

**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)**

GSTIN Number, if any/ User-id	271900000645ARI URD	
Legal Name of Applicant	M/s. Godavari Marathwada Irrigation Development Corporation	
Registered Address/Address provided while obtaining user id	Executive Engineer, Krishna Marathwada Construction division, Division No 1, Sinchan Bhavan, Anand Nagar, Osmanabad, Aurangabad-, 413501	
Details of application	GST-ARA, Application No. 91 Dated 16.01.2020	
Concerned officer	OSM-VAT-D-001, Osmanabad	
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Works Contract
B	Description (in brief)	The functions and powers of the corporation have been listed in the Maharashtra Act XXIII of 1998. In general, board has been entrusted with the work of investigation, planning, designing of projects and irrigation Management of the Major, Medium and Minor projects in the Godavari river basin.
Issue/s on which advance ruling required		(ii) Applicability of a notification issued under the provisions of CGST Act
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

NO.GST-ARA- 91/2019-20/B- **80**

Mumbai, dt. **25.10.2021**

**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. GODAVARI MARATHWADA IRRIGATION DEVELOPMENT CORPORATION**, the applicant, seeking an advance ruling in respect of the following question.

**Whether Works contract awarded under the Krishna Bhima stabilization project to be classified under sub-clause (vii) of serial no 3 of Heading 9954 (construction of service) substituted by way of Notification No 31/2017 Central tax (Rate) dated 13th Oct 2017 as amended to original notification 11/2017 – Central Tax (Rate)**

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 made by M/s. Godavari Marathwada Irrigation Development Corporation, Aurangabad, the applicant, are as under:-

- 2.1 The applicant, is a body constituted under the Maharashtra Godavari Marathwada Irrigation Development Corporation Act, 1998 and established by notification published in Gazette of Irrigation Department dated 17<sup>th</sup> August 1998.

- 2.2 Preamble to the act is as follows

*An Act to make special provision for promotion and operation of irrigation projects, command area development and schemes for generation of hydro electric energy to harness the water of Godavari river pertaining to state of Maharashtra and other allied incidental activities including flood control in the Godavari river valley by establishing the Godavari Marathwada Irrigation Development corporation.*

- 2.3 The functions and powers of the corporation have been listed in the Maharashtra Act XXIII of 1998. In general, board has been entrusted with the work of investigation, planning, designing of projects and irrigation Management of the Major, Medium and Minor projects in the Godavari river basin. The projects are to be completed so as to utilize the water from Godavari basin.
- 2.4 As a part of its objective, applicant issued a tender document on 03.02.2009 for construction of a Tunnel from Nira Bhima Link No 5 Tq. Indapur Dist. Pune under Krishna Bhima Stabilization project detailing the scope of work as follows:-

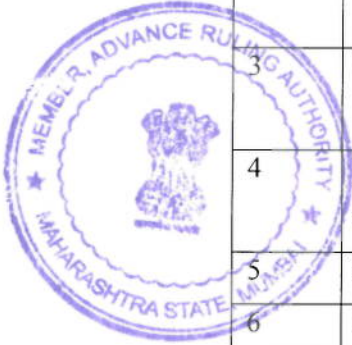
Item No	Item of work	Approx. Quantity in
1	Excavation in S.S.	891.00 TCM
2	Excavation in H.S.	1600.00TCM



3	Underground excavation of tunnel	978.00 TCM
4	Concrete work for tunnel lining by concrete pump	38.00 TCM
5	Structural steel permanent support	1418.00 MT
6	Steel reinforcements	380.00MT
7	Length of tunnel	24.50 Km

Estimated cost of the above work is derived at Rs. 438.37 Crores as follows-

Sr No	Particulars	Value of work (in crores)	In %	Various Excavation and related activity	Other s
1	Excavation	14.93	3.41%	3.41%	
2	Excavation	55.46	12.65%	12.65%	
3	Underground Excavation	285.96	65.24%	65.24%	
4	providing fabrication transportation and erecting structural steel	9.16	2.09%		2.09%
5	supporting rock bolts, drilling holes	1.92	0.44%		0.44%
6	Providing and fixing in position M.S.	2.37	0.54%		0.54%
7-a	Admixture, scaffolding, machinery, labour, -Tunnel arch	0.61	0.14%		0.14%
7-b	Admixture, scaffolding, machinery, labour, portal	0.11	0.03%		0.03%
8	Providing & fixing in chain link & hooks	0.98	0.22%		0.22%
9	Providing & fixing in situ cement concrete M – 15	10.41	2.38%		2.38%
10	Providing & fixing in situ cement concrete M – 20	4.58	1.04%		1.04%
11	Removing excavated stuff underground excavation	49.83	11.37%	11.37%	



12	providing drainage arrangement	1.99	0.45%		0.45%
Total		438.31		92.67%	7.33%

- 2.5 As per the tender process, the contract was awarded to M/s Soma – Mohite (JV) on 21.08.2009 at Rs. 536.76 Crores to be executed over the period of 60 months from contract date. First extension to works contract was granted till 20.08.2018, and status of the RA bill (Running account) for work done is as follows

Sr No	Date of work valued	Particulars	Amount	In % of total contract value
1	05 <sup>th</sup> November 2014	First RA bill	Rs. 6.20 Crores	1.15% of total billings
2	30 <sup>th</sup> June 2017	Second RA bill	Rs. 8.36 Crores	1.56% of total billings

- 2.6 Out of total estimated work approximately 2.00% is completed before 01.07.2017 i.e. date of implementation of the GST Act, 2017 & rest of the works contract is still under execution.

- 2.7 The Relevant entry of Notification No 11/2017 C.T.(R) as amended by Notification No. 31/2017 Central Tax (Rate) dated 13<sup>th</sup> Oct 2017 is reproduced as under :

“(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
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- 2.8 As per Section 2 (119) of CGST Act 2017, the term “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;

As per paragraph (x) to the explanatory notes of Notification 31/2017 – Central Tax (Rate), “Government Entity” means an authority or a board or any other body including a society, trust, corporation,

i) set up by an Act of Parliament or State Legislature; or

ii) established by any Government,

with 90 per cent. or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.”

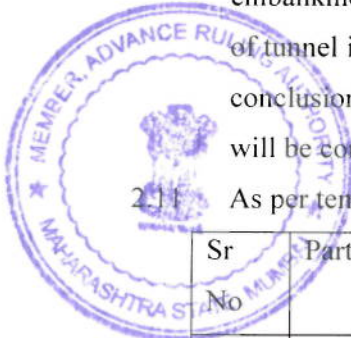
- 2.9 Original Notification 11/2017 – C.T.(Rate) has been amended by Notification No 31/2017 C.T. (R) dated 13.10.2017 and more specific entry relating to the predominant earth work related works contract is introduced entry under sub-clause (vii) of serial no 3 of Heading 9954.

Basic criteria to be classified under the notification requires

1. Works contract
2. 75% or more earth work
3. Provided to Government Entity

- 2.10 As per the scope of the work of the contract, execution involves mostly excavation of earth and embankment and concrete work to support the structure. Since the contract involves construction of tunnel including the excavation and ground preparation works on behalf of the applicant, at the conclusion of the contract the rights of the constructed tunnel will be with applicant. Hence this will be considered as works contract as per of Sec. 2 (119) of GST Act 2017.

- 2.11 As per tender documentation schedule B, Work contract consist of following -



Sr No	Particulars	Amount in Rs Crores.	In %
1	Various Excavation and excavated material mobilisation	406.18	92.67%
2	Others	31.82	7.33%
Total		438.00	100.00%

- 2.12 Since the earth work is more than 75% of the total contract value, said contract is considered to be involving predominantly earth work.

- 2.13 Also, as per Notification 31/2017 – C.T.(Rate) a “Government entity” should be :-

1. An Authority or board ;
2. set up by an Act of Parliament or State Legislature or established by any government
3. 90% participation by way of equity or control

- 2.14 Applicant is a body constituted under the Maharashtra Act XXIII of 1998 and established by notification published in Gazette Irrigation department dated 17<sup>th</sup> August 1998.



- 2.15 Applicant's activities are controlled and managed by duties and responsibilities mentioned in the Maharashtra Act XXIII of 1998. Any contract or tenders awarded are mitigated out of own funds to which it shall be credited by money received from state government by way of grants, subventions, loans, advances and also appropriation from the state governments over the period of time as mentioned in section 31 of the Maharashtra Godawari Marathwada Irrigation Development Corporation Aurangabad Act, 1998.
- 2.16 State government is exercising control by appointing Minister of the irrigation as chairperson of the corporation along with others as mentioned in section 30 of the Maharashtra Godawari Marathwada Irrigation Development Corporation Act, 1998. Therefore maintaining the control over the activities of the corporation.
- 2.17 Applicant has satisfied the conditions as given in explanatory notes to Notification No. 11/2017 for identification as Government entity.
- 2.18 Also applicant has established that 92.67% of the works contract predominantly deals in earthwork and other material works includes 7.33%, in support of which we have produced the tender documents, detailed itemized scope of work.

2.19 Also that after the tunnel work is complete the ownership lies with the corporation and not with the contractor.

2.20 In light of above, applicant submits that above contract fulfils the requirement of the sub-clause (vii) of Sr. No. 3 of Heading 9954 (construction of service) substituted by way of Notification No 31/2017 C.T.(R) dt 13.10.2017 and should be classified under 2.5% SGST and 2.5% CGST.

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

**Officer Submission dated 06.10.2021**

3.1 Section 95(a) of GST Act, provides for provision of applying for advance ruling in relation to supply being undertaken or proposed to be undertaken by the applicant. In the case in hand the applicant is neither providing any supply or is desirous to make any supply. Moreover, the applicant has awarded a work of composite supply of works contract to M/s. Soma Mohite-Joint Venture and is a recipient of services of M/s Soma Mohite-Joint Venture. So the application for advance ruling is not tenable on that count.

3.2 The section 95(c) of GST Act, which reads as below:

*(c) "Applicant means any person registered or desirous of obtaining registration under this Act;"*

In the case in hand the applicant himself claims to be an URP and further the application is not related to section 97 (2) (f) wherein the applicants asks for his liability to get registered. Thereby, the present applicant cannot be classified as one desirous of obtaining registration

under the Act. Thus, the present applicant is not eligible to file application on that count also.

- 3.3 The present applicant is desirous of advance ruling on the applicability of sub clause (vii) of Serial No 3 of Heading 9954 (construction of service) substituted by way of Notification No 31/2017 C.T.(R) dtd 13.10.2017, to the supply provided by one M/s Soma Mohite-Joint Venture to the applicant. The applicant has entrusted work of construction of Tunnel from Nira Bhima Link No 5 Tq. Indapur Dist. Pune under Krishna Bhima Stabilization project to M/s Soma Mohite-Joint Venture. The applicant has submitted copy of Order issued by the Maharashtra Appellate Authority of Advance Rulings (MAAR) (Order No. MAH/AAAR/SS-RJ/21/2019-20 Dt. 20/01/2020). The AAAR ruling was passed on appeal by M/s Soma Mohite Joint Venture and has already dealt with the question of applicability of 'sub-clause (vii) of serial no 3 of Heading 9954 (construction of service) substituted by way of Notification No 31/2017 C.T.(R) dt 13.10.2017 to original Notification No. 11/2017 – C.T. (Rate) to the work of construction of Tunnel from Nira Bhima Link No 5 Tq. Indapur Dist. Pune under Krishna Bhima Stabilization project assigned by applicant.

- 3.4 It is clear from perusal of order by AAAR and submissions made by the present applicant that the both application are related to same supply between the Soma Mohite Joint Venture and applicant. In this regard the first proviso of section 98(2) provides:

*"Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act"*

- 3.5 As the issue related to same supply as already decided by AAAR Maharashtra the present application needs to be rejected.

- 3.6 The applicant has submitted that two RA bills were raised before 30/06/2017 i.e. before inception of GST. The two RA bills were said to pay bill amount of 1.15% and 1.56% respectively of total project cost. However, the applicant has not provided amount of supply done post GST implementation. This office had inquired vide email regarding amount of supply post GST implementation and payment thereof but no response is received from the applicant till now.

- 3.7 In this regard it is seen that in the Soma Mohite AAAR, it has been submitted that the entity 'Soma Mohite JV' was formed exclusively to execute work of construction of Tunnel and allied work from Nira Bhima Link No 5 Tq. Indapur Dist. Pune under Krishna Bhima Stabilization project awarded by applicant. Therefore, it can be concluded that the supply disclosed anywhere by the Soma Mohite JV is related to work in question by present





applicant. It is seen from records available on GST portal and Back Office system of GSTN that the Soma Mohite JV registered with GSTN 27AAEAS1739F1ZI has filed annual returns of years 2017-18, 2018-19 and 2019-20 and monthly returns for 2020-21 and 2021-22. The turnover shown (Only B to C supply) in the returns is as below (up to August 2021)

Sr. No.	Year	Taxable Turnover (B to C)	Tax CGST (B to C)	Tax MGST (B to C)	Tax IGST (B to C)
1	2017-18	39,35,71,488	2,36,14,299	2,36,14,299	0
2	2018-19	2,09,40,50,577	5,23,51,264	5,23,51,264	0
3	2019-20	2,42,95,00,045	14,57,70,003	14,57,70,003	0
4	2020-21	2,17,46,88,412	6,24,22,611	6,24,22,611	0
5	2021-22	19,59,17,981	50,31,302	50,31,302	0
6	Total	7,28,77,28,503	28,91,89,479	28,91,89,479	0

3.8 It is further seen from TDS data that the supplier Soma Mohite (JV) has received credit of TDS u/s 51 of CGST/MGST Act, 2017 and accepted the same. The TDS deductor is Executive Engineer Krishna Marathwada Construction Division.

3.9 As per submissions of the applicant the work was originally estimated to cost Rs.4, 38, 36, 37,599/-. It is also mentioned by applicant that work worth Rs. 14.56 crores was completed during VAT regime in addition to that work during GST regime. It is safe to infer that most part of the supply is already over. Any decision in the present application will affect taxation of the supply which is almost complete. The supplier in the case has already collected tax from the recipient. The decision needs to be taken considering the effect on supply already completed.

#### 04. HEARING

- 4.1 Preliminary hearing in the matter was held on 11.02.2020. Shri. Prakash Patwardhan, GSTP, Shri. Onkar Gunjalwar, CA, Shri Amit Raut, appeared, and requested for admission of the application. Jurisdictional Officer was absent.
- 4.2 The application was admitted and called for final e-hearing on 28.09.2021. Shri. Prakash Patwardhan, GSTP, Shri. Onkar Gunjalwar, CA and Shri. Nandesh Kardel, authorized



representative, appeared and made oral and written submissions. Jurisdictional Officer Shri. Abhijeet Pore, ACST, Osmanabad appeared. The departmental representative requested for time to make written submission and was given one week and was also directed to send a copy to the applicant.

4.3 We heard both the sides.

**05. OBSERVATIONS AND FINDINGS:**

5.1 We have gone through the facts of the case, documents on record and written and oral submissions of the applicant and the jurisdictional officer. Applicant has not made any further submissions regarding their eligibility to file the subject application under the provisions of Section 95 of the CGST Act, 2017.

5.2 In the subject case, we find that, the applicant is a recipient of subject supply and has raised the subject question as a recipient of services.

5.3 This authority is governed by the provisions of Chapter XVII of CGST ACT and the relevant Sections are 95 to 98, 102, 103, 104 and 105. As per Section 95, the term '*advance ruling*' means a decision provided by this authority to an applicant on matters or questions specified in subsection 2 of Section 97, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

5.4 Therefore, before we decide the question raised by the applicant in this application, it is essential that we first determine whether or not the activities undertaken by the applicant pertain to the supply of goods or services or both, being undertaken or proposed to be undertaken by the applicant.

5.5 Section 95 of the CGST Act, 2017 allows this authority to decide the matter in respect of supply of goods or services or both, *undertaken or proposed to be undertaken by the applicant*. We find that the applicant has not undertaken the supply in the subject case. Rather, the applicant is a recipient of impugned services in the subject case. The impugned transactions are not in relation to the supply of goods or services or both undertaken or proposed to be undertaken by the applicant and therefore, the subject application cannot be admitted as per the provisions of Section 95 of the GST Act. Hence without discussing the merits of the case, we reject the subject application as not being maintainable.

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 –

*“The present application filed for advance ruling is rejected, as being non-maintainable as per the provisions of law.”*



**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. 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** for online appeal application against order passed by Advance Ruling Authority.