

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, Old Building, 1st floor, B-Wing, Room No.107, Mazgaon, Mumbai - 400010.

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)
BEFORE THE BENCH OF

(1) Shri. D. P. Gojamgunde, Joint Commissioner of State Tax, (Member)

(2) Ms. Priya Jadhav, Joint Commissioner of Central Tax, (Member)

ARN No.	AD2704220381478
GSTIN Number, if any/ User-id	27AACCG7854PIZV
Legal Name of Applicant	M/s. Gantrex India Crane Rails Private Limited
Registered Address/Address provided while obtaining user id	Flat no. 501, Plot no. 65, 5th Floor, Sharda Terraces, CBD Belapur, Navi Mumbai, Thane, Maharashtra, 400614
Details of application	GST-ARA, Application No. 08 Dated 29.04.2022
Concerned officer	BELAPUR-701 CHARGE, RAIGAD DIVISION, THANE ZONE, MAHARASHTRA
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A Category	Service Provision, Works Contract
B Description (in brief)	The application is an entity engaged inter-alia in the business as a seller of industrial crane rails equipment's and accessories and as a provider of works contract services relating to industrial crane rail solutions.
Issue/s on which advance ruling required	<ul style="list-style-type: none">➤ Classification of any goods or services or both➤ Applicability of a notification issued under the provisions of the Act.➤ 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" respectively] by M/s. Gantrex India Crane Rails Private Limited, the applicant, seeking an advance ruling in respect of the following questions.

1. Whether the instant provision of testing and commissioning service of Rail Track is classifiable under sl. No.3 (vi) (a) of Notification no. 11/2017-Central Tax (Rate) dated 28.06.2017 (as amended)?
2. In case where the answer to question No. 1 is in negative, what shall be the classification and the rate of tax?

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 any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

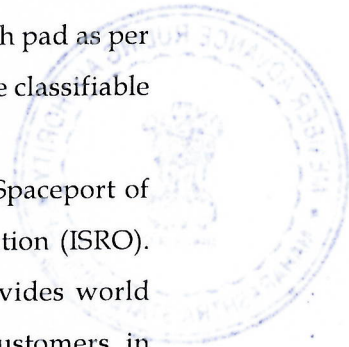
1. FACTS AND CONTENTION - AS PER THE APPLICANT:

1.1 Applicants registered office at Flat no. 501, Plot no. 65, 5th Floor, Sharda Terraces, CBD Belapur, Navi Mumbai, Thane, Maharashtra, 400614, is engaged into the business for the provision of works contract services to its service recipients.

1.2 In the instant contract in hand, the applicant received a purchase order bearing reference no. SHAR/VAST/2018E099350101 dated 07.05.2019 from Satish Dhawan Space Centre SHAR (for the sake of brevity, hereinafter referred to as "contractee") for erection, testing and commissioning of Rail tracks meant for handling assembled staged rockets from Assembly Building to Launch pad as per the said agreed order. The said rail tracks being the civil structures are classifiable under immovable property.

1.3 Satish Dhawan Space Centre SHAR (SDSC SHAR), Sriharikota, the Spaceport of India, is one of the lead Centres of Indian Space Research Organisation (ISRO). Department of Space (DOS), Government of India. The Centre provides world class launch base infrastructure for national and international customers in accomplishing diverse launch vehicle/satellite missions for remote sensing, communication, navigation & scientific purposes and is one among the best-known names of the Spaceports of the world today. The space Centre, which was popularly known as SHAR (Sriharikota Range) was renamed as Satish Dhawan Space Centre SHAR on September 5, 2002, in fond memory of Prof. Satish Dhawan, former Chairman of ISRO.

1.4 The applicant submits that as per the said work order our affiliate being M/s. Gantrex SPRL, registered office address at Rue du Commerce 19. Rue de Commerce Nivelles, 1400, Brabant Wallon, Belgium was responsible for execution of the supply of the enlisted items in the work order to the contractee at an agreed rate. Whereas the applicant was responsible for the erection & commissioning part of the items supplied by its affiliate to the contractee at an agreed price of Rs 2,21,84,000/.



1.5 The said contract spreads over a period of 13 months where the first leg of the contract i.e. supply of items by the affiliate spreads over first 04 (four) months and the remaining 09 (nine) months are for the delivery of erection & commissioning service.

The payment terms of the said contract being -

1. For Supply portion (for items enlisted in sl. no. 01 to 04):

- (i) Irrevocable LC will be opened for 90% of Rails & Fish Plates after receipt of Order Acknowledgment & Proforma Invoice. LC Charges shall be to the respective accounts.
- (ii) Balance 10% of this supply value will be paid by wire transfer after receipt & acceptance of the items at our site by CLIP. Note: In case if one more LC to be opened, then the same can be opened based on M/s. Gantrex's request. However, the LC charges inside & outside India shall be to M/s. Gantrex's Account.

2. For Supply (Items Sl. no. 05 & 06):

- (i) 90% will be paid by Wire Transfer after receipt & Inspection by CLIP at Satish Dhawan Space Center site.
- (ii) Balance 10% after acceptance of material by CLIP.

3. For Erection, Testing and Commissioning:

- a) 20% of erection cost as advance after commencement of work at site and against submission of bank guarantee valid till erection, commissioning and acceptance by CLIP plus 60 days.
- b) 70% of erection cost against pro-rata progress at site duly accepted by CLIP.
- c) 10% of erection cost after successful commissioning and acceptance by CLIP.

Copy of the above-mentioned purchase order is enclosed with this application.

2. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW

2.1 The Relevant provision under the GST Law: -

2.1.1 Given that the subject contracts are one composite indivisible contract disguised as two independent contracts - one for supply of items and other for services rendered for erection & commissioning of Rail Tracks & Allied System of the turnkey project, it is pertinent to analyses the provision of GST Laws to determine GST liability on the composite contract:



According to the section 8 of Central Goods and Services Tax Act, 2017 The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:

- (a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply, and*
- (b) ...*

where the term "composite supply" has been defined under Section 2(30) of the supra Act as –

"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:

Further "principal supply" is defined under Section 2(90) as –

"principal supply means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary:

2.1.2 Therefore, when two or more taxable supplies of goods or services or both are made by a taxable person to a recipient, where such supplies are naturally bundled and are supplied in conjunction with each other in the ordinary course of business, one of them being a principal supply, then the said supplies shall be treated as a supply of such principal supply and tax liability shall be determined accordingly.

Moreover, para 6 of the Schedule II to The CGST Act, 2017 reads as under -

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

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

where "works contract" as defined under Section 2[119) 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,"

Since composite supply of works contract has been explicitly classified as supply of service under Schedule II, the concept of works contract follows that:

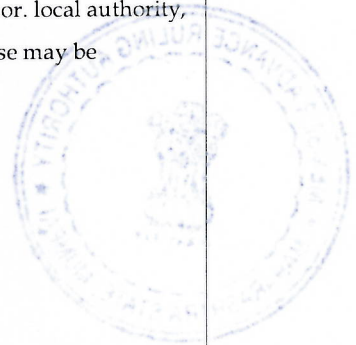
- Works contract in itself is a composite supply in which construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration of commissioning etc. are involved along with transfer of property in goods.
- In GST, as per definition of works contract service if construction, fabrication, completion, erection, installation, sitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning is for immovable property only, then it will classify as works contract. Hence it means that aforesaid activities if they are undertaken for a movable property then it will not be works contract service.
- Notification No. 24/2017-Central Tax (Rate) dated 21 September, 2017 read with Notification No. 46/2017-Central Tax (Rate) dated 14th November, 2017 provides that Composite supply of works contract as defined in clause (119) of section 2 of the 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 civil structure or any other Original works meant predominantly for use other than for commerce, industry, or any other business or profession would fall under Entry 3(vi)(A) with HSN Code 9954 attracting GST @ 12%.

2.1.3 However, if the erection & commissioning contract is held to be independent of the supply of items contract, the former shall be considered as a pure service extended to a government entity and hence would be considered as a supply under Entry 3(xii) of Notification no. 12/2017-Central Tax (Rate) dated 28.06.2017.





Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
3	Chapter 9954	<p>Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above provided to the Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of -</p> <p>(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) 2 residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the</p>	6	<p>Provided where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to work entrusted to it by the Central Government, State Government Union territory or local authority, as the case may be</p>





		Schedule III of the Central Goods and Services Tax Act, 2017. Explanation - For the purposes of this item, the term 'business shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.		
		(xii) Construction services other than (i), (ia), (ib), (ic), (id), (ic), (if), (iii), (iv), (V), (va), (vi), (vii), (viii), (ix), (x) and (xi) above. Explanation. - For the removal of doubt, it is hereby clarified that, supply by way of services specified at items (i), (ia), (ib), (ic), (id), (ie) and (il) in column (3) shall attract central tax prescribed against them in column (4) subject to conditions specified against them in column (5) and shall not be levied at the rate as Specified under this entry.	9	-

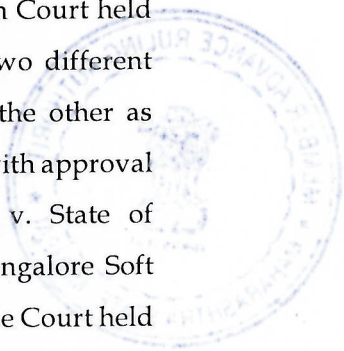
2.1.4 Given the aforesaid scope of service, it is evident that the contract involves supply of multiple services along with the supply of materials during the tenure of contract and therefore it is necessary to examine through case laws whether the subject contracts are two separate independent contracts or they are, in reality, one composite indivisible contract disguised as two independent contracts - one for supply of items and other for services rendered for erection & commissioning of Rail Tracks & Allied System of the turnkey project.

2.1.5 Where parties enter into distinct and separate contracts, one for the transfer of material for monetary consideration, and the other for payment of remuneration for services and for work done, there are - ordinarily. two

agreements, though there is a single instrument embodying them. (State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd. (64) 1959 SCR 379: AIR 1958 SC 560). In such cases the transaction would not be one and indivisible, but would fall into two separate agreements. (Hindustan Aeronautics Ltd. v. State of Karnataka (65) (1984) 55 STC 314 (SC): State of Himachal Pradesh v. Associated Hotels of India Ltd., (66) (1972) 29 STC 474: (1972) 1 SCC 472: AIR 1972 SC 1131] (five judges). If there are two independent contracts, namely, purchase of the components from a dealer, it would be a contract for sale and similarly, if a separate contract is entered into for installation, that would be a contract for labour and service. (Kone Elevator India (P) Ltd. v. State of T.N. (67) 2014 (7) SCJ 7: (2014) 7 SCC 1: 2014 (5) ALT 33.1 (DN SC)).

2.1.6 In L.S. Chandramouli and Company v. The State of Madras (72) (1966) 18 STC 325 (Madras)(DB), the Division Bench of the Madras High Court held that there was nothing wrong in the same person holding two different capacities, one as an agent of a non-resident principal and the other as proprietor of his own business. This judgment was referred to with approval by the Supreme Court in Karnataka Pawnbrokers' Assn. v. State of Karnataka (73) (1998) 7 SCC 707. In State of Karnataka v. Bangalore Soft Drinks P. Ltd. (74) (2000) 117 STC 413 (SC), wherein the Supreme Court held that the terms of the contract indicated that the respondent had a dual role to play - one as seller of the goods and the other as that of a transporter or the carrier of the goods: The same person can, no doubt, play a dual role and, merely because both the contracts are entrusted to the same person, two separate and independent contracts would not become a single indivisible contract. Turn-key projects, however, stand on a different footing.

2.1.7 A composite contract, for erection and commissioning of Rail Tracks, should be treated as a works contract as it is not chattel sold as chattel or, for that matter. A chattel being attached to another chattel. (Kone Elevator India (P) Ltd. (67 supra)). A works contract' is an "entire and indivisible" works contract for the construction/execution of a turnkey project to specifications where the person executing the work is entitled to receive the total price (Thomson Press (1) Ltd. v. State of Haryana (68) (1996) 100 STC 417 (P&H



HC]). While examining the exercise of divisibility, the dominant intention behind such a contract, namely, whether it was for construction of Rail Track or for erection and commissioning services, is rendered otiose or immaterial. (State of Karnataka y, Pro Lab (69) 2015 (2) SCJ 359: (2015) 78 VST 451 (SC): 2015 (2) ALT 35.3 (DN SC); Larsen and Toubro Ltd. v. State of Karnataka (70) 2013 (8) SCJ 559: (2013) 65 VST 1 (SC)). The dominant nature test or "overwhelming component test" or "the degree of labour and service teste" are no longer applicable. (Kone Elevator India (P) Ltd. 67: Larsen and Toubro Ltd. (70 supra).

2.1.8 In turnkey projects, the same person is entrusted with the responsibility of procuring material, and of erection and installation of equipment. The contractors' obligations, under both the supply and erection contracts, would cease only after the turnkey project becomes operational, and after final payment is made both for supply of material and for erection and installation of equipment. Existence of a cross-fall breach clause, or a clause which enables the owner to terminate the supply contract for breach the erection contract and vice versa, would mean that, while the contracts are ostensibly two separate contracts-one for supply of material and the other for rendering works and services, they are, in fact, one single indivisible contract. The goods supplied to the owner, under the supply contracts, are tailor-made goods, and cannot be bought off the shelf. Such goods cannot, ordinarily, be sold to another except for their use in turnkey projects of a similar nature. The functions relating to the supply of material, and rendering services of erection and installation, are integrally connected and are interdependent.

2.1.9 Furthermore, clauses to the agreement show that termination of the supply contract would enable the employer to terminate the contract and vice-versa. In Indure Ltd. v. CTO (75) 2010 (8) SCJ 683: (2010) 9 SCC 461, the bidder was required to quote a lump sum price in its proposal for the entire scope of the work covered under the bid documents. The total contract was agreed to be divided into two separate contracts, (i) supply contract, and (ii) erection contract, with a cross fall breach clause wherein breach of either of the contracts entitled the employer/owner/contractee (NTPC) to cancel the other contract also. NTPC awarded two contracts to Indure Ltd. for



performing the work of erection of the plant-on a turnkey basis. The Supreme Court, in Indure Ltd (75 supra), held that, even though two contracts were entered into between the parties, it was only one contract for the reason that NTPC kept a right with it with regard to the cross-fall breach clause, meaning thereby that default in one contract would tantamount to default in another, and the whole contract was liable to be cancelled.

2.2 CONCLUSION:

2.2.1 On the basis of above-mentioned provisions of law read with the judgements referred to above, it is submitted that in turn-key projects, more particularly of the kind involved in this application, the same person i.e. M/s. Gantrex) has been entrusted with the responsibility of supply of materials, and for erection and commissioning of the Rail Tracks meant for Handling assembled staged rockets from Assembly Building to Launch Pad. While in-built safeguards are provided in all the contracts to ensure quality of the works and services, and effective performance of the supply contracts do not absolve the applicant-contractor of its obligation of erection and commissioning of the Rail Tracks after the supply of materials in the specified area to the contractee. The applicant contractor's obligations, under both the contracts, cease only after the turn-key project is accepted by CLIP, and after final payment is made both for supply of materials, and for erection and commissioning of the Rail Tracks meant for Handling assembled staged rockets from Assembly Building to Launch Pad.

2.2.2 Furthermore, existence of a cross-fall breach clause, or a clause which enables the contractee to terminate the supply contract for breach of the contract and vice-versa, would mean that, while the contracts are ostensibly two separate contracts - one for supply of materials, and the other for erection and commissioning of the Rail Tracks, they are, in fact, one single indivisible contract. The contracts, is tailor made supply, and cannot be bought off the shelf. Such service cannot, ordinarily, be supplied to another except for in turnkey projects of a similar nature.

2.2.3 The Client being Satish Dhawan Space Centre SHAR is aware of such interdependence of the two contracts. Although awarded under the same PO and two-part tenders signed for execution, clauses under both of them make it abundantly clear that notwithstanding the break-up of the contract



price, the contract shall, at all times, be construed as a single source responsibility contract and the Gantrex shall remain responsible to ensure execution of both the contracts to achieve successful completion and handing over of the facilities.

2.2.4 Composite nature of the contract is further clear from the clause that defines satisfactory performance of the First Contract (supply of materials) upon completion of erection & Commissioning phase in Second Contract. The client has not contracted for erection & commissioning phase, but for the composite supply. namely works contract service for construction and operation of Rail Tracks.

2.2.5 Therefore, from the above submissions, it is evident that, while the form of the contracts indicate that they are two separate contracts, in substance they are one single indivisible works contract for construction and operation of Rail Tracks, owing to following factors: -

- Contract have 2 or more supplies of goods or services or both;
- The supplies are naturally bundled;
- The taxable supplies are supplied in conjunction with each other;

2.2.6 Given the above, since this supply is undertaken for a SHSC-SHAR, hence the rate of tax applicable on given service (as it is a works contract service) shall fall under Entry 3(vi)(a) with HSN Code 9954 and would attract CGST and SGST @ 6% each.

2.2.7 Further if at all it is held that M/s. Gantrex SPRL and the applicant, both being part of Gantrex group are two separate entities, the services of erection and commissioning of the Rail Tracks meant for Handling assembled staged rockets from Assembly Building to Launch Pad by the applicant still would be classified as a works contract as the execution of the said contract involves supply of consumable materials like welding electrode, grinding wheels, cleaning material, etc. and hence would be a composite works contract supplied to a government entity for purpose other than commerce, industry or any business or profession thereby justifying classification under Entry 3(vi)(a) of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 with HSN Code 9954 attracting 12% GST.



2.2.8 The applicant is hereby submitting the correspondences made with the SHRC SHAR for your kind reference justifying classification under Entry 3(vi)(a) with HSN Code 9954 attracting 12% GST.

2.2.9 However, if the instant contract of erection and commissioning of the Rail Tracks are held as a pure service extended to a government entity then it would be considered as supply under Entry 3(xii) of Notification no. 12/2017-Central Tax (Rate) dated 28.06.2017 attracting GST @ 18%.

03. CONTENTION - AS PER THE CONCERNED OFFICER:

Brief facts of the case:

The applicant received a purchase/work order bearing reference no. SHAR/VAST/2018E099350101 dated 07.05.2019 from Satish Dhawan Space Centre SHAR (for the sake of brevity, hereinafter referred to as "contractee") for supply and erection, testing and commissioning of Rail tracks meant for handling assembled staged rockets from Assembly Building to Launch pad as the said agreed order. The said rail tracks being the civil structures are classifiable under immovable property. As per the said purchase/work order the affiliate being M/s. Gantrex SPRL, registered office address at Rue du Commerce 19, Rue de Commerce Nivelles, 1400, Brabant Wallon, Belgium was responsible for execution of the supply of the enlisted items in the work order to the contractee at an agreed rate. Whereas the applicant was responsible for the erection & commissioning part. of the items supplied by its affiliate to the contractee at an agreed price of Rs.2,21,84,000/- including GST @18%. The said contract spreads over a period of 13 months where the first leg of the contract i.e. supply of items by the affiliate spreads over first 04 (four) months and the remaining 09 (nine) months are for the delivery of erection & commissioning service.

Contention of taxpayer over applicability of tax rate @18%: As per the purchase order dated 02.05.2019, it is clearly mentioned that "The PO value for erection and commission of supplied items by M/s Grantrex India Crane Rails PVT LTC (i.e. Item sl. No. 07) is Rs. 18800000/- and GST @18% Rs. 3384000/-extra for item sl.no.07 against tax invoice. As per the purchase order, the work is done by the applicant and GST is paid @ 18%. Out of total amount, 91% (Rs. 20304000/-) was cleared and received to the taxpayer by SHAR details of which are attached with this letter. But Balance of Rs.1880000/- is withheld by SHAR. The taxpayer has disclosed the invoices in GSTR 1 for the period 2019-20 and 2020-21 and has filed GST Returns in



GSTR 3B for the periods. He has already paid the tax at the rate 18 %. No credit/debit notes are issued against the said invoices.

Contention of SHAR upon applicability of tax rate @12%: As defined in the Work contracts under section 2(119) commissioning of immovable property where transfer of property in goods (whether as goods or in some other form is involved and supplied to Central government the applicable rate is 12%. Railway Track is used for Handling finished goods in a Plant/Project. The foundation and structural support like Rail Track which is used for handling finished product is immovable property. As the applicant was fully acquainted that the testing and commissioning of Rail Track is meant for Handling assembled staged rockets finished products) from Assembly building to Launch pad as per agreed work order, and it is clearly evident that the Rail track is part of civil structure (Machinery & Equipment) and classified as immovable property.

Transfer of Property

Maintenance/Commissioning Contracts can qualify as pure service contracts only when they involve no supply of goods. Typically, such contracts envisage that the contractor shall supply some materials to the customer and there shall be some consumables used by the contractor like welding electrode, grinding wheels, cleaning material etc. while doing commissioning works pertaining to an immovable property, including a plant/machinery which is embedded to earth and that makes it qualify as a 'work contracts'. Hence it is concluded by SHAR that the applicable GST rate in this case is as defined under the SAC Code 9954 i.e 12% under the following sub-Clause as SDSC SHAR, ISRO being a Central Government Organization under Department of Space.

As per Serial no. 3(vi)a Of Notification No. 11/2017-Central Tax (Rate) New Delhi, the 28th June, 2017

[(vi) [Composite supply of works contract as defined in clause (119) of section 2 of the Telangana Goods and Services Tax Act, 2017 [other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above] 27 , provided] 28 to the Central Government, State Government, [Union territory or a local authority] 29] 30 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; rate of tax applicable is 12%.

Comment by this office: Notification No. 11/2017-Central Tax New Delhi, the 28th June, is amended several times. It notifies in serial number 3 that, [(vi) [Composite supply of works contract as defined in clause (119) of section 2 of the Telangana Goods and Services Tax Act, 2017 [other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above] 27, provided] 28 to the Central Government, State Government, [Union territory or a local authority] 29] 30 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; falls under rate 12%.

And

[(xii) Construction services other than (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x) and (xi) above falls under rate 18% .

If the said work done as per purchase order is treated as composite supply, the tax rate would be at 12% as per notification.

As per section 2(119) of CGST Act 2017 "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."

As per Para 6(a) of Schedule II to the CGST Act, 2017, works contracts shall be treated as a supply of services.

As per definition of Composite supply -" a supply is comprising two or more goods/services, which are naturally bundled and supplied in with each other in the ordinary course of business, one of which is a principal supply. It means that the items are generally sold as a combination. The items cannot be supplied separately"

A supplier can issue a credit note against a Tax Invoice on or before 30th September of the next financial year or the date of filing of annual return pertaining to the Tax Invoice, whichever is earlier

The time limit to avail Input Tax Credit ("ITC") in respect of any invoice or debit note under Section 16(4) of the CGST Act, through any return in FORM GSTR 3B



filed upto November 30, 2021 for the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21, was November 30, 2021

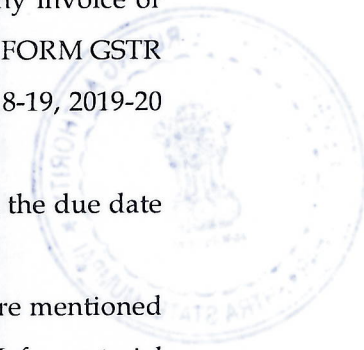
The taxpayer has already filed GST returns for the period in which the related invoices are issued i.e. 2019-20 and 2020-21 and has paid the tax at the rate 18%. When the buyer requests changes to an order after the invoice was issued, credit note must be issued by the supplier. As per GST act 2017 " section 34(1) If a seller has charged too much tax or the value of the goods or services in the invoice is higher than it should be, or if the buyer returns the goods, or if the goods or services are not up to standard, then the seller can give the buyer a 'credit note'. when a tax invoice is issued, and the same is required to be amended to reduce the tax liability mentioned in it, the supplier can issue a credit note. A supplier can issue a credit note against a Tax Invoice on or before 30th September of the next financial year or the date of filing of annual return pertaining to the Tax Invoice, whichever is earlier" Also, the time limit to avail Input Tax Credit ("ITC") in respect of any invoice or debit note under Section 16(4) of the CGST Act, through any return in FORM GSTR 3B filed upto November 30, 2021 for the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21, was November 30, 2021.

In the instant case, if the change in rate is applied and tax is reduced, the due date of issuing credit note and availing ITC thereon is already over.

As mentioned in the purchase order dated 02.05.2019, two supplies are mentioned separately and tax invoices are raised separately by M/s. Gantrex SPRL for material supply and by M/s. Gantrex India Crane Rails Pvt Ltd for erection and commissioning to SHAR which indicates that the two supplies are not naturally bundled but are two individual supplies. Both are different supplies and none of them is mentioned as principle supply. For, Not being a composite supply, the work of erection and commission of supplied items would be taxed at the rate 18%.

Also, the rate of tax for both the supplied is clearly mentioned. The PO value for erection and commission of supplied items by M/s Grantrex India Crane Rails PVT LTC (i.e. Item sl. No. 07) is Rs. 22184000/- and GST @18% Rs. 3384000/-extra for item sl.no.07 against tax invoice.

As per the purchase order, the work is completed by the applicant and GST is paid @ 18%. As per submission of taxpayer, the taxpayer has followed the said purchase order showing GST applicability @18% and paid GST accordingly. Hence, the tax



rate on the said work of erection and commission would be @18% as mentioned in purchase order.

04. HEARING

Preliminary e-hearing in the matter held on 03.01.2025. Mr. Rohit Prasad, C.A., appeared and requested for admission of the application. Jurisdictional Officer Mrs. Anuradha Prakash Chimanwar, State Tax Officer of SGST was present.

The application was admitted and called for final e-hearing on 03.04.2025. Mr. Rohit Prasad, C.A., Authorized Representative, appeared made oral and written submissions. Jurisdictional Officer Mrs. Anuradha Prakash Chimanwar, State Tax Officer of SGST appeared. We heard both the sides.

05. OBSERVATIONS AND FINDINGS:

5.1. We have gone through the application filed by the applicant and the submissions made by them from time to time and the submissions made by them at the time of the personal hearing. We have also gone through the submissions made by the jurisdictional officer vide letter date 27.01.2025. The applicant, M/s. Gantrex India Crane Rails Pvt. Ltd., are providing erection, testing and commissioning services to M/s. Satish Dhawan Space Center, SHAR, Department of Space, Government of India. Satish Dhawan Space Centre (SDSC) is one of the centers of Indian Space Research Organisation, Department of Space, Government of India. The center provides world class launch base infrastructure for national and international customers in accomplishing diverse launch vehicle/satellite missions for remote sensing, communication, navigation and scientific purposes. More particularly, we find that SDSC issued a purchase / work order No. SHAR/VAST/20i8E099350101 dated 7.5.2019 to M/s. Gantrex SRP, Rue Du Commerce 19, Rue du commerce Nivelles, 1400, Brabant Wallon, Belgium for supply of Rails. Fish plates and clips. In the same order, the work of erection and commissioning of the rail track was awarded to the applicant i.e. M/s. Gantrex India Crane Rails Pvt. Ltd. The work comprises of erection and commissioning of rail tracks meant for handling assembled staged rockets from Assembly Building to Launch Pad.

5.2. Ongoing through the purchase order/work order, we find that the order has been divided into two portions i.e. one for supply of goods and one for providing service of erection and commissioning. The contract for the first portion for supply of goods has been awarded to M/s. Gantrex SRP, Belgium while the work of erecting and commissioning of the rail tracks has been given to the applicant.



We find that Section 2(30) of the CGST Act, 2017, defines Composite Supply as under: -

"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."

Works Contract has been defined under the CGST Act, 2017, in Section 2(119) as under: -

"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."



5.3. In order to constitute a composite supply, the goods provided by the applicant should be naturally bundled in the ordinary course of business. The concept of 'naturally bundled' supplies is not defined under CGST Act. For this, reliance can be placed on the flyer cum FAQ issued by CBIC to explain the concepts of 'composite supply' and 'mixed supply', which also makes reference to the Education Guide issued under service tax regime in determining whether a supply is a composite or a mixed supply under GST regime. The 'Education Guide' issued by the Central Board of Excise & Customs ('CBEC') in the year 2012 explains the 'Bundled service' to mean a bundle of provision of various services wherein an element of one service is combined with an element or elements of any other service or services. Para 9.2.4, the Education Guide discuss whether a bouquet of services is bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below:

- a) The perception of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expect such services to be

provided as a package, then such a package could be treated as naturally bundled in the ordinary course of business.

- b) Majority of service providers in a particular area of business provide similar bundle of services. For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.
- c) Nature of the services offered is such that one is the main service and the other services combined with such a service are ancillary.
- d) Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are –

There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.

The elements are normally advertised as a package.

The different elements are not available separately.

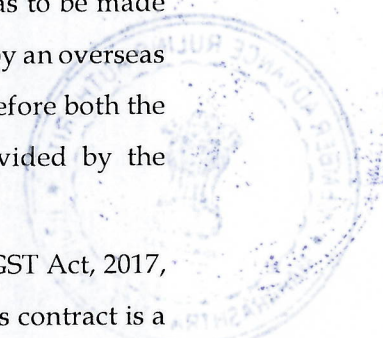
The different elements are integral to one overall supply - if one or more is removed, the nature of the supply would be affected.

We find that in order to qualify as a composite supply, the supply has to be made by a taxable person. In the instant case, the goods are being supplied by an overseas entity and the service is being provided by a different entity and therefore both the supplies cannot be combined together to classify the service provided by the applicant as a composite service.

5.4. The definition of “works contract” given under Section 2(119) of the CGST Act, 2017, read with para 6(a) of Schedule II of the Act, clearly denotes that works contract is a composite supply of services which shall fulfill both the following conditions: -

- i) the supply shall be in relation to immovable property only.
- ii) The supply essentially involves transfer of property in goods (whether as goods or in some other form).

In the instant case, with respect to the supply of the goods by M/s. Gantrex, Belgium and the service of erection and commissioning provided by the applicant, the supply by the applicant does not involve any transfer of property in goods from the applicant to their client, the said service cannot be considered as a works contract. The Contract for supply of goods is with one person while the contract for supply of erection service is with another person. Both the said contracts cannot be combined together to treat the same a works contract in view of the fact that it is being supplied by two different persons and liability of both the persons and distinct and separate



and the consideration received by both the parties are distinct and identifiable. The time lines for completion of the contract by the two parties are separate and identifiable. Ongoing through the invoices submitted by the applicant, it is very clear that the goods have been supplied by M/s. Gantrex SRPL, Belgium to Satish Dhawan Space Centre, Shriharikota who is mentioned as the consignee. Similarly, M/s. Gantrex India Crane Rails (P) Ltd., the applicant has issued invoice to Satish Dhawan Space Center SHAR for the erection and commissioning of rail track and allied system directly. There are no cross references of the supplier of goods or the supplier of service in their invoices. Therefore, we find that the two orders, one for supply of goods and one for erection and commissioning cannot be considered as a single order of works contract or a composite supply of goods or services. Though both the supplies are covered under the same purchase order, we find that in effect, as far as GST is concerned, both the orders are separate and clearly divisible and distinct, where both consideration and liability for breach of contract are distinct and separate on both the suppliers.



5. We find that the service provided by the applicant is in the nature of erection and commissioning of rail line from the Assembly Building to the Launch Pad. The rail line, fish plates and other goods necessary for the said service is provided by the client i.e. SDSC, SHAR and the applicant only provides their services of erecting and commissioning of the rail line as required by the client. Since no goods are supplied by the applicant, consequently, no goods are transferred from and therefore, it can be held the supply of service by the applicant does not involve transfer of property in goods. In view of the said fact, we hold that the service provided by the applicant to SDSC would not qualify as a works contract service. We find that as per Para 4.3.2 of the Tender Document, Supplier shall provide all supervision, labour, tools, machines, cranes, equipment, scaffolding, rigging material and incidental material such as bolts, wedges, anchors, etc. required to complete the works. Supplier shall also provide at his own cost all such consumables like oxygen - acetylene gas, welding rods, grinding wheels, temporary supports, shims etc. required to complete work. We find that such goods like oxygen-acetylene gas, welding rods, grinding wheels etc., are consumables which get consumed in the process of the completion of the process of erection and commissioning. The property in such goods are not transferred from the applicant to the client in any form. In this regard, we place reliance on the decision of the Apex Court in Gannon Dunkerley & Co. v. State of

Rajasthan & Others, [(1993) 1 SCC 364] here it was, inter alia, held that the property in consumables such as water, electricity, fuel etc., used in the execution of the works contract does not get transferred in the course of execution of a works contract. Therefore, we find that even if certain consumables are consumed during the course of execution of the supply of erection and commissioning, it cannot be said that transfer of property in goods (whether as goods or in some other form), is involved in the execution of such contract. A similar view has been expressed by the Hon'ble Kerala High Court in the case of Deputy Commissioner of Sales Tax v. Thomas Stephen and Co. Ltd. (1987) 66 STC 34; (1987) 1 KLT 161, (paragraph 5) which was affirmed by the Supreme Court in Deputy Commissioner v. Thomas Stephen & Co. Ltd. (1988) 69 STC 320 (at pages 324-325); (1988) 1 KLT 568 (paragraph 12)."

In order to arrive at the correct classification of the services provided by the applicant and to determine the duty liability in this case, it is necessary to examine the various clauses laid down under Notification No.11/2017 dated 28.6.2017. Chapter 99 covers all the services under GST. Section 5 covers construction services which includes in its ambit erection and commissioning services. Sr.No.3 of the table in the said Notification covers all types of construction services. On a careful perusal of the said services covered under the said serial number, it is seen that Sr.No.3(i) covers construction of complex, building, civil structure or part thereof intended for sale. Sr.No.3 (ii) to (x) covers various services which are in the nature of composite supply of works contract. Sr.No.3 (xi) covers services by way of housekeeping, plumbing carpentering etc. while Sr.No.3(xii) covers construction services other than (i) to (xi). We find that the applicant has specifically asked whether the services of erection and commissioning of rail tracks provided by them is classifiable under S.No.3(vi)(a) of Notification No.11/2017-Central Tax (Rate) dated 28.6.2017. We find that Sr.No.3 (vi) of the said notification has been deleted with effect from 18.7.2022 vide Notification No.3/2022 CT (Rate) dated 13.7.2022. The details of the said Sl. No. 3 (vi)(a) prior to its deletion is as under: -

S.No.	Chapter, Section or Heading	Description of Service	Rate (Percent)	Condition
3	9954	vi) Composite supply of works contract as defined in clause (119) of Section 2 of the Central Goods	6	(Provided that where the services are supplied to a Government entity, they should have been

		and Services Tax Act, 2017, provided to the Central Government, State Government, Union Territory, a local authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;		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.
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We find that the classification under S.No.3(vi)(a) of the Notification No.11/2017 Central Tax (Rate) dated 28.6.2017 would not be applicable in the present case as the supply of services of erection and commissioning by the applicant would not qualify as a composite supply of works contract service.

5.7. We find that the services provided by the applicant in the present case is pure service of erection and commissioning on the basis of the materials submitted by the client. The details submitted by the applicant does not in any manner point out the fact that any materials/goods are supplied by them along with the service of erection and commissioning. In fact, all the materials are supplied by M/s. Gantrex SRPL, Belgium as can be seen from the purchase order produced by the applicant. We find that during the relevant time i.e. prior to the amendment of Notification No.11/2017 dated 26.8.2017 by Notification No.3/2022 dated 13.7.2022, the Sr.No.3 (xii) of Notification No.11/2017 dated 26.8.2017 covered construction services not specified under S.No.(i) to (xi) of the said notification. Since the service provided by the applicant cannot be considered as a composite supply nor as a works contract, the classification of the said services would fall under the residuary category of construction services Chapter heading 9954 during the relevant period. The services provided by the applicant of erection and commissioning can be considered as a pure construction service under the said heading 9954 and chargeable to GST under

Sr.No.3(xii) of Notification 11/2017 Central Tax (Rate) dated 26.8.2017 which attracts duty @ 9% CGST +9% SGST.

06. 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- 08/2022-23/B- 206 Mumbai, dt. 28-04-2025

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

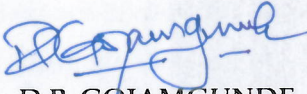
Question No.1. Whether the instant provision of testing and commissioning service of Rail Track is classifiable under Sl.No.3(vi)(a) of Notification No.11/2017 Central Tax (Rate) dated 28.6.2017 (As amended up to 17.7.2022)?

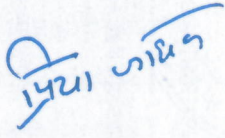
Answer No.1: No.

Question No.2. In case where the answer to Question 1 is in negative, what shall be the classification and rate of tax?

Answer No.2. The said services shall be classified under Heading 9954 and more specifically under Sr.No.3(xii) of Notification 11/2017 Central Tax (Rate) dated 28.6.2017 and the rate of tax will be 18% i.e. @ 9% CGST + 9% SGST.




D.P. GOJAMGUNDE
(MEMBER)


PRIYA JADHAV
(MEMBER)

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

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. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.