

**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	AD270920005101R	
GSTIN Number, if any/ User-id	27AAACB7343N1ZE	
Legal Name of Applicant	M/s. B.T.Patil & Sons Belgaum Construction Private Limited	
Registered Address/Address provided while obtaining user id	1073A, PADMAPATAK KAMGAR CHAL, LINE BAZAR PARISAR, KASBA BAWADA, KOLHAPUR-416016	
Details of application	GST-ARA, Application No. 35 Dated 07.10.2020	
Concerned officer	Division-III, Commissionerate Kolhapur	
<b>Nature of activity(s) (proposed/present) in respect of which advance ruling sought</b>		
A	Category	Works Contract
B	Description (in brief)	M/s. B.T. Patil & Sons Belgaum Construction Pvt. Ltd., the applicant is a Sub-Contractor of M/s. Mahalaxmi B T Patil Honai Constructions JV who are engaged in Construction of Jeur Tunnel (linking Ujani reservoir to Sina Kolegaon reservoir) under Krishna Marathwada Irrigation Project Tq. Karmala Dist. Solapur Project awarded by Godavari Marathwada Irrigation Development Corporation, Aurangabad. The work order is consisting of Earth Work such as Excavation for Tunnel, removing of excavated stuff, providing steel support, rock bolting, reinforcement, fixing of chain link, cement concreting etc.
Issue/s on which advance ruling required		➤ Applicability of a notification issued under the provisions of the Act
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.



NO.GST-ARA- 35/2020-21/B- 49

Mumbai, dt. 18.04.2022

**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. B.T.PATIL & SONS BELGAUM CONSTRUCTION PRIVATE LIMITED**, the applicant, seeking an advance ruling in respect of the following questions:

- A) If the tax rate of M/s. Mahalaxmi B T Patil Honai Constructions JV (Referred to as JV) is NIL as per SI No 3A- Chapter No. 9954 as per Notification No. 12/2017 C.T. (Rate) dated 28.06.2017, as amended by Notification No. 2/2018-C.T. (Rate) dated 25.01.2018, whether we can avail the benefit of the same tax rate i.e. NIL?
- B) If the above answer is negative, then whether we can avail the benefit of SI No 3 (x) – Chapter No. 9954 as per Notification No. 01/2018-C.T. (Rate) dated 25.01.2018 (amendments in the Notification No 11/2017- Central Tax (Rate) dated 18th June 2017)?

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.

**FACTS AND CONTENTION – AS PER THE APPLICANT FACTS:**

- 2.1 M/s. Mahalaxmi B T Patil Honai Constructions JV (Referred to as JV/Main Contractor) a GST registered company situated 363/11, Balaji Niwas, Shivajinagar, Pune-411 016, engaged in the business of Construction of infrastructure projects was formed to undertake construction of Jeur Tunnel under (Linking Ujani Reservoir to Sina, Kolegaon reservoir) Krishna Marathwada Irrigation Project, Tal. Karmala, Dist. Solapur, a work allotted by Executive Engineer, Lift Irrigation Division, Osmanabad Project awarded by Godavari Marathwada Irrigation Development Corporation (GMIDC), Aurangabad.
- 2.2 The Said JV consists of three members, viz. M/s Mahalaxmi Infraprojects Pvt Ltd., M/S BT Patil & Sons (Belgaum) Constructions Pvt Ltd and Honal Constructions and was formed to get the work and to share it amongst themselves. Accordingly, M/s Mahalaxmi Infraprojects Pvt Ltd. Pune and M/S BT Patil & Sons Belgaum Constructions Pvt Ltd (applicant) are executing the work in the Ratio 50:50 proportion.
- 2.3 As per stages of completion of work, JV raises invoice on GMIDC and the applicant is raising invoice on JV. As a JV member, applicant has work order consisting of Earth Work such as Excavation for Tunnel, removing of excavated stuff, providing steel support, rock bolting, reinforcement, fixing of chain link, cement concreting etc. wherein total earth work is around 91% and the construction work is approximately 9%, wherein transfer of property is involved.



- 2.4 The Contract / Transaction under consideration is Composite supply of works contract as defined in clause (119) of section 2 of the CGST Act, 2017. The Main Contractor provided Services to the Central Government, State Government, Union territory, local authority, a Governmental Authority or a Government Entity.
- 2.5 GMIDC is entrusted with planning, designing of projects, maintenance of completed project, construction of projects and irrigation management of the Major, Medium and Minor Projects. In subject case, Excavation Work constitutes approximately 91.00% of the value of Works Contract.
- 2.6 The question is whether the benefit of the Notification No. 39/2017 ITR or Notification No. 31/2017 CTR dated 13th October 2017 will be available to the JV?. Identical issue was decided in RE: - P. K. Agarwala (2019 (20) GSTL 605 (AAR-GST)) by holding that the assesses are entitled for benefit of concessional rate of tax under Notification No. 39/2017-ITR dated 13.10.2017.
- 2.7 Since the major part of the work order, i.e., about 91%, is 'Earth Work, the said work order of JV qualifies for the benefit of exemption under Sr. No. 3A of the Notification No. 12/2017-CTR dt 28.06.2017, as amended by Notification No. 2/2018-CTR dt 25.01.2018, i.e. GST rate is NIL as Sr. No. 10 of Eleventh Schedule of Article 243G of the Constitution which covers "Minor Irrigation, water management and watershed development" and Sr. No. 5 of Twelfth Schedule of Article 243W of the Constitution which covers "Water supply for domestic, industrial and non-commercial purposes" would cover the activities carried out by the JV and on the same line we as a JV member can also take the benefit of NIL rate of tax.

**WRITTEN SUBMISSION DATED 24.03.2022:-**

- 2.8 Applicants construction work includes Earth Work such as excavation for tunnel, removing of excavated stuff, providing steel support, rock bolting, reinforcement, fixing of chain link, cement concreting etc.
- 2.9 An identical case involving identical set of questions in the matter of Soma Mohite Joint Venture was decided in favour of the Applicants by the Maharashtra Appellate Authority for Advance Ruling. It is submitted that contract relating to Soma Mohite Joint Venture was identical to the contracts involved in the instant case and even the project is one and the same added by GMIDC.
- Therein, it was held that the work carried out by the Applicant JV was covered by Entry 3(vii) of Notification No. 11/2017-CTR as amended by Notification No. 31/2017-CTR. Accordingly sub-contractors of JV are also eligible for the same tax rate under Sr. No. 3(x) of the said Notification.

2.10 The Ld. Assistant Commissioner, Division-III (Deccan) CGST, Pune-II Commissionerate, vide letter dated 30.07.2021 has submitted that services provided by the Applicants fall within the description of services specified in column 3 of the Notification and they have satisfied all the conditions in column 5 of the Notification. Further, Deputy Commissioner, Central GST, Division-III, Kolhapur vide email dated 10.01.2022 has agreed to applicability of GST @ 5% under Entry 3(x) of the Notification.

2.11 However, Deputy Commissioner (E-505), SGST, Large tax Unit-1, Pune vide letter dt 18.01.2022 has opposed the subject application. Applicant submits that, the submissions made in letter dated 18.01.2022 are bereft of any merit and that the same does not even touch the issue involved in the instant case. Emphasis sought to be placed on the term "composite supply" used in the Notification, is without any basis and has no relevance to the term "composite supply" as defined in Section 2(30) of the CGST Act. What needs to be looked at is the definition of the term "Works contract" under Section 2(119) of the CGST Act. Going by the said definition, it is ex-facie clear that what is required is a transfer of property in goods involved in execution of construction. Admittedly, the said condition stands satisfied as the Applicants have been awarded a contract for construction of a tunnel and that in execution of this construction contract, transfer of property in goods supplied by the Applicants has taken place. In addition, services of excavation have also been provided. It is a settled law that a contract cannot be dissected and each activity be charged to tax separately at independent rates. Therefore, such division of contract as proposed in letter dated 18.01.2022 is not permissible in law. Merely because some or any activity of the work entrusted to the Applicant by GMIDC, is or can be subcontracted by the Applicants is not determinative of composite nature of supply of goods and excavation services, in execution of contract of construction of a tunnel.

2.12 Therefore, it may be held that the JV and its sub-contractors are eligible for benefit of paying GST @ 5% under Sr. No. 3(vii) and 3(x) of the Notification No. 11/2017-Central Tax (Rate).

**03. CONTENTION – AS PER THE CONCERNED OFFICER:**

**Officer Submission dated 10.01.2022:-**

**Question No. 1**

3.1 **Comments:** Applying the ratio of order No. MAH/AAAR/SS-RJ/21/2019-20 dated 20.01.2020 passed by the Maharashtra Appellate Authority for Advance Ruling for Goods and Service Tax In case of M/s Soma Mohite Joint Venture wherein similar issue regarding applicability of Sr.No. 3A





as per Notification No. 12/2017 CTR as amended has been decided, it appears that the impugned contract is not covered under Sr.No. 3A of Notification No. 12/2017-CTR dated 28/06/2017 as amended. Consequently the reply to the appellant's question is in negative.

**Question No. 2**

3.2 **Comments:-** Sr.No. 3(x) of the relevant Notification is reproduced as under;

(1)	(2)	(3)	(4)	(5)
3	Ch. 9954	(x) Composite supply of works contract as defined in clause (119) of Section 2 of the Central Goods and Service 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 Govt. Authority or a Govt. Entity.	2.5%	Provided that where the services are supplied to a Govt. Entity they should have been procured by the said entity in relation to a work entrusted to it by the Central Govt. State Govt. , Union territory or local authority as the case may be

3.2 On going through the submission made by the applicant, it is seen that they are in the receipt of work order consisting of earth work such as Excavation for Tunnel, removing of excavated stuff, providing steel support, rock bolting, reinforcement, fixing of chain link cement concerting etc., wherein total earth work is approximately 91% and the construction work is approximately 9%, where in transfer of property is involved. In this case, it is not disputed that the GMIDC is a Government entity and the earthwork forms more that 75% of the work and the order is procured by principle contractor in relation to work entrusted to it by State Government. Therefore, it can be said that Sr.No. 3(x) of Notification No. 11/2017 can be made applicable in the present case.

**04. HEARING**

- 4.1 Preliminary e-hearing in the matter was held on 10.08.2022. Authorized representative of the Applicant, Shri. Abhijit Mundada, CA was present. The Jurisdictional Officer Shri. Prashant Chavhan, Superintendent, Range-I, Kolhapur was also present. The Authorized representative made oral submission with respect to admission of the subject application.
- 4.2 The application was admitted and called for final e-hearing on 11.01.2022. The Authorized representatives of the applicants, Shri. Makarand Joshi, Advocate and Shri Laxman Awachar were present. Jurisdictional officer Shri. Shrikant Raut DC, Shri. Prashant Chavan Superintendent Division-II, Commissionerate-Kolhapur were also present. Applicant stated that project started from pre-GST era & 90% of the project is completed. Applicant stated that they want ruling up

to 31.12.2021. The applicant has not produced any records or advanced any argument related to amendment w.e.f 01.01.2022. Application is heard.

**05. DISCUSSIONS AND FINDINGS:**

5.1 We have perused the documents on record and submission made by both, the applicant as well as the jurisdictional officer in the said matter.

5.2 M/s. Mahalaxmi BT Patil Honai Constructions JV, (Principal Contractor), has been contracted to undertake construction of Jeur Tunnel Under (Linking Ujani Reservoir to Sina, Kolegaon reservoir) Krishna Marathwada Irrigation Project, Tal. Karmala, Dist. Solapur, by the Godavari Marathwada Irrigation Development Corporation (GMIDC), Aurangabad.

5.3 The applicant, M/S BT Patil & Sons Belgaum Constructions Pvt Ltd has submitted that, the impugned contract/work order given to the Principal Contractor consists of Earth Work such as Excavation for Tunnel, removing of excavated stuff, fabrication, transporting, providing steel support, rock bolting, reinforcement, fixing of chain link, cement concerting, providing drainage arrangement etc. wherein total earth work is around 91% and construction work is approximately 9%, wherein transfer of property is involved. As per the applicant, impugned activity of the Principal Contractor is a Composite supply of works contract as defined in clause (119) of section 2 of the CGST Act, 2017, where such supply is to a Governmental Authority/Government Entity.

5.4 The applicant has submitted that the Principal Contractor has outsourced fifty percent of the work as per the contract to the applicant. While making detailed submissions regarding the activity of the Principal Contractor, the applicant has also submitted that, the two questions raised are in respect of impugned supply provided to the Principal Contractor by the applicant, as the sub-contractor.

5.5.1 The jurisdictional officer has submitted as under:-

*On going through the submission made by the applicant, it is seen that they are in the receipt of work order consisting of earth work such as Excavation for Tunnel, removing of excavated stuff, providing steel support, rock bolting, reinforcement, fixing of chain link cement concerting etc., wherein total earth work is approximately 91% and the construction work is approximately 9%, where in transfer of property is involved. In this case, it is not disputed that the GMIDC is a Government entity and the earthwork forms more that 75% of the work and the order is procured by principle contractor in relation to work entrusted to it by State*





*Government. Therefore, it can be said that Sr.No. 3(x) of Notification No. 11/2017 can be made applicable in the present case.*

- 5.5.2 The jurisdictional officer has opined about the first question of the applicant in the negative.
- 5.6 The applicant has relied on the decision given by the Maharashtra Appellate Authority for Advance Ruling (MAAR) vide Order No. MAH/AAAR/SS-RJ/21/2019-20 dated 20.01.2020, in the matter of Soma Mohite Joint Venture (SMJV) wherein it was held that the work carried out by Soma Mohite Joint Venture was covered by Entry 3(vii) of Notification No. 11/2017 -CTR as amended by Notification No. 31/2017-CTR.
- 5.7.1 We have already observed in the Advance Ruling Application filed by the Principal Contractor on the same Work Order and the similar questions raised that, the impugned Contract/Work Order, involves activities consisting of Earth Work such as Excavation for Tunnel, removing of excavated stuff, fabrication, transporting, providing steel support, rock bolting, reinforcement, fixing of chain link, cement concreting, providing drainage arrangement etc. wherein, the total earth work is approximately 91% and construction work is around 9% wherein transfer of property is involved and held that the activity of the Principal Contractor, part of which is outsourced to the applicant, is a Composite supply of works contract as defined in clause (119) of section 2 of the CGST Act, 2017, where such supply is to a Governmental Entity, i.e. GMIDC. Further, we also held that, the Principal Contractor's supply is to a Government Entity, i.e. GMIDC and the said work has been procured by GMIDC in relation to work entrusted to it by the State Government of Maharashtra.
- 5.7.2 Applying the ratio of the decision of the Maharashtra Appellate Advance Ruling Authority in the case of Soma Mohite Joint Venture, in an application filed by the Principal Contractor i.e. M/s. Mahalaxmi B T Patil Honai Constructions JV before this authority, we have held in our order that, the Maharashtra Appellate Advance Ruling Authority's decision in the case of Soma Mohite Joint Venture is squarely applicable in the case of the Principal Contractor and the impugned activity of the Principal Contractor falls under Sr. No. 3 of Notification No. 11/2017 – CTR dated 28.06.2017 as amended from time to time.
- 5.8 With respect to the first question asked by the applicant , since we have already held that the activity of the Principal Contractor is not covered under Sr. No 3A- Chapter No. 9954 as per Notification No. 12/2017- C.T. (Rate) dated 28.06.2017, as amended from time to time, in the subject case also relying on the same ratio we are of the opinion that the applicant cannot



avail the benefit of Sr. No 3A- Chapter No. 9954 as per Notification No. 12/2017- C.T. (Rate) dated 28.06.2017, as amended.

5.9.1 In the case of the Principal Contractor's application for Advance Ruling, we have held that the supply of the Principal Contractor falls under Sr. No. 3 of Notification No. 11/2017 – CTR dated 28.06.2017 as amended from time to time.

5.9.2 We now reproduce the relevant Sr. No. 3 of Notification No. 11/2017 – CTR dated 28.06.2017 as under:-

Sr. No.	Chapter, Section or Heading	Description of Service	Rate %	Condition
3	<b>Heading 9954</b> (Construction services)	(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.	2.5	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
		(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.

5.9.3 Composite supply of works contract as defined in clause (119) of section 2 of the CGST Act, 2017 provided by a sub-contractor (in this case, the applicant) to the main contractor (Principal Contractor) providing services specified in item (vii) of Sr No 3 of Notification 11/2017-CTR to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity is covered under Section 3 (x) of Notification No. 11/2017 – CTR dated 20.06.2017 as amended.





- 5.9.4 The Particulars of various items of work to be done by the applicant includes : Excavation for Tunnel work in all kind of soft-strata and rock including ventilation arrangement ; Providing and fabrication, transporting and erecting structural supports ; Providing and rock bolting in position (work order in running meter) ; Providing and fixing in position M.S. reinforcement; Providing and applying material component shot crating in two layers ; providing ad fixing chain link ; providing and laying in situ cement concrete in grade M-15 ; Providing and laying in situ cement concrete in grade M-20 ; removing excavated stuff from underground excavation ; providing drainage arrangement and bailing out water, etc.
- 5.9.5 The work items mentioned in 5.9.4 above are a part of the work allotted to the applicant by the Principal Contractor and we have already held that the supply of the Principal Contractor is a composite supply of works contract since there is a combination of supply of goods as well of services.
- 5.9.6 The Composite supply of works contract is provided by the applicant sub-contractor to the main contractor who is further providing services specified in item (vii) to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.
- 5.10 In view of the above we find that the impugned supply of the applicant is covered under Sr.No. 3(x) of Notification No. 11/2017 – CTR dated 20.06.2017 as amended from time to time.
- Further, we find that Notification No.11/2017-CT (Rate) dated 28/6/2017 as amended, was amended vide Notification No. 15/2021 – Central Tax (Rate) dated 18.11.2021 (with effect from 01.01.2022) and in Sr. No 3, in column (3), in the heading “Description of Services”, in item (x) for the words “Union territory, a local authority, a Governmental Authority or a Government Entity” the words “Union territory or a local authority” shall be substituted. That means words “a Governmental authority or a Government Entity” are omitted. Therefore, 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. 11/2021 – CTR dated 28.06.2017 as amended from time to time.
06. In view of the extensive deliberations as held hereinabove, 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:-** If the tax rate of M/s. Mahalaxmi B T Patil Honai Constructions JV (Referred to as JV) is NIL as per SI No 3A- Chapter No. 9954 as per Notification No. 12/2017 C.T. (Rate) dated 28.06.2017, as amended by Notification No. 2/2018- C.T. (Rate) dated 25.01.2018, w.e.f. 25th January 2018, whether we can avail the benefit of the same tax rate i.e. NIL?

**Answer:-** Answered in the negative.

**Question 2:-** If the above answer is negative, then whether we can avail the benefit of SI No 3 (x) – Chapter No. 9954 as per Notification No. 01/2018- C.T. (Rate) dated 25.01.2018 (amendments in the Notification No 11/2017- C.T. (Rate) dated 18.06.2017)?

**Answer:-** Answered in the affirmative BUT ONLY TILL 31.12.2021.



  
**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.