

**MAHARASHTRA AUTHORITY FOR ADVANCE RULING**  
**GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.**  
**(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)**

**BEFORE THE BENCH OF**

- (1) Shri. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)  
(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

ARN No.	AD270421034301Q
GSTIN Number, if any/ User-id	27AASF4205B1ZJ
Legal Name of Applicant	M/s. Kapil Sons Explosives LLP
Registered Address/Address provided while obtaining user id	Plot No 11, United Apartments, Taware Colony, Pune-411009, Maharashtra
Details of application	GST-ARA, Application No. 06 Dated 03.05.2021
Concerned officer	PUN-VAT-C-508, Pune-002.
<b>Nature of activity(s) (proposed/present) in respect of which advance ruling sought</b>	
A Category	Service Provision, Works Contract
B Description (in brief)	M/s Kapil Sons Explosives LLP, the applicant is engaged in drilling and blasting works at various sites using Industrial explosives & other materials. Applicant is GST registered and has raised question regarding classification of supply.
Issue/s on which advance ruling required	<ul style="list-style-type: none"><li>• Classification goods and/or services or both</li><li>• Determination of the rate of the tax on any goods or services or both</li></ul>
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below

NO.GST-ARA- 06/2021-22/B-

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Mumbai, dt.

18/02/2022

**PROCEEDINGS**

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by M/s. Kapil Sons Explosives LLP, the applicant, seeking an advance ruling in respect of the following question.

1. Whether the activity to be carried by the applicant shall be classified as supply of goods or services or a composite supply of 'works' contract?
2. Whether the activity should be classified as Composite Supply of works contract under Entry 3(x) of Notification No. 11/2017-CT (R) dated 28.06.2017 i.e. provided by a sub-contractor to the main contractor providing services specified in item (vii) above to the Central/State Government, Union territory, a local authority, a Governmental Authority or a Government Entity taxable at the rate of



At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

**2. FACTS AND CONTENTION – AS PER THE APPLICANT**

The submissions of M/s Kapil Sons Explosives LLP, the applicant, are as under:-

- 2.1 *The applicant, a GST registered firm, is engaged in drilling and blasting works at various sites using Industrial explosives and other materials.*
- 2.2 *The development of balance land in Sector-26 & Sector-26(A) at Vahal Ulwe, Navi Mumbai in the State of Maharashtra ("the QUARRY") is in the effective control and possession of the owner, M/s City and Development Corporation of Maharashtra Limited (hereinafter referred to as "CIDCO").*
- 2.3 *M/s Balajee Infratech & Constructions Pvt Ltd (Balajee) has been awarded work order from CIDCO for Drilling, Blasting, Mucking and allied job and reclamation works for the land Development respectively pertaining to Ulwe NMIA at the said QUARRY.*
- 2.4 *The applicant is in lawful possession of Explosive License Number vide E/WC/MH/22/2007 E111559) & E/WC/MH/22/2005(E111560) with validity 31/03/2022 and E/WC/MH/22/2006 (E111556) with validity:31/03/2023 in Form-22 for stocking of Explosives and to provide Blasting operation with the usage of explosive materials having validity till 30th November'2021 under the Explosives Act, 1884 and Explosives Rules, 2008 made there under.*
- 2.5 *Balajee has approached the applicant to provide blasting operation with the usage of explosives for extraction of boulders at the said QUARRY on certain terms and conditions.*
- 2.6 *That the drilling and blasting work has thus been allocated to applicant by Balajee for Navi Mumbai International Airport land Development work site. The applicant has to undertake Drilling & Blasting work for providing Rock with earth fill for reclamation of Land as per specifications with material quarried from ULWE hill (as per specifications in the tender documents), as per specifications documents and drawing and technical specification document and drawing and as directed by Engineer Incharge. Applicant had to undertake the earthwork wherein the material and labour were included in the work allocated to it.*

**B. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW AND/OR FACTS**

- 2.7 *Section 9 of the CGST Act 2017 is the charging section for levy of GST. The term "goods" has been defined under section 2(52) of the said Act. The term "services" has been defined under section 2(102) of the said Act. Section 2(30) defines "composite supply: and the term works contract has been defined under Section 2(119). Further, as per clause 6 of the Schedule II Works contract as defined in clause (119) of section 2 is a supply of services.*
- 2.8 *The GST rates on services have been notified by the Government in Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 which has been amended by various notifications and the relevant extract of the said notification (as amended up to date) for the present issue is reproduced as under:*



**TABLE**

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)	<sup>3</sup> [(i) Construction of affordable residential apartments by a promoter in a Residential Real	0.75	Provided that the central tax at the rate specified in column (4) shall be paid in cash

**Interpretation of provisions and applicable concepts:**

[[vii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, involving predominantly earth work (that is, constituting more than 75 per cent. of the value of the works contract) provided to the Central Government, State Government, Union territory, 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.] <sup>30,31</sup>
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[(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.] <sup>35</sup>
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- 2.9 The work awarded by CIDCO to the main contractor i.e. Balajee, is development of balance land in Sector 26 & 26A at Vahal, Navi Mumbai under NMIA Project. For such contract, the main contractor has engaged the applicant as a sub-contractor for drilling and blasting work.
- 2.10 As per the work order issued by CIDCO to Balajee, development of balance land includes series of activities such as providing rock fill for reclamation of land up to level specified in drawings as per specifications with material queried by control blasting or wedging and chiseling or line drilling from area in the Quarry, extraction of rock by controlled blasting/chiseling, loose dressing of land, filling of voids with quarry spalls and compacting with pneumatic vibratory roller, levelling of land.



2.11 The term "earthwork" has not been defined in Act or rules made there under and hence reference is required to be made to the dictionary meaning of the same.

1. As per - Merriam Dictionary "earth work" means
  1. an embankment or other construction made of earth especially: one used as a field fortification
  2. the operations connected with excavations and embankments of earth
  3. a work of art consisting of a portion of land modified by an artist Wikipedia, the free encyclopedia
2. As per Civil engineering use [edit]- earthwork means:  
Typical earthworks include road construction, railway beds, causeways, dams, levees, canals, and berms. Other common earthworks are land grading to reconfigure the topography of a site, or to stabilize slopes.
3. As per Military use [edit]- earthwork means:  
In military engineering, earthworks are, more specifically, types of fortifications constructed from soil. Although soil is not very strong, it is cheap enough that huge quantities can be used, generating formidable structures. Examples of older earthwork fortifications include moats, sod walls, motte-and-bailey castles, and hill forts. Modern examples include trenches and berms.
4. As per English Cambridge dictionary earthwork means:  
noun - a raised area of earth made, especially in the past, for defence against enemy attack.
5. As per Princeton's Word Net earth work means : earthwork (noun) an earthen rampart
6. That as per Wiktionary, earth work means :  
Any structure made from earth: especially an embankment or rampart used as a fortification.
7. That as per Webster Dictionary, earth work means :  
any construction, whether a temporary breastwork or permanent fortification, for attack or defence, the material of which is chiefly earth;  
the operation connected with excavations and embankments of earth in preparing foundations of buildings, in constructing canals, railroads, etc.;;  
an embankment or construction made of earth
8. That as per the Guide to the Training of Supervisors - Trainees' Manual/Part 1 (ILO, 1981, 269) Earthwork involves the loosening, removal and handling of earth quantities in the construction process. Earthworks are carried out to provide a level terrace or "bench", with an even, longitudinal slope, on which the drainage and camber can be built.

2.12 Thus as per the above definitions, it is clear that Earthwork includes both excavation and fortification. Since on the basis of work order issued by CIDCO to Balajee it is evident that the work involved is of excavation hence same qualifies as earthwork. In fact, the itemized billing of work to be done for CIDCO as given in the annexure to the work order is as under:

ANNEXURE				
Sl. No.	Description of Work	Rate	Quantity	Total
a)	By controlled blasting or wedging and chiselling or line drilling	456164.87	167.00	Cum. 7,61,79,533.79

2.13 On going through the work order, it is understood that various goods including explosives, tools and other material have to be used during the process of blasting and hence there is an element of goods involved in the transaction. Further, undoubtedly there is a service element in carrying out the whole



process starting from drilling till the end by removing the rubble. Hence, the activity involves both goods and services.

2.14 The elements of the definition of a works contract are as under:

- 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;

2.15 In respect of above conditions, the applicability of facts of case is as under

- It is clear from the work order itself that the applicant is engaged for construction of airport by drilling and blasting technique for excavation of land. Hence it is a contract for construction.
  - The land for airport is undoubtedly immovable property.
- Now, it needs to be interpreted whether there is transfer of property in goods (whether as goods or in some other form) involved in execution of contract, based on provisions of law and legal jurisprudence available in this regard.

The materials used for drilling and blasting are movable property in their own identity before incorporation in execution of the project. Now for the question beforehand that whether there is transfer of property in goods involved in execution of project, a very important point of consideration is that instead of only using the word goods, the statute has used an expression being goods (whether as goods or in some other form) in the definition of works contract.

2.16 It is relevant to the issue that an exhaustive debate has taken place dealt with by a three judge bench of Supreme Court in *Larsen and Toubro Limited and another vs. State of Karnataka and another* (2014) 1 SCC 708 = 2013-TIOL-46-SC-CT-LB, wherein it has been held that the expression "goods (whether as goods or in some other form)" appearing in sub-clause (b) of clause (29A) of Article 366 of the Constitution of India has the effect of enlarging the term "goods" by bringing within its fold goods in all different forms. The expression "in some other form" in the bracket is of utmost significance as by this expression the ordinary understanding of the term "goods" has been enlarged by bringing within its fold goods in a form other than goods. Goods in some other form would thus mean goods which have ceased to be chattels or movables or merchandise and become attached or embedded to earth. In other words, goods which have by incorporation become part of immovable property are deemed as goods. The definition of "tax on the sale or purchase of goods" includes a tax on the transfer or property in the goods as goods or which have lost its form as goods and have acquired some other form involved in the execution of a works contract."

2.17 Hence, the Apex Court of law has held that transfer of property in such goods takes place when the goods are incorporated in the works and even though if they loose their identity as goods, this factor does not prevent them from being goods. Hence there is a transfer of property in goods, in some other form involved in the execution of construction project. Further, in this regard, the judgment of Hon'ble Supreme Court in the case of *State of Gujarat Vs. Bharat Pest Control* [Civil Appeal No. 1335 of 2018] = 2018-TIOL-310-SC-VAT is relevant, wherein it has been held as follows :-

"5. A Constitution Bench of this Court in *Kone Elevator India Private Limited vs. State of Tamil Nadu*, while considering the correctness of its earlier view with regard to dominant nature of the contract test, had, apart from holding that the dominant nature test would no longer be determinative,



considered paragraph 56 of the report in *Larsen & Toubro Limited 2 (2014) 7 SCC 1 (supra)* and has accepted the same to be the correct position in law.

6. In view of the above position of law enunciated in *Larsen & Toubro Limited (supra)* and *Kone Elevator India Private Limited (supra)* the view taken by the High Court that there is no deemed sale of the goods used in the contract executed by the respondent - contractor cannot have our approval. We, therefore, set aside the order of the High Court and allow this appeal."

2.18 Applicant is of a view that all the conditions of works contract under Section 2(119) are met for the work of balance land development by drilling and blasting techniques. Further the view has been taken by the Advance Ruling Authority of Gujarat in case of *M/s KHEDUT HAT [2018-TIOL-173-AAR-GST]* that blasting work with use of explosives is a composite supply. The ruling pronounced is as under:

*There is deemed supply of explosives in this case in view of the judgement of Hon'ble Supreme Court in the case of Bharat Pest Control - 2018-TIOL-310-SC-VAT as well as the supply of service in the form of the blasting work - Therefore, the situation as narrated by the applicant is a 'composite supply' of goods and services and shall be covered by Section 2(30) and Section 8(a) of the CGST Act, 2017 and the GGST Act, 2017: AAR.*

2.19 Further City and Industrial Development Corporation of Maharashtra Ltd., (CIDCO), a company wholly owned by the Govt. Of Maharashtra is a Governmental Authority as defined under Explanation 4(ix) of the Notification No 11/2017-CT dated 28.06.2017.

2.20 The work executed by Balajee for CIDCO is for earth work which is a works contract service. In fact the billing to CIDCO has been done by Balajee as works contract service involving more than 75% of earthwork.

2.21 Based on interpretation of the above relevant facts and material, the classification entry in Sl. No. 3(vii) of Notification No. 11/2017 - CT(Rate) appears to be the correct classification of the activity undertaken by Balajee which is described as

*[[vii)Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, involving predominantly earth work (that is, constituting more than 75per cent. of the value of the works contract) provided to the Central Government, State Government, Union territory, local authority, a Governmental Authority or a Government Entity.*

2.22 The services provided by the main contractor were works contract service in which earth work involved was more than 75% of the total value of the contract. In such a case it is evident from the perusal of the agreement between the applicant and Balajee that said contract was further sub-contracted to the applicant by Balajee. The terms and conditions and the nature of work to be done by applicant for Balajee was same and was on the basis of the main contract between CIDCO and Balajee only. In the instant case, the material i.e. blasting material along with other tools and consumables were bought and employed by applicant only the same site. Thus the services supplied by the applicant are duly classifiable under following HSN:

Site formation and clearance services including preparation services to make sites ready for subsequent construction work, test drilling and boring and core extraction, digging of trenches- 995432.

2.23 On the basis of above the billing has been done by the applicant at 5% GST Rate to Balajee only. The copy of invoice raised by applicant upon Balajee is enclosed and marked as Annexure-9. Hence it is clear that since the service supplied by main contractor is classifiable under entry S.No 3(vii) of N.N. 11/2017-CT



Rate 2017 and back to back sub-contract of the same agreement has happened hence the service supplied by the applicant merits classification under entry S.No. 3(x) of N.N. 11/2017-CT (Rate) dated 28.06.2017 which is read as:

[(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.

2.24 The supplies classifiable under the above entry are taxable at the rate of 5% and hence the appellant is of the view that the activity carried out by appellant shall be taxable under the above classification under HSN 995432 and be taxable at the rate of 5%.

After the concerned jurisdiction officer filed the written submission dt 22/12/2021, the applicant also made its submission in reply to the said submissions made by the concerned jurisdiction officer, in which contentions as made in application as above are reiterated in short and point wise reply is submitted in response to the said written submission filed by the concerned jurisdiction officer. The said reply by applicant is considered while deciding the matter.

### 03 CONTENTION – AS PER THE CONCERNED OFFICER:

The submissions of the jurisdictional officer are as under:-

#### Officer Submission dated: 22.12.2021

3.1 M/s Balajee Infratech and Constructions Pvt. Ltd. has received contract from CIDCO for Drilling, Blasting, Mucking and allied job and reclamation work for land development to the Vahal Ulwe site of CIDCO. The said M/s Balajee has awarded subcontract to the applicant, for providing drilling and blasting operation with the usage of explosives for extraction of boulders at the impugned site of CIDCO. A close perusal of the contract between M/s Balajee and the Applicant at clause 4 of the said contract and also from the clause regarding the scope of work to be done by the Applicant for M/s Balajee is that the Applicant is entrusted with the work of drilling and blasting operation with explosives at the designated site. As such, the works involves the component of labour (specifically for the purpose of drilling, filling of explosives in the drilled holes and for precise and effective blasting of the explosives) and also the component of goods- the explosives used for undertaking the blasting operation. The work to be performed by the Applicant for M/s Balajee thus involves supply of service as well as goods and is a composite supply as defined under Section 2(30) of CGST Act, 2017.

3.2 Further, In Hindustan Zinc Ltd. v Commercial Taxes Officer, on 29 February, 2008, the Hon. Rajasthan High Court while dealing with the issue whether the explosives are goods liable to be taxed and whether the activity of blasting carried out by Hindustan Zinc is a works contract observed that;  
"27.... since the explosives is a consumable item and in fact consumed in mining operation, therefore, as per Clause (e), ( e) cost of consumables such as water, electricity, fuel, etc., used in the execution of the works contract the property in which is not transferred in the course of execution of a works contract; and) the entire cost of explosives is required to be deducted from the value of the goods involved in execution of works contract, which in other words, mean that no tax can be levied on the value of the consumable item which is explosive in this case. The argument appears to be quite attractive but is devoid of any force because of the reason that deduction from the value of goods involved in the execution of a works contract can be claimed only of "charges towards labour" and "services" obviously



provided by principle. The explosive is not falling in either "labour charges" nor it is "service" provided to the contractor. As per Clause (e) referred above, the consumable items are only the items used ancillary in works contract and those can be water, electricity and fuel etc., as these items are not the goods transferred to the contractor in execution of works contract and providing above or like items, the contractor is given some facilities by the Principal engaged in works contract. In mining operation, the main article with which operation can be given effect to, is the explosive and that explosive can be put to blast with the help of electricity, which may be generated or obtained from different source. The explosive is the item like cement, iron etc., for which tax is leviable. In mining operation, fuel is consumed to run the machinery like in other works contract and the machineries are run by electricity and fuel and in that process, there may be consumption of water. Therefore, the explosives are not those consumable items which can be equated with the water, electricity or fuel. When in the definition clause or a list prescribing certain items, is not exhaustive and uses the words- "such as" and "etc." then other items or articles or goods which are similar to the goods or articles, referred in the definition depending upon the facts, can be included in said definition."

- 3.3 Taking cue from the above referred judgment it can be inferred that the activity of the Applicant of drilling and blasting of explosives can be termed as a 'works contract'. The work done by the Applicant of drilling and blasting of explosives are definitely naturally bundled and supplied in conjunction with each other in the ordinary course of business. As such, the activity of the Applicant can definitely be classified as a "Composite Supply of Works Contract" under the Heading 9954 i.e. "Construction Services".
- 3.4 The question of the Applicant is, Whether the activity should be classified as Composite Supply of works contract under Entry 3(x) of Notification No.11/2017-CT (Rate) dated 28/6/2017 i.e. provided by a sub-contractor to the main contractor providing services specified in item (vii) above to the Central, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity taxable at the rate of 5%?
- 3.5 A perusal of the contract between M/s Balajee and the Applicant at clause 4 of the said contract and also from the clause regarding the scope of work to be done by the Applicant for M/s Balajee shows that, the Applicant is entrusted only with the work of drilling and blasting operation with explosives at the designated site of CIDCO. The Applicant is only supposed to drill at the quarry site and thereafter perform the work of blasting of rocks etc., with the help of explosives. As per contract terms, the Applicant is not supposed to remove the boulders, rocks or mud, etc. after completion of blasting operation. The said work may be done by M/s Balajee or any of his agents but definitely not by the Applicant. The Applicant, thereby, does not have to and does not perform any earthwork activities as canvassed. Further, the nature of the work performed the applicant reveals that the cost of labour (service) component is very less as compared to the cost of explosives that are to be employed and utilized by the Applicant in the said contract.
- 3.6 Entry 3(vii) of Notification No.11/2017-CT (Rate) dated 28/6/2017 provides for the tax rate of 5% on "Composite supply of works contract as defined in clause (119) of section 3 of the CGST Act, 2017 involving predominantly earth work (that is constituting more than 75 per cent of the value of the works contract) provided to the Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity."

Entry 3(x) of Notification No.11/2017-CT (Rate) dated 28/6/2017 also provides for the tax rate of 5% on "Composite supply of works contract as defined in clause (119) of section 3 of the CGST Act, 2017





provided by a subcontractor 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.”

3.8 The main rider to the entry 3(vii) and thereby also to entry 3(x) is that the taxable person should predominantly be performing earth work and that too constituting more than 75 per cent of the value of the works contract. In the case in hand, however, the Applicant is not entrusted with the activity of performing any earth work and is definitely not doing any. As such, the Applicant will not fit in the activity defined under entry 3(x) vide the above mentioned notification. The activity of the Applicant by virtue of the works performed has to be classified under the category of “Construction Services”. A close observation of the description of services mentioned vide Notification No.11/2017-CT (Rate) dated 28/6/2017 reveals that the activity of the Applicant does not fit in any of the entries from 3 (i) to 3 (xi) and also that under serial number 38. As such, the activity of the Applicant has to be categorized under entry 3(xii) construction services other than those under entries 3(i), 3(ii), 3(iii), 3(iv), 3(v), 3(vi), 3(vii), 3(viii), 3(ix), 3(x), 3(xi) and entry at serial number 38. The Applicants’ construction service by virtue of been categorized under entry 3(xii) of Notification No.11/2017-CT (Rate) dated 28/6/2017 has to be taxed at 18 per cent.

**4 In response to above written submissions of jurisdiction officer, the applicant further made following submissions:**

4.1 After admission of application for advance ruling, the applicant vide email dated 27.12.2021 was made privy to the “argument notes” submitted by the jurisdictional officer to the Hon’ble AAR against the grounds put forth by the applicant in AAR submissions. On perusal of the said “argument notes” following points have been agreed by the jurisdictional officer.

1. The activity undertaken by the applicant for M/s Balaji Infratech & Construction Pvt Ltd is a works contract service (page no 3 of the “argument note”)
2. The HSN Code of the services supplied by the applicant is classifiable under HSN Code 9954 under “Construction Services”
3. The activity undertake by the applicant will not will not fit in the activity defined under entry 3(x) as applicant is not entrusted with the activity of performing any earth work and is definitely not doing any and thus Applicants’ construction service by virtue of been categorized under entry 3(xii) of Notification No.11/2017-CT (Rate) dated 28/6/2017 has to be taxed at 18 per cent.

4.2 The point wise reply to the said “argument notes” is submitted as under

- A. Applicant concurs with the view of the jurisdictional officer that its activity is classifiable as works contract service in accordance with notification no 11/2017-CT Rate dated 28.06.2017.
- B. The applicant concurs with the view of the jurisdictional officer that HSN Code of the services supplied by it is classifiable under HSN Code 9954 under “Construction Services”.
- C. Applicant does not concur with the view of jurisdictional officer that, its activities are not classifiable under entry 3(x) of the notification no 11/2017-CT Rate dated 28.06.2017. The applicant’s understanding is that its activities for M/s Balaji as a sub-contractor are duly classifiable under entry 3(x) of the Notification No 11/2017-CT (Rate) and are taxable under GST at the rate of 5%. The specific rebuttal to the view of jurisdictional officer are advanced in following paragraphs:

4.2.1 The main rider to the entry 3(x) of the N.N. 11/2017-CT (Rate) is not that the taxable person should predominantly be performing earth work and that too constituting more than 75 per cent of the value



of the works contract as understood by the jurisdictional officer. The extracts of both the entries is reproduced as under

Entry 3(vii)	Entry 3(x)
[(vii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, involving predominantly earth work (that is, constituting more than 75 per cent. of the value of the works contract) provided to the Central Government, State Government, Union territory, local authority, a Governmental Authority or a Government Entity.	(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.

- C.2. On perusal of above entries it is clear that main rider to classify an activity under 3(vii) of the N.N. 11/2017-CT (Rate) dated 28.06.2017 is that
- Services should be works contract services
  - Recipient should be either Central Government or State Government or Union territory or local authority or a Governmental Authority or a Government Entity.
  - The work should involve predominantly earth work (that is, constituting more than 75 per cent. of the value of the works contract)
  - In given case the applicant has already submitted copy of agreement and work order executed between M/s Balajee and CIDCO on perusal of which, it is evident that M/s Balajee has been awarded work order from CIDCO for Drilling, Blasting, Mucking and allied job and reclamation works for the land Development respectively pertaining to Ulwe NMIA at the said QUARRY. On perusal of same it is evident that it has been asked to undertake series of Activities such as
    - providing rock fill for reclamation of land up to level specified in drawings as per specifications with material queried by control blasting or wedging and
    - chiseling or line drilling from area in the Quarry,
    - extraction of rock by controlled blasting/chiseling,
    - loose dressing of land,
    - filing of voids with quarry spalls and
    - compacting with pneumatic vibratory roller,
    - levelling of land.
- C.3. Thus the activity to be done by Balajee Infratech & Construction Pvt Ltd predominately (in fact only) involves earth work i.e. extraction, site clearance and land levelling only.
- C.4. It is evident from the work awarded to M/s Balajee that, it has to get the blasting done and also has to prepare the land. The debris removal plus dressing of land and its levelling is within the scope of its work.
- C.5. work to be done by M/s Balajee is for CIDCO which is Governmental Authority.
- C.6. The work to be executed by Balajee Infratech & Construction Pvt Ltd involves material and services both and is for immovable property (development of land). Thus same qualifies as works contract



- C.7.** Hence, it is clear that contract executed between Balajee and CIDCO is a works contract which predominantly involves earthwork (in fact completely earth work only). Thus same get classified under entry 3(vii) of the Notification No 11/2017-CT (Rate) dated 28.06.2017.
- C.8.** The learned jurisdictional officer has erred in not understanding that main contractor who is supplying services to CIDCO is giving works contract service which involves earth work only. The invoice issued by Balajee to CIDCO is also under HSN Code 9954 and with rate of tax at 5%.
- C.9.** Once it is settled that main contractor is giving services to Governmental Authority classifiable under entry 3(vii) of the N.N. 11/2017-CT dated 28.06.2017, the activity of applicant automatically classifies under entry 3(x) of Notification No 11/2017-CT dated 28.06.2017.
- C.10.** That it is relevant to note main rider to classify the activity under entry 3(x) is that
- Supply of service is as a sub-contractor
  - Nature of Service is a works contract
  - The main contractor to whom service is provided is providing services to Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity which are classifiable under entry 3(vii) of the notification no 11/2017-CT (Rate) dated 28.06.2017.
- C.11.** That the case of applicant fits in given entry 3(x) because
- It is supplying services as sub-contractor to M/s Balajee Infratech & Construction Pvt Ltd
  - It is supplying works contract services
  - The main contractor i.e. Balajee, is supplying services to M/s CIDCO which is a Governmental Authority and its services are classifiable under 3(vii) of the notification no 11/2017-CT (Rate) dated 28.06.2017.
- C.12.** The understanding that under "entry 3(x) is that the taxable person should predominantly be performing earth work and that too constituting more than 75 per cent of the value of the works contract" is grossly incorrect. There is no such condition given in the said entry that work performed by the applicant should be predominantly earth work. The said condition is only applicable on the main contractor which has been established above.
- C.13.** That thus once HSN Code under which the services supplied by the applicant as sub-contractor is 9954 i.e. works contract services, the applicant's activity duly gets covered under entry 3(x) of the notification no 11/2017-CT (Rate) dated 28.06.2017.
- C.14.** That further classification of service i.e. 6 digit classification is irrelevant in given case since the main contractor is covered under HSN Code 995432 and involves earth work.

## 05 HEARING

- 5.1 Preliminary e-hearing in the matter was held on 30.11.2021. The Authorized representative of the applicant, Shri. Yash Ladda, learned CA and Smt. Shuchi Sethi, learned CA were present. The Jurisdictional officer was absent. The Applicant was directed to produce details of works completed. The Applicant was also directed to produce relevant bills, invoices issued (copies) and details thereof and what tax treatment is being adopted at present by the applicant.
- 5.2 The Application was admitted and was fixed for final e-hearing on 14.12.2021. Shri. Yash Ladda, learned CA, Smt. Shuchi Sethi, learned CA and Shri Chirag Mehta, learned CA, appeared and made submissions. The Jurisdictional Officer Smt Manisha Bhadage, STO Pune VAT C 508, was present and has filed written submissions as above. The application was heard.



06. **OBSERVATIONS AND FINDINGS:**

- 6.1 We have understood the facts of the matter, considered the documents on record and the oral/written submissions made by both, the applicant as well as the jurisdictional officer.
- 6.2 The registered taxable person M/s Kapil Sons Explosives LLP (Applicant) is engaged in drilling and blasting works using Industrial explosives and other materials.
- 6.3 Applicant has submitted that, M/s CIDCO has given a contract to M/s Balajee Infratech and Constructions Pvt. Ltd. (Balajee) for Drilling, Blasting, Mucking and allied job and reclamation work of the land development for Navi Mumbai International Airport land Development work site at the Vahal Ulwe site of M/s CIDCO. Thereafter, M/s Balajee has subcontracted with the Applicant, to provide only drilling and blasting operation with the usage of explosives for extraction of boulders at the aforementioned site of M/s CIDCO. The works being done by the applicant involves drilling and blasting operation with the use of explosives.
- 6.4 The applicant is of the opinion that, the service rendered by M/s Balajee to M/s CIDCO is covered under Sr. No. 3 (vii) of Notification No. 11/2017-CT (Rate) dated 28.06.2017 which states that, *Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, involving predominantly earth work (that is, constituting more than 75 per cent. of the value of the works contract) provided to the Central Government, State Government, Union territory, local authority, a Governmental Authority or a Government Entity is taxable at 5% GST.* Further, the applicant is also of the opinion that, the service rendered by it to M/s Balajee is covered under Sr. No. 3 (x) of Notification No 11/2017-CT (Rate) dated 28.06.2017.
- 6.5 The applicant is to provide only drilling and blasting operation with the usage of explosives for extraction of boulders at the said QUARRY to M/s Balajee.
- 6.6 We agree with the applicant's submissions as well as the submissions of the jurisdictional officer that, the work of blasting with explosives which is subcontracted to the applicant, is a composite supply as defined under the GST Laws. We also take reference from the decision given by the Advance Ruling Authority of Gujarat in case of **M/s KHEDUT HAT [2018-TIOL-173-AAR-GST]** which has held that blasting work with use of explosives is a composite supply. The ruling pronounced is as under:  
***"There is deemed supply of explosives in this case in view of the judgement of Hon'ble Supreme Court in the case of Bharat Pest Control - 2018-TIOL-310-SC-VAT as well as the supply of service in the form of the blasting work - Therefore, the situation as narrated by the applicant is a 'composite supply' of goods and services and shall be covered by Section 2(30) and Section 8(a) of the CGST Act, 2017 and the GGST Act, 2017: AAR.***
- 6.7 The jurisdictional officer has referred to the decision in the case of M/s Hindustan Zinc Ltd. v Commercial Taxes Officer, dated 29 February, 2008 and has submitted that, from the said decision, it can be inferred that the activity of the Applicant of drilling and blasting of explosives can be termed as a 'works contract'. We also find that, since the Applicant is rendering a composite supply and since the said supply is in respect of immovable property i.e. Airport Land, we find that the applicant is providing Composite supply of works contract as to M/s Balajee.
- 6.8 Now, what we need to find is whether the work of drilling and blasting with explosives, which has been sub contracted to the applicant, falls under Sr. No. 3 (x) of Notification No 11/2017-CT (Rate) dated 28.06.2017.



- 6.9 Sr. No. 3 (x) of Notification No 11/2017-CT (Rate) dated 28.06.2017 states that 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.
- 6.10 It is clear that the Entry 3(vii) of Notification No.11/2017-CT (Rate) dated 28/6/2017 provides for the tax rate of 5% on “Composite supply of works contract as defined in clause (119) of section 3 of the CGST Act, 2017 **involving predominantly earth work (that is constituting more than 75 per cent of the value of the works contract)** provided to the Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity.” Further, the applicant has submitted, that M/s Balajee are supplying to M/s CIDCO, predominantly earthwork services constituting more than 75 per cent of the value of the works contract.
- 6.11 Entry 3(x) of Notification No.11/2017-CT (Rate) dated 28/6/2017 also provides for the tax rate of 5% on “Composite supply of works contract as defined in clause (119) of section 3 of the CGST Act, 2017 provided by a subcontractor 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.”
- 6.12 Thus, in view of above, impugned service supplied by the applicant will be covered under Sr. No. 3 (x) of Notification No. 11/2017 – CTR dated 28.06.2017 **only** if the services provided by M/s Balajee to M/s CIDCO, a Government entity, falls under Sr. No. 3 (vii) of Notification No.11/2017-CT (Rate) dated 28/6/2017.
- 6.13 Further, we find that Notification No.11/2017-CT (Rate) dated 28/6/2017 was amended vide Notification No. 15/2021 – CT(R) dated 18.11.2021 (with effect from 01.01.2022) and in Sr. No 3 (vii) of the amended Notification No. 15/2021–CTR dated 18.11.2021, the words “Governmental Authority” and “Government Entity” have been deleted. Therefore, in view of the above discussions, with effect from 01.01.2022, the impugned services supplied by the applicant will not be covered under Sr. No. 3 (x) of Notification No. 11/2017-CT (Rate) dated 28/6/2017, as amended.
06. In view of the above discussions, we pass an order as follows:

**ORDER**

**(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)**

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

**Question 1:** Whether the activity to be carried by the applicant shall be classified as supply of goods or services or a composite supply of ‘works’ contract’?

**Answer:** The activity to be carried by the applicant shall be classified as a composite supply of ‘works’ contract’.

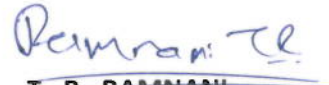


**Question 2:** Whether the activity should be classified as Composite Supply of works contract under Entry 3(x) of Notification No. 11/2017-CT (Rate) dated 28.06.2017 i.e. provided by a sub-contractor to the main contractor providing services specified in item (vii) above to the Central, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity taxable at the rate of 5%?

**Answer:** Answered in the negative.



  
RAJIV MAGOO  
(MEMBER)

  
T. R. RAMNANI  
(MEMBER)

**Copy to:-**

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

**Note:-**An Appeal against this advance ruling order shall be made before, The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15<sup>th</sup> floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on [gst.gov.in](http://gst.gov.in) for online appeal application against order passed by Advance Ruling Authority.