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/07/2021

(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/04)

Date: 20.01.2021

Name and address of the applicant	:	M/s. Shilchar Technologies Limited Bil Road, Bil , Vadodara-391410.
GSTIN of the applicant		24AADCS3108B1Z2
Date of application	:	10.02.2020
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(*a*) classification of any goods or services or both;
Date of Personal Hearing	:	23.12.2020
Present for the applicant	:	Shri Dhruvank Parikh CA

M/s. Silcher Technologies Ltd., Bil Road, Bil, Vadodara -380022 is a company registered under the provisions of Companies Act and having a GSTIN: 24AADCS3108B1Z2, 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. Silcher Technologies Ltd. is one of India's prominent manufacturers of Electronics & Telecom and Power & Distribution transformers. The said company was founded in 1990 to manufacture R-core transformers. In 1995, after an overwhelming response from the market, they ventured into the manufacturing of Ferrite transformers. As part of their expansion plans, they started manufacturing Distribution and Power Transformers in a phased manner from 2005 to 2007. The applicant now caters to a wide cross section of industrial segments from utility to renewable energy sector and to individual retail customers across the globe.

3. The applicant submitted that they provide an extensive range of Linear Transformers from R-core to EI and Toroidal to Current transformers. These transformers can be supplied according to customer specific requirement in terms of thermal insulation, cut-offs, static-magnetic shielding, special mounting, epoxy moulding, vacuum impregnation, etc.

4. The applicant submitted that they manufacture Telecom and Data Transformers of highest quality standards to satisfy customer requirements. With engineering support from Custom Magnetics, USA they design the most efficient and cost effective solutions for their customers. All Telecom

Transformers are tested for QA both during production and before shipping. Incoming quality control tests are conducted on all raw materials. The quality control department of Applicant is equipped with the latest computerized equipment available. Each shipment is provided with a full quality control report and certificate of compliance (COC). Applicant also manufactures Standard Line transformers for R-core as well as Toroidal Models. Their standard line transformers are available for 9/18V output, 12/24V output and isolation transformers for 115/230V output. The input for all the above transformers is 115 V/230V. The standard line transformers of Applicant meet CSA and CE standards as well as class B insulation system.

5. The Applicant submitted that they have attained expertise in manufacturing Power Transformers in a very short span of time after venturing into the business of Distribution Transformers. The Applicant is capable of manufacturing 25MVA, 66KV Class Power Transformer. The Transformers of Applicant are manufactured under stringent stage wise Quality Checks till dispatch. The state-of-the-art facility accompanied by a team of qualified and experienced professionals adds reliability to each product. The Applicant has an annual manufacturing capacity of 600MVA. All the transformers of Applicant are type tested at NABL certified laboratory. The Applicant had type tested power transformers from 3.15MVA, 33KV Class to 15MVA, 66KV Class.

6. The applicant submitted that with respect to distribution transformers, applicant manufacture transformers in capacities ranging from 5KVA, 1 Phase to 3.5MVA, 33KV and 1000KVA, 11KV Dry Type Transformers. The Power transformers undergo stringent stage wise Quality Checks till dispatch. They have an annual manufacturing capacity of 1425MVA. They have type tested distribution transformers from 5KVA, 1 Phase to 3.5MVA, 33KV Class.

7. Few of the products manufactured by the Applicant are imaged as under:

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

Whether supply of Aluminium Foil Type Winding Inverter Duty Transformer classifiable under Chapter Heading 8504 and parts of Transformer supplied / to be supplied for initial setting up of solar project falls under Sr. No. 234 in Schedule-I to Notification No. 01/20017-Central Tax (Rate) dated 28th June, 2017 and liable to Central GST at the rate of 2.5% along with State GST at the rate of 2.5%?

APPLICANT'S INTERPRETATION OF LAW AND/OR FACTS

9. The applicant submitted that on the basis of actual interpretation of the legal language and well specified norms and Notifications pertaining to the class / category of goods supplied / to be supplied, Applicant submits as under based on the best of the belief and understanding:

(i) The Applicant has received an Order from M/s. Adani Green Energy Limited (PO: 4500315135 dated 08.11.2019), the copy of which is enclosed herewith for the kind consideration for supply of 25MVA ONAN/ONAF 33/0 8/0 8KV Aluminium Foil Type Winding Inverter Duty Transformers, Mandatory Spares for Transformers which also includes Packing and Forwarding, Freight and Insurance charges up to the Site of the customer.

(ii) The product to be supplied falls under Chapter Heading 8504 to the best belief and understanding of the Applicant as the Applicant since years classifies the product under the said Chapter Heading.

(iii) As per the indemnity / undertaking given by the counter recipient of supply i.e. M/s. Adani Green Energy Private Limited, the recipient of supply is developing and setting up a 75MW Solar Project at Chitrakoot, Uttar Pradesh (UPNEDA Project) for which an approval has been granted to the recipient of supply from the Ministry of New & Renewable Energy.

(iv) For the above initial setting of the Solar Project, the recipient of supply of the applicant require machine, equipment, power cables, transformers and many other parts & components of the solar Power plant, for direct use in its manufacturing and initial setting up. The recipient of supply also confirmed that these Inverter Duty Transformers being procured are parts of Solar Power Generating System and will be used only for the said application.

(v) The Technical specification issued by the recipient of supply for the above **contract awarded to the Applicant (Ref: 5353-E-SEP-EES-TE-S-I-002)** for Aluminium Winding Inverter Duty Transformers to be procured for 50MW Solar Project at Jalabad, 50MW Solar Project at Sahaswan and 50+25MW i.e 75MW Solar Project at Chitrakoot Uttarpradesh for which the contract has been awarded to the **Applicant contains scope of supply and services along with intent of specification at page no. 3 which reads as under:**

"1.0.0 INTENT OF SPECIFICATION:

1.1.0 This Specification Covers Design, Engineering, Manufacture, Assembly and Testing at Works, Packing / Dispatch, Transportation to Site with Transit Insurance, Supervision of Erection, Testing & Commissioning of Inverter Duty Transformers as Specified Complete with All Accessories for Efficient and Trouble Free Operation of Solar Power Plant.

1.1.0 It is not the intent to specify completely herein all details of the design and manufacture. However, the equipment shall conform in all respects to high standards of design engineering and workmanship and shall be capable of performing in continuous commercial operation up to bidder's guarantee.

1.1.0 The general terms and conditions, instruction to bidders and other attachment referred to elsewhere be hereby made part of the technical specification. The bidder shall be responsible for and governed by all requirements stipulated in the specification.

1.1.0 Deviations if any should be brought out very clearly on deviation sheet enclosed with the specification only. Otherwise it will be construed that the bidder's offer is in line with what has been stated / asked for in this specification.

1.1.0 The offer should be complete with technical data, catalogue, brochures and drawings as applicable. In order to be able to present the proven-ness of the equipment offered, the bidder is required to elaborate details of experience, capabilities, reference list, etc. in the offer.

2.0.0 SCOPE OF SUPPLY & SERVICES:

2.1.0 The Scope of Supply Shall Cover Design, Engineering, Manufacture, Assembly and Testing at Works, Packing / Dispatch, Transportation to Site with Transit Insurance and Supervision of erection, testing & commissioning of the transformer complete with all fittings and accessories.

2.2.0 The scope of supply shall also include the following.

a) First fill of consumables.

b) Spare parts required for successful commissioning.

c) Mandatory spare parts for three years trouble free operation & maintenance.

O&M spares shall be considered for evaluation of bid. It shall not be binding on the owner to procure all of the O&M spares.

2.3.0 Scope of Services

a) Preparation and submission of drawings & document in soft and hard form as per the drawing/document submission schedule.

b) Supervision of erection, testing & commissioning of transformer.

c) Submission of progress report.

d) Participation in project review /Technical Coordination meetings.

2.4.0 Exclusion

a) Civil works.

b) Fire Fighting Equipments.

c) Receipt, Unloading & Storage

d) Erection, Testing and Commissioning.

2.5.0 Terminal Points

a) HV Bushing for termination in Cable Box.

b) LV Bushing for termination in Cable Box.

c) Transformer Earthing Pads."

The Copy of the technical specification is enclosed with the application.

10. The applicant submitted that it can be seen from para 2.3.0 above, the services are also included and hence the recipient of supply of service has issued a separate Service Order No. 5700280769 dated 23.12.2019 for supervision of erection, testing and Commissioning charges for the transformer to be supplied / supplied by the Applicant which is enclosed herewith for the kind consideration. The Applicant is going to charge 18% GST on the same being classified as service. At this juncture, it is worth mentioning that actual erection, commissioning and installation is not supposed to be carried out by the applicant as such it shall be required only to supervise the same for which a separate contract as mentioned above has been issued to the Applicant.

11. The Applicant submitted that they believes that the product i.e. Aluminium Foil Type Winding Inverter Duty Transformers along with its parts to be supplied falls under Sr. No. 234 to the Schedule – I to Notification No. 01/2017-Central Tax (Rate) dated 28th June, 2017 read with similar Notification issued under Gujarat GST Act, 2017 as amended from time to time wherein the rate of GST is 2.5% + 2.5%. The said entry for Chapter No. 84 or 85 reads as under:

> "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"

12. The applicant submitted that after various disputes on the above mentioned entry and divergent decisions of the Honorable Advance Ruling Authorities and Honorable Appellate Authority for Advance Ruling across the Nation with respect to the classification of the contract / supply and applicability of 5% or 18% rate, the Honorable GST Council in its 31st meeting held on 22 December, a much-awaited clarification was recommended in relation to the GST applicable on solar power generating systems and other renewable energy devices. This was implemented vide Notification No.24/2018-Central Tax (Rate), which came into force on 31st December 2018, and it added an explanation to entry 234:

> *"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. 11/2017-Central Tax (Rate), dated 28 June 2017 the value of supply of goods for the purposes of this entry shall be deemed as 70% of the gross consideration charged for all such supplies, and the remaining 30% of the gross consideration charged shall be deemed as value of the said taxable service."*

13. The applicant submitted that further, a new entry 38 has been added in the Notification No. 11/2017-Central Tax (Rate) pertaining to rate of services vide Notification No. 27/2018-Central Tax (Rate) dated 31st December, 2018 read with similar Notification issued under the provisions of the Gujarat GST Act,2017 which prescribes an 18% GST rate for services under chapter 9954, which pertains to construction services, or 9983, which pertains to other professional, technical and business services (except research, development, legal and accounting services), or 9987, which pertains to "maintenance, repair and installation (except construction) services", "by way of construction or engineering or installation or other technical services, provided in relation of setting up of" bio-gas plant, solar power generating system, waste-to-energy plants/devices.

14. The applicant submitted that two separate contracts have been issued by the recipient of supply as supply and services have separately been bided by the Applicant as there was not at all a compulsion from the recipient of supply to bid two different contracts as the supply of goods also could have been sufficed and accordingly the explanation as inserted above and reproduced and mentioned herein above shall not be applicable and thus Applicant believes that the supply of Transformers to be executed / should be liable to GST at 2.5% CGST and 2.5% SGST.

15. The applicant submitted that hence, on the basis of all the above explanations and precedence, they are very much hopeful of an Advance decision from the Authorities.

Personal Hearing

16. Personal hearing in the matter was held on 23.12.2020. Authorised representative of the company appeared on behalf of the applicant and re-iterated the submission made in the Application.

DISCUSSION & FINDINGS

17. 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.

18. 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.

19. The applicant submitted that they are one of India's prominent manufacturers of Electronics & Telecom and Power & Distribution transformers. The said company was founded in 1990 to manufacture R-core transformers. As part of their expansion plans, they started manufacturing Distribution and Power Transformers in a phased manner from 2005 to 2007. They now cater to a wide cross section of industrial segments from utility to renewable energy sector and to individual retail customers across the globe. Their standard line transformers are available for 9/18V output, 12/24V output and isolation transformers for 115/230V output. The input for all the above transformers is 115 V/230V. The standard line transformers of Applicant meet CSA and CE standards as well as class B insulation system.

20. The Applicant further submitted that they are capable of manufacturing 25MVA, 66KV Class Power Transformer. The said transformer manufactured under stringent stage wise Quality Checks till dispatch. The state-of-the-art facility accompanied by a team of qualified and experienced professionals adds reliability to each product. They have an annual manufacturing capacity of 600MVA. All the transformers of Applicant are type tested at NABL certified laboratory. They had type tested power transformers from 3.15MVA, 33KV Class to 15MVA, 66KV Class.

21. The Applicant has received an Order from M/s. Adani Green Energy Limited (PO: 4500315135 dated 08.11.2019), for supply of 25MVA ONAN/ONAF 33/0 8/0 8KV Aluminium Foil Type Winding Inverter Duty Transformers, Mandatory Spares for Transformers which also includes

Packing and Forwarding, Freight and Insurance charges up to the Site of the customer.

22. In this regard, applicant has submitted an indemnity / undertaking dated 05.02.2020 given by M/s. Adani Green Energy Private Limited i.e. recipient of supply of Aluminium Foil Type Winding Inverter Duty Transformer wherein it is stated that,

> *M/s. Adani Green Energy Limited is developing and setting up (75MW Chitrakoot Solar Project. Uttar Pradesh, UPNEDA Project). for which approval from the Ministry of New & Renewable Energy has already been received; that the entire lot to be received from the applicant will be used only in the initial setting of the above project and not elsewhere or not for any other purposes.*

23. The applicant submitted that two separate Purchase Orders have been issued by the recipient of supply as supply of goods and services. The applicant has received the order P.O. 4500315135 dated 08.11.2019 of supply of Aluminum Foil Type Winding Inverter Duty Transformer along with their parts. Also received a separate Service Order No. 5700280769 dated 23.12.2019 for supervision of erection, testing and commissioning charges for the transformer to be supplied by the Applicant.

24. The moot question here is to decide whether the supply of said Aluminum Foil Type Winding Inverter Duty Transformer and their parts is eligible for GST rate @ 5% as per the Sr. No. 234 of Notification No. 01/2017-CT(Rate) dated 28.06.2017.

25. Under GST regime, various rates have been prescribed for goods and services. Per, Notification No. 01/2017-CT (Rate), dated 28 June, 2017, solar power generating systems and parts for their manufacture are taxable at 5%. The relevant entry reads as follows :

Schedule-I GST @5%

Sl. No.	Chapter Heading	Description
234	84 or 85 or 94	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 and wind operated electricity generator (e) Waste to energy plants/devices (f) Solar lantern/solar lamp (g) Ocean waves/tidal waves energy devices/plants (h) *Photovoltaic cells, whether or not assembled in modules or made up into panels*

The said notification provides that items covered under Chapter 84 or 85 or 94 which constitute renewable energy devices and parts required for

their manufacture are covered under the aforesaid Entry No. 234 and are liable to be taxed at 5%. Thus to avail the benefit of said notification entry as above applicant has to satisfy two conditions namely, that the goods must be covered by 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.

25.1 Now we examine the classification of Aluminum Foil Type Winding Inverter Duty Transformer and their parts as per CTH and see whether the goods are covered under Chapter Heading 84 or 85 or 94 of the Custom Tariff code.

25.2 The tariff code 8504 of Customs Tariff Act, 1975 covers the "*ELECTRICAL TRANSFORMERS, STATIC CONVERTERS (FOR EXAMPLE, RECTIFIERS) and INDUCTORS"*. The impugned product i.e. Inverter Duty Transformer is classifiable under Tariff Heading 8504. CTH 85049010 of Customs Tariff Act, 1975 covers the *"parts of Transformer"*. Thus applicant satisfies first condition that the goods i.e. Inverter Duty Transformer and their parts are covered Chapter 85 of Customs Tariff Act, 1975.

25.3 Now we turn to the next aspect of the notification to find out whether the impugned goods i.e. Inverter Duty Transformer is a device or parts for the manufacture of especially Solar Power Generating System. Solar Power Generating System and words "devices and parts" are not defined under the provision of GST Act or Rules or the notifications issued there under.

25.4 Therefore in common parlance Solar power generating systems generally are the systems which absorb sunlight and convert 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.

25.5 The applicant is supplying Inverter Duty Transformer for setting up Solar Power Generating System. The use/ function of the transformer is defined as under:

Function of Transformer

A transformer consists of an input connection, an output connection, windings or coils and the core. When the input voltage is applied to the primary winding, AC flows in the primary winding direction and a changing magnetic field is set up in the core. As this magnetic field cuts across the secondary winding, alternating voltage is produced in the secondary winding. The ratio between the output voltage and the input voltage is the same as the ratio of the number of turns between the two windings. There are different configurations for both single-phase and three-phase systems. The ratio between the number of actual turns of the wire in each coil determines the output voltage and hence the type of transformer.

With no distinction with regard to shape or size, a transformer converts electrical power from one type to another. Some of the major types of transformers used in UPS systems and inverters are mentioned below.

- Inverter transformers or electronic transformers: These are commonly used for small power conversion or to get the desired voltage. It can be said that all inverter transformers are power transformers but not all power transformers are inverter transformers.
- **Inverter duty transformers**: **These are mainly used in solar applications and operate at the fundamental frequency of an alternating system.** They are designed for one or more output windings connected to the inverter's load. Owing to multiple outputs, multiple inverters paralleled to photovoltaic arrays are connected to these transformers and reduce the project cost without compromising on the transformer's functions. Generally, with the three-and five-winding construction to address the harmonics, they can also be customised to suit the voltage, power, low losses, sound level and operating conditions, environmental impact and safety issues. Other features include galvanic isolation between the solar inverter and the feeding network.
- Instrument transformers: Also known as accurate ratio transformers, these are used along with standard low range measuring devices to measure high values of current or voltage. n AC.
- Isolation transformers: These types of transformers isolate the power source from the powered devices, thereby providing safety to appliances as well as their users.

In view of the above discussion it can be deduced that Aluminum Foil Type Winding Inverter Duty Transformer and their parts are an essential part/ device of Solar Power Generating System.

26. Further, under erstwhile law also, solar power generating systems have not been defined. However, under erstwhile excise law, various exemptions were extended to non-conventional energy devices which included solar power generating systems - List 8 of Notification No. 12/2012-Central Excise, dated 17 March, 2012.

26.1 Since 'Solar Power Generating System' has not been defined in the present law, in order to understand the ambit of the said system, following judicial pronouncement under the Excise Law can be examined.

(i) Reference is made to the judgment of Delhi Tribunal in the case of Rajasthan Electronics & Instruments Ltd. v. Commr. of C. Ex., Jaipur [2005 (180) E.L.T. 481 (Tribunal)] wherein it was held that '7. The adjudicating authority admitted the fact that Solar Photovoltaic Module is a Solar Power Generating System. We find that other parts are only panel housing consisting of controllers and switches. Hence the whole system is a Solar Power Generating System and is entitled for the benefit of notification. Therefore, the denial of benefit of notification by the adjudicating authority is not sustainable. The impugned order is set aside and the appeals are allowed'.

(ii) Further, in the case of Bangalore Tribunal in the case of B.H.E.L. v. Commissioner of Central Excise, Hyderabad [2008 (223) E.L.T. 609 (Tribunal)] it was held that "In the present case, the appellants have claimed exemption in respect of "inverter charger card" as solar power generating system. The appellants actually manufactured SPV lantern. The above lantern required electricity for its working. It is possible to convert solar energy to electricity with the help of inverter charger manufactured by the appellants. The Dy. General Manager has certified that the inverter merger constitutes solar power generating system as it performs the function of generating the required high frequency AC power from Sunlight with the help of SPV module and supplying it to the compact fluorescent lamp of a solar lantern. In view of the above expert opinion, we hold that the impugned item can be considered as solar power generating system and is entitled for the benefit of the exemption Notification. Therefore, we allow the appeal with consequential relief".

(iii) In M/s. Phenix Construction Technology v. Commissioner of Central Excise & Service Tax, Ahmedabad-II [2017-TIOL-3281-CESTAT-AHM = 2017 (358) E.L.T. 241 (Tri. - Ahmd.)] the question under consideration was whether the structures and parts of structures cleared for initial setting up of solar power plant are eligible for the benefit of Notification No. 15/2010-C.E. The point of dispute in the said case law was that whether the aforesaid goods would qualify as components of the solar power plant. Hon'ble CESTAT has decided that the items required for initial setting up of the plant would qualify as component; hence the benefit of exemption would extend to such items also as solar power generating system.

(iv) In Jindal Strips Ltd. v. Collector of Customs, Bombay [2002-TIOL-347-CESTAT-DEL-LB = 1997 (94) E.L.T. 234 (Tri. - LB)] CESTAT has observed that component means a constituent part or element. It was also observed that 'component' means one of the parts or sub-assemblies or assemblies, of which a manufactured product is made up and into which it may be resolved and includes an accessory (or attachment).

26.2 Basis the aforesaid judgments, it can be deduced that the components of the solar power plant which are essential for setting up of the power plants would also be eligible for the benefits provided to the solar power plant. Accordingly, Aluminum Foil Type Winding Inverter Duty Transformer and their parts are an essential part/ device of Solar Power Generating System and are eligible for the benefit of Sr. No. 38 of Not. No. 01/2017-CT (Rate) dated 28.06.2017.

27. Notification No. 01/2017-CT (Rate) dated 28.06.2017 was amended vide Notification No. 24/2018-CT (Rate) dated 31.12.2018 and explanation against S. No. 234 was inserted. The amended Notification No. 01/2017-CT (Rate) dated 28.06.2017 is read 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
		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. 11/2017-Central Tax (Rate), dated 28th June, 2017 [G.S.R. 690(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.***

The explanation to the entry was added by Notification No. 24/2018-Central Tax (Rate), dated 31-12-2018 w.e.from 01.01.2019.

28. Further vide Notification No. 27/2018-Central Tax (Rate), dated 31-12-2018, an amendment was carried out and Serial No. 38 was inserted in Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 in respect of services related to setting up of solar power plants. The entry at Serial No. 38 is as follows:

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 *Explanation* :- This entry shall be read in conjunction with Serial Number 234 of Schedule I of the Notification No. 1/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i), dated 28th June, 2017 vide GSR Number 673(E), dated 28th June, 2017.	9	

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-Central Tax (Rate) and Entry No. 38 is effective from 1-1-2019.

28.1 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. 11/2017-Central Tax (Rate), dated 28-6-2017 (as amended by Notification No. 27/2018-Central Tax (Rate), dated 31-12-2018) and Entry No. 234 of Schedule I of Notification No. 1/2017-Central Tax (Rate), dated 28-6-2017 (as amended by Notification No. 24/2018-Central Tax (Rate), dated 31-12-2018) and the values must be as per the explanation provided therein. The deemed bifurcation of value of goods and service was inserted in the Entry No. 38 of Notification No. 01/2017-CT (Rate) dated 28.06.2017 to remove the anomaly in cases where the supplier supply the goods and service both for setting up of Solar Power Generating System.

29. The applicant has submitted that they have received two separate P.O. issued by the recipient of supply one for the supply of Aluminum Foil Type Winding Inverter Duty Transformer along with their parts and second for supply of Service as such there was not compulsion to bid both the contract. Therefore, the applicant is of the view that they have supply the Inverter duty Transformer and their parts and not the Service along with the transformer. To examine the said contention of the applicant we have gone through both the Purchase order i.e. of goods and Service Order and Technical Specification issued by the recipient of supply.

The main clauses of Goods Purchase Order No. 4500315135 dated 08.11.2019 are reproduced here under:

1.0 Scope of Works/ Facilities

1.1 ***The scope of work under this contract broadly covers complete Design, engineering, manufacture, assembly, inspection and testing at manufacturer's works, packing & forwarding, Dispatch/ Transformer along with transit insurance charges on FOR Site basis of Inverter Duty Transformer along with Accessories*** *(5/6 25MWA, ONAN/ONAF, 33/0.8/0.8kv Aluminium Foil Type Winding Inverter Duty Transformer (IDT)) for the above mentioned subject Project.*

1.2 The detailed Scope of supply shall be as per, "Technical Specification" subsequent clarification issued on Tender Document (if any) & various correspondences exchanged as referred above. In case of any ambiguity in the documents the later document shall prevail.

1.4 Contractor has to comply short circuit test of transformer as per our technical requirements, it shall not absolve the contractor from performing his obligation under this contract and it shall in no way limit the liabilities and responsibilities of the contractor. In respect of the agreed parameters/ specification and the desired performance of the Plant/item/Material, short circuit of transformer to be performed in parallel to the schedule which was agreed in the contract. If found short circuit failed in first attempt of test, contractor has to perform Root Cause of failure (RCA) and the report to be submitted to Employer for evaluation and approval. Upon approval of said cause and the same shall be implemented on future design of transformer production and it shall undergo short test till the transformer passess the test.

2.0 Contract Price

*2.1 The Contract Price for the scope of work/facilities as indicated above is Rs. 3,83,04,600/- as per *Price Schedule* which is inclusive of Packing & Forwarding (P&F) and Freight Transit charges but excludes GST.*

2.2 GST shall be paid extra at actual as applicable.

The main clauses of Service Order No. 5700280769 dated 23.12.2019 are reproduced here under:

1.0 *Scope of Works/ Facilities*

1.1 The scope of work under this contract covers Supervision of Erection and, Testing & Commissioning (ETC) charges of 5/6.25MVA, ONAN/ONAF, 33/0.8/0.8kV Aluminium Foil type Winding Inverter Duty Transformers (IDT) at site for the items/equipment as per Tender document.

1.2 All the expenses towards deputation of manpower (i.e. travelling expense, lodging & boarding and local conveyance charges etc.) for the Supervision of ETC are included in the contract price.

2.0 Contract Price

2.1 The Contract Price for the Scope of Works/ Facilities as indicated above is Rs. 6,90,000/- exclusive of GST.

2.2 Supervision charges indicated in order is for 26 Man-days beyond that the charges shall be @Rs. 15,000/- per man-days.

2.3 Type testing quantity indicated is tentative, in case testing is to be done the same shall be done @Rs. 1,50,000/- per transformer which is exclusive of GST.

2.4 The GST @18% shall be paid extra as applicable.

The main clauses of Technical Specification 5353-E-SEP-EES-TE-S-I-002 for Aluminium Winding Inverter Duty Transformers are reproduced here under:

2.0.0 Scope of Supply & Services:

2.1 The Scope of supply shall cover Design, Engineering, Manufacturer, Assembly and Testing at Works, Packing/ Dispatch, Transportation to site with Transit insurance and Supervision of erection, testing & commissioning of the transformer complete with all fittings and accessories.

2.2 ***The scope of supply shall also include the following*** *:*

a) First fill of consumables.

b) Spare parts required for successful commissioning

c) Mandatory spare parts for three years trouble free operation & maintenance

2.3 ***Scope of Services***

a) Preparation and submission of drawings & document in soft form as per the drawing/document submission schedule.

b) Supervision of erection, testing & commissioning of transformer.

c) Submission of progress report.

d) Participation in project review / Technical Coordination meetings.

2.4 Exclusion

a) Civil Works.

b) Fire Fighting Equipments.

c) Receipt, Unloading & Storage

d) Erection, Testing and Commissioning

29.1 On going through the clauses of both the purchase order and technical Specification it is observed that recipient of supply of goods and service i.e. M/s. Adani Green Energy Ltd. have given two Purchase order to the applicant one for supply of goods and second for supply of Service whereas the Technical Specification Ref: 5353-E-SEP-EES-TE-S-I-002 of above contract is single and contains both scope of supply of goods and service. Further, in the purchase order of goods covers scope of work as, ***"complete Design, engineering, manufacture, assembly, inspection and testing at manufacturer's works, packing & forwarding, Dispatch/ Transformer along with transit insurance charges on FOR Site basis of Inverter Duty Transformer along with Accessories".*** Purchase Order of service covers

"***Supervision of Erection and, Testing & Commissioning (ETC) charges of 5/6.25MVA, ONAN/ONAF, 33/0.8/0.8kV Aluminium Foil type Winding Inverter Duty Transformers (IDT) at site for the items/equipment as per Tender document".*** The technical specification for Aluminium Winding Inverter Duty Transformers covers the scope of supply and service both and mentioned that, ***"The Scope of supply shall cover Design, Engineering, Manufacturer, Assembly and Testing at Works, Packing/ Dispatch, Transportation to site with Transit insurance and Supervision of erection, testing & commissioning of the transformer complete with all fittings and accessories".*** From the said clause it can be easily deduce that the recipient of supply has artificially bifurcated the one work order into two, one for goods and other one for service so that the applicant can pay GST tax on value of individual supply i.e. on goods @5% and Service @18% and do not attract the GST tax rate on deemed bifurcation of total contract value into 70% of goods and 30% of Service in terms of explanation inserted under Entry No. 234 of Not. No. 01/2017-CT (Rate) dated 28.06.2017.

29.2 We are convinced that the impugned contract is for supply of a Aluminium Foil type Winding Inverter Duty Transformers, as a whole, and in addition, further responsibility in respect of *Design, Engineering, Manufacturer, Assembly, Testing at Works and supervision of erection, testing & commissioning* of the Inverter is to be undertaken by the applicant as per terms and conditions of the P.O. and Technical specification submitted before us. We say so as clauses in the very P.O. and Technical Specification present a situation contrary to the claim being laid forth. Therefore, applicant contention is not tenable and misleading.

30. A reading of the submitted both P.O. and technical specification leads us to infer that though the Buyer intends to purchase the Aluminium Foil type Winding Inverter Duty Transformers as a whole, by devising certain clauses, it is sought to bring about a splitting up of the intended purchase of the Transformer, as a one whole, into a purchase of goods and a purchase of services. However, the intended purpose to present the agreement as a contract for supply of goods ONLY has not achieved the desired purpose. The agreement is for supply of an effectively running Transformer. The clauses mentioned in Technical Specification reveal that the Supplier is involved in the process right from the early engineering period to procurement and implementation stage. In fact, we find that the applicant has tried to bifurcate the works contract of setting up of a Aluminium Foil type Winding Inverter Duty Transformers into contract for supply of goods and supply of services. We see that both the Purchase Order tendered are for setting up of Aluminium Foil type Winding Inverter Duty Transformers.

31. Thus, from the above it is seen that the supply of the goods and the supply of service are inextricably linked with each other. It is not that the applicant has been assigned with the work of supply of goods only. But the applicant has been given the task of setting up the '*Aluminium Foil type Winding Inverter Duty Transformers*'. Thus, though the Purchase Order's are made separately, it is one indivisible contract for the setting up of the *Aluminium Foil type Winding Inverter Duty Transformers.* In fact the technical specification is single for both the supply of goods and Service. Further, at the time of Personal hearing, we members have requested to the representative of the applicant to submit the copy of work contract/agreement but he has shown his inability to submit the same and quoted the reason that applicant have not make contract for supply with M/s. Adanai Green Energy Ltd. But we are not convinced with this argument of the applicant because Purchase order does not have any binding on both the parties and it is not legal document in case any dispute arises and matter goes in court of law. Contract is mandatory for executing any supply of goods and service between both the parties i.e. recipient of supply of goods & service and applicant by not submitting the copy of contract do not want to disclose the fact that there is only one contract for supply of goods and service both. It may also be assume that in the contract/agreement both the scope of work of supply of goods and service are mentioned and also single value of complete work have been mentioned. Therefore, we are convinced and this fact lead us to reach on conclusion that work order for supply of goods and service is one & whole and not separate as per the technical specification submitted by the applicant before us.

32. We find that the applicant has sought to find out the way of not to pay the GST in terms of explanation inserted in the entry No. 234 of Not. No. 01/2017-CT (Rate) dated 28.06.2017 by Notification No. 24/2018-CT (Rate) dated 31.12.2018 w.e.from 01.01.2019 i.e. deemed bifurcation of contract value into 70% of goods and 30% of service by artificially bifurcating the P.O. into supply of goods and service where as we are of the view that contract is linked/ single for both the supply of goods and service. Further, in the explanation inserted under entry No. 234 of Not. No. 01/2017-CT (Rate) dated 28.06.2017 by Notification No. 24/2018-CT (Rate) dated 31.12.2018 w.e.from 01.01.2019 it is not mentioned that the said clause of deemed bifurcation of the contract value will not be applicable in case there is two separate Purchase Order one for supply of goods and other for supply of service but it is specifically mentioned that, "*if goods specified under entry No. 234 of Not. No. 01/2017-CT (Rate) along with supply of service and one is taxable service specified in the entry at S. No. 38 of Not. No. 11/2017-CT (Rate) then value of supply of goods shall be deemed 70% and remaining 30% shall be deemed value of*

the taxable service". In the case hand to cover under the said entry the applicant should satisfy the two conditions **one** the supplying the goods should be taxable and specified under entry No. 234 of Not. No. 01/2017-CT (Rate) and **second** there should also be supply of service alongwith the goods and said service should be taxable in terms of Entry No. 38 of Not. No. 11/2017-CT (Rate). The applicant is supplying the goods *Aluminium Foil type Winding Inverter Duty Transformers and covers under CTH No. 85 of Custom Tariff Act, 1975,* which are specified under Entry No. 234 of Not. No. 01/2017-CT (Rate) and taxable. **Hence first condition is satisfied.** The applicant is supplying the service i.e. design, engineering, inspection, testing and supervision of erection & Commissioning etc. which is directly related to the Inserter duty transformer and such service covers under entry No. 38 of Not. No. 11/2017-CT (Rate) under *"other technical services provided in relation of setting up of Solar Power Generating System"*. **Hence second condition is also satisfied.**

33. Therefore, in view of the above discussion we hold that the applicant is liable for payment of GST in terms of Explanation inserted in Entry No. 234 of Not. No. 01/2017-CT (Rate) dated 28.06.2017 vide Notification No. 24/2018-CT (Rate) dated 31.12.2018 and in terms of Serial No. 38 of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 in respect of services considering the total value of both the Purchase Order i.e. P.O. No. : 4500315135 dated 08.11.2019 of goods and P.O. No. PO: 4500315135 dated 08.11.2019 of service. Explanation stated that out of the gross value of the supply, 70% shall be deemed to be on account of goods and 30% shall be deemed to be on account of service. Accordingly, the effective rate came to 8.9% as under :

S. No.	Particulars	% of value	Rate of tax	Effective Rate of tax
1.	Goods	70	5%	3.5 %
2.	Services	30	18%	5.4%
			Total	8.9%

34. In view of the above we rule as under:

R U L I N G

Q. Whether supply of Aluminium Foil Type Winding Inverter Duty Transformer classifiable under Chapter Heading 8504 and parts of Transformer supplied / to be supplied for initial setting up of solar project falls under Sr. No. 234 in Schedule-I to Notification No. 01/20017-Central Tax (Rate) dated 28th June, 2017 and liable to Central GST at the rate of 2.5% along with State GST at the rate of 2.5%?

Ans. The applicant is liable for payment of GST on the total value of both the Purchase Order i.e. supply of goods and supply of service in terms of Explanation inserted vide Entry No. 234 of Not. No.

01/2017-CT (Rate) dated 28.06.2017 vide Notification No. 24/2018-CT (Rate) dated 31.12.2018. Explanation stated that out of the gross value of the supply, 70% shall be deemed to be on account of goods and 30% deemed to be on account of service. Accordingly, the effective rate came to 8.9% as under:

S. No.	Particulars	% of value	Rate of tax	Effective Rate of tax
1.	Goods	70	5%	3.5 %
2.	Services	30	18%	5.4%
Total				8.9%

(**SANJAY SAXENA**) (**MOHIT AGRAWAL**)

MEMBER **MEMBER**

Place: Ahmedabad

Date: 20.01.2021.