

## MAHARASHTRA AUTHORITY FOR ADVANCE RULING

(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

### BEFORE THE BENCH OF

(1) Shri B. V. Borhade, Joint Commissioner of State Tax (Member)

(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax (Member)

GSTIN Number, if any/ User-id	27AABCE8028J1ZI
Legal Name of Applicant	EIFFEL HILLS AND DALES DEVELOPERS PVT LTD
Registered Address/Address provided while obtaining user id	1st FLOOR,MANTRI HOUSE, FC ROAD,PUNE-411004
Details of application	GST-ARA, Application No. 46 Dated 28.06.2018
Concerned officer	PUNE COMMISSIONERATE, DIVISION III, RANGE II, PUNE II.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Works Contract
B Description (in brief)	The applicant is a construction company engaged in the business of Mechanical, electrical and plumbing (MEP) turnkey project contracting & engineering.
Issue/s on which advance ruling required	(1) classification of goods and/or services or both (ii) determination of time and value of supply of Applicability of a notification issued under the provisions of this Act
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

### 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"] by EIFFEL HILLS AND DALES DEVELOPERS PVT LTD, the applicant, seeking an advance ruling in respect of the following questions.

**1) Whether MEP activities (Mechanical, Electrical & Plumbing Works) undertaken by the Applicant falls within the definition of composite supply of works contract as defined under Section 2(119) of CGST Act??**

**2) Whether can the applicant charge GST rate of 12% on MEP (Mechanical, Electrical & Plumbing Works) activities by availing the benefit of Central Tax (Rate) Notification No 01/2018 dated 25th January 2018, if the said supplies are in relation to an housing project enjoying Infra status vide F No 13/6/2009-INF dated 30th March 2017 of Government of India, in Ministry of Finance, Dept. of Economic Affairs?**

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 such 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, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

#### **02. FACTS AND CONTENTION - AS PER THE APPLICANT**

The submissions, as reproduced verbatim, could be seen thus-  
Statements of relevant facts having a bearing on the questions raised and statement containing the applicant's interpretation of law.



The applicant M/s Eiffel Hills And Dales Developers Pvt Ltd having GSTIN 27AABCE8028J1ZI is a construction company engaged in the business of Mechanical, electrical and plumbing (MEP) turnkey project contracting & engineering.

The MEP activities provided by the applicant include design, engineering, supply, installation and commissioning of plumbing, firefighting and electrical infrastructure systems to a wide range of commercial projects. The applicant is venturing into an agreement with a developer/builder to provide MEP services for an affordable housing project. The said housing project satisfies the definition of affordable housing described in Notification no 13/6/2009INF dated 30th March, 2017 by Ministry of Finance, Department of Economic Affairs thereby enjoying the Infra status within the meaning of Central Tax (Rate) Notification No 01/2018 dated 25th January 2018.

*By conjoint reading of Notification No 20/2017-Central Tax (Rate) dated 22nd August 2017 and notification No 01/2018 dated 25th January 2018 as amended by inserting therein in Item No (v) new sub item (da) it is apparent that "Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to, (da) low-cost houses up to a carpet area of 60 square meters per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March 2017;" attracts GST @ 12%.*

Thus, in order to seek clarity and certainty on the questions raised in point no 14 of the said application, the applicant has thereby approached the Honorable Advance Ruling Authority under Section 97 of the Maharashtra Goods and Service Tax Act, 2017.

#### **Additional Submissions on 14.08.2018**

In connection with the above submission made by the GST department at the time of Preliminary Hearing against our application and questions raised to the Hon Advance Ruling Authority in application No 46 dated 28.06.2018, we state as follows

A) in reply to our first question raised "Whether MEP activities (Mechanical, Electrical, Plumbing Works) undertaken by the applicant falls within the definition of composite supply of works contract as defined under Section 2(119) of CGST Act", the dept.'s reply is not concrete on whether the same tantamount to the composite supply of Works contract?

In reply to the above we state that, as per the draft contracts agreement for Electrical & Plumbing works to be undertaken by us and submitted in this behalf to the GST Dept. on 08.08.2018, the scope of work for electrical contract includes complete installation, testing & Commissioning of Substation Electrical Work, HT & LT Cabling work, DG & Cabling Work, Street light & Cabling Works whereas the scope of work for plumbing contract includes complete external plumbing work, laying of RCC hume pipes/GI pipes/UPVC Pipes for storm water lines, construction of chambers.

With reference to section 3(26) of General Clause Immovable Property is defined as "Land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth."

Further Works Contract as defined in clause (119) of Section 2 of the CGST Act 2017, 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 execution of such contract.

On conjoint reading of both the definitions it is amply clear that the aforesaid work activities results in creation of immovable property and also satisfies the definition of work contract.

Further on reading composite supply definition under Section 2(30) which states that "a supply made by taxable person to a recipient comprising two or more supplies of goods and services, 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. The activities of engineering, designing, supply, installation and commissioning are interrelated in any external electrical and plumbing activities and are not provided separately in ordinary course of business, and hence they together form a composite supply within the meaning of Section 2 (30).

B) In reply to second question on whether can the applicant charge GST Rate of 12% on MEP activities by availing the benefit of central tax rate Notification No 01/2018 dated 25th January, 2018 under sub item (da) in item (V) under serial no 3 of the said notification, the department replied that the benefit of this notification is in respect of Original Works and the same is defined under S no 2(zs) of Notfn No 12/2017 CT(rate) dated 28.06.2017 as under "Original Works" means-all new constructions;

I) All types of additions & alterations to abandoned or damaged structure 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.

The department's contention is that the aforesaid activities cannot be termed as Original Works which is impractical. All the above concerned activities, falls within the definition of Original Works.

#### **03. CONTENTION - AS PER THE CONCERNED OFFICER**

The submission, as reproduced verbatim, could be seen thus-

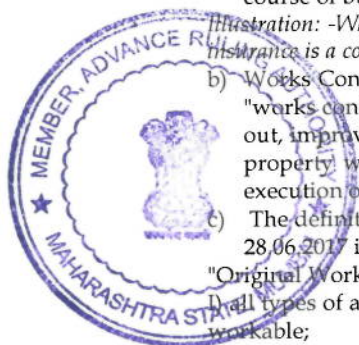
The application has been examined and the submission/comments are as under;

I) **Brief facts are as under:**

1) The applicant M/s Eiffel Hills and Dales developers Pvt. Ltd. is engaged in the business of Mechanical, Electrical, Plumbing (MEP) turnkey project contracting and engineering.



- 2) The MEP activities provided by the applicant include design, engineering, supply, installation and commissioning of plumbing, firefighting and electrical infrastructure systems to a wide range of commercial projects.
- (II) The GST rate(6%+6%) is applicable to following as per notification No. 20/2017 CT (rate) dated 22/08/2017 as amended by notification No. 1/2018 CT rate dated 25/01/2018. The details of exemption at S. No. V are as under:
- (v) Composite supply of works contract as defined in clause (119) of sec 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to,
- (a) Railways, including monorail and metro; (vide notification No. 1/2018 central Tax rate dated 25/01/2018 excluding deleted and replaced by including)
- (b) A single residential unit otherwise than as a part of a residential complex;
- (c) low-cost houses up to a carpet area of 60 square meters per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
- (d) Low cost houses up to a carpet area of 60 square meters per house in a housing project approved by the competent authority under
- (1) The "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana;
- (2) Any housing scheme of a State Government;
- (e) Post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes; or
- (f) Mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages
- d(a) low-cost houses up to a carpet area of 60 square meters per house in an affordable housing project which has been given infrastructure status vide notification of Govt. of India, Ministry of Finance, Dept. of Economic Affairs vide F. No. 13/6/2009-INF dated 30th March, 2017. (d)(a) added vide notification No. 1/2018 central Tax rate dated 25/01/2018).
- III) The definitions of Composite Supply, Works Contract, and Original Work & Immovable Property are as under:
- a) Composite Supply as defined in clause (30) of section 2 of the Central Goods and Services Tax Act, 2017 means a supply made by a taxable person to a recipient comprising two or more supplies of goods or services, 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 the principal supply.*
- b) Works Contract as defined in clause (119) of section 2 of the Central Goods and Services Tax 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.
- c) The definition of Original Works as defined in at S. No. 2(zs) of Notification No. 12/2017 Central Tax(rate) dated 28.06.2017 is as under;
- "Original Works" means- all new constructions;
- d) 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;
- The definition of Immovable Property as defined u/Section 3(26) of the General Clause, "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.
- IV) In view of the above, the reply is under;**
- 1) Whether MEP activities ( Mechanical, Electrical, plumbing Works) undertaken by the applicant falls within the definition of composite supply of works contract as defined under Section 2(119) of Central GST Act?
- Ans: - As per the Annexure II of the application dated 28.06.18 for the Advance ruling, the MEP activity provided by the applicant includes design, engineering, supply, installation and commissioning of plumbing, firefighting and electrical infrastructure systems to a wide range of commercial projects.
- The definition of Immovable property as defined u/Section 3(26) of the General Clause, "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.
- If the aforesaid works become immovable property as permanently fastened to the building attached to Earth & transfer of property is involved in execution of contract then it will fall within the definition of Works Contract.
- In the opinion of this office as per the definition of composite supply in the instant case two or more works contract supplies which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply has to be made by the applicant. So if the combination of the services provided by the applicant are covered under the definition of works contract and simultaneously is also covered under the definition of composite supply then it will fall within the definition of Composite Supply of Works Contract.
- Prima facie, it appears that the services of design & engineering are not covered under the definition of works contract.
- 2) Whether can the applicant charge GST rate of 12% on MEP (Mechanical, Electrical, plumbing Works) activities by availing the benefit of central Tax rate notification No. 01/2018 dated 25<sup>th</sup> January, 2018, if the said supplies are in





relation to an housing project enjoying infra status vide F. No. 13/6/2009-INF dated 30th March 2017 of Government of India, In Ministry of Finance, Department of Economic Affairs?

Ans--The exemption of GST to the Composite Supply of Works Contract is to be by way of construction, erection and commissioning or of installation of original works (pertaining to low cost houses up-to carpet area of 60 sq. mtr.) In applicant's case, their activity is by way of design, engineering, supply and commissioning of plumbing, firefighting and electrical infrastructure system which cannot be termed as Original Works viz. New construction or addition / alteration to abundant or damaged structure on land or erection commissioning or installation of plants, machinery or equipment or structure whether pre-fabricated or otherwise. Hence, prima facie, it appears that the applicant is not entitled to avail the exemption GST rate of 12% on MEP activity.

Therefore, if the combination of the services provided by the applicant are covered under the definition of works contract and simultaneously is also covered under the definition of composite supply then only the applicant will be eligible to charge GST rate of 12% on MEP by availing the benefits of Central Tax-Rate Notification No. 01/2018 dated 25th January 2018 subject to fulfilment of other conditions of the notification.

**Additional submissions given by the officer-**

Please refer to this office letter of even no. dated 30.07.2018 and letter dated 14.08.2018 received from M/s Eiffel Hills and Dales Developers Pvt. Ltd. on the above mentioned subject.

In view of the above, the comments are as under;

Q.1 Whether MEP activities ( Mechanical, Electrical, plumbing Works) undertaken by the applicant falls within the definition of composite supply of works contract as defined under Section 2(119) of Central GST Act?

**Comments:**

As per further instructions received from Member, Advance ruling authority, GST, Mumbai during PH on 31.07.2018 that in order to determine the nature of supply i.e. "Composite Supply", we have to study the contract. The applicant has submitted separate Work Orders (Draft) for electrical work and plumbing work vide letter dated 14.08.2018 (received on 21.08.2018). Our observation is as below on the basis of extracts of the draft agreement:

"ELECTRICAL WORK:

**Contract type:**

**The Contract shall be divided into two types:**

A) TYPE- / -- .....

B) TYPE- 11 -- Supply of material under basic rates

This shall be Item rate Contract for the supply of material for above mentioned works in Type - 1 Contract, for the proposed Substation electrical works, HT & LT Cabling works, DG & Cabling works, Street Light & Cabling.

a. Basic rate for each item is mentioned in Annexure-II. In case of any deviation in specification, Contractor has to seek prior written approval from Client.

b. Contractor shall submit all the quotes from vendors to our Purchase dept.

c. Purchase Dept. shall verify and approve the rate of the item.

d. After the above approval Contractor shall procure and install the item at site.

e. Contractor shall raise bill for the same item with basic landed approved rate (excluding GST) plus 5% for handling charges.

f. It shall be mandatory for the Contractor to seek approval from the client for each & every lot of Procurement of all the items & also for which the basic rates has been mentioned in Annexure-II.

g. Any variations in the basic rates of the items will be paid or debited - as the case may be - to the Contractor accordingly upon the completion of the entire awarded scope of work i.e. at the time of Full & Final Bill.

h. However, failing to adherence or an attempt to By-pass the defined procedure may lead to candid denial of any or all considerations for such claims.

**CONTRACT FOR PLUMBING WORK:**

**Execution of Extra items / Deviated items:**

1 The rates for deviated or extra items shall be derived from the Tender item rates as far as possible.

2 If the items of work are absolutely new, then the rate shall be worked at actual cost of materials with 15% profit on material + labour + 3% Overheads & Wastages (where M = Material component & L = Labour component).

3 If for such extra items any material supplied by the Client free of cost than 5% on such free supply material shall be considered towards overheads and profit element".

This shows that the customer placing the order or giving the contract to Eiffel is controlling the quantity as well as the quality of the goods and services. However, as per the definition of "Composite Supply" means "a supply made by a taxable person to a recipient comprising two or more supplies of goods or services, 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."

There are following elements to be present to qualify as such for composite supply

1. There should be two or more taxable services.
2. They should be naturally bundled.
3. Supply in conjunction with each other;
4. in the ordinary course of business;
5. one of which is a principal supply.

It is observed that "in the ordinary course of business", the customer controls only the quality of that goods and services and the timelines of the project. However, the quantity of the goods is left to the control of the Contractor. But in the instant case, as per the Service Work Order, they are controlling both. As per Annexure '1', they are billing the goods and labour cost separately. Hence, these are two different supplies to be treated as such instead of composite supply.

Annexure - I (shall be treated as part of SWO)									
Schedule of Item quantities with Specifications & applicable Rates									
Contractor:									
Company Name:									
Site Name:						SWO:			
Location:- Infra									
Subject :- Service Work Order for Supply, Installation, Testing & Commissioning of Electrical Work (with Material plus Labour) at									
Sr. No	Description	Unit	Qty	Supply		Labour		Total amount	
				Rate	Amount	Rate	Amount		
1	HT Panels								
2	Transformers								
2.1	Transformer 630 KVA	No.	6						

From the above, it appears that the supply is of goods and labour services separately. The above said supplies seems to be not naturally bundled or supplied in conjunction with each other in the ordinary course of business.

The Assessee in their letter has not stated which principal supply is in ordinary course of business.

The items like HT panels, transformers, HD cable, HT and termination kit, LT feeder panels etc. are sold in the market as it is without any installation services provided by the suppliers. Also there are materials supplied by the client free of cost and the rates have been worked out at actual cost of material with 15% profit on material + labour + 3% Overheads & Wastages (where M = Material component & L = Labour component).

Therefore, these works orders are for supply of material and supply of labour. Hence, the said contract cannot be termed as composite supply.

Q2 Whether can the applicant charge GST rate of 12% on MEP (Mechanical, Electrical, plumbing Works) activities by availing the benefit of central Tax rate notification No. 01/2018 dated 25th January, 2018, if the said supplies are in relation to an housing project enjoying infra status vide F. No. 13/6/2009-INF dated 30th March 2017 of Government of India, In Ministry of Finance, Department of Economic Affairs?

Comments:

The supply made by the applicant cannot be treated as composite supply as explained above in r/o Question No. 1, the applicant is not entitled to avail the exemption GST rate of 12% on MEP activity.

#### 04. HEARING

The case was taken up for Preliminary hearing on DT. 31.07.2018 when Sh. Narender Varma, Manager along with Sh. Govind Soni, Manager Tax appeared and stated that they were not carrying copy of authority letter and would be submitting the same next time. They were also requested to provide copies of contracts in respect of both their questions. Jurisdictional Officer, Sh. Said Hakim Supt., Division - III, Pune appeared and made written submissions.

The application was admitted and called for final hearing on 04.09.2018, Sh. Narender Varma, Manager along with Sh. Govind Soni, Manager Tax appeared. They made detailed oral submissions in respect of their application. Jurisdictional Officer, Sh. Said Hakim Supt., Division - III, Pune appeared and made written submissions. We were heard from both the sides.

#### 05. OBSERVATIONS

We have gone through the facts of the case. The issue put before us is in respect of a classification and rate of tax on transactions effected which would be on the lines thus -



We have been informed of the activities carried on by the applicant which include design, engineering, supply, installation and commissioning of plumbing, firefighting and electrical infrastructure to a wide range commercial project. Applicant in furtherance of business has entered into an agreement that is draft contract agreement with a Developer/Builder for electrical and plumbing work. Applicant has raised question on the basis of the draft agreement and by virtue of activity of the applicant claimed as covered by the scope of Notification No. 20/2017-Central Tax (Rate) dated 22/08/2017 and Notification NO. 1/2018 dated 25<sup>th</sup> January 2018 as amended by inserting therein in item No (V) a new subitem (da) whereby composite supply of works contract as defined in clause (119) of section 2 of GST Act, *supplied by way of construction, erection, commissioning, or installation of original works pertaining to, (da) low-cost houses up to a carpet area of 60 square meters per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March 2017;" attracts GST @ 12%.*

This application is made by the applicant to seek clarity and certainty on the questions raised. In order to appreciate the question we have to first decide whether the proposed activity is a composite supply as defined u/s 2 (30) of the GST Act and further we have to decide whether this composite supply is a works contract as defined in section 2(119) of the GST Act. We shall now deal with each agreement separately and appreciate the important clauses of the agreement as below:-

**A) Type -I (Material Supply, installation, testing and commissioning)**

**Subject:-** Service Work order for complete external plumbing work , laying of RCC hume pipes/GI pipes/UPVC pipes for storm water lines, drainage line, pipes for electrical cabling work, construction of chambers in External development of \_\_\_\_\_ project.

This has reference to your final offer dated \_\_\_\_\_ regarding the External plumbing work at \_\_\_\_\_ and subsequent discussion with you in presence of our Director Projects during the meeting, we herewith confirm our intention of awarding the subject matter work to your esteemed organization at the rates mentioned herein below for the specifications mentioned therein for above said works.

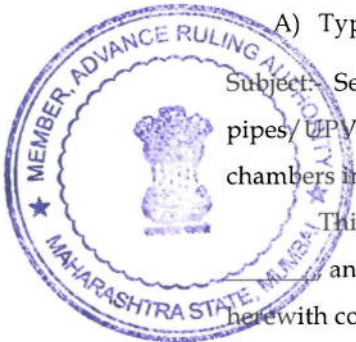
**Agreed Rate & Contract Value: -**

Total Value of the Contract awarded is Rs \_\_\_\_\_plus GST (as applicable). Contractor shall study the detailed drawing / BOQ & site topography and revert with the final BOQ in consultation with our MEP head Mr. Prince - \_\_\_\_\_, in 7 working days after receipt of LOI/ WO; we shall thereafter convert the work order on Lumsum basis.

The Contract Value is arrived based on the present tax structure prevailed as on date. However, any new levy of taxes or change in present tax structure as implemented by Govt. authorities during the tenure of the Contract will be assessed, mutually discussed, agreed upon & paid accordingly

**General & Special Conditions of Contract**

1. The Contractor shall execute and complete the work shown upon the drawings and contained in the Tender document, as revised and modified from time to time and issued to the Contractor, and shall



execute the work as per the terms, conditions and specifications contained in the Tender document, subject to any modifications contained in this Work Contract.

2. The scope of work includes all resources ,material, machinery, Scaffolding ,tools ,tackles, Consumables, curing pipe, Light fixtures & wiring, control panel, etc. other than FOC material supplied by company unless explicitly mentioned.

3. Coordination with Client, Architect, Consultants, Project Manager, etc.; wherever applicable shall be included in Services of Contractors' Scope of Work.

4. The Contractor shall afford every reasonable facility to any other agency employed by the Company for carrying out of works relating to civil works, installations and other ancillary works if any, during the duration of the contract, excluding the defect liability period in the manner laid down in the said terms and conditions and shall make good any damages, etc., after the completion of such work

5. The responsibility of maintaining and security of client supplied material and assets shall lie with the Contractor.

6. Dewatering from Footing Pits or trenches will be in the scope of the Contractor.

7. "Before commencing the Work, Contractor shall submit QAP (Quality assurance Plan) to the Client.

8. It is mandatory & binding upon the Contractor to fill the cubes (at least 06 Nos.) at site during every concrete pouring (for RCC Footings, Columns, Plinth Beams, Shear Walls, Slab, etc.) & shall submit the Cube Testing Reports after 7 days, 14 days & 28 days to the Client.

9. Contractor shall have strict vigilance & control on the Concrete brought at site in respect of it's workability, etc.so as to ensure quality RCC work, free of any defects.

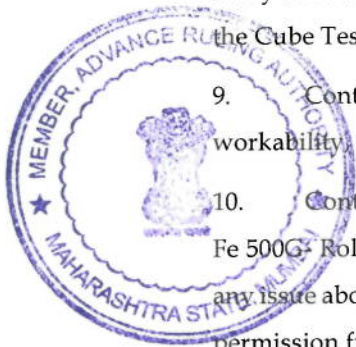
10. Contractor shall use Cement of VASAVDATTA/Ultratech/ Zuari make & Reinforcement Steel of Fe 500G Rolling make (Shri Om, Trishul OR Kalika make)for awarded scope of the Work. In the event of any issue about unavailability of the same , it is mandatory & binding upon the Contractor to obtain written permission from the Client, prior to use of such any other alternative brand.

11. Points discussed & mutually agreed & duly signed by both the parties, from time to time, during the meetings pertaining to this Work Contract & thus transformed into M.O.M.(Minutes of Meeting) shall form the part of this Contract & treated as an Addendum to this Work Order.

12. Any delay due to reasons attributed to Client cause & resulting in idleness of Contractors men & machinery may be considered for the reimbursement at actuals with due production of signed documents in original recorded jointly, by the Contractor with the authorized representative of the Client, along with proof of payments made by the Contractor during such period from time to time

13. The Shuttering design shall be prepared & submitted to the Client upon receipt of the approval from the Structural Consultant, prior to the commencement of the RCC works.

14. Contractor shall consider basic rate of Cement (OPC-53G / Vasavdatta OR equivalent) @ \_\_\_\_\_ F.O.R. at Site.





### **Billing and Payment Terms:-**

This contract is Item Rate labour plus material contract. A contract to carry out work in respect of the scope of work defined in the said conditions in the Tender document as modified by this Work Contract to be paid for according to actual measured quantities at the rates contained in the schedule, as per 'Annexure-A'.

### **R.A.Bill and Final Bill:-**

1. Contractor is entitled to submit his R.A. Bill on Milestone basis duly defined & mutually agreed while signing the Work Order. On receipt of such R.A.Bill and after an assessment amount shall be released upon thorough scrutiny of the said Bill within next 15 working days.
2. Similarly, upon satisfactory completion of awarded work, Contractor shall submit Full and Final Bill duly supported by all requisite measurements, reconciliation statement for Client supplied material and statement showing reconciliation of advances paid till date, etc.to our Billing department. Payment in the form of full and final settlement excluding 5% Retention amount shall be made upon thorough scrutiny of the Bill.

### **Mode of Measurements:-**

Mode of measurements for all the tasks shall be in accordance with the provisions of IS 1200 and strictly in accordance with work executed as per the GFC drawings issued from time to time by our Architects / Structural Consultants.

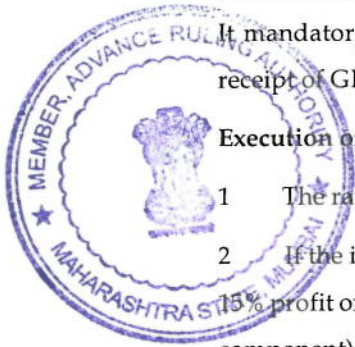
It mandatory & binding upon the contractor to check & confirm the BOQ quantities to the Client upon receipt of GFC drawings, prior to execution of work.

### **Execution of Extra items / Deviated items:-**

- 1 The rates for deviated or extra items shall be derived from the Tender item rates as far as possible.
- 2 If the items of work are absolutely new, then the rate shall be worked at actual cost of materials with 15% profit on material + labour + 3% Overheads & Wastages (where M = Material component & L = Labour component).
- 3 If for such extra items any material supplied by the Client free of cost than 5% on such free supply material shall be considered towards overheads and profit element.
- 4 The Contractor shall submit the Rate Analysis of such items along with the material bills. However, before execution of such items, prior approval in writing shall be obtained from Client in respect of rates, quantity etc.
- 5 In case of requirement of any items other than the scope of work of this contract to complete the work, the same shall be approved by client engineer in writing to the Contractor. Contractor shall bring the same at his own costs and submit the same as extra item in RA Bills.

### **Termination:-**

In the event if Contractor fails to satisfy clients / consultants in achieving good quality of work, desired speed of work and overall timely execution of the project then the client has full rights to terminate the contract by issuing a termination notice , (02 Nos.) each of 7 days in advance. Client also reserves the





right to get part or whole work done through any other agency at Contractors risk and cost & Consequences.

**Completion Period:-**

Entire work shall be carried in coordination with site in charge. The actual schedule of work shall be as discussed with Management and site in charge.

In the event of delay, on account of issue of drawings, decisions, statutory permissions, from Client side then the required extension of time to complete the project will be given to the Contractor.

**(M+L) Cost + Mark Up Contract:-**

If Client intend to execute (M+L) Contract with pre-defined basic rates of Material component then Contractor will be asked to execute the Contract accordingly with fixed pre-defined prices of required material component as finalized by the client, to be procured from client defined Contractor and with the following terms and conditions :-

1 Your contract is finalized on the basis of [(Material + 15% profit on Material) + labour + 3% Overheads & Wastages.]

2 Material component is to be derived on the basis of material indicated in item description & other miscellaneous material required to complete work even if not indicated in item description.

3 Take of sheet of the Material, based on GFC drawing, required to complete the work in all respect, mutually agreed by both the Contractor & the Client shall be considered as the basis for arriving at Material Cost.

4 Basic rates of materials shall be indicated by client along with list of approved Contractors for 30 days payment credit.

5 Any variation in basic rate beyond a limit of (+/-) 5% due to market fluctuation shall be considered for payment on actuals in respective RA bills subject to prior approval from client.

6 Labour component is to be derived on the basis of cost towards labour work for installation & other misc work including tools /tackles, specialized Equipments including any incidental charges for bonafide reasons required to complete the work in all respect even if not included in scope of work indicated in item descriptions.

7 Mark up on Material component is derived on material cost on the basic rate, any variation in amount due to change in basic rate & other bonafide reasons shall be considered for payment at actuals.

8 Taxes for the billing shall be charged on basic rate of material without taxes after calculation of input credit or the same shall be deemed as composite contract.

**B) The details of contract terms and conditions for external Electrical work contract are reproduced as follows,**

Service Work Order for external Electrical work comprising of complete installation, Testing & Commissioning & satisfactory handing over work of Substation Electrical work, HT & LT Cabling work, DG & Cabling Work, Street Light & Cabling Works at \_\_\_\_\_

This has reference to your quotation dated \_\_\_\_\_ & subsequent discussion we had dated \_\_\_\_\_ we are pleased to confirm our intention of awarding the subject matter work to you on the terms and conditions broadly depicted herein the succeeding paragraphs.

**1. Contract Type:-**

The Contract shall be divided into two types:

**TYPE- I -- (Material supply, Installation, testing & commissioning)**

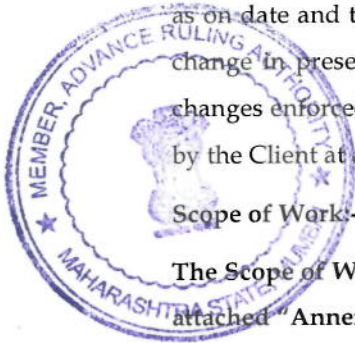
This shall be purely a Item rate with Material plus Labour basis Contract for the proposed Substation electrical works, HT & LT Cabling works, DG & Cabling works, Street Light & Cabling, wherein, the Contractor shall execute an awarded Scope of Work - duly defined herein, as per the respective clauses - wherein, it is expected to carry out the complete installation so as to satisfactorily deliver a fully functional facility or asset to the Client right from preparation of exclusive Planning, Value engineering, it's application cum installation, testing, commissioning & satisfactory handing over of the facility including related services with due diligence & to the complete satisfaction of the Client.

Agreed Rate & Contract Value: - The Total Value of awarded scope of Contract pertaining to the subject matter is works out to the tune of INR. \_\_\_\_\_/- (before Taxes) & with applicable GST@ \_\_\_, the Total Value of Work is stands at INR. \_\_\_\_\_. The contract value is arrived based on the present tax structure as on date and the present statutory requirements of Local / Govt. authorities, any new levy of taxes or change in present tax structure and any additional expenditure to be incurred towards any statutory changes enforced by Local / Govt. authorities hereafter & till the completion of work will be reimbursed by the Client at actuals.

**Scope of Work:-**

The Scope of Work for the Electrical Infra Works shall comprise of the following and as mentioned in attached "Annexure I- Bill of Quantities":-

- a. Based on our mutually agreed terms, we will provide an ample storage space within the site premises. You need to ensure that the material procured & delivered at the work site under every lot shall be thus kept / properly stacked within the storage space defined & provided by the Client including an aid for its proper Lock & Key arrangement & which shall be dedicatedly controlled, operated & thoroughly secured by you & your team on day to day basis until the satisfactory completion & handing over of the awarded scope of work with due material reconciliation. Any pilferage, misplace or theft of the Client supplied material, which shall be further issued & kept under your control & custody shall be the sole responsibility of the Contractor & under such scenario, Contractor shall make amend for such losses & shall ensure that the same shall be procured, brought at site & installed in place by you without any delays at your sole risk & cost consequences.
- b. To prepare & submit the detail Project Report duly supported with all relevant documents / drawings & separate copy of Reconciliation report as well. .
- c. To prepare all necessary dockets with layout drawings duly supported with complete Write-up about the installed Infra Electrical works for onward handing over to the Society.
- d. Contractor's scope shall be inclusive of Unloading/ Loading/ Warai/ Mathadi Charges.
- e. All electrical Materials shall be in Code: RAL-7032 color.





- f. Contractor shall also submit an irrevocable Bank guarantee of 5% of Total Contract value for Contract Type-I from any Nationalized Bank in the form of Performance guarantee (PBG) on acceptance of work order.

**TYPE- II ---- Supply of material under basic rates**

This shall be Item rate Contract for the supply of material for above mentioned works in Type - I Contract, for the proposed Substation electrical works, HT & LT Cabling works, DG & Cabling works, Street Light & Cabling.

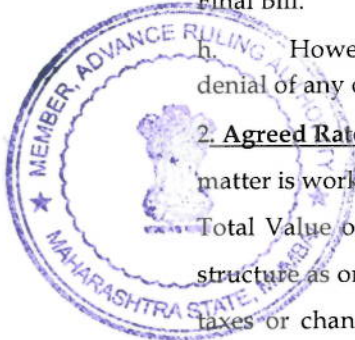
- a. Basic rate for each item is mentioned in Annexure-II. In case of any deviation in specification, Contractor has to seek prior written approval from Client.
- b. Contractor shall submit all the quotes from vendors to our Purchase dept.
- c. \_\_\_\_\_ Purchase Dept. shall verify and approve the rate of the item.
- d. After the above approval Contractor shall procure and install the item at site.
- e. Contractor shall raise bill for the same item with basic landed approved rate (excluding GST) plus 5% for handling charges.
- f. It shall be mandatory for the Contractor to seek approval from the Client for each & every lot of Procurement of all the items & also for which the basic rates has been mentioned in Annexure-II.
- g. Any variations in the basic rates of the items will be paid or debited - as the case may be - to the Contractor accordingly upon the completion of the entire awarded scope of work i.e. at the time of Full & Final Bill.
- h. However, failing to adherence or an attempt to By-pass the defined procedure may lead to candid denial of any or all considerations for such claims.

**2. Agreed Rate & Contract Value:** - The Total Value of awarded scope of Contract pertaining to the subject matter is works out to the tune of INR. \_\_\_\_\_ (before Taxes) & after adding an applicable GST@ \_\_%, the Total Value of Work is stands at INR. \_\_\_\_\_. The contract value is arrived based on the present tax structure as on date and the present statutory requirements of Local / Govt. authorities, any new levy of taxes or change in present tax structure and any additional expenditure to be incurred towards any statutory changes enforced by Local / Govt. authorities hereafter & till the completion of work will be reimbursed by the Client at actuals.

**3. Scope of Work:-**

The Scope of Work for the Electrical Infra Works shall comprise of the following and as mentioned in attached "Annexure B Bill of Quantities":-

- a. Based on our mutually agreed terms, we will provide & handover to you an ample storage space within the site premises. You need to ensure that the material procured & delivered at the work site under every lot shall be thus kept / properly stacked within the storage space defined & provided by the Client including an aid for its proper Lock & Key arrangement & which shall be dedicatedly controlled, operated & thoroughly secured by you & your team on day to day basis until the satisfactory completion & handing over of the awarded scope of work with due material reconciliation. Any pilferage, misplace or theft of the Client supplied material, which shall be further issued & kept under your control & custody shall be the sole responsibility of the Contractor & under such scenario, Contractor shall make amend for such losses & shall ensure that the same shall be procured, brought at site & installed in place by you without any delays at your sole risk & cost consequences.



- b. To prepare & submit the detail Project Report duly supported with all relevant documents / drawings & separate copy of Reconciliation report as well. .
- c. To prepare all necessary dockets with layout drawings duly supported with complete Write-up about the installed Infra Electrical works for onward handing over to the Society.
- d. Rate of material in Contract Type-II shall be inclusive of Unloading/ Loading/ Warai/ Mathadi Charges.
- e. All electrical equipment shall be in Code: RAL-7032 color.

#### **4. Completion Period:-**

The awarded scope of Infra Electrical Work in external development shall be completed within 90 days from the date of issue of work order.

However, methodology statement along with MS Project bar chart / PERT chart depicting the activity based completion plan shall be submitted to the Client before start of work & upon issuance of necessary GFC shop drawings to the Client. In the absence of the same, Client determined methodology and schedule of completion shall be treated as final & mandatorily binding upon the Contractor. `

#### **6. R.A.Bill and Final Bill:-**

- a. Contractor shall have to submit two types of separate bills for respective Contract type. Cumulative amount shall be calculated for each bill for tracking purpose.
- b. Contractor is entitled to submit his R.A. Bill on Monthly basis based on the work progresses at the work site & at the rate not more than 1 bill/month, before 10th of every month. On receipt of such R.A.Bill and after its assessment, due payment – after keeping aside retention - will be made within 15 days starting from date of receipt of certified invoice / bill at our Head Office .
- c. Similarly, upon satisfactory completion of awarded work, Contractor shall submit Full and Final Bill duly supported by all requisite measurements, reconciliation statement for Client supplied material and statement showing reconciliation of advances paid till date, etc.to our Billing department. Payment in the form of full and final settlement excluding 5% Retention amount will be made within 45 days starting from its date of receipt of certified copy of said Full & Final Bill at our Head Office..
- d. Contractor shall submit reconciliation sheet of material supplied by the Client on FOC basis along with such milestone based bill duly assessed & certified by our EIC/MEP Department & in the event of any variation in the material (both in the form of wastage or as an excess consumption ) noticed beyond a prescribed limit as defined herein above under Clause 3-C then same shall be account for on Contractors Part & the cost of the same at actuals shall be recovered from the respective milestone based bill or his Full & Final settlement.
- e. The Contractor shall also submit the relevant proofs of the payments made towards the Statutory Compliances like Labor Taxes, PF, ESIC, etc. as an enclosure with each Milestone Bill as mandatory submittals.

In the event if the Contractor fails to satisfy Clients / Consultants in achieving good quality of work, desired speed of work and overall timely execution of the project then the client has full rights to terminate the contract by issuing a termination notice 7 days in advance. Client also reserves the right to get part or whole work done through any other agency at Contractors sole risk and cost and Consequences.

#### **22. General Conditions & Special Conditions of Contract (GCC & SCC)**





- a. Coordination with Client, Architect, Consultants, Project Manager, etc.; wherever applicable shall be the integral part of Contractors' Scope of Work. However the Client shall extend his full co-operation to this effect in the interest of timely completion of the project.
- b. The Contractor shall afford every reasonable facility to any other agency employed by the Company for carrying out of works relating to civil works, installations and other ancillary works if any-other than the scope of work included & defined in this work order, during the duration of the contract, excluding the defect liability period in the manner laid down in the said terms and conditions. However, any defects and damages observed in the other agencies work or any consequential damages to the work executed by the Contractor after the completion of such works shall be made good by the respective agency deployed by the Client.
- c. The responsibility of maintaining and security of client supplied material and assets shall lie with the Contractor.
- d. The Contractor shall Cordon off the awarded building site premise using good quality Pre-Coated Galvalume sheets so as to ensure security measures & also to maintain ambience of the work premises.
- e. The schedule of Rate hereby mentioned shall remain unaltered & unchanged & thus mandatorily binding upon the contractor for entire scope of work awarded herewith & till the complete tenure of the Contract & the Contractor is not liable to claim any escalation under whatsoever circumstances.
- f. Points discussed & mutually agreed & duly signed by both the parties hereinafter, from time to time, during the meetings pertaining to this Work Contract & thus transformed into M.O.M.(Minutes of Meeting) shall form the part of this Contract & treated as an Addendum to this Work Order.

We find that in view of above facts we have to decide whether the plumbing work undertaken by the applicant falls within the definition of supply of Works Contract. The GST Act provides definition of Composite Supply which is as below:

S.2(30) of the Act, "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.

From the detailed scrutiny of the proposed contract we find that the contract like the one at hand which includes Design, engineering, work laying of RCC Hume pipe/GI pipe etc. for storm waterline and construction of chambers involves more than two taxable supplies in the nature of resources, material and machinery.

We also notice that large number of service receivers of such bundle of services mostly expect plumbing work to be provided as a package in the ordinary course of business. In the light of above observation the plumbing contract constitute a composite supply as defined u/s 2(30) of the GST Act. As a corollary to this finding we now examine whether this transaction is covered by the definition of Works Contract as defined u/s 2(119) of the GST Act. We reproduce this definition as below:

As per Section 2(119) of the Act, "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.

We understand the expression Works Contract as is essentially a contract of service which may also involve supply of goods in the execution of the contract. It is basically a composite supply of both goods and services. In a general sense, a contract of works, may relate to both immovable and movable property. But from the perusal of above definition it can be seen that the term works contract has been restricted to contract for building, construction, fabrication, repair etc. of any immovable property only. In this view of the matter we have to decide whether the draft/proposed plumbing contract on execution amounts to immovable property. As per the scope of contract, the work order is for complete external plumbing work, laying of RCC Hume pipes/UPVC pipes for storm water lines, drainage line etc. including construction of chambers. We also find that the plumbing system is either attached to earth or as the case may be fastened to building which is attached to the earth.

A sum of above discussion lead to a conclusion that the draft contract for plumbing work is a composite supply of works contract as defined in S. 2(119) of the GST Act.

However, we find that jurisdictional officer holds different opinion. We want to deal with their contention. The officer on perusal of records found that applicant billed goods and labour separately and thus opined that there are different supplies which seems to be not naturally bundled or supplied in conjunction with each other in the ordinary course of business and hence not a supply in the nature of composite supply.

After having gone through the relevant clauses of the draft contract we are not inclined to agree with the jurisdictional officer that there is separate supply of goods and services. We observe that all the activities to be undertaken by the applicant pursuant to agreement are integral parts of the performance of the contractual obligation by the applicant. In order to comply with the contractual obligation cast on the applicant, the applicant would be required to do various acts as per the scope of work. In our view, the acts to be committed by the applicant cannot be divided into two parts, namely supply of goods and services which are in fact inseparable. Accordingly we reject the contention of the jurisdictional officer and reiterate our stand that the plumbing contract is indivisible works contract pertaining to immovable property within the scope of section 2(119) of the GST Act.

We now take up second contract comprising of compete installation testing and commissioning and satisfactory handing order of substation electrical works, HT & LT cabling works, DG and cabling works, street light and cabling.

In this contract we also find that applicant would be required to do various acts which includes design, supply, installation and commissioning of substation that is electrical infrastructure. This is also a turnkey project contract like plumbing contract discussed in the earlier part of this ruling. For the reasons discussed therein we also hold that electrical contract which involves supply of taxable goods and services is a composite supply as defined u/s 2(30) of the GST Act and the said composite supply is works contract as defined u/ 2(119) of the GST Act.

We now take up second question raised by the applicant which read as below:

“Whether can the applicant charge GST rate of 12% on MEP (Mechanical, Electrical & Plumbing Works) activities by availing the benefit of Central Tax (Rate) Notification No 01/2018 dated 25th January 2018, if





the said supplies are in relation to an housing project enjoying Infra status vide F No 13/6/2009-INF dated 30th March 2017 of Government of India, in Ministry of Finance, Dept. of Economic Affairs?

With respect to this question applicant was specifically informed during the course of hearing to submit document such as agreement, total area and area per dwelling etc. However, we observe that applicant has not submitted any details / evidence such as agreement entered into with a developer/builder for the provisions of MEP services to an affordable housing project. Therefore in the absence of detailed information in relation to housing project it is not possible for this authority to reach at definite conclusion.

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)

NO.GST-ARA- 46/2018-19/B-

119

Mumbai, dt.

25/9/2018

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

Q.1. Whether MEP activities (Mechanical, Electrical & Plumbing Works) undertaken by the applicant falls within the definition of composite supply of works contract as defined under Section 2(119) of CGST Act??

**Answer: - Answered is in affirmative.**

Q.2. Whether can the applicant charge GST rate of 12% on MEP (Mechanical, Electrical & Plumbing Works) activities by availing the benefit of Central Tax (Rate) Notification No 01/2018 dated 25th January 2018, if the said supplies are in relation to an housing project enjoying Infra status vide F No 13/6/2009-INF dated 30th March 2017 of Government of India, in Ministry of Finance, Dept. of Economic Affairs?

**Answer: - Not answered for non-submission of requisite details.**



  
B. V. BORHADE  
(MEMBER)

  
PANKAJ KUMAR  
(MEMBER)

**Copy to:-**

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

**CERTIFIED TRUE COPY**

  
**MEMBER**  
**ADVANCE RULING AUTHORITY**  
**MAHARASHTRA STATE, MUMBAI**

**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.