

**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/06/2021
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2019/AR/07)

Date: 20.01.2021

Name and address of the applicant	:	M/s. Kunal Structure India Private Limited. 15 th Floor, B-Wing, Mondeal Heights, Beside Novotel Hotel, S.G. Highway, Ahmedabad-380015
GSTIN of the applicant		24AACCK7952Q1ZW
Date of application	:	31.01.2019
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(b) applicability of a notification issued under the provisions of this Act;
Date of Personal Hearing	:	23.12.2020(Through online hearing)
Present for the applicant	:	Shri Jigar Shah

M/s. Kunal Structure (India) Pvt. Ltd., 15th Floor, B-Wing, Mondeal Heights, Besides Novotel Hotel, S. G. Highway Ahmedabad-380015 is a private limited company registered under the provisions of Companies Act, 1956 and having a GSTIN: 24AACCK7952Q1ZW, has filed an application for Advance Ruling under Section 97 of CGST Act, 2017 and Section 97 of the GGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs. 5,000/- each under the CGST Act and the GGST Act.

2. M/s. Kunal Structure (India) Pvt. Ltd. entered into a contract for construction of Deendayal Upadhyay Govt. Medical College, Rajkot with M/s. HLL Infra Tech Service (HITES) Ltd. which is a Govt. of India Enterprise. M/s. HITES as the executive Agency of Ministry of Health & Welfare, Govt. of India, New Delhi floated a tender for the said work under the Pradhan Mantri Swasthya Suraksha Yojna, Phase-III (PMSSY-III).

3. The applicant submitted that they were granted the Letter of Award on 08.06.2016. The scope of work included construction of multi storied building including water supply, sanitary and plumbing, comprehensive Fire Fighting/ Protection System, Internal & External Electrification, HVAC works, Lifts, WTP, STP, ETP, CCTV and Security System, Solar Panel, PA System, EPABX/ Communication System, LAN System, site development works such as Internal Road + Path & site leveling, sewer and storm water drainage work etc.

4. The applicant submitted that with the advent of GST with effect from 01.07.2017, the services provided by the applicant are classifiable under

heading No. 9954 (Construction service) as per the Scheme of classification of service annexed to the Notification No. 11/2017-CT (Rate) dated 28.06.2017. The relevant portion of the Notification is reproduced below :

3	Heading 9954 (Construction services)	(i) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	9	-
		(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.	9	-
		(iii) construction services other than (i) and (ii) above.	9	-

5. The applicant further submitted that the above Notification was amended vide various Notifications introducing different categories of works contract service, for example service provided to the government authorities, service pertaining to construction of railways, low cost housing, service provided by a sub-contractor etc. with varying rates of GST for each category of service. Notification No. 11/2017-CT (Rate) dated 28.06.2017 amended vide Notification No. 01/2018-CT (Rate) dated 25.01.2018 and same is reproduced hereunder:

“(ix) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (iii) or item (vi) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.	6	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.
(x) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (vii) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.	2.5	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.
(xi) Services by way of house-keeping, such as plumbing, carpentering, etc. where the person supplying such service through electronic commerce operator is not liable for registration under sub-section (1) of	2.5	Provided that credit of input tax charged on goods and services has not been taken [Please refer to <i>Explanation</i> no.

section 22 of the Central Goods and Services Tax Act, 2017.		(iv)].
(xii) Construction services other than (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x) and (xi) above.	9	

6. The applicant submitted that the services of work contract provided by a sub-contractor to the main contractor supplying service 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 a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession were taxable at the rate of 12% w.e.from 25.01.2018.

7. The applicant has submitted that in the present case they are sub-contractor providing services to main contractor i.e. M/s. HITES, M/s. HITES is an executing agency of the Ministry of Health & Welfare, Govt. of India, New Delhi. Hence, the work of construction of Pandit Deendayal Upadhyay Govt. Medical College, Rajkot (Gujarat) has been entrusted to M/s. HITES by the Central Govt. and the applicant has provided services in the capacity of a sub-contractor to them.

8. Accordingly, the applicant sought the Advance Ruling on the following question :

Whether the Service of Work Contract provided by the Applicant as sub-contractor are taxable at the rate of 12% for the period prior to 25.01.2018 when Notification No. 11/2017-CT (Rate) dated 28.06.2017 was amended by Notification No. 01/2018-CT (Rate) dated 25.01.2018.

APPLICANT’S INTERPRETATION OF LAW AND/OR FACTS

9.1 The applicant submitted that in order to file an application in relation to supply of goods or services before the Authority of Advance Ruling, the Applicant must satisfy the conditions prescribed under the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as ‘IGST Act’), Central Goods and Services Tax Act, 2017 (hereinafter referred to as ‘CGST Act’) and Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as ‘GGST Act’).

9.2 The applicant stated that Section 95 to 106 of the CGST Act, 2017 enunciated under Chapter XVII cover Advance Ruling and its appeals. The definitions and questions on which advance ruling is sought is provided under section 95 and 97 respectively. The relevant sections are extracted below:

Section 95. Definitions: *In this Chapter, unless the context otherwise requires,—*
(a) **“advance ruling” means a decision** provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, **in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;**
(c) **“applicant” means any person registered or desirous of obtaining registration under this Act;**

Section 97. Application for advance ruling: (2) *The question on which the advance ruling is sought under this Act, shall be in respect of,—*
(a) *classification of any goods or services or both;*
(b) **applicability of a notification issued under the provisions of this Act;**
(c) *determination of time and value of supply of goods or services or both;*
(d) *admissibility of input tax credit of tax paid or deemed to have been paid;*
(e) **determination of the liability to pay tax on any goods or services or both;**
(f) *whether applicant is required to be registered;*
(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.*

9.3 Further, Sections 95 to 106 of the GGST Act vide Chapter XVII provide for advance ruling and appeals against the same. Similar to CGST Act, the definitions and questions on which advance ruling is sought is provided under Section 95 and 97 of the GGST Act respectively. The relevant paragraphs are extracted below:

Section 95. Definitions: *In this Chapter, unless the context otherwise requires,—*
(a) **“advance ruling” means a decision** provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, **in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;**
(c) **“applicant” means any person registered or desirous of obtaining registration under this Act;**

Section 97. Application for advance ruling: (2) *The question on which the advance ruling is sought under this Act, shall be in respect of, —*
(a) *classification of any goods or services or both;*
(b) *applicability of a notification issued under the provisions of this Act;*
(c) *determination of time and value of supply of goods or services or both;*
(d) *admissibility of input tax credit of tax paid or deemed to have been paid;*
(e) *determination of the liability to pay tax on any goods or services or both;*
(f) *whether applicant is required to be registered;*
(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**

9.4 From the aforementioned provisions of the CGST Act and GGST Act relating to Advance Ruling, it can be concluded that in respect of determination of applicability of a notification issued under the provisions of the Act, an Applicant is eligible to seek an advance ruling. Further, submitted that they are seeking Ruling regarding the rate of GST as prescribed under Not. No. 11/2017-CT (Rate) dated 28.06.2017 as amended.

9.5 It is therefore submitted that in the present case the Applicant satisfies the criterion required for filing the application for advance ruling.

10. **Issue requiring Advance Ruling**

Service provided by the Applicant were taxable at the rate of 18% for period prior to 25.01.2018 as per Sl. No. 3(ii) Notification No. 11/2017-CT (Rate) dated 28.06.2017

10.1 The applicant submitted that they have provided services of work contract in the capacity of a sub-contractor to M/s. HITES. The services provided by a sub-contractor to the main contractor, with regard to the services supplying to the government were specifically included with effect from 25.01.2018 vide Not. No. 01/2018-CT (Rate)

10.2 The applicant further submitted that an amendment is prospective in nature, unless clearly specified to be clarificatory. In this regard they have placed reliance on the Constitution Bench judgement in the case of Commissioner of Income Tax (Central)-1, New Delhi Vs. Vatika Township pvt. Ltd [(2015)1SCC1].

10.3 The applicant accordingly, submitted that the Notification No. 01/2018-CT (Rate) dated 25.01.2018 is prospective in nature and for the period prior to this date, the services of the Applicant for construction of Pandit Deendayal Upadhyay Govt. Medical College, Rajkot (Gujarat) were covered under Sl. No. 3(ii) of Not. No. 11/2017-CT (Rate) which provides the rate for composite supply of works contract as defined in clause 119 of Section 2 of the CGST Act, 2017 as 18%.

10.4 The applicant submitted that they are of the view that the services provided by the Applicant were taxable at the rate of 18% for period prior to 25.01.2018 and at 12% for the period post 25.01.2018.

Personal Hearing

11. Personal hearing in the matter was held on 23.12.2020 through virtual mode i.e. by video conference. Authorised representative of the company appeared on behalf of the applicant and re-iterated the submission made in the Application.

DISCUSSION & FINDINGS

12. We have considered the submissions made by the applicant in their application for advance ruling as well as the arguments/discussions made by

their representative. We have also considered the issues involved on which Advance Ruling is sought by the applicant.

13. 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 the GGST Act.

14. The facts of the case is that M/s. HLL Infra Tech Service (HITES) Ltd. which is a Govt. of India Enterprise and executive Agency of Ministry of Health & Welfare, Govt. of India, New Delhi had floated a tender for the construction of Deendayal Upadhyay Govt. Medical College, Rajkot under the Pradhan Mantri Swasthya Suraksha Yojna, Phase-III (PMSSY-III). Accordingly, the applicant had entered into a contract for construction of Deendayal Upadhyay Govt. Medical College, Rajkot with M/s. HLL Infra Tech Service (HITES) Ltd.

15. The applicant was granted the Letter of Award on 08.06.2016 for construction of Deendayal Upadhyay Govt. Medical College, Rajkot. The applicant submitted that scope of work included construction of multi storied building including water supply, sanitary and plumbing, comprehensive Fire Fighting/ Protection System, Internal & External Electrification, HVAC works, Lifts, WTP, STP, ETP, CCTV and Security System, Solar Panel, PA System, EPABX/ Communication System, LAN System, site development works such as Internal Road + Path & site leveling, sewer and storm water drainage work etc.

16. We find that the applicant in the present case is a sub-contractor providing services to main contractor i.e. M/s. HITES, who is an executing agency of the Ministry of Health & Welfare, Govt. of India, New Delhi. The work of construction of Pandit Deendayal Upadhyay Govt. Medical College, Rajkot (Gujarat) has been entrusted to M/s. HITES by the Central Govt. and the applicant has provided services in the capacity of a sub-contractor.

17. Accordingly, the moot issue here is to decide whether the construction service provided by the applicant in the capacity of sub-contractor to the main contractor is eligible for GST @ 12% before 25.01.2018 i.e. prior to issuance of amended Notification No. 01/2018-CT (Rate) dated 25.01.2018.

18. To examine whether the applicant is eligible for GST @12% prior to the 25.01.2018, we have to refer the main Notification No. 11/2017-CT (Rate) dated 28.06.2017 vide which Central Government notified rates applicable on the services. Serial No. 3 of the said Notification provided for rate of GST on construction services which is reproduced as under :

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
1	Chapter 99	All Services		
2	Section 5	Construction Services		
3	Heading 9954 (Construction services)	(i) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	9	-
		(ii) Composite supply of works contracts as defined in Clause (119) of Section 2 of Central Goods and Services Tax Act, 2017.	9	-
		(iii) Construction services other than (i) and (ii) above.	9	-

19. Serial No. 3 of Notification No. 11/2017 was amended by Notification No. 20/2017-Central Tax (Rate), dated 22-8-2017 and new entries at Serial No. 3(iii), 3(iv), 3(v) and 3(vi) were inserted. Thereafter, again **Not. No. 11/2017-CT (Rate) was amended and new entry No. (vi) was inserted vide Notification No. 24/2017-CT (Rate) dated 21.09.2017.** Serial No. 3 (vi) of the Notification No. 11/2017 after amendment vide Notification dated 21.09.2017 read as under:

(3)	(4)	(5)
“(vi) Services provided to the Central Government, State Government, Union Territory, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of - (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession; (b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or	6	-

(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.		
(vii) Construction services other than (i), (ii), (iii), (iv), (v) and (vi) above.	9	”.

20. Further, the principal rate Notification No. 11/2017 was amended vide **Notification No. 1/2018-Central Tax (Rate), dated 25-1-2018 and inserted new entries at Serial No. 3(ix), 3(x), 3(xi) and 3(xii)**. The Composite Supply of Works Contract services provided by a sub-contractor to the main contractor were dealt with in entries at Serial No. 3(ix) & 3(x) of the amended Notification No. 11/2017 and the same read as under :

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
3	Heading 9954 (Construction services)	(ix) Composite supply of works contract as defined in Clause (119) of Section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (iii) or item (vi) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.	6	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.
		(x) Composite supply of works contract as defined in Clause (119) of Section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (vii) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.	2.5	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.

21. The said entries at **Serial No. 3(ix) and 3(x) pertained to works contract services provided by the sub-contractor to the main contractors who were in turn providing services to Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity**. The **new entries at Serial No. 3(ix) and 3(x) inserted vide Notification dated 25-1-2018 prescribed GST rate for sub-contractor services** pertaining only to the **services provided by the main contractor to the Governments/Government entity which were covered** in Serial No. 3(iii), **Serial No. 3(vi)** and Serial No. 3(vii) of the principal rate Notification No.

11/2017.

22. The entry at **Serial No. 3(vi)** concerned with **works contract services provided by a sub-contractor to the main contractor where the main contractor is providing works contract services to a Government Entity** by way of construction, erection, commissioning, installation, completion of (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession; **(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;** or (c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule-III to the Central Goods and Services Tax Act, 2017.

23. We find that vide Notification No. 01/2018-CT (Rate) dated 25.01.2018 a new entry no. 3(ix) was inserted in the principal rate Notification No. 11/2017-CT (Rate) dated 28.06.2017 vide which “**Composite supply of works contract as defined in Clause (119) of Section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (iii) or item (vi) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity**” was made taxable @12% . The said amended Notification came into effect from the date of issue of the Notification. Hence the said Notification No. 01/2018-CT (Rate) dated 25.01.2018 was issued on 25.01.2018 and in the opening paragraph of the said Notification the following is mentioned, “*In exercise of the powers conferred by sub-section (1) of section 9, sub-section (1) of section 11, sub-section (5) of section 15 and sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No. 11/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 690(E), dated the 28th June, 2017, namely*”. Accordingly, the said Notification is also published on the date of Notification in the Gazette of India. Further, an amendment in the Notification is prospective in nature, unless clearly specified to be clarificatory. Also the effective date of a Notification is always date of issue of Notification unless it is specified date of effect of the Notification. The Notification always came into effect from the date it was published in the Gazette of India and the subject Notification was issued in the Gazette of India on 25.01.2018 i.e. on the date it was issued. Therefore, Notification No. 01/2018-ct (Rate) dated 25.01.2018 is applicable/ came into effect prospectively and from the date of issue i.e. from 25.01.2018.

24. In the case of M/s. Jindal Industries Vs. Union of India reported in 2002(145) ELT 508 (Del) has held that, “**Notification to take effect from date of publication in Official Gazette**”.

25. In view of the above we hold that the GST rate 12% prescribed under Sr. No. (ix) vide Notification No. 01/2018-CT (Rate) dated 25.01.2018 is effective from the date of issue of said Notification i.e. 25.01.2018.

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

RULING

Q. Whether the Service of Work Contract provided by the Applicant as sub-contractor are taxable at the rate of 12% for the period prior to 25.01.2018 when Notification No. 11/2017-CT (Rate) dated 28.06.2017 was amended by Notification No. 01/2018-CT (Rate) dated 25.01.2018.

Ans. Negative in view of the above discussion.

(SANJAY SAXENA)

(MOHIT AGRAWAL)

MEMBER

MEMBER

Place: Ahmedabad

Date: 20.01.2021.