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GOA AUTHORITY FOR ADVANCE RULING

(Constituted under section 96 of the Goa Goods and Services Tax Act, 2017
read with Rule 103 of the Central Goods and Services Tax Rules, 2017)

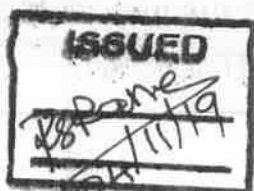
BEFORE THE BENCH OF

(1) Shri. J. K. Meena, Addl. Commissioner of Central Tax, Member

(2) Mrs. Sarita S. Gadgil, Addl. Commissioner of State Tax, Member

Advance Ruling No. GOA/GAAR/2 of 2019-20/ **1984**

Name of the Applicant	Shri Shakil Sikandar Gavandi (Prop.- M/s Unique Earthmovers)
Address	Ground Floor, Shop No. 4/A, H. No. 7551, Porvorim, Goa-403521
GSTIN	30AENPG8812R1Z2
Date of Application	01/07/2019
Under Section 97(2) of the CGST/GGST Act, 2017 which question raised	<ol style="list-style-type: none">1. Whether the supply of mere labour without material to the main contractor who is supplying the "Works Contract Service", is covered under the purview of "Works Contract Service"? and2. Whether the reduced rate of GST (12% from 18%), as approved in 25th GST Council Meeting dated 18.01.2018 is applicable to such supply of mere labour force/work to main contractor engaged in supply of "works Contract Service"?
Date of Hearing	23/10/2019
Persons Present for Hearing	Mrs. Deepa Patkar, Advocate and authorised representative of the applicant.



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PROCEEDING

REPRESENTED BY: Mrs. Deepa Patkar, Advocate, Authorised Representative, for Shri Shakil Sikander Gavandi.

The issue raised by Shri Shakil Sikander Gavandi (Prop- Unique Earthmovers), Ground Floor, Shop No. 4/A, H. No. 7551, Porvorim, Goa-403521 (hereinafter the applicant) is fit to pronounce Advance Ruling as it falls under the ambit of the Section 97(2)(a) & (g) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the GST Act') given as under:

- (a) *classification of any service;*
- (g) *whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.*

Further, as per the declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending for proceedings nor proceedings were passed by any authority. Based on the above observations, the application is admitted to pronounce advance ruling.

1. Submission and interpretation of the applicant :

- (a) The applicant is one of the suppliers of services to M/s M. Venkata Rao Infra Project Pvt. Ltd (in short M/s MVR) who are engaged in the activities of construction of Bridges etc. The Applicant is registered under the provisions of GST Act, 2017 having GSTIN 30AENPG8812R1Z2.
- (b) The applicant only provides the service of dumping of soil from one place to another and excavation service.
- (c) When the applicant raised a GST bill charging GST @ 18% (CGST+SGST) to M/s MVR, the main contractor, M/s MVR informed him that the GST rates have been changed from 18% to 12% w.e.f. 18th January, 2018 for a person supplying "works contract service".
- (d) The applicant merely provides a part of the service in works contract services and doesn't provide work contract service to the main contractor and as such the change in the law (rate) is not applicable to the applicant. The applicant is liable to charge GST @ 18% only.
- (e) When the applicant informed the above view to the main contractor (M/s MVR), the main contractor refused to accept his bills with 18% GST and they also insisted the applicant to charge GST @ 12%.

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- (f) The applicant consulted his tax consultant, who also opined that the change in rate is applicable only to suppliers of "works contract service".
 - (g) The applicant informed M/s MVR that he would prefer Advance Ruling from the Department on the issue.
 - (h) The main contractor also has given an undertaking voluntarily that in case the advance ruling comes in favour of the applicant he would pay the applicant the balance of 6% of GST along with interest.

2. Questions on which the Advance Ruling is sought

Q.1 Whether the supply of labour force/work without material by a sub-contractor to main contractor, who is engaged in supply of "works contract" service, also falls under "works contract" services?

Q.2 Whether 'point No. 12' of the 25th CGT Council Meeting held on 18.01.2018 reducing GST rate from 18% to 12% is applicable also to such sub-contractors supplying labour force/work without material to the main contractor who is engaged in supply of "works contract" service?

3. Personal Hearing

In the matter personal hearing was fixed on 20.08.2019 at 3:00 PM before the Goa Authority for Advance Ruling at the Office of the Commissioner of Commercial Taxes, Vikrikar Bhavan, M.G. Road, Panaji, Goa. However, none appeared on behalf of the applicant for personal hearing at the scheduled date. Therefore, the applicant was granted with another opportunity of personal hearing when personal hearing was fixed and conducted on 23.10.2019 before the Goa Authority for Advance Ruling at the Office of the Commissioner of Commercial Taxes, Vikrikar Bhavan, M.G. Road, Panaji, Goa. Mrs. Deepa Patkar, Advocate duly authorised by the applicant to represent him before the authority, appeared for personal hearing and reiterated the submissions already made in the application.

4. Findings, analysis & conclusion :

- (a) While going through the submissions made by the applicant, we have found that the applicant is a person registered under the provisions of GST Act, 2017 and is engaged in supply of labour force/work to M/s MVR, who are engaged in supply of "works contract" service.
- (b) The applicant is providing the labour job to M/s MVR and the supply made by the applicant does not consist supply of materials.



- (c) The applicant is of the view that the supply made by him does not fall under the definition of "works contract" service.
- (d) The applicant is of the view that the reduced rate of GST @ 12% from 18% is not applicable to him and he is liable to collect and pay GST @ 18%.

Further the natures of works undertaken by the applicant are predominantly dumping of soil from one place to another place and in relation to excavation. The applicant is performing his task with help of his men and machines, and he is not supplying any material to the main contractor. The crux of the application made by the applicant seeking ruling is whether the activity carried out by him can be classified as "works contract" service or otherwise? Before arriving at any conclusion we would like to reproduce the relevant provisions of the statute. "Works Contract" is defined by the GST Act, 2017 in clause (119) of Section 2, which reads as under:

(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.

Hence, to qualify an activity as "works contract":

- (i) The activities to be undertaken under a contract may be one or more of the following in relation to **any immovable property** viz. Building, Construction, Fabrication, Completion, Erection, Installation, Fitting out, Improvement, Modification, Repair, Maintenance, Renovation, Alteration, or Commissioning etc.
- (ii) Such activities shall be in relation to any immovable property.
- (iii) **Transfer of property in goods must be involved.**

Immovable property is defined in Section 3(26) of the General Clauses Act, 1897 as under:

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

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4.1 Further, Section 7 of GST Act, 2017 envisages the 'scope of supply'. The relevant provisions of Section 7 of GST Act, 2017 reads as under:

Scope of Supply:

7. (1) For the purposes of this Act, the expression "supply" includes-

(a)

(b)

(c)

(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

4.2 Further, entry No. 6 of Schedule II provides how to treat with composite supply. Entry No. 6 of Schedule II reads as under:

6. Composite supply

The following composite supplies shall be treated as supply of services, namely:-

(a) **works contract as defined in clause (119) of section 2; and**

(b) *supply by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.*

4.3 Clause (30) of Section 2 of GST Act, 2017 defines the "composite supply" as under:

(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 or which is a principal supply.*

5. In view of above facts, we find that, "works contract" is a composite supply and it is composition of activities of building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repairs, maintenance, renovation, alteration or commissioning carried out on



an 'immovable property' and transfer of property (whether in form of goods or in some other form) must essentially take place with such activities. The supply of "works contract" is to be treated as supply of service but it is combination of supply of service and supply of goods. **Transfer of property in goods (whether as goods or in some other form) is an essential component of supply to be treated as "works contract" service.**

5.1 In the matter of case at hand, we find that there is no transfer of property from the applicant to the main contractor (M/s MVR) while performing the work of dumping of soil from one place to other place or while activity of excavation. The applicant is merely performing labour work. Therefore, the activities carried out by the applicant cannot be treated as "works contract".

6. In view of the foregoing, we rule as follows :-

ADVANCE RULING:

Q.1 Whether the supply of labour force/work without material by a sub-contractor to main contractor, who is engaged in supply of "works contract" service, also falls under "works contract" services?

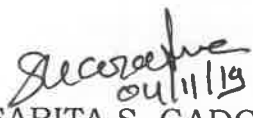
Ans: No. The supply of labour force/work without material by a sub-contractor to main contractor, who is engaged in supply of "works contract" service, does not fall under "works contract" services

Q.2 Whether 'point No. 12' of the 25th CGT Council Meeting held on 18.01.2018 reducing GST rate from 18% to 12% is applicable also to such sub-contractors supplying labour force/work without material to the main contractor who is engaged in supply of "works contract" service?

Ans: No. The reduction of GST rate from 18% to 12% is not applicable to such sub-contractors supplying labour force/work without material to the main contractor who is engaged in supply of "works contract" service.


(J. K. MEENA)
Member

4/11/19


(SARITA S. GADGIL)
Member

Dated: 04/11/2019

Place: Panaji - Goa

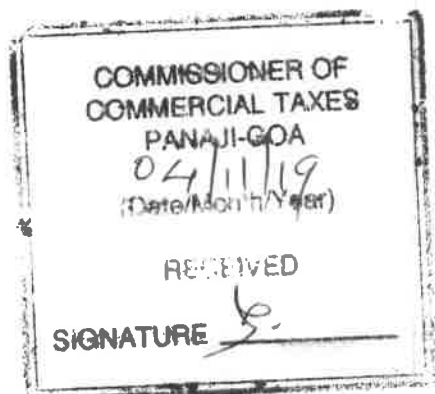


To,

Shri Shakil Sikander Gavandi,
(Prop. - Unique Earthmovers),
Ground Floor, Shop No. 4/A, H. No. 7551,
Porvorim, Goa-403521.

Copy to:

1. The Commissioner of Central GST, Goa Commissionerate, Panaji - Goa; ✓
2. The Commissioner of State GST, Panaji - Goa;
3. The Dy. Commissioner of Central GST, Div-I, Goa Commissionerate, Panaji; ✓
4. The Dy. Commissioner of State Tax, Mapusa Ward, Mapusa - Goa;
5. The State Tax Officer, Mapusa Ward; Mapusa Goa;
6. The Superintendent, CGST, Range-II; Div-I, Goa Commissionerate, Panaji. ✓
7. Office file;
8. Guard file.



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