bar under proviso to Section 98(2) of the MGST Act / CGST Act applicable to the instant application as the question involved in the application is neither pending nor decided in any proceedings in the case of an applicant under any of the provisions of this Act. It is therefore prayed that the instant application may be decided on merits

APPLICANT'S INTERPRETATION OF LAW

- The Applicant submits that it is not clear on the applicable rate of tax in respect of the supplies which will be made to the ONGC in the factual position of the present case as described above.
- The Applicant understands the following;
 - ▶ An agreement which qualifies as a works contract in terms of Section 2(119) of the MGST Act / CGST Act is necessarily a 'composite supply in terms of entry 6(a) of the Schedule II to the MGST Act / CGST Act.
 - ▶ The liability of composite supply has to be determined in terms of Section 8(a) of the MGST Act / CGST Act.
 - ▶ Works Contract is accordingly considered a 'supply of service in terms of this entry 6(a) of the Schedule II to the MGST Act / CGST Act.
 - ▶ Notification No. 39/2017 - Integrated Tax (Rate) dated 13.10.2017 specifies the rate of tax on supply of works contract service.
- At the outset the Applicant requests this Hon'ble Authority to confirm if the aforesaid understanding of the Applicant reflects correct appreciation of legal position.
- In view of the aforesaid, it is prayed that this Hon'ble Authority be pleased to issue the ruling clarifying the legal position generally as also opine upon the specific questions raised by the Applicant as set out above.
- It is further prayed that this Hon'ble Authority also be pleased to;
 - Grant personal hearing to the Applicant along with an authorized **representative**.
 - Permit the Applicant to file further / additional submissions in these proceedings; and (c) Pass such other order this Hon'ble Authority may feel appropriate in the factual circumstances in these proceedings, and oblige.

03. CONTENTION - AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-
It is submitted that, Issue on which advance ruling is required:

M/s. Technip UK Limited, Unit No.602, Wing-A, and Unit Nos.601 & 602, Wing-B-1, Boomerang, Chandivli Farm Road, Near Chandivli Farm Road, Near Chandivli Studio, Andheri (East) Mumbai 400072.(GSTIN:

Un registered) (here in after referred to as 'the applicant') has filed above application under Section 98 of the Central Goods and Service Tax Act, 2017 read with Rule 104 (1) of the CGST Rules, 2017 seeking advance ruling on:

- (a) Whether the terms of the NIT, particular its self-styled description as 'lump sum turnkey' contract, renders it as a 'works contract' as understood under the GST law?
- (b) In the event the answer to (a) is in the affirmative, does it imply that each and every supply made to ONGC under the contract would be subject to rate of tax as applicable to a 'works contract'?
- (c) In the event the answer to (a) is in the affirmative;
 - (A) Will the position change if the members of the consortium raise distinct invoices and ONGC also pays directly to the members?
 - (B) Can it be said that in such circumstances the individual invoices will not be affected by the overall description as a 'works contract'?
- (d) In the event the answer to (a) is in the affirmative and only one single rate of tax applies to the entire contract, can the members of the claim rate of tax in terms of Notification No.39/2017 - Integrated Tax (Rate) dated 13.10.2017?
- (e) In the given facts of the instant application, can the member of the consortium supplying goods alone claim concessional rate of tax of 5% in terms of Notification No.3/2017-Integrated Tax (Rate) dated 28.06.2017?

2. In point No.15 of the application regarding statement of relevant facts having a bearing on the question(s) raised, the applicant has stated the following are as under:

M/s. Technip UK Limited (the applicant), registered address at One St Paul's Churchyard, London, EC4M 8AP-UK and address for correspondence at Unit No.602, Wing-A, and Unit Nos.601 & 602, Wing-B-1, Boomerang, Chandivli Farm Road, Near Chandivli Farm Road, Near Chandivli Studio, Andheri (East) Mumbai 400072, Maharashtra, India. The Applicant Company seek to clarity on the applicable rate of tax on the transaction proposed to be executed in relation to tenders issued by the oil and Natural Gas Corporation of India Ltd. ('ONGC') for executing erection, commissioning and installation *work* on turnkey basis for petroleum operations.

Further, in this regard, the applicant has submitted a sample Notice Inviting Tender (NIT) issued by ONGC (Annexure-3), the 'General Conditions of Contract ("GCC") (Annexure-4) appended to the NIT and Bid Evaluation Criteria (Annexure-5) released by ONGC

The Tenders issued by ONGC normally relates to erection, commissioning, and installation of plant and machinery for ONGC. In terms of the NIT, bids are invited for overall responsibility of entire project. Further, as per the NIT and its accompanying Annexures, the bidders are required to give an overall lump-sum price' towards carrying out the obligations under the NIT. A detailed break-up of the price is also required by the ONGC.

The NIT permits a consortium of members to bid as well. In this regard, the following may be noted:

- i) With respect to certain tenders, the applicant would like to participate not individually but as part of consortium. This consortium would comprise of the applicant and another member, and there will be a joint bid.
- ii) in the above scenario, the members of the consortium will separately supply the goods and services i.e., one member will supply the goods and other member will supply the service.
- iii) in terms of the NIT, the members of the consortium are required to (1) make separate supplies to the ONGC and (ii) can raise invoices upon ONGC directly for their respective supplies.
- iv) These invoices will be separately and directly paid by the ONGC to the respective member of the consortium.

In the aforesaid background a question has arisen as to the applicable rate of GST to be charged on the respective invoices of the members of the consortium which would be raised upon ONGC. The question has arisen inter alia in view of the characterisation of the NIT in consideration. The precise issue is whether in the facts of the NIT described above and taking into account its relevant clauses the NIT (when it is eventually executed into a contract) render it into (i) a 'works contract under GST law taking into consideration the supplies of both the members of the consortium conjointly, or (ii) the supplies made by the respective members would be treated as distinct supplies for GST purposes. The reasons for this confusion are discussed below.

As per Section 2(119) of CGST Act, 2017; works contract is defined as:

"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

The above definition may be relevant to determine whether the lump-sum-turn-key contract that will be executed by ONGC will be a works contract or not.

Schedule 11 to CGST Act, deems 'works contract' as defined in Section 2(119) as a 'service'. Further, applicant understands that as per Notification No.39/2017- Integrated Tax (Rate) dated 13.10.2017, "offshore works contract services" for oil and gas exploration and production attract a GST rate of 12 percent. As per this Notification, 'Onshore works contract services' for oil and gas exploration and production attract a GST rate of 18 percent. Entry No.3 (viii) and 3(ix) of the Notification are to this effect.

Besides the above, it is also relevant to point that Notification No.3/2017-Integrated Tax (Rate) dated 28.06.2017 may also be applicable in the present case. The said Notification provides for a concessional rate of GST i.e.5% on specified goods supplied in relation to petroleum projects.

The applicant is desirous of knowing whether such contract shall be considered as a works contract for the purpose of GST and accordingly the rate of tax applicable on such work contract shall apply on each and every invoice raised by them. Alternatively, whether the members of the consortium supplying goods alone can claim concessional rate of tax of 5% in terms of Notification No.3/2017-Integrated Tax (Rate) dated 28.06.2017.

3. In point No.16 of the application regarding statement containing the applicant's interpretation of law and/or facts, as the case may be, the applicant's view point and submissions on issues on which the advance ruling is sought, the applicant has stated the following are as under:

1. The applicant submits that it is not clear on the applicable rate of tax in respect of the supplies which will be made to the ONGC in the factual position of the present case as described above.

2. The applicant understands the following:

- An agreement which qualifies as a works contract in terms of Section 2(119) of the MGST Act/CGST Act is necessarily a 'composite supply in terms of entry 6(a) of the Schedule. II to the MGST Act/CGST Act.

- The liability of composite supply has to be determined in terms of Section 8(a) of the MGST Act/CGST Act.

Works Contract is accordingly considered a 'supply of service in terms of this entry 6(a) of the Schedule II to the MGST Act/CGST Act.

Notification No.39/2017-Integrated Tax (Rate) dated 13.10.2017 specifies the rate of tax on supply of works contract service.

FINDINGS

4. M/s: Technip UK Limited (the applicant), registered address at One St Paul's Churchyard, London, ECAM SAP-UK and address for correspondence at Unit No.602, Wing-A, and Unit Nos.601 & 602, Wing-B-1, Boomerang, Chandivli Farm Road, Near Chandivli Farm Road, Near Chandivli Studio, Andheri (East) Mumbai 400072; Maharashtra, India. Therefore, the applicant does not appear to have any "fixed establishment" in India. As per Section 95(C) of CGST Act, 2017, M/s.Technip UK Limited does not satisfy the scope of the term 'Applicant' as they are neither registered with the department nor they have expressed any desire to take registration. Therefore, the application merits rejection on this account only.

Further, the basic issue to be decided in the application is to

(a) Whether the terms of the NIT, particular its self-styled description as lump sum turn key' contract, renders it as a 'works contract' as understood under the GST law?

(b) In the event the answer to (a) is in the affirmative, does it imply that each and every supply made to ONGC under the contract would be subject to rate of tax as applicable to a 'works contract'?

(c) In the event the answer to (a) is in the affirmative;

(A) Will the position change if the members of the consortium raise distinct invoices and ONGC also pays directly to the members?

(B) Can it be said that in such circumstances the individual invoices will not be affected by the overall description as a 'works contract'?

(d) In the event the answer to (a) is in the affirmative and only one single rate of tax applies to the entire contract, can the members of the claim rate of tax in terms of Notification No.39/2017 - Integrated Tax (Rate) dated 13.10.2017?



(e) In the given facts of the instant application, can the member of the consortium supplying goods alone claim concessional rate of tax of 5% in terms of Notification No.3/2017-Integrated Tax (Rate) dated 28.06.2017?

In this regard, based on the statements of facts forwarded, the para-wise comments to the queries raised by M/s Technip UK Ltd., are as follows:

i) As per Section 2(119) of CGST Act, 2017, works contract is defined as:

"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

Therefore, it can be seen that a contract wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of the contract for the above specified activities/purposes (i.e. building, construction, fabrication etc.) of any immovable property. Thus, the contract has to be in respect of any immovable property involving transfer of goods in its execution for these specified purposes.

Also, as per para 6 of Schedule-II to the CGST Act, 2017, the following composite supplies shall be treated as a supply of service, namely: -

- a) Works contract as defined in clause (119) of Section 2; and
- b)

Therefore, supply of Works Contract is necessarily a Composite supply to be treated as supply of service.

Further, as per clause 30 of Section 2 of CGST Act, 2017, *"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.*

Thus, the composite supply has to be provided by a taxable person. As per clause 107 of Section 2 CGST Act, 2017, *"taxable person" means a person who is registered or liable to be registered under Section 22 or Section 24.* Further, as per clause 84 of Section of the CGST Act, 2017, "person" includes -

- a) An individual;
- b) A Hindu Undivided family;
- c) A company;
- d) A firm;
- e) A Limited Liability Partnership;
- f) An association of persons or a body of individuals, whether incorporated or not, in India or outside India;
- g) Any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause 45 of Section 2 of the Companies Act, 2013 (1 of 2013);
- h) Any body corporate incorporated by or under the laws of a country outside India;
- i) A co-operative society registered under any law relating to co-operative societies;
- j) A local authority;
- k) Central Government or a State Government;
- l) Society as defined under the Societies Registration Act, 1860 (21 of 1860)
- m) Trust; and
- n) Every artificial juridical person, not falling within any of the above

The applicant, in their application has stated that they would like to participate not individually but as a part of consortium. This consortium would comprise of the applicant another member, and there would be a joint bid.

Thus, from the above, the consortium may fall under the category of person as per Section 2(84) of CGST Act, 2017 as an "association of persons" and may be taxable as such. Therefore, to be able to determine, whether the supply under the said contract would be a Composite Supply, or otherwise, it would be important to decide whether the Consortium would fall under the category of Association of Persons and taxable person as such. However, in order to decide the status of Consortium as an Association of Persons or otherwise, it shall be important to understand the contractual arrangements amongst the participating members of the consortium, the existence of some common management, the arrangement of sharing

profit, the composition of the consortium, roles of the applicant and members of the consortium in the course of the supply etc. However, nothing in respect of these has been provided by the applicant.

Also, as per the annexures, provided by the applicant, the Scope of Work Summary paragraph states that the scope of Work is the Engineering, Procurement, Construction, Installation and Commissioning (EPCIC), of the KG DWN 98-2 Development Subsea Facilities, comprising of:

"i) Subsea Production System (SPS), including Subsea Production Tree Systems (Oil and Gas production trees), Water Injection Tree: System, Infield Manifold System (oil and gas production manifolds), Subsea Riser Base Manifold System (gas lift and water injection), SSIV System (Oil and Gas production flowlines, gas lift line; and gas export pipelines), Subsea Connection System, Subsea Tooling System, Subsea Control System (topsides, onshore and subsea installed components), and ancillary systems.

ii) Subsea Umbilical Risers, and Flowlines (SURF), including Dynamic and Static Umbilical System (production controls and SS/V) and associated UTAS; Production (oil and gas production), Water Injection, and Gas Lift Risers and Flowlines, Gas Export Risers and Pipelines, Flowline and Pipeline Jumpers, and ancillary systems.

iii) The Scope of WORK also includes Life of Field Support (LOS), containing services and provision of a Local Service Support Base, located in Kakinada, India.

iv) Equipment testing, System integration Testing (SIT), pre-commissioning, commissioning, and start-up support are also contained in the scope of Work.

v) Quantity for each item can be found in Pricing Format document provided by COMPANY."

Further, as already stated above, to be able to consider a contract as Works Contract as defined under clause 119 of Section 2 of CGST Act, 2017, the contract has to be in respect of any immovable property involving transfer of goods in its execution. The term "immovable property" has not been defined under the CGST Act, 2017 and the Rules made thereunder. However, reference can be had to Section 3(26) of General Clauses Act, 1897, which defines "immovable property" as follows:

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

As per Section 3 of the Transfer of Property Act, 1882, "attached to the earth" means

- (a) rooted in the earth, as in the case of trees and shrubs;
- (b) imbedded in the earth, as in the case of walls or buildings; or
- (c) attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached:

Therefore, to be able to conclude whether the contract is a Works Contract or otherwise, it is important to determine whether the activities as per the contract would be related to immovable property or not which itself depends upon the meaning as defined under Section 3(26) of the General Clauses Act, 1897 to include things attached to the earth (as per the meaning assigned under Section 3 of the Transfer of Property Act, 1882) or permanently fastened to anything attached to the earth.

However, from the annexures, including sample Notice Inviting Tender (NIT) and General Clauses and Conditions (GCC) provided; the exact description about the above work i.e. SPS, SURF, LOFS etc is not found and therefore, it cannot be concluded as to whether the above described work (as per the scope of Work Summary provided) is that of immovable property or not. The same is not coming out of the scope of Work. Therefore, the Hon'ble authority may like to direct the applicant to provide detailed description of scope of work so as to enable to determine whether the contract is that of immovable property or otherwise.

In view of the above, this office requests the Hon'ble authority to direct the applicant to provide additional details regarding the scope of work as above so as to offer comments on whether

- (a) the said 'Lump Sum Turn Key' Contract would render it as a 'works contract' under the provisions of CGST Act, 2017..
- (b) This question stems from question a). Therefore, if on providing relevant information the contract is found to be a Works Contract and the subject consortium is found to be meriting as 'Association of Persons' then, the supplies made under the contract shall attract the rate applicable to Works Contract Supply since the Works Contract, which is a composite supply, is to be treated as a supply of services in terms of Schedule II to the CGST Act, 2017.

- (c) This question also stems from question a). However, it has not been provided in the application what are the supplies to be made by the individual members of the consortium; whether the supply can be identified as composite supply or otherwise

Therefore, no comments can be offered as above,

As per Section 7(1) of CGST Act, 2017, the expression "supply" includes, inter alia, *all forms of supply of goods or services or both such as sale, transfer, barter, exchange etc. made or agreed to be made for a consideration by a person in the course or furtherance of business.* Further, as per Section 8(1) of CGST Act, read with Section 5(1) of GST Act, 2017, *there shall be levied a tax on intra-state for inter-state) supplies of goods or services or both at specified rates.*

Therefore, if on providing relevant information the contract is found to be a Works Contract and the subject consortium found to be meriting as 'Association of Persons', (involving transfer of goods as well) then it will be treated as a supply of services in terms of Schedule - I to CGST Act, 2017, even if the members of the consortium raise distinct invoices and ONGC also pays directly to the member, the supply shall be that of Works Contract alone and tax shall be levied on supply of Works Contract. Individual members' invoices, however, may make supply of goods and services independently of the contract, however, they shall be required to differentiate in their invoices, whether the supply is towards the fulfilment of the subject work contract and they should also provide a mechanism for tracking the quantification of such supplies towards the fulfilment of the subject work contract. The said supplies under the work contract should clearly be distinguishable from any other individual supplies:

- (d) This question also stems from question a). Therefore, if on providing relevant information the Contract is found to be a Work Contract and the subject consortium found to be meriting as 'Association of Persons', only then members of Consortium (AOP) will be eligible for benefit of Notification No.39/2017 subject to the fulfilment of the Criteria and conditions laid down in the said notification. The position shall not change even if the members of the consortium raise distinct invoices, the supply shall remain that of Works Contract and the rate of tax in terms of notification no. 39/2017- Integrated Tax(Rate) dated 13.10.2017 will apply.

- (e) if on providing relevant information the Contract is found to be a Work Contract, member of the Consortium, supplying goods alone, cannot claim concessional rate of tax of 5% in terms of Notification No. 3/2017- Integrated Tax(Rate) dated 28.06.2017 since the supply of such goods would be the part of supplying Works Contract which is a service and the notification No. 3/2017 -integrated Tax (Rate) applies for the supply of goods alone and the rate as applicable to Works Contract supply shall apply.

PRAYER

Considering the facts discussed in foregoing paragraphs, the question framed by the applicant in Point No. 14,

(a) Whether the terms of the NIT, particular its self-styled description as 'lump sum turn key contract' renders it as a 'works contract' as understood under the GST law? The answer is this office prays Hon'ble Authority to direct the applicant to provide additional relevant details of the scope of work and the contractual framework of the members of the consortium detailing its composition and contractual arrangements amongst the participating members of the consortium, the existence of some common management, the arrangement of sharing profit, the composition of the consortium, roles of the applicant and members of the consortium in the course of the supply etc. as stated in para 4 above.

(b) In the event the answer to (a) is in the affirmative, does it imply that each and every supply made to ONGC under the contract would be subject to rate of tax as applicable to a 'works contract'? The answer is, This question stems from question (a). Therefore, if on providing relevant information the contract is found to be a Works Contract and the subject consortium is found to be meriting as 'Association of Persons' then, the supplies made under the contract shall attract the rate applicable to Works Contract Supply since the Works Contract, which is a composite supply, is to be treated as a supply of services in terms of Schedule II to the CGST Act, 2017. Therefore, this office prays Hon'ble Authority to direct the applicant to provide additional relevant details of the scope of work and the contractual framework of the members of the consortium detailing its composition and contractual arrangements amongst the participating members of the consortium, the existence of some common management, the arrangement of sharing profit, the composition of the consortium, roles of the applicant and members of the consortium in the course of the supply etc.: as stated in para 4 above,

(C) In the event the answer to (a) is in the affirmative;

- (A) Will the position change if the members of the consortium raise distinct invoices and ONGC also pays directly to the members?
- (B) Can it be said that in such circumstances the individual invoices will not be affected by the overall description as a 'works contract'?

The answer is, this question stems from question a).

Therefore, if on providing relevant information the contract is found to be a Works Contract and the subject consortium found to be meriting as 'Association of Persons', (involving transfer of goods as well) then it will be treated as a supply of services in terms of Schedule - I to CGST Act, 2017, even if the members of the consortium raise distinct invoices and ONGC also pays directly to the member, the supply shall be that of Works Contract alone and tax shall be levied on supply of Works Contract. Individual members' invoices, however, may make supply of goods and services independently of the contract, however, they shall be required to differentiate in their invoices, whether the supply is towards the fulfilment of the subject work contract and they should also provide a mechanism for tracking the quantification of such supplies towards the fulfilment of the subject work contract. The said supplies under the work contract should clearly be distinguishable from any other individual supplies,

Therefore, this office prays Hon'ble Authority to direct the applicant to provide additional relevant details of the scope of work and the contractual framework of the members of the consortium, detailing its composition and contractual arrangements amongst the participating members of the consortium, the existence of some common management, the arrangement of sharing profit, the composition of the consortium, roles of the applicant and members of the consortium in the course of the supply etc. as stated in para 4 above.

- (d) In the event the answer to (a) is in the affirmative and only one single rate of tax applies to the entire contract, can the members of the claim rate of tax in terms of Notification No.39/2017 - Integrated Tax (Rate) dated 13.10.2017? The answer is, This question stems from question a). Therefore, if on providing relevant information the Contract if found to be a Work Contract and the subject consortium found to be meriting as 'Association of Persons', only then members of Consortium (AOP) will be eligible for benefit of Notification No.39/2017 subject to the fulfilment of the Criteria and conditions laid down in the said notification. The position shall not change even if the members of the consortium raise distinct invoices, the supply shall remain that of Works Contract and the rate of tax in terms of notification no. 39/2017- Integrated Tax(Rate) dated 13.10.2017 will apply.

Therefore, this office prays Hon'ble. Authority to direct the applicant to provide additional relevant details of the scope of work and the contractual framework of the members of the consortium detailing its composition and contractual arrangements amongst the participating members of the consortium, the existence of some common management, the arrangement of sharing profit, the composition of the consortium, roles of the applicant and members of the consortium in the course of the supply etc. as stated in para 4 above.

- (e) In the given facts of the instant application, can the member of the consortium supplying goods alone claim concessional rate of tax of 5% in terms of Notification No.3/2017 Integrated Tax (Rate) dated 28.06.2017? The answer is, If on providing relevant information the Contract if found to be a Work Contract, member of the Consortium, supplying goods alone, **cannot claim concessional rate of tax of 5% in terms of Notification No. 3/2017- Integrated Tax(Rate) dated 28.06.2017** since the supply of such goods **would be the part of supplying Works Contract** which is a service and the notification No. 3/2017 -Integrated Tax (Rate) applies for the supply of goods alone and the rate as applicable to Works Contract supply shall apply. Hence, this office prays Hon'ble Authority to direct the applicant to provide additional relevant details of the scope of work and the contractual framework of the members of the consortium detailing its composition and contractual arrangements amongst the participating members of the consortium, the existence of some common management, the arrangement of sharing profit, the composition of the consortium, roles of the applicant and members of the consortium in the course of the supply etc. as stated in para 4 above to arrive at proper conclusion.

Further, M/s. Technip UK Limited (the applicant) has registered address at One St Paul's Churchyard, London, EC4M 8AP-UK and address for correspondence at Unit No.602, Wing-A, and Unit Nos.601 & 602, Wing-B-1, Boomerang, Chandivli Farm Road, Near Chandivli Farm Road, Near Chandivli Studio, Andheri (East) Mumbai 400072, Maharashtra, India. Therefore,

M/s. Technip UK Limited does not appear to have any "fixed establishment" in India. As per Section 95(c) of CGST Act, 2017, M/s. Technip UK Limited does not satisfy the scope of the term 'Applicant' as they are neither registered with the department nor they have expressed any desire to take registration. Therefore, the application merits rejection on this account only.

The answers of all the questions raised by the applicant depend on the complete facts about the nature of their consortium being an Association of Persons or not and the nature of supply to ONGC being works contract or not. Any answer to these questions will result into varied implications in the form of applicability of a higher rate of 12% on goods against 5% if the contract qualifies as Works Contract. However, the same fact, i.e. if the contract is a works contract, would result into applicability of lower rate of 12% on services which otherwise are chargeable @ 18%. Therefore, the providing of complete facts on both accounts is very important in this case.

Additional Required submission is made by the applicant on 23.01.2019.

Applicant submitted that, this is in reference to hearing dated 09 January 2019 before your good self in the captioned matter. During the hearing, we were directed to submit the due dates of invitation to tender and the date of award of the tender.

In response to this query, we would like to state that the bid was submitted by us on 19 February 2018. As regards the second part of the query, we are enclosing as Annexure - 1 the printout of ONGC website in respect of this tender which clearly indicates that the Contract was awarded on 01 October 2018. This is clearly after the filing of the present application before this Hon'ble Authority on 18 September 2018.

In our respectful submission, since the award of contract is subsequent to our application, as on the date of filing of the application it was indeed a proposed transaction. In this respect would like to point out the decision of the Hon'ble Delhi High Court in the case of Netapp B.V. v. Authority for Advance Ruling (2013) 357 ITR 102 (Del) wherein it has been held that the admissibility of the application is to be examined on the basis of the circumstances prevailing on the date of application and not subsequent events.

In view of the aforesaid we reiterate that our application may be considered by this Hon'ble Authority on merits and appropriate ruling may be issued on the questions raised by us in the application, and oblige.

The applicant submitted that the details of award of relevant contracts as follows,

ONGC awards contract for integrated (SPS+SURF) Work Package for Development of its Mega Deep Water Project KG-DWN-98/2(Cluster-2) in East Coast.

ONGC's mega deep water development initiative for integrated development of KG-DWN_98/2 (Cluster-2) Project in East Coast of India took a leap forward with the award of a major work package, viz. SPS+SURF (Subsea Production System + Subsea Umbilical, Risers & Flow lines) to Consortium of BHGE, McDermott and L& T hydrocarbon on 01.10.2018 with awarded cost of Rs. 11,740.86 Crores (USD 1694.45 Million). This tender is one of the biggest integrated (SPS+SURF) tenders awarded globally in recent years.

ONGC took a strategic of integrating hitherto separate work packages of SPS and SURF into a single integrated (SPS+SURF) work package tender. This will help to eliminate major interface issues among SPS and SURF packages, resulting in time and cost optimization to the company. This innovative approach by ONGC has been widely appreciated by global major contractors of SPS and SURF.

Cluster-2 development will have water depths ranging from 350m to 1,400m and is one of the most capital intensive and technologically challenging projects in East Coast of India. Total peak gas production rate from Cluster-2 is envisaged to be about 16MMSCMD and peak oil production rate of 80,000 BPD.

ONGC envisages commencement of first gas production by December 2019, first oil by March 2021 and over all project completion by August 2021. This project will also have key contribution in fulfilling Hon'ble Prime Minister's clarion call to achieve 10% reduction in import dependency on energy by 2022. This information issued by: Corporate Communications, Oil and Natural Gas Corporation Ltd.




04. HEARING

The Preliminary hearing in the matter was held on 11.12.2018, Sh. Tarun Jain, Advocate appeared and requested for admission of application as per contentions made in their application. Jurisdictional Officer Sh. Mohan Rout, Supptt. Mumbai East Commissionerate appeared and submitted written submissions.

The application was admitted and called for final hearing on 09.01.2019, Sh. Tarun Jain, Advocate along with Ms. Divya Mahajan, C.A., appeared and argued as per submissions. In the course of hearing Applicant was asked to submit date and events of the contract including final award of the contract. Jurisdictional Officer did not appear. The additional information called during the course of hearing, was made available by the applicant on 23.01.2019. Both the parties were heard.

05. OBSERVATIONS

We have gone through the facts of the case and written submission given by both the parties. The issue put before us is in respect of a proposed transaction which would be on the lines thus



The Applicant is an unregistered person under the provisions of the GST Act. The present application has been filed before us to seek clarity on the applicable rate of tax on the transaction proposed to be executed by them in relation to tenders issued by the Oil and Natural Gas Corporation of India Ltd. ('ONGC') for executing erection, commissioning and installation work on turnkey basis for petroleum operations. Applicant has submitted documents such as a sample Notice Inviting Tender ('NIT') and Bid Evaluation Criteria released by ONGC. Tenders issued by ONGC normally relates to erection, commissioning and installation of plant and machinery for ONGC. In terms of the NIT, bids are invited for overall responsibility of entire project for an 'overall lump sum price' towards carrying out the obligations under the NIT. NIT permits a consortium of members to bid. Accordingly applicant would like to participate not individually but as part of consortium. This consortium would be of applicant and other member/members for making joint bid. Further, members of the consortium will separately supply goods and services. Members of the consortium will raise invoice separately on ONGC and ONGC will pay them separately. On this factual matrix applicant has raised many questions as above.

During the course of hearing the members of the Bench informed the applicant to submit details as to date and event of the contract including the status of the contract as on the date. In response, Shri. Taru Jain, Adv., for the applicant submitted a written reply on 23.01.2019. As per the written reply, bid was submitted by the applicant to ONGC on 19.02.2018. The impugned contract was awarded by ONGC to the successful bidder i.e. consortium of BHGE McDermott and L & T Hydrocarbon on 01.10.2018. Thus, undisputedly the contract was awarded subsequent to the present ARA. In view of the same, the applicant submits that their application is as per the

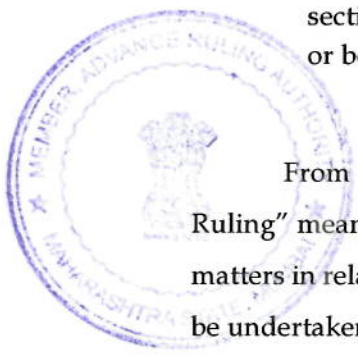
provisions of Section 95 of the Act and they are desirous of obtaining a ruling on the questions raised by them and on matters specified in subsection (2) of section 97 of the GST Act.

From the information made available to this authority vide their second written submission the undisputed fact is that ONGC has awarded contract to consortium BHGE and not to the applicant's consortium. Applicant is also not a member of BHGE consortium. We shall now examine the provision of Chapter XVI of the CGST Act, 2017 to find out whether the present application is covered by the scope of Chapter XVII – Advance Ruling. We reproduce the relevant provisions as below:

95. Definitions.

In this Chapter, unless the context otherwise requires,--

- (a) "advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;



From a perusal of the provisions relating to Advance Ruling, it is seen that "Advance Ruling" means a decision provided by this authority to an applicant on specified questions and matters in relation to the supply of goods or services or both or being undertaken or proposed to be undertaken by the applicant. Thus the broad objective for setting up this mechanism is to -

- i). provide certainty in tax liability in advance, in relation to an activity proposed to be undertaken by the applicant;
- ii) attract Foreign Direct Investment (FDI);
- iii) reduce litigation;
- iv) pronounce ruling expeditiously in transparent and inexpensive manner;

An Advance Ruling, thus helps the applicant in determining the liability to pay GST. It also brings certainty in determining the tax liability with no litigation as the ruling is binding on the Government authorities besides the applicant. On the contrary we find in the present case that the tender contract is awarded to a consortium other than the applicant and as such the possibility of supply of goods or services or both by the applicant pertaining to the said tender contract is no more available.

Under the circumstance we feel that the vowed purpose of giving advance ruling would not be served if we answer the questions raised in the ARA.

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- 77/2018-19/B-

17

Mumbai, dt.

29/1/2019

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

- Question:** (a) Whether the terms of the NIT, in particular its self-styled description as 'lump sum turnkey' contract, renders it as a 'works contract as understood under the GST law?
- (b) In the event the answer to (a) is in the affirmative, does it imply that each and every supply made to ONGC under the contract would be subject to rate of tax as applicable to a 'works contract'?
- (c) In the event the answer to (a) is in the affirmative;
- (A) Will the position change if the members of the consortium raise distinct invoices and ONGC also pays directly to the members?
- (B) Can it be said that in such circumstances the individual invoices will not be affected by the overall description as a 'works contract'?
- (d) In the event the answer to (a) is in the affirmative and only one single rate of tax applies to the entire contract, can the members of the claim rate of tax in terms of Notification No. 39/2017 - Integrated Tax (Rate) dated 13.10.2017?
- (e) In the given facts of the instant application, can the member of the consortium supplying goods alone claim concessional rate of tax of 5% in terms of Notification No. 3/2017- Integrated Tax (Rate) dated 28.06.2017?

Answer: As per the above discussion, we find ARA application filed by the applicant is infructuous and hence the questions raised in the application are not answered.

PLACE - Mumbai

DATE - 29/1/2019


B. TIMOTHY
(MEMBER)


B. V. BORHADE
(MEMBER)

CERTIFIED TRUE COPY

Copy to:-

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


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.