

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

(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	27AAACA5509K1ZP
Legal Name of Applicant	Allied Digital Services Ltd
Registered Address/Address provided while obtaining user id	13A, 13 floor, Earnest House, Back Bay Reclamation, NCPA ROAD, Block III, Nariman Point, Mumbai – 400021.
Details of application	GST-ARA, Application No. 90 Dated 03.11.2018
Concerned officer	Dy. Commr. S.T.(E-806), Nodal – I, Mumbai
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Works Contract
B Description (in brief)	Setup a comprehensive CCTV based Surveillance system for the city of Pune and Pimpri Chinchwad for the Govt. of Maharashtra(Home Dept)
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 (vii) whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term
Question(s) on which advance ruling is required	As reproduced in para 02 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 **Allied Digital Services Ltd**, the applicant, seeking an advance ruling in respect of the following questions:

Question 1 :- Whether the amount received for supply of services during the post GST period to the Government of Maharashtra (Home Department) as per the contract in question are taxable under SGST/CGST Act ?

Question 2 :- If answer to the question No.1 is in affirmative then what is the rate of tax under SGST/CGST?

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 relevant facts having a bearing on the question(s) on which advance ruling is required.

1. The Government of Maharashtra (for short "GOM") has envisaged to setup a comprehensive CCTV based City Surveillance System for the city of Pune and Pimpri-Chinchwad (hereinafter referred to as the "Surveillance Project").
2. The GOM published the Request for proposal (for sort' RFP') to seek services of a reputed IT firm as a System Integrator for Design, Development, Implementation & Maintenance of CCTV based Surveillance System For Pune and Pimpri-Chinchwad areas. Accordingly the Applicant, has submitted its proposal for the same.
3. The GOM has selected the Applicant as successful bidder and issued Letter of Intent dated 17th September 2013 to the Applicant. the Applicant in turn signed and returned the same as a token of acceptance of Letter of Intent.
4. Therefore the agreement dated 28th day of October, 2013 is made between the Home Department of GoM and the Applicant. The Applicant is referred to as 'Systems Integrator' or 'SI' in the contract document.

5. The Applicant has certain queries regarding the applicability of GST tax on the payments made by the GoM to the Applicant under above stated contract.

6. The important clauses of the said agreement relevant for deciding the issue are as follows:

"1. Definitions

in the Agreement, the following terms shall be interpreted as indicated,

- (a) 'GOM' means Home Department, Government of Maharashtra;
- (b) 'Contract' means this Agreement entered into between GOM and the Systems Integrator including all attachments and annexure thereto and all documents incorporated by reference therein;
- (c) 'Systems Integrator' means M/s. Allied Digital Services Limited interchangeably referred to as "SI" in the contract; and
- (d) 'RFP' means the Tender Published by GOM (Ref. No. ISS 1012/CR-71/Spl-4) and the subsequent corrigenda / Clarifications issued.
- (e) 'GO Live' means the date on which the proposed solution becomes operational after successful conclusion of all acceptance tests to the satisfaction of GOM.
- (f) "Deliverable" means any action/output generated by the SI while discharging their contractual obligations. This would include feeds, analytics, information and all the other services rendered as per the scope of work and as per the SLAS.



(g) "Assets" refer to all the hardware / Software / furniture / data / documentations / manuals / catalogs / brochures / or any other material procured, created or utilized by the SI or the GOM for the Pune Surveillance Project.

3) Term of the Agreement

The term of this agreement shall be a period of 5 years and 10 months from the date of execution of this Agreement. This includes the estimated period of 42 weeks for implementation of the project and 60 months from the date of successful go live of the project.

4 Fees

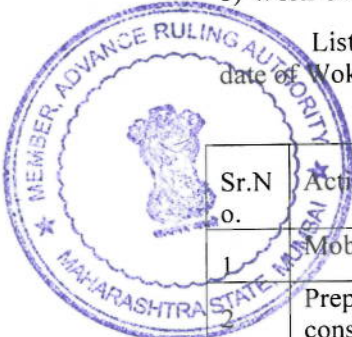
Total fees to be paid to the Systems Integrator for the execution of this Contract are Rs. 2,24,31,50,105.50. GOM shall pay the Systems Integrator the total fees in following manner : (a) 20% of the total fees against Project Go Live (i.e. successful FAT) and (b) Remaining 80% of total fees in 20 equal installments (Rs. 8,97,26,004.22 /per quarter). The fees shall be inclusive of Value Added Tax or Sales Tax, Service Tax, Income Tax, duties, fees, levies, charges, and commissions as applicable under the relevant Laws of India. Should there be a change in applicable taxes, the actual taxes on the date of billing would prevail.

The payment shall be made at the end of every three months starting from the date of Successful Go Live and shall be subject to strict adherence of the respective SLAS. If the Systems Integrator is liable for any penalty/liquidated damages as per the SLAs (refer to the clause no. 7 of this agreement), the same shall be adjusted from quarterly payments due to the System Integrator.

GOM will release the payment within 30 days of submission of valid invoice subject to the condition that invoice and all supporting documents produced are in order and work is performed to the satisfaction of GOM. GOM shall be entitled to delay or withhold the payment of any invoice or part of it delivered by SI. where GOM dispute such invoice or part of it provided that such dispute is bonafide. The disputed amount shall be settled in Resolution of dispute.

6) Work Completion Timelines

List of the broad activities to be carried out by the Systems Integrator and the timelines from the date of Work Order are given in the table below. "T" stands for the date of issue of the Work Order.



Sr.N o.	Activity	Time Line
1	Mobilization of Resources, Preparation of the Inception Report	T + 3 weeks
2	Prepare the Detailed Technical Architecture of the Overall System in consultation with all the Stakeholders	T + 6 weeks
3	Prepare FRS for the Video Surveillance Solution, Finalise Reporting Formats / Base Rules	T + 8 weeks
4	Prepare SRS, SDD for the Entire Video Surveillance System	T + 12 weeks
5	Supply, Installation, Configuration of various equipments, components, systems at Data Center	T + 18 weeks
6	Preparing and implementing the Surveillance system information security policy, Including policies on backup	T + 20 weeks
7	Installation of the Video Surveillance System, including customized system at Data Center	T + 20 weeks
8	Final Acceptance Testing (FAT) for Video Surveillance System, Data Center Equipments	T+ 23 weeks
	Phase I : Operationalization at 1s Zone	
9	Supply, Installation of Cameras for 1" Zone (Approx. 350 cameras)	T + 21 weeks
10	Development of the Command Center at CP office & Addnl. CP Office Viewing Center at Zone 1, Supply & Installation of equipments at	T + 21 weeks

	corresponding Police Stations	
11	Establishing connectivity for Zone 1 Cameras, Command Center & Police Stations	T+23 weeks
12	Training and Capacity Building for the Police Personnel for Phase I	T+25 weeks
13	FAT for Phase I cameras, Command / Viewing Center Setup, Police Station Setups	T + 26 weeks
14	FAT for Data Centers	T + 26 weeks
15	Go Live for the 1st Zone	T + 26 weeks
	Phase II Operationalization at 2nd 3rd & 4th Zone	
16	Supply, Installation of Cameras for 2nd, 3rd & 4th Zones	T + 31 weeks
17	Development of the remaining viewing Centers, Supply & Installation of equipments at corresponding Police Stations	T + 26 weeks
18	Establishing connectivity for Phase II Cameras, Viewing Center, Police Stations	T + 33 weeks
19	Training and Capacity Building for the Police Personnel for Phase II	T + 35 weeks
20	FAT for phase II Cameras, Viewing Center Setup, Police Station	T + 37 weeks
21	Go Live for the 2nd, 3rd & 4th Zones	T + 40 weeks
22	System Documents, User Documents as per ITIL (Information Technology Infrastructure Library) standards	T +41 weeks
23	formal Go Live for the Entire Project	T + 42 weeks
24	Operations and Maintenance post Go-live	5 years

Time is the essence of the agreement

7) Service Level Agreement (SLA)

GOM is looking at a very professional approach in the project implementation and its operations. System Integrator is expected to match these expectations of the service levels given in Annexure III of this agreement. Any non-adherence to the SLAS would lead to the penalty, to be calculated as per the details given in Annexure III to this agreement.

8) Use & Acquisition of Assets during the term

System Integrator shall

- Take all reasonable & proper care of the entire hardware & software, network or any other information technology infrastructure components used for the project & other facilities leased/owned by the system integrator exclusively in terms of the delivery of the services as per this Agreement (hereinafter the "Assets") in proportion to their use & control of such Assets which will include all upgrades/enhancements & improvements to meet the needs of the project arising from time to time.
- Term "Assets" also refers to all the hardware / Software / furniture / data / documentations / manuals / catalogues / brochures / or any other material procured, created or utilized by the SI or the GOM for the Pune Surveillance Project.
- Maintain 3% of installed camera quantity as spare inventory at all times, for an types of cameras.
- Keep all the tangible Assets in good & serviceable condition (reasonable wear & tear excepted) &/or the intangible Assets suitably upgraded subject to the relevant standards as stated in of the RFP to meet the SLAs mentioned in the contract & during the entire term of the Agreement.

9) Provide a well-prepared documentation for users in the manual, a clear plan for training, education & hand holding the users & shall form part of hand holding phase until bringing up the users to use software solution with speed & efficiency.

h) To the extent that the Assets are under the control of the system Integrator, keep the Assets suitably housed & in conformity with any statutory requirements from time to time applicable to them.

j) Not, knowingly or negligently use or permit any of the Assets to be used in contravention of any statutory provisions or regulation or in any way contrary to law.

k) Use the Assets exclusively for the purpose of providing the Services as defined in the contract.

m) Use the Assets only in accordance with the terms hereof & those contained in the SLAS.

n) Maintain standard forms of comprehensive insurance including liability, system & facility insurance & any other insurance for the Assets, data, software, etc. in the joint names of GOM & the System Integrator, where the SI shall be designated as the loss payee' in such insurance policies; & SI shall be "able to pay premium for the insurance policy & shall ensure that each & every policy shall keep updated from time to time.

o) Ownership of the Assets shall vest with GoM on Go Live of the project. Ownership of any asset, created during the contractual period after go live, shall also vest with GOM upon creation of such asset.

p) Ensure the integration of the software with hardware to be installed and the current Assets in order to ensure the smooth operations of the entire solution architecture to provide efficient services to GOM of this project in an efficient and speedy manner.

q) Obtain a sign off from GOM or its nominated agencies at each stage as is essential to close each of the above considerations.

r) Ensure that the Mobile Vans mentioned in RFP shall be registered under the provisions contained u/s 39 of Motor Vehicle Act, 1988 in the name of GoM.

s) Follow/observe the conditions laid down under the provisions contained u/sub Section 2 of Section 149 of Motor Vehicle Act, 1988.

19) Data Ownership

All the data created as the part of the project shall be owned by GOM. The SI shall take utmost care in maintaining security, confidentiality and backup of this data. Access to the data / systems shall be given by the SI only to the personnel working on the projects and their names & contact details shall be shared with GOM in advance. GOM / its authorized representative(s) shall conduct periodic / surprise security reviews and audits, to ensure the compliance by the SI Vendor to data / system security.

20) Intellectual Property Rights

(A) For the customized solution developed for the project, IPR of the solution would belong exclusively to the GOM. The SI shall transfer the source code to GOM at the stage of Go Live. The SI shall also submit all the necessary instructions for incorporating any modification / changes in the software and its compilation into executable / installable product. Government of Maharashtra may permit the SI, right to use the customized software for any similar project being executed by the same SI, with payment of reasonable royalty to GoM for the same.

(B) GOM has sovereign rights & nothing herein shall or will be construed or deemed to grant to the System Integrator any right, title, license, sub-license, proprietary right or other claim against or interest in to or under (whether by estoppels, by implication of otherwise) to the Intellectual Property Rights.



Miscellaneous

j) Personnel/Employees

i. Personnel/employees assigned by System Integrator to perform the services shall be employees of System Integrator and/or its subcontractors, & under no circumstances will such personnel be considered as employees of GOM. System Integrator shall have the sole responsibility for supervision & control of its personnel & for payment of such personnel's employee's entire compensation, including salary, legal deductions withholding of Income taxes & social security taxes, worker's compensation, employee & disability benefits & the like & shall be responsible for all employer obligations under all laws as applicable from time to time. The GoM shall not be responsible for the above issues concerning to personnel of System Integrator.

ii. System Integrator shall use its best efforts to ensure that sufficient System Integrator personnel are employed to perform the Services, & that, such personnel have appropriate qualifications to perform the Services. GOM or its nominated agencies shall have the right to require the removal or replacement of any system Integrator personnel performing work under this Agreement. in the event that GOM requests that any System Integrator personnel be replaced, the substitution of such personnel shall be accomplished pursuant to a mutually agreed upon schedule & upon clearance of the personnel based on profile review & upon schedule & upon clearance of the personnel based on profile review & personal interview by GOM or its nominated agencies, within not later than 30 working days. System Integrator shall depute quality team for the project & as per requirements, GoM shall have the right to ask System Integrator to change the team.

m) Entire Agreement

This MSA, the SLAs & all schedules appended thereto & the contents & specifications of the volumes I, II, III & IV of the RFP subsequent corrigenda issued thereon & clarification (undertakings) accepted by the GOM constitute the entire agreement between the parties with respect to their subject matter."

7. From the schedule forming part of the contract it is clear that the entire project cost, as per the contract, is at Rs. 224,31,50, 106/-- The goods used in the project that is capital cost of the project is at Rs. 90,35,70,545/-; and the balance operation cost for 5 years of the entire project which is at Rs. 133,95,79,561/

8. As per the contract the project went "Go Live" on 27th October 2015. This shows that the project was operational in all respect on or before 1st July 2017 i.e. before the GST regime.

9. As per the contract the ownership of the assets that is hardware/software/furniture/data/documentation/manuals/catalogue/ brochures / or any other material procured, created or utilised by the applicant will be transferred to the GOM on the date of "Go Live". The Project went live on 27th October 2015 and hence, as per the contract, all the Assets of Rs. 90,35,70,545/-(Rupees Nine Thousand Thirty Five Lakhs Seventy Thousand Five Hundred Forty Five Only) are transferred on 16th June 2015 to the Government of Maharashtra by the applicant and for that purpose he has raised the invoice on the Government of Maharashtra for the above amount.

10. At the same time the applicant also paid applicable VAT on the entire amount of Rs. 90,35,70,545/-on entire value of transfer of capital assets to the government of Maharashtra.

11. The Applicant submits that prior to the GST regime service tax was an exempted on the contract.

12. It is submitted that as per the agreement the government of Maharashtra released 20% amount of the entire project cost as per the agreement after project "Go Live" on or about 27 October 2015. The balance amount that is 80% of the total contract value is being released in 20 quarterly equal installments for the further period of 5 years from 27 October 2015 onwards. The quarter is comprised of 3 months viz. April to June, July to September, October to December and January to March of each financial years.

13. The applicant has paid necessary fee for this application of Rs. 5000/- (Five Thousand only).

14. The Copy of the contract along with the Schedules forming part of the contract are annexed herewith for ready reference.

15. According to us the contract in question is a composite supply of works contract as defined in the clause 119 of section 2 of the CGST Act and hence it will be liable for tax @6% under the CGST Act as well as under the SGST Act.

16. Considering the above facts and circumstances the applicant raises the following questions before the honorable Advance Ruling authority for its kind consideration and decision

Question 1 :- Whether the amount received for supply of services during the post GST period to the Government of Maharashtra (Home Department) as per the contract in question are taxable under SGST/CGST Act ?

Question 2 :- If answer to the question No.1 is in affirmative then what is the rate of tax under SGST/CGST?

The Appellant prays to decide the above questions.

03. CONTENTION – AS PER THE CONCERNED OFFICE

Please find required information of Advance Ruling Application No.90 in the case of M/s. Allied Digital Services Ltd. as under

The dealer has entered into agreement between Government of Maharashtra to set up comprehensive CCTV based surveillance system on dt.28.10.2013 for desing, development, implementation and maintaince of CCTV based surveillance system for Pune and Pimpri - Chinchwad area. The total fees paid to the applicants as per the agreement for the execution of this contract are at Rs. 2,243,150,105.50/- which includes all the cost components as per scheduled A to S , for a period of 5 years and 10 months of the execution. The Government of Maharashtra released 20% amount of entire project cost. As per agreement after project "GO LIVE" on or about 27 October 2015. The balance amount i.e. 80% of the total contract value is being released in 20 quarterly equal installments for the further period of five years from 27 October 2015 onwards. The Government of Maharashtra has issued letter to the Applicant for Final Acceptance Certificate for Design, Development, Implementation & Maintaince of CCTV based Surveillance System for Pune & Pimpri-Chinchwad and declared the project GO LIVE from the issuance date of letter on 27 October 2015.

The Applicant has submitted invoices dt. 25 July 2017, dt. 26 October 2017, dt.25 January 2017 of Pune city Survillance Project as per agreement dt.28 October 2013 to the Government of Maharashtra by levying tax under CGCT - 9% and SGST- 9%. by way of notification no.20/2017 dtd. 22/08/2017. Thereafter the Applicant also submitted invoices dt. 25 April 2018 and dt. 25 October to the Government of Maharashtra by levying tax under CGCT - 6% and SGST- 6%. by way of notification no 46/2017 dtd.14/11/2017.

In the Advance Ruling Application para no. 15 the applicant has mentioned that the contract in question is a composite supply of works contract as defined in the clause 119 of section 2 of the CGST Act and hence it will be liable for tax @6% under the CGST Act as well as under the SGST Act.

In view of above and documents submitted by the dealer the question in the application of advance ruling is commented as under

Question 1 : Whether the amount received for supply of services during the post GST period to the Government of Maharashtra (Home Department) as per the contract in question are taxable under SGST/CGST Act ?

Comments :- This activity of the Applicant is Works contract as defined in section 2(119) of CGST Act is a composite supply and shall be treated as 'supply of service' -para 6(a) of Schedule II of CGST Act and which attracts tax under SGST/CGST Act.

Question 2 : If answer to the question No.1 is an affirmative then what is the rate of tax under SGST/CGST ?
Comments :- As per sr.no. 3(xii) of Notification No.11/2017-Central Tax (Rate) (updated version of the Notification No.11/2017-Central Tax(Rate) dated the 28th June, 2017 as amended upto 27th July, 2018) New Delhi, the 28th June,2017 the tax rate is SGST- 9% & CGST- 9%)

04. HEARING

The Preliminary hearing in the matter was held on 05.12.2018, Sh. Prakash Shah, Director, Sh. Vijay Walunj, Authorized signatory, Sh. Pradeep Rawal, Manager Accounts Finance, along with Sh. V. V. Guthe, Advocate appeared and made oral and written submissions and stated that they have made full submissions and they do not need final hearing in the matter. They requested to take decision on records submitted. Jurisdictional Officer Sh. S. V. Sawant, Dy. Commr. of S.T.(E-806), Nodal I, Mumbai appeared and made oral and written submissions. We were heard from both the sides.

05. OBSERVATIONS

We have carefully gone through the facts of the case, oral and written submissions made by the applicant as well as the jurisdictional officer and the relevant provisions of the GST law in this regard.

The Government of Maharashtra has awarded contract to the applicant to render services of system integrating design, development, implementation and maintenance of CCTV based surveillance system for the use by the Police in the jurisdiction of cities of Pune and Pimpri-Chinchwad. The agreement was entered between the Home Department of GOM and the Applicant on the 28th day of October, 2013, which falls in the period prior to implementation of GST. We refer this contract as "Surveillance Project".

The issues before us are: Question 1: whether there is liability to pay tax under the GST law on the amount received post GST for supply of services as per the contract executed prior to the implementation of GST and Question 2: if the said amount is held to be taxable, then at what rate tax should be paid.

Both the questions are inter-connected. Answers to both the questions depend on the determination of the nature of the activity being carried out by the applicant and once the nature of the activity is determined the question both the questions as to whether the activity is covered under the GST law or not, and the applicable rate of duty can be determined.

To determine the nature of activity of the applicant it is required to be determined whether the contract involves composite supply as defined under the SGST/CGST Act and further whether such supplies constitute a Works Contract as defined in clause (119) of section 2 of the GST Act.

We would now look at relevant clauses of the agreement to understand the exact nature of the transaction envisaged by the said agreement which we have already reproduced in para 2 pertaining to the facts and contention of the applicant.

The perusal of clauses of the agreement leads us to the following inferences:

- 1) The agreement clearly mentions that the applicant firm is responsible for design, development, implementation and maintenance of CCTV based surveillance system.
- 2) As per the contract there is single price payable in prescribed manner.
- 3) The ownership of the Assets shall vest with GOM.
- 4) IPR of the customized solution would belong to GOM.
- 5) This MSA, SLA and all schedules and corrigendum clarification issued and accepted by GOM constitute the entire agreement between the parties.

A sum of above inferences would mean that applicant supplies more than two taxable supplies of goods or services or combination thereof and the provision consists of different supplies such as design, development, implementation and maintenance of CCTV based surveillance system and are integrated in such way that all of them constitute, on the over all, a supply to set up a comprehensive CCTV based city surveillance system. In this view of the matter we are convinced that various supplies as contemplated by the contract constitute composite supply as defined u/s 2(30) which reads 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;

Illustration: Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply”

As a corollary of above finding, 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 SGST/CGST Act.

Section 2(119) reads: “**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 regimes where the provisions were applicable to both movable and immovable property.

In the present contract, we find that the liability of the contractor-applicant does not end with the supply of goods but it extends till the successful testing, commissioning and also to maintenance of the system. 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 cited supra. The term 'immovable property' has not been defined under the GST Act. However, there are plethora of judgments of the Hon. Supreme Court and the Hon. High Courts which have helped understand the term 'immovable property'. One such decision is TTG Industries Ltd. vs. CCE reported as (2004)4SCC751.


We can now look at how the judgment has been delivered -

"8. In their reply to the show-cause, the respondents explained the processes involved, the manner in which the equipments were assembled and erected as also their specifications in terms of volume and weight. It was explained that the function of the drilling machine is to drill hole in the blast furnace to enable the molten steel to flow out of the blast furnace for collection in ladles for further processing. After the molten material is taken out of the blast furnace, the hole in the wall of the furnace has to be closed by spraying special clay. This function is performed by the mudgun which is brought to its position and locked against the wall for exerting a force of 240-300 tons to fill up the hole in the furnace. The blast furnace in which the inputs are loaded is a massive vessel of 1719-cubic-metre capacity and the size of its outer diameter is 10.6 metres, and the height 31.25 metres. Hot air at 1200 degrees centigrade is fed into the blast furnace at various levels to melt the raw materials. With a view to protect the shell against heat, the blast furnace is lined with refractory brick of one-metre thickness. Thus, the drilling machine has to drill a hole through one-metre thickness of the refractory brick lining. The drilling machine as well as the mudgun are erected on a concrete platform described as the cast house floor which is in the nature of a concrete platform around the furnace. The cast house floor is at a height of 25 feet above the ground level. On this platform concrete foundation intended for housing drilling machine and mudgun are erected. The concrete foundation itself is 5-feet high and it is grouted to earth by concrete foundation. The first step is to secure the base plate on the said concrete platform by means of foundation bolts. The base plate is 80 mm mild sheet of about 5 feet diameter. It is welded to the columns which are similar to huge pillars. This fabrication activity takes place in the cast house floor at 25 feet above ground level. After welding the columns, the base plate has to be secured to the concrete platform. This is achieved by getting up a trolley way with high beams in an inclined posture so that base plate could be moved to the concrete platform and secured. The same trolley helps in the movement of various components to their determined position. The various components of the mudgun and drilling machine are mounted piece by piece on a metal frame, which is welded to the base plate. The components are stored in a storehouse away from the blast furnace and are brought to site and physically lifted by a crane and landed on the cast house floor 25-feet high near the concrete platform where drilling machine and mudgun have to be erected. The weight of the mudgun is approximately 19 tons and the weight of the drilling machine approximately 11 tons. The volume of the mudgun is $1.5 \times 4.5 \times 1$ metre and that of the drilling machine $1 \times 6.5 \times 1$ metre. Having

regard to the volume and weight of these machines, there is nothing like assembling them at ground level and then lifting them to a height of 25 feet for taking to the cast house floor and then to the platform over which it is mounted and erected. These machines cannot be lifted in an assembled condition.

10. The judicial member noticing these facts observed that it is a physical and engineering impossibility to assemble mudguns or the tap hole-drilling machines elsewhere in a fully assembled condition and thereafter erect or install the same at a height of 25 feet on the cast floor of the blast furnace. She found that even the adjudicating authority conceded the fact that the equipments have to be assembled/erected on the base frame projection of the furnace. She also accepted the submission urged on behalf of the appellant that if the machines are to be removed from the blast furnace, they have to be first dismantled into parts and brought down to the ground only by using cranes and trolley ways considering the size, and also considering the fact that there is no space available for moving the machines in assembled condition due to their volume and weight. She found support for her conclusion in the decision of this Court in *Municipal Corpn. of Greater Bombay v. Indian Oil Corpn. Ltd.* [1991 Supp (2) SCC 18] and held that the twin tests laid down by this Court to determine whether assembly/erection would result in immovable property or not were fully satisfied in the facts of this case. She concluded:

"The test laid down by the Supreme Court is that if the chattel is movable to another place as such for use, it is movable but if it has to be dismantled and reassembled or re-erected at another place for such use, such chattel would be immovable. In the present appeal, even according to the finding of the Collector, mudguns and tap hole-drilling machines have to be dismantled and disassembled from the cast floor before being erected or assembled elsewhere. We have also arrived at the same conclusion independently, in para 10 above. Accordingly applying the test laid down by the Supreme Court we hold that the erection and installation of mudguns and tap hole-drilling machines result in immovable property. In the light of the ratio of the above case-law, we hold that the mudguns and tap hole-drilling machines do not admit of the definition of goods and, therefore, excise duty is not leviable thereon."



25. In *Mittal Engg. Works (P) Ltd. v. CCE* [(1997) 1 SCC 203 : (1996) 88 ELT 622] this Court was concerned with the exigibility to duty of mono vertical crystallisers which are used in sugar factories to exhaust molasses of sugar. The material on record described the functions and manufacturing process. A mono vertical crystalliser is fixed on a solid RCC slab having a load-bearing capacity of about 30 tons per square metre. It is assembled at site in different sections and consists of bottom plates, tanks, coils, drive frames, supports, plates, etc. The aforesaid parts were cleared from the premises of the appellants and the mono vertical crystalliser was assembled and erected at site. The process involved welding and gas-cutting. After considering the material placed on the record it was held that the mono vertical crystalliser has to be assembled, erected and attached to the earth by a foundation at the site of the sugar factory. It is not capable of being sold as it is, without anything more. This Court, therefore, concluded that mono vertical crystallisers are immovable property and hence not "goods" within the meaning of the Act and, therefore, not exigible to excise duty.

In *Triveni Engg. & Industries Ltd. v. CCE* [(2000) 7 SCC 29: (2000) 120 ELT 273] a question arose regarding excisability of turbo alternator. In the facts of that case, it was held that installation or erection of turbo alternator on a concrete base specially constructed on the land cannot be treated as a common base and, therefore, it follows that installation or erection of turbo alternator on the platform constructed on the land would be immovable property, as such it cannot be an excisable goods falling within the meaning of Heading 85.02. In reaching this conclusion this Court considered the earlier judgments of this Court in *Municipal Corpn. of Greater Bombay* [1991 Supp (2) SCC 18], *Quality Steel Tubes* [(1995) 2 SCC 372 : (1995) 75 ELT 17] and *Mittal Engg. Works (P) Ltd.* [(1997) 1 SCC 203: (1996) 88 ELT 622] as also the

earlier judgment of this Court in *Sirpur Paper Mills Ltd. v. CCE* [(1998) 1 SCC 400: (1998) 97 ELT 3]. This Court observed: (SCC pp. 35-36, para 14)

"14. There can be no doubt that if an article is an immovable property, it cannot be termed as 'excisable goods' for purposes of the Act. From a combined reading of the definition of 'immovable property' in Section 3 of the Transfer of Property Act, Section 3(26) of the General Clauses Act, it is evident that in an immovable property there is neither mobility nor marketability as understood in the excise law. Whether an article is permanently fastened to anything attached to the earth requires determination of both the intention as well as the factum of fastening to anything attached to the earth. And this has to be ascertained from the facts and circumstances of each case."

42. *So also in T.T.G. Industries Ltd. v. CCE* [(2004) 4 SCC 751 : (2004) 167 ELT 501], the machinery was erected at the site by the assessee on a specially made concrete platform at a level of 25 ft height. Considering the weight and volume of the machine and the processes involved in its erection and installation, this Court held that the same was immovable property which could not be shifted without dismantling the same.

43. *It is noteworthy that in none of the cases relied upon by the assessee referred to above was there any element of installation of the machine for a given period of time as is the position in the instant case. The machines in question were by their very nature intended to be fixed permanently to the structures which were embedded in the earth. The structures were also custom-made for the fixing of such machines without which the same could not become functional. The machines thus becoming a part and parcel of the structures in which they were fitted were no longer movable goods. It was in those peculiar circumstances that the installation and erection of machines at the sites were held to be by this Court to be immovable property that ceased to remain movable or marketable as they were at the time of their purchase. Once such a machine is fixed, embedded or assimilated in a permanent structure, the movable character of the machine becomes extinct.*

As can be understood from the above judgements, the Honourable Courts have evolved the term 'immovable property' when faced with the question of what constitutes movable and immovable property. Though not issued for the purposes of the GST Act, the rules laid down by the Courts in the above judgments can be applied in order to differentiate immovable property from the movable property.

Thus, it can be seen that the Hon. Supreme Court held those machines to be immovable property when they cannot be shifted without first dismantling it for re-erecting it at another site. In the instant case CCTV cameras are permanently fastened to the street lighting poles which are not intended to be removed but to provide surveillance to police authorities on a real time and continuous basis to control criminal activities or to gather evidence for prosecution of offenders. If at all they have to be re-located to another place the cameras and the related equipment have to be dismantled for re-erection elsewhere.

Applying the principles that emerges from the reading of above cited judgments, it can be concluded that comprehensive 'CCTV based City Surveillance System' can be termed as immovable property for following reasons:

- 1) CCTV based Surveillance System have permanently been fastened to the things attached to the earth.
- 2) The CCTV based Surveillance System cannot not be shifted without first dismantling it and then erecting it at another site.

In the facts before us and having regard to the principles laid down in the judgments discussed above, we are of the firm view that set up of a comprehensive CCTV based city surveillance system for the city of Pune and Pimpri-Chinchwad does result into installation/commissioning of immovable property wherein transfer of property in goods is involved in the execution of the contract and thus the 'Surveillance Project' is a works contract as defined in Sub-section 119 of Section 2 of the GST Act and is supply of services as per 6(a) of Schedule II of the GST Act. And therefore the amount received for the supply of services post GST are taxable under the provision of GST Act.

Question No. 2: Having answered the question No.1 in the affirmative, then the rate of tax applicable under GST Act is determined as under:

While dealing with Que no. 1 above, we have drawn a conclusion that the applicant is supplying works contract services, we now reproduce the Notification no.11/2017 – Central Tax (Rate) dated 28/06/2017 which is applicable to the present case.

Sl. No.	Chapter, Section or Heading.	Description of Service	Rate (per cent.)	Condition
1	2	3	4	5
	Chapter 99	All Services		
	Section 5	Construction Services		
	Heading 9954 (Construction services)	(i))	9	-
		(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.	9	-
		(iii) construction services other the (i) and (ii) above.	6	-

Hence as per the said Notification it is very clear that the composite supply of works contract as in the subject case falls under (ii) attracting 18% GST. The said Notification was amended on 22.08.2017 vide Notification No. 20/2017 – Central Tax (Rate) and is reproduced as under:-

Sl. No.	Chapter, Section or Heading.	Description of Service	Rate (per cent.)	Condition
1	2	3	4	5
	Chapter 99	All Services		
	Section 5	Construction Services		
	Heading 9954 (Construction services)	(i))	9	-
		(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.	9	-
		(iii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied to the Government,alteration of, (a) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958); (b) canal, dam or	6	-

		other irrigation works;(c) pipeline, conduit or plant for (i) water supply(ii) water treatment, or (iii) sewerage treatment or disposal.		
		(iv) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction,of - (a) a road, bridge, tunnel, or terminal; (b) a civil structure- under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana; (c) a civil structure under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana,; (d) a civil structure or any other original works pertaining to under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana; (e) a pollution control or effluent treatment plant,.....	6	
		(v) Composite supply of works contract as 6 defined in clause. (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of ORIGINAL WORKS pertaining to, (a) railways, excluding monorail and metro	6	
		(vi) Construction services other than (i), (ii), (iii), (iv), (v) and (vi) above.	6	

As per the said Notification with the amendment mentioned above also it is very clear that the composite supply of works contract as in the subject case falls under (ii) attracting 18% GST. The said Notification 11/2017 was further amended on 21.09.2017 vide Notification No. 24/2017 – Cen Tax (Rate) and is reproduced as under:-

Sl. No.	Chapter, Section or Heading.	Description of Service	Rate (per cent.)	Condition
1		3	4	5
	Chapter 99	All Services		
	Section 5	Construction Services		
	Heading 99.4 (Construction services)	(i)	9	-
		(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.	9	-
		(iii) Composite supply of works contract	6	-
		(iv) Composite supply of works contract	6	
		(v) Composite supply of works contract as 6 defined in clause. (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of ORIGINAL WORKS pertaining to, (a) railways, excluding monorail and metro	6	
		(vi) Services provided to the Central Government, State Government, Union Territory, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of – (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession; (b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or (c) a residential	6	

		<i>complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017</i> <i>(vii) Construction services other than (i), (ii), (iii), (iv), (v) and (vi) above.</i>		
--	--	--	--	--

Vide amendment Notification No. 31/2017, dated 13.10.2017, the original Notification No. 11/2017 stood as under:-

Sl. No.	Chapter, Section or Heading.	Description of Service	Rate (per cent.)	Condition
1	2	3	4	5
	<i>Chapter 99</i>	<i>All Services</i>		
	<i>Section 5</i>	<i>Construction Services</i>		
	<i>Heading</i>	<i>(i)</i>	9	-
	<i>9954</i>	<i>(ii) Composite supply of works contract as 6 defined in clause. (119) of section 2 of the Central Goods and Services Tax Act, 2017</i>	9	-
	<i>(Construction services)</i>	<i>(iii) Composite supply of works contract</i>	6	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be
		<i>(iv) Composite supply of works contract</i>	6	
		<i>(v) Composite supply of works contract as 6 defined in clause. (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of ORIGINAL WORKS pertaining to, (a) railways, excluding monorail and metro</i>	6	
		<i>(vi) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017 provided to the Central Government, State Government, Union Territory, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of – (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession; (b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or</i>	6	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be



		<i>cultural establishment; or (c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017</i>		
	Notification 31/2017 Dt.13.10.2017	“(vii)Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, involving predominantly earth work (that is, constituting more than 75per cent. of the value of the works contract) provided to the Central Government, State Government, Union territory, local authority, a Governmental Authority or a Government Entity.	2.5	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be
	Notification 31/2017 Dt.13.10.2017	(viii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 and associated services, in respect of offshore works contract relating to oil and gas exploration and production (E&P) in the offshore area beyond 12 nautical miles from the nearest point of the appropriate base line.	6	-
	Notification 31/2017 Dt.13.10.2017	(ix) Construction services other than (i), (ii), (iii), (iv), (v), (vi), (vii)and (viii) above.	9	”;

Even with the amendment the applicant's position has not changed. Their composite supply of works contract as in the subject case falls under (ii) attracting 18% GST. The said Notification 11/2017 was also further amended on 25.01.2018 vide Notification No. 01/2018 – Central Tax (Rate) the relevant portion of the notification is reproduced as below:

C) for item (ix) and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely: -

3	4	5
“(ix) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (iii) or item (vi) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity	6	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.

(x) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (vii) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.		Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.
(xi) Services by way of housekeeping, such as plumbing, carpentering, etc. where the person supplying such service through electronic commerce operator is not liable for registration under subsection (1) of section 22 of the Central Goods and Services Tax Act, 2017.	2.5	Provided that credit of input tax charged on goods and services has not been taken [Please refer to <i>Explanation</i> no. (iv)].
(xii) Construction services other than (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x) and (xi) above.	9	–”;

Even with the amendment aforesaid the applicant's position has remained unchanged. The Surveillance project remains works contract as in the subject case falls under (ii) attracting GST @18%. However in the subject it is seen that applicant is providing composite supply of works contract in respect of surveillance project to Government of Maharashtra but the reduced rate of tax is available only if the work is of the type of original work. The expression 'Original work' has not been defined under any of the Notifications applicable to the present case. The expression 'original work' has assigned meaning under the CPWD Works Manual 2014 which is reproduced as below:

1.3.1 Original Works

These shall mean:

- (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.

Thus 'Original Works' would mean ; all new constructions; all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable; erection, installation etc. that results in increase in life and value of property . In the present case the work done by the applicant does not appear to be original works.

Hence from the above discussions we find that in the present case, the contract is not related to any original work and is in the nature of composite supply of Works Contract. Hence

we hold that the activity of the applicant in the present case is nothing but a composite supply of Works Contract, not being original works and they will be covered under Sr. No. 3, item no. (ii) of Notification No. 11/2017 dated 28.06.2017 as amended by Notification No. 1/2018 dated 25.01.2018 and attract 18% GST (9% each of CGST and SGST).

06. In view of the 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- 90/2018-19/B-

159

Mumbai, dt.

19/12/2018

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

Question 1 :-Whether the amount received for supply of services during the post GST period to the Government of Maharashtra (Home Department) as per the contract in question are taxable under SGST/CGST Act ?

Answer :- Answer is in the affirmative.

Question 2 :- If answer to the question No.1 is in affirmative then what is the rate of tax under SGST/CGST?

Answer :- As per above discussion, the applicant's taxable supply of services would be liable to tax at the rate of 18% (9 % each for CGST and MGST).



—sd—
B. TIMOTHY
(MEMBER)

—sd—
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 Jurisdictional Commissioner of Central Tax.
5. Joint commissioner of State tax, Mahavikas for Website.

—sd—
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.