

GUJARAT AUTHORITY FOR ADVANCE RULING, GOODS AND SERVICES TAX, A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380009.	
---	---

ADVANCE RULING NO. GUJ/GAAR/R/2022/33

(In Application No. Advance Ruling/SGST&CGST/2022/AR/17)

Dated:01.06.2022

Name and address of the applicant	:	M/s. Amnex Infotechnologies Pvt. Ltd, B-1301, Mondeal Heights, 13 th Floor, Nr. Novotel Hotel, S. G. Highway, Ahmedabad, Gujarat-380015
GSTIN of the applicant	:	24AABCI8023R1Z9
Date of application	:	19-3-22
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	a, e
Date of Personal Hearing	:	5-5-22
Present for the applicant	:	Shri Meet Jadawala, CA

Brief facts

M/s Amnex Infotechnologies Private Limited (hereinafter referred to as M/s Amnex for the sake of brevity) submitted before us a copy of ‘Request for Proposal (RFP), issued by the Shahjahanpur Nagar Nigam, Uttar Pradesh, for selection of Master System Integrator (MSI) for implementation of Intelligent Traffic Management System (ITMS) in Shahjahanpur city. M/s Amnex was awarded the said work by Shahjahanpur Nagar Nigam.

2. The relevant extracts of said RFP are as follows:

“Para 2.2

MSI’s scope of work shall include but will not be limited to the following broad areas:

Details of each of these broad areas have also been outlined in Annexures:

1. Assessment, Scoping and Survey Study:

- a) Assess existing systems and infrastructure.
- b) Conduct site survey for finalization of detailed technical architecture, gap analysis, final Bill of Quantities and project implementation plan
- c) Conduct site surveys to identify the need for site preparation activities
- d) Obtain site clearance obligations & other relevant permissions with the support of Shahjahanpur Nagar Nigam.

2. Supply, Installation, Testing and Commissioning of the following primary components:

- a) Adaptive Traffic Control System (ATCS)
- b) Automatic Number Plate Recognition (ANPR) System
- c) Red Light Violation Detection (RLVD) System
- d) Public Address System
- e) Variable Message Sign boards
- f) Emergency Call Box
- g) City Wifi
- h) Network Connectivity
- i) Operation Control Room

3. Operation and Maintenance Phase:

The MSI will also be responsible for supply of IT infrastructure solution for the management of hardware and application software, networking, installation, training, maintenance and operations of the solution for the period of 5 years from the Go Live date, the O&M period will commence after Go-Live and will be for a period of 5 years. Warranty period of the product supplied under project i.e. hardware, software, IT/Non- IT, etc., will be considered after Go-Live.

Para 2.5.4: Lightning – proof measures

The MSI shall comply with lightning-protection and anti-interference measures for system structure, equipment type selection, equipment earthing, power, signal cables laying.

Para 2.5.5: Earthing system

All electrical components are to be earthened by connecting two earth tapes from the frame of the component ring and will be connected via several earth electrodes. The cable arm will be earthen through the cable glands. The entire applicable IT infrastructure i.e. field locations/traffic junctions or operation control room shall have adequate earthing.

Para 2.5.6: All Junction Boxes, Poles and Cantilever

1. The MSI shall provide the Junction Boxes, poles and cantilever to mount the field sensors like the cameras, traffic sensors, traffic light aspects, active network components, controller and UPS at all field locations, as per the specifications given in the RFP.....

6. All electrical connections/joints must be above 1 meter from nearest Road level, so that uninterrupted power supply can be maintain during flood/water logging situation. All poles base, Junction boxes, etc should be installed accordingly

7. All Poles, Cantilevers, Gantries, Junction Boxes, other outdoor fixtures, etc must be fixed strongly in such a way to handle the wind load up to wind speed of 120 Km/Hr

Para 2.5.7: Cabling Infrastructure

1. The MSI shall provide standardized cabling for all devices and subsystems in the field.

2. MSI shall ensure the installation of all necessary cables and connectors between the field sensors /devices assembly, outstation junction box, for pole mounted field sensors /devices the cables shall be routed down the inside of the pole and through underground duct to the outstation cabinet.

Para 2.6.1: Adaptive Traffic Control System

The broad scope of work to be covered under Adaptive Traffic Control System module will include the following, but is not limited to:

1. Preparation of Solution Architecture as per project blueprint to develop a final BOQ for installation of ATCS Traffic Signals.

2. Installation of vehicle detectors, ATCS controllers, Traffic light aspects, poles, cantilevers, Junction Box and other required accessories at 13 traffic junctions for successful operation of the ITMS project in Shahjahanpur City

3. The MSI is suggested to follow a priority approach while installation of ATCS at junctions. The list of junctions is given in chapter 6 of volume II.

4. The MSI is responsible for integration of ATCS field infrastructures with the proposed ITMS Platform.”

3. M/s Annex submits that its role in the project mainly includes electrical, lighting, earthing, fixation of junction boxes, poles and cantilevers, cabling infrastructure, design, supply, installation, testing and commissioning of various intelligent traffic management system as per RFP and that the execution of the project involves:

(i) Infrastructural cabling / civil work which is pre-requisite for fixation of various intelligent traffic management systems,

(ii) Fixation of various intelligent traffic management system like adaptive traffic control system, red light violation detection system, automatic number plate recognition system etc and

(iii) Operations and maintenance of intelligent traffic management systems during warranty period.

4. M/s Annex submitted that as per the sub-section (30) of section 2 of the CGST Act, 2017, the "Composite supply" is defined as :

"Composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply

Illustration — Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;”

5. M/s Annex submits that the RFP mentions the following:

(i) M/s Annex is responsible for design, development, implementation and maintenance of Intelligent Traffic Management Infrastructure.

(ii) As per the contract there is single price payable in prescribed manner

(iii) The ownership of the assets shall vest with Shahjahanpur Nagar Nigam, Uttar Pradesh

(iv) IPR of the customized solution Infra would belong to Shahjahanpur Nagar Nigam, Uttar Pradesh

5.1 M/s Annex submits that it supplies more than two taxable supplies of goods or services or combination thereof and the provision consists of different supplies such as design, development, implementation and maintenance of Infrastructure developed in city and are integrated in such a way that all of them constitute, on the overall, a supply to set up a comprehensive Traffic Management Infrastructure. In this view of the matter, the various supplies as contemplated by the contract constitute composite supply as defined under section 2(30).

5.2 M/s Annex submits that the term works contract is defined in sub-section (119) of section 2 of CGST Act, 2017 as :

"(119) 'works contract' means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation,

alteration or commissioning of any immovable property, wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract."

5.3 M/s Annex submitted that the agreement with Shahjahanpur Nagar Nigam is for the implementation of ITMS in Shahjahanpur which involves design, supply, installation, testing, commissioning and constructing of ITMS Infrastructure which primarily includes Adaptive traffic Control, Red light violation detection, Automatic number plate recognition, etc. along with operation & maintenance of ITMS for a period of 5 years on turnkey basis. From this, it appears that the scope of work involves supply of goods as well as services, which are in conjunction with each other to complete the ITMS infrastructure installation.

5.4 Further that the term works contract has been restricted to contract for building construction, fabrication etc. of any immovable property only. As per the General Clauses Act, 1987, the term Immovable property shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth". In order to become an immovable property, the goods have to be attached to the earth for the permanent beneficial enjoyment of the immovable property. It is to be noted that as held by the Supreme Court in the case of CCE v. Solid & Correct Engg. Works 2010(252) ELT 481 that any annexation should be with the object of permanent beneficial enjoyment of the land or building. It submits that an immovable property means a property that is attached to the land which cannot be easily detached and also structure or machinery that cannot be located/moved or shifted elsewhere at frequent intervals. It submits that the said contract for designing and installation of the ITMS which cannot be shifted or moved to other places/buildings at frequent intervals and is meant for permanent beneficial of the building qualifies as immovable in nature.

6. M/s Annex submitted that as per the Notification No. 24/2017–Central Tax (Rate) dated 21st September, 2017, the CGST rate of 6% has been prescribed for services provided to a local authority by way of erection, commissioning, installation, of a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession.

Sr. No.	Description of Service	Rate	Condition
	<p>“3 <i>(i) ...</i> <i>(ii) ...</i> <i>(iii) ...</i> <i>(iv) ...</i> <i>(v) ...</i> <i>(vi) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above, provided to the Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity by</i></p>	6	

	<p><i>way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of—</i></p> <p><i>(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;</i></p> <p><i>(e) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;</i></p> <p><i>(f) a residential complex meant predominantly 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.</i></p>	
--	--	--

Original works has been defined in the GST regime, vide para 2 of the Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017, as follows:

(zs) “original works” means- all new constructions;

- (i) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;*
- (ii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;”*

7. M/s Annex submits that it’s role in the said project involves infrastructural cabling / civil work for fixation of different Intelligent Traffic Management Projects like Adaptive Traffic Control System, Red Light Violation Detection System, Automatic Number Plate Recognition System, etc. which squarely covers under definition of original work due to erection, commissioning and installation of many more various hardware/equipment of traffic management systems including making of structures thereof like fixed poles, other infrastructural and civil structure to fix various equipment. It’s role in the project delivery involves civil work to support erection of fixed poles and other infrastructure, as well as provide underground cabling for power and connectivity for these. These would be supporting the installation of the hardware for Adaptive Traffic Control System, Red Light Violation Detection System, Automatic Number Plate Recognition System etc. Along with the same, before the systems are declared fit to be used, a lot of configurations in terms of the way they are installed, angles of view etc need to be configured. This entire installation satisfies the definition of Original Works as defined in para 2(zs) of the Notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017 and also satisfies the definition of Works Contract as defined in sub-section (119) of section 2 of CGST Act, 2017. The complete installation is by nature also immovable, and hence should attract CGST, as per Notification No. 24/2017-Central Tax (Rate) dated 21st September, 2017, at the rate of 12%.

8. M/s Annex submitted that works contract provided by it falls under definition of Original Work under Works Contract service and that Shahjahanpur Nagar Nigam is a

Local Authority in the state of Uttar Pradesh and consequently the service provided by M/s Annex falls under Entry No. 3(vi)(a) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 and liable to tax @ 12%.

9. M/s Annex has submitted that the service provided by it can either fall under SAC code 995461 “Electrical installation services including Electrical wiring and fitting services, fire alarm installation services, burglar alarm system installation services” or can also be classified under SAC code 995468 “Other installation services nowhere else classified”. It submits that service of erection and installation covers many more different equipments, SAC code 995468 precisely covers installation of all electrical and other equipments and hence SAC code should be 995468.

10. Questions on which Advance Ruling sought:

1. What is the rate of GST applicable on Applicant for provision of services provided to Shahjahanpur Nagar Nigam (Local Authority)?

2. Which is the correct HSN / SAC code?

Personal Hearing

11. Virtual hearing granted on 5-5-22 was attended by Shri Meet Jadawala, CA and he reiterated the submission.

Revenue’s submission:

12. Revenue has neither submitted its comments nor appeared for hearing.

Findings

13. At the outset we would like to make it clear that the provisions of CGST Act and GGST Act are in parimateria and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the GGST Act.

14. We have carefully considered all the submissions before us. We find the subject Contract Agreement, as enumerated in the brief facts, is a Works Contract Agreement, involving supply of goods and services for implementation of the Project. Vide Schedule II(6)(a) CGST Act, Supply of Works Contract shall be treated as a supply of service. We find that the service recipient is Shahjahanpur Nagar Nigam, Uttar Pradesh which is a local authority. Thus, we find the subject Supply is covered vide Sr no 3(vi)(a) of Notification 8/2017-Integrated Tax (R) dated 28-6-17 at Tariff 9954 and liable to 12% IGST rate. We find this Integrated Tax Notification comes into play in subject matter as the supply is Inter State Supply. For this reason, We dismiss M/s Annex submission to take into account

Notification 24/2017- CT(R) dated 21-9-17, as this Notification pertains to Intra state supply.

15. M/s Annex has also sought a Ruling on the HSN/ SAC Code of Subject Supply. We note that subject ITMS project is an original works involving both installation, commissioning and maintenance. We find Tariff 9954, as mentioned in previous para, is reflected at the said sr. no 3(vi)(a) of Notification 8/2017-IT(R). We refer to SAC 995468: Other installation services n.e.c. We find the said SAC description encompasses the ITMS project, which is an original works installation and note that SAC 995468 occurs last in the numerical order of the of Tariff subheading 9954. In this backdrop and for the reason that the subject supply is made to a local authority and the rate being 12% IGST as per said sr no 3(vi)(a) to the said Notification and that Tariff 9954 is reflected at the said sr no 3(vi)(a), We find it apt to consider SAC 995468 for the subject works contract, without delving further. Our view on subject SAC is for this specific case and this is not a straightjacket formula for determination of SAC but that each case has to be individually examined in the backdrop of the case's specific facts. In Conspectus of aforementioned Discussion and findings, we pass the Ruling:

Ruling

1. The said supply is leviable to 12 % IGST.
2. SAC is 995468.

(ATUL MEHTA)
MEMBER (S)

(ARUN RICHARD)
MEMBER (C)

Place: Ahmedabad
Date: 01.06.2022