

**GUJARAT AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/03/2021
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/38)

Date: 20.01.2021

Name and address of the applicant	:	M/s. Apar Industries Limited Survey No.189/P1,GIDC Road, Tal. Umbergaon, Valsad, Gujarat-396171.
GSTIN of the applicant		24AAACG1840M1ZR
Date of application	:	29.08.2020
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(e) determination of the liability to pay tax on any goods or services or both; (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.
Date of Personal Hearing	:	23.12.2020
Present for the applicant	:	Shri Amal Dave

BRIEF FACTS

The applicant M/s. Apar Industries ltd. located at Plot No.189/P1, GIDC Road, Tal.Umbergaon, Valsad (Dist.), Gujarat-396171 AND Survey No.82/2P,88,861/1, 862/1, 863/1, Khata No.1932, Manekpur Road, Khatalwada, Valsad-396120. (having correspondence address at 12/13, Jyoti Wire House, 23A, Shah Industrial Estate, Off.Veera Desai Road, Andheri(West), Mumbai) are manufacturers and suppliers of various goods such as Power/Electric cables, House wire cables, Marine/pressure tight cables and non-pressure tight cables, Solar DC cables, XLPE(HT/LT) cables etc. falling under Chapter Heading No.8544 of the Customs Tariff Act.

2. The applicant vide their submissions dated 06.08.2020 and 22.12.2020 have submitted that they have received Purchase Order from Solar Power Generating Projects such as Adani Green Energy Limited, Adani's Mundra Solar PV Limited, etc. and expected future similar orders, for supply of "Solar HT XLPE & LT XLPE Cables", for use as Parts in the manufacture of Solar Power Generating System; that though these cables are universally classified under Tariff Heading No.8544, they are used as integral parts in Solar Power Generating System without which Solar Power Generating System cannot function and cannot be treated as complete in all respect and at the same time the same is capable of being separated for repairs and replacement; that, therefore, all the Solar Power Project authorities are claiming that these cables will attract GST @5% in terms of Sr.No.234 of Schedule-I of the Notification No.01/2017-Integrated Tax(Rate) dated 28.06.2017; that amendment to original Purchase Order bearing No.4500293305 dated 25.12.2018 (amended

as on 16.02.2019) related to the above Project Authorities, confirming the applicability of concessional rate of GST @5% is submitted; that while placing the above orders, the indenting project authority is claiming that applicable GST will be @5% on these cables, since the same is forming an integral part in the manufacture of Solar Power Generating System and hence Sr.No.234 of Schedule-I to the above notification will get attracted in their supply of these cables; that they are internationally certified, approved and recognized manufacturer and supplier of said HT XLPE & LT XLPE Cables i.e. Photo-Voltaic (PV) Cables and being an applicant in the present application for Advance Ruling seeks immediate ruling/order about 'Determination of Liability to pay Tax on the above goods' to be supplied by them from Gujarat State to Solar Power Generating Projects, for use as essential parts in their manufacture. The applicant has requested to take up this matter on priority and out of turn as it involves the national interest and economic development of our country and the requirement of the goods by the project authority is also on priority to complete the project in time.

3. The applicant has submitted that these goods viz. "HT XLPE & LT XLPE Cables" were manufactured as per the type, size and specifications provided by the Project Authority of Solar Power Generating System and supplied directly to them/their site for use as Parts in the manufacture of Solar Power Generating System; that the Government of India (Ministry of Finance and Department of Revenue, CBIC) had issued a Notification No.1/2017-Integrated Tax (Rate) dated 28.06.2017 with 6 'Schedules' specified therein with different GST Rate in respect of the Goods supplied. All goods falling in 'Schedule-I' attract 5% rate of IGST [or 2.5% each of CGST & SGST] and their said goods i.e. 'Cables' referred above manufactured and to be supplied to Solar Power Projects for use as Parts in their manufacture fall under Sr.No.234 of the Schedule-I to the said Notification and accordingly applicable rate of GST on their above supply will be @ 5%, in total [i.e. 2.5% each of CGST & SGST or 5% IGST]; that during pre-GST Regime, "all goods" falling under 'Any Chapter', when supplied to Solar Power Projects, were fully exempted from payment of Central Excise Duty as per the Notification No.15/2010-C.E., dated 27.02.2010, based on the Certificate for the intended use, issued by the Project Authority and countersigned by the concerned Ministry of New and Renewable Energy (MNRE);that the Post-GST Notification/Law, however, do not give the full exemption from GST, but gives the concessional rate of 5% IGST [or 2.5% each of CGST & SGST] on the supply of **'any goods or Parts, falling under chapter 84, 85 or 94'**, if the same is used as Parts for the manufacture of Solar Power Generating System in terms of Notification No.1/2017-I.T.(Rate) dated 28.06.2017; that the said Notification No.1/2017-IT (Rate), do not impose any conditions, unlike pre-GST Notification (referred above), for claiming the benefit of concessional rate of GST Rate; that the Authority has issued a similar certificate for the use of goods supplied by the applicant for the intended purpose by the Solar Power Project Authority which clearly substantiates that the Cables supplied by them will be used as Parts in the manufacture of Solar Power Generating Projects. Entry at Sr.No.234 of Schedule-I of above Notification is reproduced as under:

Schedule I – 5%

Chapter /Heading / Sub-heading /Tariff item	Description of Goods
(2)	(3)
84, 85 or 94	Following renewable energy devices & parts for their manufacture (a) Bio-gas plant (b) Solar power based devices (c) Solar power generating system (d) Wind mills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants / devices (f) Solar lantern / solar lamp (g) Ocean waves/tidal waves energy devices/plants (h) Photo voltaic cells, whether or not assembled in modules or made up into panels.

	Explanation: If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 8/2017-Integrated Tax (Rate), dated 28th June, 2017 [G.S.R. 683(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service.
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4. The applicant has further submitted that these 'HT XLPE & LT XLPE Cables' are manufactured as per the design, specification and standard provided by the Solar Power Project Authority, and are supplied solely & predominantly for use as Parts for the manufacture of said Solar Power Generating System; that these cables have no other intended use or multiple-use, other than for use as Parts in the manufacture of 'Solar Power Generating System'; that for manufacturing these quality cables of the international standard for use in Solar Power Projects, they have been accorded with the permission, certification and approval from the International Authority i.e. TuV to manufacture as per EN-50618:2014 specs which is exclusively for the Solar application products; that a detailed technical specification, standard and various Parameters of the subject cables that needs to be complied with is given in the 'Technical Write-up' which is submitted; that CBIC/Board has already clarified vide **Circular No.80/54/2018-GST dated 31.12.2018 at Para 11.2** thereof that "the Notification specifically applies only to the goods falling under chapters 84, 85 and 94 of the Tariff; that therefore, this concession would be available only to such machinery, equipment, etc. which fall under 84, 85 and 94 and used in the initial setting up of renewable energy plants and devices including WTEP; that this entry does not cover goods falling under other chapters, say a transport vehicle falling under chapter 87 that may be used for movement of waste to WTEP"; that the goods i.e. "HT XLPE & LT XLPE Cables" supplied by them falls under chapter 85 which is covered under Sr.No.234 of the said Notification; that they are of the view that since the goods i.e. HT XLPE & LT XLPE Cables, manufactured and designed by them for use as parts in the manufacture by the Solar Power projects, the benefit of concessional rate of GST @ 5% is clearly admissible to them; that they have verified from Purchase Order placed on them which is attached with their original Application for Advance Ruling that the goods will be used only in Solar Power Generating System and also obtained end user certificate as per Annexure-IV submitted by them. The applicant has stated that they rely on the following Advance Rulings to support their contention:

- (i) Order No.07/2018-19 dated 28.08.2018 passed by the Authority of Advance Ruling-Uttarakhand, in the case of M/s Eapro Global limited, Roorkee.
- (ii) Order No.15/2018-19 dated 23.01.2019 passed by AAR, Uttarakhand, in the case of M/s. Premier Solar Systems(P) ltd., Dehradun.
- (iii) Order No.Giriraj Renewables (P) ltd. – AAAR(146) AAR Karnataka (215).

5. They have concluded their submission by requesting that it be held that supply of "HT XLPE & LT XLPE Cables" to Solar Power Generating Projects for use as parts for their manufacture will be covered by Entry Sr.No.234 of the Schedule-I to Notification No.1/2017-Integrated Tax (Rate), and will attract concessional Rate at 5% IGST Rate; that since the Government of India is initiating and encouraging such Solar Power Projects and Wind Mill Projects for the development of our country and as per the past practice the "recipient of supply" has given an undertaking for use in the intended purpose and therefore there is no question of the goods, that is, cables being diverted for any other use; that in terms of Board Circular dated 31.12.2018 if the goods supplied falls under chapter 84, 85 and 94, then benefit of concessional rate of GST is directed to be given; that since the Applicant is accredited /approved / certified by the International Authority 'TuV', to manufacture as per EN-

50618:2014 specs which is exclusively for the products for Solar Power applications, and said goods has no other intended use and application and hence the benefit of concessional rate of 5% must be given/allowed.

6. The applicant has asked the following question seeking Advance Ruling on the same:

“Whether the applicability or determination of liability to pay Tax on our said goods at 5% GST rate is legally correct and in order in terms of Schedule-I to the Notification No.01/2017-Integrated Tax(Rate) or not.”

7. Further, in pursuance of the personal hearing held on 23.12.2020, the applicant vide their additional submission (submitted to this office on 29.12.2020) have stated that during the course of hearing held on 23.12.2020, they were requested to submit additional documents to show that the PO placed by M/s. Adani for HT XLPE & LT XLPE Cables was accepted; that a copy of the tender awarded to M/s. Adani for setting up solar power projects was also asked to be submitted within 3 days; that they have submitted copies of various e-mails exchanged in-between the parties regarding these transactions and to show that such PO had been duly accepted by the applicant company, they are also enclosing a copy of the Sales orders for these transactions, which prove it beyond doubt that the PO was accepted and that these cables are to be used in the Solar Power Projects, awarded to M/s. Adani; that as regards the copy of the tender, the tender was awarded to M/s. Adani and therefore the applicant may not be in possession of the same; that they are trying to get a copy of the said tender at the earliest and the same shall be submitted as and when received; that in the meanwhile these documents may be taken on record, which are in the nature of evidence to prove it beyond doubt that the PO was accepted and that such PO was placed for DC cables to be used in Solar Power projects.

DISCUSSION & FINDINGS:

8. We have considered the submissions made by the applicant in their application for advance ruling, submissions dated 22.12.2020, additional submission of the applicant(received in this office on 29.12.2020) as well as the arguments/discussions made by their representative Shri Amal Dave, Advocate at the time of personal hearing. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

9. At the outset, we would like to state that the provisions of both the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017 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 similar provisions of the GGST Act. However, since the present application submitted by the applicant deals with inter-state supply of goods, we will be required to make references to the IGST Act, 2017 as well as the Notifications of Integrated Tax(Rate) issued under the said Act.

10. As per the submission of the applicant, they have received Purchase Order from M/s.Adani Green Energy Limited., Rajasthan for supply of “Solar HT XLPE & LT XLPE Cables”, for use as Parts in the manufacture of Solar Power Generating System and though these HT XLPE & LT XLPE Cables are universally classified under Tariff Heading No.8544, they are used as integral parts without which Solar Power Generating System cannot function and cannot be treated as complete in all respect and at the same time the same is capable of being separated for repairs and replacement. They have also stated that, therefore, all the Solar Power Project authorities are claiming that these cables, will attract GST @5% in terms of Sr.No.234 of Schedule-I of the

Notification No.01/2017-Integrated Tax(Rate) dated 28.06.2017. The applicant has submitted photocopy of amendment to original Purchase Order bearing No.4500293305 dated 25.12.2018 (amended as on 16.02.2019) (involving supply of XLPE Cables worth Rs.5,98,50,001/-inclusive of GST@5%) received from M/s. Adani Green Energy Ltd., Rajasthan confirming the applicability of concessional rate of GST @5% . However, they have not submitted copy of the original Purchase Order dated 25.12.2018.

11. Based on the submissions of the applicant, photocopies of the various documents submitted by them as well as the arguments/discussions made by the representative of the applicant during the course of personal hearing, we find that the main issue to be decided is whether the applicability or determination of liability to pay Tax on their goods namely XLPE Cables that are used as integral parts in the Solar Power Generating System at 5% GST rate in terms of Sr.No.234 of Schedule-I of the Notification No.01/2017-Integrated Tax(Rate) dated 28.06.2017 is legally correct or not.

12. In view of the above, we find it necessary to go through the provisions of the Notification No.01/2017-Integrated Tax(Rate) dated 28.06.2017 which contains the headings, sub-headings as well as the rates of GST applicable to various goods which are covered under 6 schedules as under:

- (i) 2.5 per cent. in respect of goods specified in Schedule I,
- (ii) 6 per cent. in respect of goods specified in Schedule II,
- (iii) 9 per cent. in respect of goods specified in Schedule III,
- (iv) 14 per cent. in respect of goods specified in Schedule IV,
- (v) 1.5 per cent. in respect of goods specified in Schedule V, and
- (vi) 0.125 per cent. in respect of goods specified in Schedule VI

Further, Explanation (iii) and (iv) of the said Notification reads, as under:

(iii) “Tariff item”, “sub-heading” “heading” and “Chapter” shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

13. On going through the aforementioned notification, we find that there is an Entry No.234 which appears in Schedule-I of the said notification and reads as “*Following renewable energy devices & parts for their manufacture : (a) Bio-gas plant (b) Solar power based devices (c) Solar power generating system (d) Wind mills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants / devices (f) Solar lantern / solar lamp (g) Ocean waves/tidal waves energy devices/plants (covering goods of Chapter headings 84, 85 and 94)* and against this entry, the rate of GST prescribed is 5%. The same reads as under:

Schedule-I

Sr.No.	Chapter/ Heading/ Sub-heading/ Tariff item	Description of goods
234.	84, 85 or 94	Following renewable energy devices & parts for their manufacture (a) Bio-gas plant (b) Solar power based devices (c) Solar power generating system (d) Wind mills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants / devices (f) Solar lantern / solar lamp (g) Ocean waves/tidal waves energy devices/plants

14. On going through the provisions of the above entry, we find that it covers renewable energy devices as well as parts (covered under Chapters-84,85 and 94 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) for their manufacture and the list includes (a) *Bio-gas plant* (b) *Solar power based devices* (c) **Solar power generating system** (d) *Wind mills, Wind Operated Electricity Generator (W.O.E.G)* (e) *Waste to energy plants / devices* (f) *Solar lantern / solar lamp* (g) *Ocean waves/tidal waves energy devices/plants*. As per the submission of the applicant, the XLPE cables manufactured and supplied by them are to be used as parts in the manufacture of Solar Power Generating System. Thus, in order to avail the benefit of said notification entry as above, applicant has to satisfy two conditions namely, that the goods must be covered under Chapter Heading 84, 85 or 94 and secondly the goods shall satisfy the description “renewable energy devices & parts for their manufacture i.e. Solar Power Generating System. Since the applicant have mentioned in their submission that their product XLPE cables fall under Sub-heading 8544, we find it imperative to refer to Sub-Heading 8544 of Chapter-85 of the Customs Tariff Act, 1975(51 of 1975) which reads as under:

“8544 - Insulated (including enameled or anodized) wire, cable (including co-axial cable) and other insulated electric conductors, whether or not fitted with connectors; Optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors”

On going through the above, we are convinced that cables are indeed covered under the Sub-heading 8544 of Chapter-85 of the First Schedule to the Customs Tariff Act, 1975(51 of 1975) as submitted by the applicant and therefore the first condition has been satisfied.

15. Now, the next issue to be dealt with is whether the XLPE cables manufactured by the applicant are being used as parts of Solar Power Generating System as submitted by the applicant. In order to find out whether the XLPE cables manufactured and supplied by the applicant indeed form integral parts of the Solar Power Generating System, we need to first know what a Solar Power Generating System is. As known in common parlance, Solar power generating systems generally is a system which absorbs sunlight and converts it into electricity which can be put to further use. A Solar Energy System is a renewable energy generating system that collects photovoltaic energy from the sun and converts it into usable electricity. A solar energy generating system relies on four main components: solar panels, inverter, controller and batteries and details are as under :

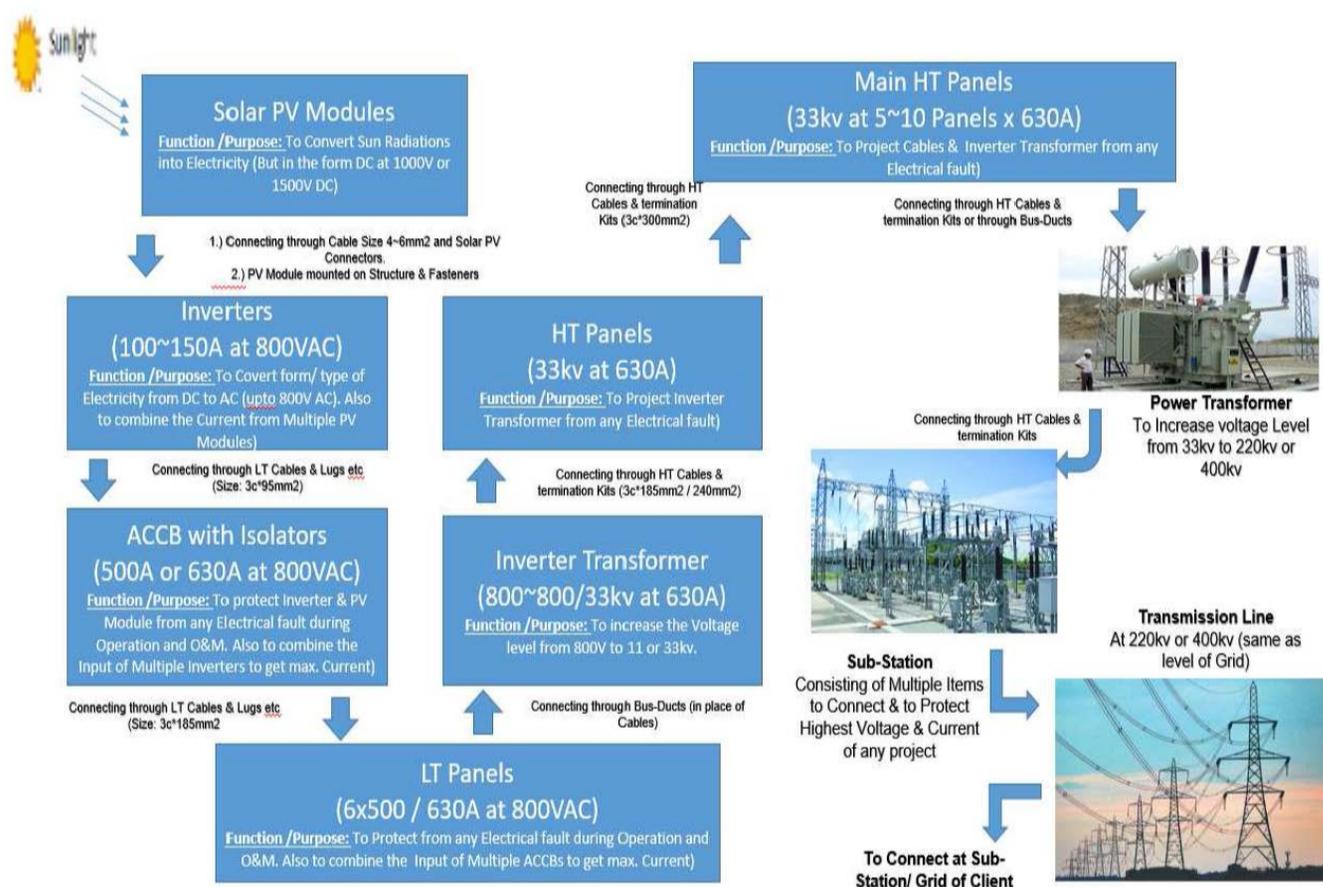
- (i) Solar panels : The main part of a solar power generating system is the solar panel. Solar panels contain solar cells. Solar cells, sometimes called photovoltaic cells, convert the energy of the sun into electricity.
- (ii) Inverters : The electricity produced in a solar panel is DC. Electricity we get from the grid supply is AC. So it is required to install an inverter to convert DC of solar system to AC of same level as grid supply. In off grid system the inverter is directly connected across the battery terminals so that DC coming from the batteries is first converted to AC then fed to the equipment. In grid tie system the solar panel is directly connected to inverter and this inverter then feeds the grid with same voltage and frequency power.
- (iii) Controller : This is not desirable to overcharge and under discharge a lead acid battery. Both overcharging and under discharging can badly damage the battery system. To avoid these both situations a controller is required to attach with the system to maintain flow of current to and fro the batteries.
- (iv) Battery : The battery is charged by solar electricity and this battery then feeds a load directly or through an inverter. In this way variation of power quality due to variation of sunlight intensity can be avoided in solar power system instead an uninterrupted uniform power supply is maintained.

15.1 The applicant is supplying XLPE cables to be used as parts in the Solar Power Generating System. The XLPE cables are used for connecting the transformer to the grid/substation.

15.2 Further, the applicant has submitted the technical write-up in this regard, in respect of the Solar Power Generating System as well as the role of cables as parts in the Solar Power Generating System. The technical write-up submitted by the applicant is as under:

“Solar Power Generating system

A Solar Power Generating system is designed to generate electricity by means of an array of photovoltaic Cells. It consists of an arrangement of several components, that include Solar Panels to absorb and convert sunlight into (DC) electricity, Solar DC String cables that interconnect the Solar Panels to collect the generated power into a combiner box, interconnecting cables from Combiner Box to a solar inverter to convert the output from DC to AC, as well as Panel mounting structure, Conduits and other electrical accessories to set up a working system. It may also use a solar tracking system to improve the system's overall performance and include an integrated battery solution, as prices for storage devices are expected to decline. Strictly speaking, a **solar array** only encompasses the ensemble of solar panels, the visible part of the PV system, and does not include all the other hardware, often summarized as balance of system (BOS). The major components of a typical Solar project will look as below:



Various Types of Cables used in Solar Power Generating system

As can be observed, at each and every stage, suitable cables are required, the cables used are:

- a) Solar DC String Cables to interconnect the Solar Panels and are manufactured as per EN-50618:2014
- b) DC application cables for use from Combiner Box to Inverter are XLPE Insulated and manufactured as per IS:7098(Part-I)
- c) AC application cables for use from Inverter to step up transformer are XLPE Insulated and manufactured as per IS:7098(Part-I)
- d) Medium Voltage 11-33 KV XLPE Cables used for Transformer to the grid / substation
- e) Communication Cables RS 485 and Fiber Optic Cables

Solar DC String Cables:

Solar DC String Cables are used to interconnect the Solar Panels, generally of size 4 /6/10 sqmm. These cables are manufactured as per EN-50618:2014 and are suitable for its use in harsh environment openly exposed to ultraviolet sunlight for entire day and tested, certified by TuV for 25 years working life. As most of the solar plants are set up where Sunlight is having good intensity, these cables can be used in high ambient temperature of up to 60 Deg C and can operate to maximum operating temperature of 120 Deg C. These cables can also be used in cold conditions as low as - 40 Deg C. All Solar projects have to use such cables that are TuV certified to make them bankable with the financing bodies. The EN: 50618 specs is exclusively for the Solar application. These Solar DC cables are printed on its surface mentioning Solar Cables as per EN: 50618 and its size. These cables are exclusively used for Solar application and do not have any other use.

Low Voltage DC XLPE Cables

The XLPE cables are used on DC side from Combiner box to Inverters. These cables as per IS: 7098 (Part-I) are generally Single core cables with Aluminium or steel strip/wire armouring. The commonly used sizes of these single core cables are 240/300/400 sqmm. These cables are also having an expected life of 25 years.

Low Voltage AC XLPE Cables

The XLPE cables are used from Inverters to step up Transformer. These cables as per IS: 7098 (Part-I) are generally Single core cables with Aluminium strip/wire armouring. The commonly used sizes of these single core cables are 240/300/400 sqmm. These cables are also having an expected life of 25 years.

Medium Voltage (11 or 33 KV) XLPE Cables

The MV XLPE cables are used from Transformer to connect to Transmission line or to substation. These cables as per IS: 7098 (Part-II) are generally Three core cables with Steel strip/wire armouring. The commonly used sizes of these single core cables are 120/185/240/300/400 sqmm. These cables are also having an expected life of 25 years.

Communication Cables RS 485 and Fiber Optic Cables

These RS 485 data communication cable and Fiber Optic cables are used for Supervisory control and data acquisition (SCADA) and remote monitoring application. It monitors the overall system performance.

CABLES: An Integral Part of the Solar Power Generating System

As can be seen above, all these cables are an integral part of the Solar Power Generating System. Without these interconnecting cables, the components like Solar Panels and others cannot generate usable power.”

16. We have gone through the aforementioned details of the Solar Power Generating System, the uses of cables therein as well as the technical write-up submitted by the applicant. We find that XLPE cables do form an integral part of the Solar Power Generating System as they connect the transformer to the transmission line or substation or are used from Inverters to step up Transformer as mentioned in the write-up. However, in order to confirm as to whether the XLPE cables manufactured and supplied by the applicant in the instant case are covered under Sr.No.234 of Schedule-I of Notification No.01/2017-Integrated Tax(Rate) dated 28.06.2017 or otherwise, it is necessary to confirm that the XLPE cables are indeed used as parts of Solar Power Generating System or otherwise in the instant case. For this purpose, we find it necessary to refer to Circular No.80/54/2018-GST dated 31.12.2018 issued by the CBIC/Board containing clarification regarding GST rates and classification of various goods. In this regard, while discussing the issue regarding Waste to Energy Plant and the scope of entry No.234 of Schedule-I of Notification No.01/2017-Central Tax(Rate) dated 28.06.2017, the Board clarified as under:

“11. Applicability of GST on supply of Waste to Energy Plant:

11.1. Representations have been received regarding applicable GST rate on the goods used in the setting up of Waste to Energy plants (WTEP) in term of Sr. No. 234 of Schedule I of Notification No 1/2017-Central Tax (Rates) dated 28th June, 2018. The

said entry 234 prescribes 5% rate on the following renewable energy devices & parts for their manufacture:

- (a) Bio-gas plant
- (b) Solar power based devices
- (c) Solar power generating system
- (d) Wind mills, Wind Operated Electricity Generator (WOEG)
- (e) Waste to energy plants / devices
- (f) Solar lantern / solar lamp
- (g) Ocean waves/tidal waves energy devices/plant
- (h) Photo voltaic cells, whether or not assembled in modules or made up into panels.

11.2 The notification specifically applies only the goods falling under chapters 84, 85 and 94 of the Tariff. Therefore, this concession would be available only to such machinery, equipment etc., which fall under Chapter 84, 85 and 94 and used in the initial setting up of renewable energy plants and devices including WTEP. This entry does not cover goods falling under other chapters, say a transport vehicle falling under Chapter 87 that may be used for movement of waste to WTEP.

11.3 Another related doubt raised is as to how a supplier would satisfy himself that goods falling under Chapter 84, 85 and 94, say a turbine or a boiler, required in a WTEP, would be used in the WTEP. In this context it is clarified that GST is to be self-assessed by a taxpayer. Therefore, he needs to satisfy himself with the requisite document from a buyer such as supply contracts/order for WTEP from the concerned authorities before supplying goods claiming concession under said entry 234.”

17. On going through the clarification given in the above circular, we find that for the supplier to satisfy himself that the goods supplied by them are used in the Waste to Energy Plant' (WTEP) or otherwise, he needs to satisfy himself with the requisite document from the buyer such as supply contracts/order for WTEP from the concerned authorities before supplying goods claiming concession under Entry 234. Comparing the said clarification with the issue in hand, we find the applicant has not provided/submitted copies of the supply contracts or orders for the Solar Power Generating System from the buyer regarding supply of parts for the same as required in the above circular. Further, they have not submitted the copy of the original purchase order bearing No. 4500293305 dated 25.12.2018 issued to them by their buyer M/s.Adani Green Energy Ltd., Rajasthan but have submitted only a copy of the amendment of the said purchase order issued on 16.02.2019. Further, we would like to emphasise here that purchase orders do not have any binding on both the parties as it is not a legal document in case any dispute arises and matter goes to the court of law. However, since the applicant has submitted only the amendment to the aforementioned Purchase order, with regard to the transactions in the instant case, we need to go through the same thoroughly. After going through the same, we find that the subject portion of the amendment to the aforementioned purchase order reads as under:

“Amendment-01 to Purchase Order (PO) No.4500293305 dated 25.12.2018 for – Design, engineering, manufacture, assembly, inspection and testing at works, supply, packing and forwarding, transportation and transit insurance on F.O.R. Site basis for HT cable Package for 200 MW MSEDCL, Rajasthan, NSM Solar Project in Village: Rawra, Taluka: Bap, District:Jodhpur, State: Rajasthan, India.”

17.1 On going through the above, we find that subject portion itself mentions about various services such as Design, engineering, assembly, inspection and testing at works, supply, packing and forwarding, transportation and transit insurance on F.O.R. Site basis for HT cable Package for 200 MW MSEDCL, Rajasthan, NSM Solar Project. We, therefore, find that unless and until we go through the provisions/conditions of the Contract/agreement in the current transaction, it would not be possible to reach a conclusive decision in the matter. Further, we find that although the applicant has submitted printouts of

some of the correspondences made by them with the buyer through email, they have not submitted the copy of Contract/agreement alongwith their submission. Although the representative of the applicant was requested to submit the copies of contract/agreement/tender etc. during the course of personal hearing, they have not submitted the same neither during the course of personal hearing, nor thereafter. In view of the above discussions, it can very easily be inferred that the Contract/agreement is an extremely important document and without going through the Contract/agreement signed by the applicant with the buyer, it would be impossible for us to arrive at a conclusive decision in the instant case. The applicant has also not submitted/provided copies of the tender awarded to their buyer M/s.Adani Green Energy ltd., Rajasthan in the instant case, although the representative of the applicant was specifically asked to provide the same during the course of personal hearing. Also, in their additional submission (which was received in this office on 29.12.2020), they have stated that they are not in possession of the same but will submit it as and when it is received from M/s.Adani Green Energy ltd., Rajasthan. In view of the facts mentioned above and in the event of non-submission of the aforementioned documents by the applicant, it would not be possible for us to take a decision in the matter since the issue in hand covers supply of goods such as cables for the Solar Power Generating System and after going through the subject portion mentioned in the amendment of the original purchase order dated 25.12.2018, there appears to be a distinct possibility of supply of services being involved in the instant case, along with the supply of goods and in such an eventuality, the nature of the transaction as well as the aspect of GST liability thereon are likely to be completely different. There is also every likelihood of such supply of goods i.e. XLPE cables for Solar Power Generating System being accompanied by services such as assembly, installation of the cables with all fittings and accessories etc. Even otherwise, as can be seen from the details mentioned in the subject portion of the amendment to the aforementioned purchase order dated 25.12.2018 that the subject portion itself mentions about various services such as Design, engineering, manufacture, assembly, inspection and testing at works, supply, packing and forwarding, transportation and transit insurance on F.O.R. site basis, alongwith the supply of XLPE cables.

17.2 In this context, we would like to refer to the amendment made to Entry No.234 of Schedule-I of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 vide Notification No.25/2018-Integrated tax(Rate) dated 31.12.2018 wherein an explanation to Entry No.234 was inserted w.e.f. 01.01.2019. The amended Notification No. 01/2017-IT (Rate) dated 28.06.2017 reads as under:

S. No.	Chapter/Heading/Sub-heading/Tariff item	Description of Goods
(1)	(2)	(3)
234	84 or 85	Following renewable energy devices and parts for their manufacture (a) Bio-gas plant (b) Solar power based devices (c) Solar power generating system (d) Wind mills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants/devices (f) Solar lantern/solar lamp (g) Ocean waves/tidal waves energy devices/plants
		<i>Explanation</i> : If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services , one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the Notification No.8/2017-Integrated Tax (Rate), dated 28th June, 2017 [G.S.R. 683(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service.

Simultaneously, Notification No.28/2018-Integrated Tax (Rate), dated 31-12-2018 amended Notification No.8/2017-Integrated Tax (Rate), dated 28-6-2017(w.e.f. 01.01.2019) vide which Serial No.38 was inserted in Notification No.8/2017-Integrated Tax (Rate), dated 28-6-2017 in respect of services related to setting up of solar power plants. The entry at Serial No.38 reads as under :

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
38	9954 or 9983 or 9987	Service by way of construction or engineering or installation or other technical services, provided in relation of setting up of following, - (a) Bio-gas plant (b) Solar power based devices (c) Solar power generating system (d) Wind mills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants/devices (f) Ocean waves/tidal waves energy devices/plants <i>Explanation :-</i> This entry shall be read in conjunction with Serial Number 234 of Schedule I of the Notification No. 1/2017-Integrated Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i), dated 28th June, 2017 vide GSR Number 666(E), dated 28th June, 2017.	18	

The explanation to the entry provides that the changes have to be read in conjunction with Serial Number 234 of Schedule-I of Notification No.1/2017-Integrated Tax (Rate) dated 28.06.2017.

17.3 A conjoint reading of the two aforementioned notifications requires that after 1-1-2019 the supply is taxable on the values worked out separately for goods and services under both Entry No.38 of Notification No.8/2017-Integrated Tax (Rate), dated 28-6-2017 (as amended by Notification No. 28/2018-Integrated Tax (Rate), dated 31-12-2018) and Entry No. 234 of Schedule I of Notification No. 1/2017-Integrated Tax (Rate), dated 28-6-2017 (as amended by Notification No.25/2018-Integrated Tax (Rate), dated 31-12-2018) and the values must be as per the explanation provided therein. The very purpose of insertion of deemed bifurcation of value of goods and service in the Entry No.38 of Notification No.08/2017-IT (Rate) dated 28.06.2017 was to remove the anomaly in cases where the supplier supplies the goods and services both for setting up of Solar Power Generating System. It therefore follows, that in similar circumstances involving supply of services along with supply of goods(classifiable under Sr.No.234 of Schedule-I of Notification No.01/2017-Integrated Tax(Rate) dated 28.06.2017(as amended from time to time)), out of the gross value of the supply, 70% shall be deemed to be on account of goods on which GST payable would be 5% whereas the remaining value of 30% shall be deemed to be on account of service on which GST leviable shall be 18%. However, in the instant case, we are not in a position to take any decision on the issue, since the applicant has failed to provide the documents such as contract/agreement/tender as mentioned in the foregoing paras. In view of the aforementioned facts, we conclude that in view of non-submission of the documents such as contract/agreement/tender as mentioned above by the applicant and without going through the conditions/provisions envisaged in the aforementioned documents, it will not be possible for us to take a decision in the matter.

18. We have also observed that the applicant has cited a few judgements of Advance Ruling Authorities to support their contention. In this context, we have to emphasise here that decisions of Advance Ruling Authorities cannot be

relied upon by the applicant, since, as per the provisions of Section 103 of the CGST Act, 2017, the Advance Ruling pronounced by the Advance Ruling Authority or the Appellate Authority shall be binding only on the applicant who had sought it in respect of any matter referred to in sub-section(2) of Section 97 for Advance Ruling and the concerned officer or the jurisdictional officer in respect of the applicant.

19. In light of the above circumstances, we rule, as under –

R U L I N G

Question: Whether the applicability or determination of liability to pay Tax on our said goods at 5% GST rate is legally correct and in order in terms of Schedule-I of Notification No.1/2017-Integrated Tax(Rate) or not?”

Answer: In view of non-submission of copies of contract/agreement/tender as mentioned above, by the applicant M/s. Apar Industries ltd., Plot No.189/P1, GIDC Road, Tal.Umbergaon, Valsad, it would not be possible for us to give a decision in the matter for the reasons discussed hereinabove.

(SANJAY SAXENA)

(MOHIT AGRAWAL)

MEMBER

MEMBER

Place: Ahmedabad

Date: 20.01.2021.