

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		27AAACY4160G1ZD
Legal Name of Applicant		YOGIRAJ POWERTECH PRIVATE LIMITED
Registered Address/Address provided while obtaining user id		OFFICE NO B-203, B-WING, SECOND FLOOR GROMA HOUSE, SECTOR 19, PLOT NO 14-C, VASHI NAVI MUMBAI, Maharashtra, 400703
Details of application		GST-ARA, Application No. 47 Dated 28.06.2018
Concerned officer		Dy. Commr. of S.T.(E-009) Raigad division, Navi Mumbai
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Works Contract
B	Description (in brief)	Shifting LT,HT O/H lines crossing and providing LT,HT U/G cables from Hingna Depot CH. 19500 to Ambazari Lake CH.12500 for Nagpur Metro Rail Project for E-W corridor". NMRCL Is a Special Purpose Vehicle (SPV) created for the smooth implementation and operations of the Nagpur Metro Rail Project and is a joint venture of Government of India & Government of Maharashtra, with 50:50 equity. NMRCL is Incorporated by Govt. of India-Ministry of Corporate affairs.
Issue/s on which advance ruling required		(i) Classification of any goods or services or both (ii) determination of time & value of supply. 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 YOGIRAJ POWERTECH PRIVATE LIMITED, the applicant, seeking an advance ruling in respect of the following ISSUE.

1. Whether EPC Contract for electrical cable supply and laying work can be classified as contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.
2. Whether these contracts can be classified as works contracts as per GST Law and whether notification no. 11/2017-Central Tax (Rate) dated 28th June 2017 as amended by notification no.01/2018-Central Tax (Rate) dated 25th Jan 2018 is applicable to the present case?

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-

Statement of relevant facts having a bearing on the question(s) raised

We have received order from Nagpur Metro Rail Corporation hereafter called as NMRC for "Shifting LT, HT O/H lines crossing and providing LT, HT U/G cables from Hingna Depot CH. 19500 to Ambazari Lake CH. 12500 for Nagpur Metro Rail Project for E-W corridor". NMRC is a Special Purpose Vehicle (SPV) created for the smooth implementation and operations of the Nagpur Metro Rail Project & is a joint venture of Govt. of India & Government of Maharashtra, with 50:50 equity. NMRC is incorporated by Govt. of India- Ministry of Corporate affairs.

This work is awarded to us through tendering process and scope of work is described in work schedule attached to the tender. The work involves Supply, erection, testing and commissioning including transport, loading, unloading, insurance etc of transformer substation, HT & LT Overhead Line & Cable Through Underground, from RR Substation to metro Khapri station for Metro Rail Project. The work schedule separately describes each activity to be carried out to complete the work and also rate for each activity is separately mentioned, by adding amount of each activity total estimated tender cost is derived and we have to quote in percent % above or below of the estimated cost. Thus we have no option to quote the individual prices for each activity but we have to quote in percent below or above to the total estimated cost provided by contractee i.e. NMRC. More over we have to accept whole tender and do not have option to accept part activities and refuse rest activities. Thus it can be seen that :

- The components are sold as a package at a single price and different components are not available separately.
- Single tender is floated for all the components.
- Different components are integral to one main supply. If one or more components are removed the nature of main supply would get affected.
- Many components viz. cement concrete foundation, dismantling, joints, earthing, stone, metal etc. are clearly incidental and ancillary to an identifiable main supply i.e supply of cable.

In the above said case identifiable main supply particularly underground "LT/HT cable" and it can be moved/shifted by excavation of earth and can be re-installed at other place. The cable is embedded in earth for safety of human and cable itself. The name of the work itself says "... Shifting & providing 315 KVA transformer substation HT & LT Overhead Line & Cable Through Underground, ..."

The said NMRC department is insisting us to charge 12% GST as per the notification number 11/2017-Central Tax (Rate) dated 28th June 2017 as amended by notification no. 01/2018-Central Tax (Rate) dated 25th Jan 2018, treating above work as 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,- (a) railways, including monorail and metro;

Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s) (i.e. applicant's view point and submissions on issues on which the advance ruling is sought).

As per Section 2(119) of the Central Goods and Services Tax (CGST) Act, 2017, unless the context otherwise requires, 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 can be seen from definition of works contract only construction, fabrication, completion..... Of immovable property will be considered as works contract but as per our interpretation of work schedule attached to the tender the work can not be classified as immovable property therefore it cannot be classified as works contract and hence it cannot be classified as service, thus the above said notification will not be applicable in this case. But it should be classified as Composite supply, as different goods and services viz. Testing, cable, wires, cement pipes, laying, joints, Insurance, commissioning, transport etc. which are naturally bundled and supplied in conjunction with each other, with principal supply being LT/HT Cable.

Once it is classified as composite supply, rate of GST applicable to principal supply will be applicable to whole composite contract, here the principle supply is LT/HT cable (item no. 1, 7, 10 of work schedule) and rate of the same should be applicable to whole contract.

NAGPUR METRO

Name of Work:- Estimate No. NMRC/U/S (ELE)/01-2015,

CH 11040 to CH 16280 :- Shifting & providing 315 KVA transformer substation HT & LT Overhead Line & Cable Through Underground, 11 KV RMU, LBS from RR Substation to metro Khapri station for Metro Rail Project on North South Corridor.

SCHEDULE-B

Sr. No	CSR No	Description	Qty	Unit	Rate	Amount
1	7.3.13	Supplying , erecting & terminating 3 x 300 sq mm 11 kV, XLPE(E) armoured cable on wall/ceiling or laid in provided trench / pipe in an approved manner as per specification No CB-HT	11900	Mtrs	2110.00	25109000.00
2	5.2.15	Supplying and erecting mini feeder pillar triple pole with 300A FPMCCB as incomer and 3 outgoing circuits with HRC Fuse base and Cartridge of 100A consists of aluminium, bus bar 500V 300A	7	Each	48487.00	339409.00

		complete 5.2.15 erected in 14 gauge CRCA sheet box with supporting angles, self locks, gasket and slanting top to be erected on provided foundation as per per specification No. SW-SWR/MFP				
3	5.2.14	Supplying and erecting mini feeder pillar triple pole with 200A FPMCCB as incomer and 2 outgoing circuits with HRC Fuse base and Cartridge of 100A consists of aluminium, bus bar 500 V 200 A. complete erected in 14 gauge CRCA sheet box with supporting angles, self locks, gasket and slanting top to be erected on provided foundation as per per specification No. SW-SWR/MFP	2	Each	34752.00	69504.00
4	16.3.4	Providing Cement concrete foundation for pump in 1:2:4 with required size and length of foundation bolts and nuts (cost with required size and length of foundation bolts and nuts (cost with wooden box is included).	110	Cu.M trs	5673.00	624030.00
5	18.1.41	Dismantling of KVA Distribution Transformer safely without any damages and storing it in safe place.	200	KVA	80.00	16000.00
6	8.8.3	Dismantling the existing overhead line including G.I. wires of all sizes without damaging & making the coils in suitable sizes.	11.5	Km	816.00	9384.00
7	7.5.16	Providing and erecting Heat shrinkable outdoor termination kit for 11kV (E) XLPE HT cable 3x240 to 300 sq. mm. with necessary material as per specification No. CB-JT/HT	72	Each	15127.00	1089144.00
8	7.5.7	Providing and erecting Heat shrinkable indoor termination kit for 11 kV (E) XLPE HT cable 3x240 to 400sq. mm. with necessary material as per specification No. CB-JT/HT	64	Each	11152.00	713728.00
9	7.5.25	Providing and erecting Heat shrinkable Straight through joint kit for 11 kV (E) XLPE HT cable 3x300 to 400 sq.mm. with necessary material as per specification No. CB-JT/HT	24	Each	28306.00	679344.00
10	7.1.31	Supplying, erecting & terminating PVC armoured cable 32core 300 sq mm aluminium conductor with continuous 12.97 sq mm (8 SWG) G.I. earth wire complete erected with glands & lugs, on wall/trusses/pole or laid in provided trench/ pipe as per specification no. CB-LT/AL	1950	Mtr	1708.35	3331282.50
11	9.1.5	Supply, Installation, Testing and commissioning of UL Certified / CPRI Tested Maintenance Free Earthing comprising of Electrode of 17.2 mm diameter Low Carbon Steel with 250 micron Molecular Copper Bonded Earthing Rod of Length 3m along with 5 25 kg Carbon Based environment friendly back fill Ground Enhancing compound required to fill up the excavated earth with required quantity as per specification no EA-MOBI	5	Each	15764.00	78820.00
12	9.1.3	Providing earthing with Galvanised cast iron earth plate size 60 x 60 x 0.6 cm with funnel with a wire mesh for watering and brick masonry block C.I. 76 cover complete with all materials, testing & recording the results as per specification No. EA-EP	76	Each	5495.70	417673.20
13	5.9.6	Supplying & erecting 11 kV 630A, Indoor type Ring Main unit with 1or 2 Incoming & 2 or 1 Outgoing with HRC fuses complete erected on provided cc foundation/MS channels/trench, etc, in an approved manner as per specification no SW-HTS / RMU	7	Each	432050.00	3024350.00
14	8.8.2	Dismantling the existing pole above 6 m height with brackets, clamps, insulators, stay from the cement concrete foundation and making the site clear by refilling the pits with excavated materials and bringing it to the ground level.	60	Each	615.00	36900.00
15	10.2.18	Supplying and erecting fencing of section having size 2450 mm in height from ground level and 1200 mm width with angle iron frame work erected in C C foundation and painted as per specification No SS-AS/FSG	72	Each	5286.00	380592.00
16	10.2.19	Supplying and erecting 50 x 50 x 6 mm. angle iron as corner support 2m long fixed at the middle of the fencing frame and the other side inclined at 30 degree angle, in C.C. foundation of 15 x 15 x 40cm complete duly painted with one coat of red oxide and two coats aluminum paint.	8	Each	1060.00	8480.00
17	10.2.20	Supplying and erecting double leaf hinged door each 1500mm in width x 1850 mm in height using B class ,GI pipe with angleiron supports, chain link wiremesh (jali) complete supported on channel iron, erected in foundation, and painted as per specification no SS-AS/DLD	4	Each	16158.00	64632.00



18	MSDCL	Bore Horizontal With HDPE Pipe upto 130 18 MSDCL MM Dia.	955	Mtr	5602.00	5349910.00
19	7.6.6	Supplying & laying (including excavation) 15 cms. dia RCC Hume pipe with coupling collar of standard thickness at required depth up to 90 cms. below road / ground surface, for enclosing provided cable & necessary back filling with light ramming to make the road/ground surface as it was (Except bitumen carpet	350	Mtr	751.00	262850.00
20	7.6.8	Supplying & laying (including excavation) 25 cm Dia half round RCC Hume pipe of standard thickness at required depth up to 90 cms. below road / ground surface, for enclosing provided cable & necessary back filling with light ramming to make the road/ground surface as it was (Except bitumen carpet).	9480	Mtr	577.00	5469960.00
21	16.2.4	Providing and spreading stone metal 25mm size for 100 mm depth above the 1000 ground level.	1000	Cu m	66.00	66000.00
22	16.5.15	Supplying and erecting ISI mark G.I. pipe 100 mm dia 'C' class position with accessories. As per specification No. CWPLB/GP	372	Mtr	1821	677412.00
23	16.3.6	Providing cement concrete for foundation or for concrete filling in 1:3:6 ratio with 20 to 25 mm. stone metal duly plastered 278 with necessary curing for pole muffing or any	278	Cu.M tr	4211	1170658.00
24	9.1.4	Providing pipe type earthing with 40mm. dia. G.I. pipe or 20 mm dia. G.I. Rod complete with all materials as per specification No. EA-EP	34	Each	1536	52224.00
25	10.1.4	Supplying and Erecting approved make 200kVA/3 phase, 50 c/s Oil immersed and naturally cooled indoor/outdoor type, copper wound transformer with delta conn. on HV side & star connection on LV side with additional neutral brought out on load side, voltage rating 11/0.415kV with HV tapping of +/- 2.5% -5% continuously rated for full load with standard accessories complete with Test Certificate with losses below 500 watts at no load, 3000 watts at full load as per IS:2026) as per specification No SS- TR.	1	Each	310776	310776.00
26	10.2.25	Providing floor mounting stand for keeping 4 Nos. of FIRE buckets 1500mm in length, 900mm in height frame made out of 30x30x4 mm angle iron with cross 2 supports for legs, welded with 4 hooks and duly painted with one coat of red lead and two coats of silver paint.	2	Each	2972	5944.00
27	10.2.24	Providing round bottom FIRE Bucket of 9 Litres capacity as per IS: 2546 made out of 24 gauge G.I. sheet with extra handle 18 at bottom duly painted white inside and red outside with FIRE Mark, on provided stand/ wall hook.	8	Each	637	5096.00
28	8.1.10	Supplying and erecting Rolled steel Joist (Girder) pole 100 x 116 mm (23 kg/m) with provided base plate in provided foundation as per specification No. OHPL/RSJ	264	Each	1436	379104.00
29	8.4.11	Supplying 100 x 50 mm with 4.7 mm thick web and 7.5 mm thick flange channel iron cross arm of suitable length for 2.4m wide DP structure and erecting on DP with 50x6 mm clamp as	18	Each	2174	39132.00
30	16.3.3	Providing cement concrete foundation including excavation for the poles 60 cm x 60 cm x deep 1/6 of pole length in 1:3:6 cement concrete (20 x 25 mm stone metal) and 45 cm x 45 cm x 45 cm/45 cm dia. x 45 cm. height plinth duly plastered and with necessary curing and finishing in an approved manner. (for above 9 m poles)	26	Each	33270	865020.00
31	10.2.2	Supplying and erecting approved make 11 kV out door type gang operated air break, triple pole switch 400A, capacity with 3 post pin type insulator per phase, mounted in horizontal or vertical position with necessary channels on provided cross arm with adequate length of 'C' class G.I. pipe for operating handle erected on extended square shaft. The operating handle provided with lock and key at suitable height from ground level with necessary clamp.	3	Set	18414	55242.00
32	8.6.15	Supplying and erecting Distribution class, 11 kV thyrite type lightning arrester, on provided cross arm as per specification No. OH-INS/LA	2	Set	1373	2746.00
33	10.2.5	Supplying and erecting approved make, 11 kV out door type drop out fuse with insulator complete with fuse holders, fuse	2	Set	9821	19642.00

		barrel with metal fitting, fuse element mounted on M.S. channel with working current of 15 Amps capacity complete erected on provided cross arm.				
34	8.4.23	Supplying & erecting inline cut point end pole D. P. Structure for 200 KVA Transformer with R.S.J. Pole 2 Nos. of size 100 x 116 mm x 11 Mtr. Long with suitable Distribution Box of C.R.C.A. Sheet 16 SWG (size 4 SqMtr.) with 4 Pole MCCB 300 Amps as incomer & 6 Nos. 63 Amps Kitkat for outgoing circuits. Transformer D.P. Structure includes the A. B. Switch 200 Amps, D.O. fuse Set & L.A. Set. 2 Nos. Top channel of size 100 mm x 50 mm for erection of A.B. Switch & 2 Nos. Base channel of size 100 mm x 50 x mm for erecting Transformer. Channel of size 75 x 40 mm for erecting D.O. Fuse Set, L.A., A.B. Switch handle etc. Angle of size 50 x 50 x 6 mm for erecting Distribution Box, Transformer Belt etc. as per drawing (App. 176 kg. iron work) with necessary clamps, Nut-bolts. Vee cross arm, top clip, insulators etc. complete with caution board & barbed wire. D.P. Structure shall be erected in provided c.c. foundation	1	Each	136964	136964.00
35	5.12.5	Dismantling any type of unserviceable feeder pillar, Switch gear panel, Capacitor Panel, Metering panel, Bus-bar Panel, Electronic Equipment Panel, etc. and remaking the site good as original. Approx. size (upto 200cm. x 90 cm x 45 cm and	2	Each	1207	2414.00
36	8.4.22	Supplying & erecting inline cut point end pole D. P. Structure for 100 kVA Transformer with R.S.J. Pole 2 Nos. of size 100 x 116 mm x 11 Mtr. Long with suitable Distribution Box of C.R.C.A. Sheet 16 SWG (size 4 SqMtr.) with 4 Pole MCCB 200 Amps as incomer & 6 Nos. 100 Amps Kitkat for outgoing circuits transformer D.P. Structure includes the A. B. Switch 200 Amps, D.O. fuse Set & L.A. Set. 2 Nos. Top channel of size 100 mm x 50 mm for erection of A.B. Switch & 2 Nos. Base channel of size 100 mm x 50 x mm for erecting Transformer. Channel of size 75 x 40 mm for erecting D.O. Fuse Set, L.A., A.B. Switch handle etc. Angle of size 50 x 50 x 6 mm for erecting Distribution Box, Transformer Belt etc. as per drawing (App. 176 Kg. iron work) with necessary clamps, Nut-bolts. Vee cross arm, top clip, insulators etc. complete with caution board & barbed wire. D.P. Structure shall be erected in provided c.c. foundation	1	Each	130443	130443.00
37	8.4.17	Supplying & erecting single pole cut point channel set of for 11 kV HT/OH. Line. Two channel of size 100 x 50 mm 1.6 m Long having stud angle of size 50 x 50 x 6 mm 1.5 m long with top piece of size 100 x 50 mm 0.45 m. Long with necessary clamps, nut bolts etc. complete as per drawing.	1	Each	6364	6364.00
38	5.9.1	Supplying and erecting approved make extendable / non-extendable type 11 kV, 630A, load break switch with fuses of required rating, on provided MS channels / trench / foundation in an approved manner as per specification no SW-HTS / LBS	3	Each	154214.00	462642.00
39	7.3.27	Supplying, erecting & terminating PVC armoured cable 34 core 120 sq mm aluminium conductor with continuous 12.97 sq mm (8 SWG) G.I. earth wire complete erected with glands & lugs, on wall/trusses/pole or laid in provided trench/ pipe as per specification no. CBLT/AL	750	Each	736.00	552000.00
		Total				51000173/-
		Rs. Five corer Ten lacks, one hundred and seventy three only				

Additional submissions

In continuation of our statement of facts and our interpretations of facts submitted earlier along with advance ruling application we would further like to state that.

As per Section 2(119) of the Central Goods and Services Tax (CGST) Act, 2017,

unless the context otherwise requires, 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.

Thus as per definition contract for building, construction..... of immovable property should only be considered as works contract

'Immovable property' is defined in section 3(26) of General Clauses Act, 1897 as follows:

"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;"

Meaning of 'immovable property' as per section 3 of the Transfer of Property Act, 1882 does not include standing timber, growing crops or grass. The Hon'ble Supreme Court in the case of Commissioner of Central Excise, Ahmedabad Vs. Solid & Correct Engineering Works 2010 (252) ELT 481 has with reference to case under Central Excise Act discussed the meaning of words 'immovable property' which also confirms our view that only things permanently attached to the land which cannot be demolition can be considered as immovable property, merely attachment of the plant to the foundation can not be considered as immovable property. The said case is discussed in detail in submissions made by the Dy. Commissioner of State Tax vide letter dated 30th June 2018 so for the sake of brevity the same is not reproduced here once again.

Further Order No. 58/1 / 2002-CX dated 15.01.2002 issued under section 37B of the Central Excise Act clarified various items as immovable property after referring to various judgments of Hon'ble Supreme Court. In para 5 of the order, examples of immovable property given are as follows:

"5. Keeping the above factors in mind the position is clarified further in respect of specific instances which have been brought to the notice of the Board.

(1) Turn key projects like Steel Plants, Cement plants, Power plants etc. involving supply of large number of components, machinery, equipment's, pipes and tubes etc. for their assembly/installation erection/integration/ interconnectivity on foundation/ civil structure etc, at site, will not be considered as excisable goods for imposition of central excise duty, the components, however, would be dutiable in the normal course.

Here we would like to draw your attention to the fact that our scope of work does not include construction of entire project of Metro stations, railway line, power supply, civil structures etc. but scope include "Shifting LT,HT Overhead lines crossing which are obstructing metro railway path and providing LT,HT underground cables for Nagpur Metro Rail Project.

The work is not construction of metro rail project but this is shifting of existing utilities obstructing metro railway path and providing supplying and installation of new underground cable along with its accessories. Detail scope is already submitted in statement of facts submitted with application for advance ruling.

(2) Huge tanks made of metal for storage of petroleum products in oil refineries or installations. These tanks, though not embedded in the earth, are erected at site, stage by stage, and after completion they cannot be physically moved. On sale/disposal they have necessarily to be dismantled and sold as metal sheets/scrap. It is not possible to assemble the tank all over again. Such tanks are therefore not moveable and cannot be considered as excisable goods (Reference para 15 of Triveni judgment supra and the case of CCE Chandigarh v. Bhagwanpura Sugar Mills reported in 2001 (47) RLT 409 (CEGAT Delhi))

(3) Refrigeration/Air conditioning plants. These are basically systems comprising of compressors, ducting, pipings, insulators and sometimes cooling towers etc. They are in the nature of systems and are not machines as a whole. They come into existence only by assembly and connection of various components and parts. Though each component is dutiable, the refrigeration/air conditioning system as a whole cannot be considered to be excisable goods. Air conditioning units, however, would continue to remain dutiable as per the Central Excise Tariff.

(4) Lifts and escalators. (a) Though lifts and escalators are specifically mentioned in sub heading 8428.10, those which are installed in buildings and permanently fitted into the civil structure, cannot be considered to be excisable goods. Such lifts and escalators have also been held to be non-excisable by the Govt. of India in the case of Otis Elevators India Co Ltd reported in 1981 ELT 720 (GOI). Further, this aspect was also a subject matter of C&AG's Audit Para No.7.1(b)/98-99 [DAP NO 1867 which has since been settled by the C&AG accepting the Board's view that such lifts and escalators are not excisable goods. Also refer CCE vs Kone Elevators India Ltd reported in 2001(45)RLT 676 (CEGAT - Chen)

Thus we are of the opinion that our work does not fall under the term works contract and we agree with the opinion expressed by Dy Commissioner State Tax vide letter dated 30th July 2018 that the said supply falls under composite supply as there are two or more taxable supplies which are naturally bundled and supplied in conjunction with each other and cannot be considered as a contract for building, construction..... of immovable property and the Notification No 11/2017-Central tax (rate) dated 28th June 2017 is not applicable in our case and the same should be treated composite supply with principle item being supply of HT/LT cable and the rate of the principal supply should be applicable to whole contract.

With regards to our advance ruling application we hereby submit challan (4 copies) for payment of balance fees of Rs.5000 dated 6th August 2018 having CIN ORBC18082700076845 under CGST Act.,

Also as required by you we here by submit Tender document (4 sets) of works allotted to us by Nagpur Metro Rail Corporation.

03. CONTENTION - AS PER THE CONCERNED OFFICER

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

I would like to submit regarding their questionnaires as a jurisdiction officer as under.

Applicant have raised following questions

- 1 Whether EPC Contract for electrical cable supply and laying work can be classified as contract for building, construction, fabrication, completion, erection, installation, fitting put, improvement, modification, repair, maintenance, renovation, alteration or commissioning of 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 information provided by applicant, The applicant received order from Nagpur Metro Rail Corporation hereafter called as NMRCL for "Shifting LT,HT O/H lines crossing and providing LT,HT U/G cables for Nagpur

Metro Rail Project". NMRCL is a Special Purpose Vehicle (SPV) created for the smooth implementation and operations of the Nagpur Metro Rail Project and is a joint venture of Government of India & Government of Maharashtra, with 50:50 equity. NMRCL is incorporated by Govt. of India- Ministry of Corporate affairs

After going through documents provided it is evident that work is awarded through the work involves various activities viz. Supply, erection, testing and commissioning including transport, loading, unloading, insurance etc. of transformer substation, HT & LT Overhead Line & Cable Through Underground which is awarded to applicant in single bunch of contract at a single tendering process thus it is also evident that applicant has no option to quote different prices for each individual items and has to accept entire work and do not have option to accept part activities and refuse rest activities. Upon going through work schedule provided by the applicant, I find that there are different components like installation of cable, cement, joints, transport, insurance which are naturally bundled and supplied in conjunction with each other and are integral to one main supply i.e. supply of cable and if one or more components are removed the nature of main supply would get affected.

Now as per Section 2(119) of the Central Goods and Services Tax (CGST) Act, 2017, unless the context otherwise requires, 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"

So as to qualify as works contracts work there should be of transfer of property in goods of immovable property is necessary.

The Hon'ble Supreme Court in the case of Commissioner of Central Excise, Ahmedabad vs. Solid & Correct Engineering Works 2010 (252) ELT 481 has with reference to case under Central Excise Act discussed the meaning of words 'immovable property'. The Court has observed in paras 18 and 19 of the judgment as follows:

18. That argument needs to be tested on the touch stone of the provisions referred to above. Section 3(26) of the General Clauses Act includes within the definition of the term "immovable property" things attached to the earth or permanently fastened to anything attached to the earth. The term "attached to the earth" has not been defined in the General Clauses Act, 1897. Section 3 of the Transfer of Property Act, however, gives the following meaning to the expression "attached to the earth":

- (a) rooted in the earth, as in the case of trees and shrubs;
- (b) imbedded in the earth, as in the case of walls and buildings;
- (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

19. It is evident from the above that the expression "attached to the earth" has three distinct dimensions, viz. (a) rooted in the earth as in the case of trees and shrubs (b) imbedded in the earth as in the case of walls or buildings or (c) attached to what is imbedded for the permanent beneficial enjoyment of that to which it is attached. Attachment of the plant in question with the help of nuts and bolts to a foundation not more than 11/2 feet deep intended to provide stability to the working of the plant and prevent vibration/wobble free operation does not qualify for being described as attached to the earth under any one of the three clauses extracted above. That is because attachment of the plant to the foundation is not comparable or synonymous with trees and shrubs rooted in earth. It is also not synonymous with imbedding in earth of the plant as in the case of walls and buildings, for the obvious reason that a building imbedded in the earth is permanent and cannot be detached without demolition. Imbedding of a wall in the earth is also in no way comparable to attachment of a plant to a foundation meant only to provide stability to the plant especially because the attachment is not permanent and what is attached can be easily detached from the foundation. So also the attachment of the plant to the foundation at which it rests does not fall in the third category, for an attachment to fall in that category it must be for permanent beneficial enjoyment of that to which the plant is attached.

It is evident from work schedule submitted by the applicant that the work involves Supply, erection, testing and commissioning including transport, loading, unloading, insurance etc of transformer substation, HT & LT Overhead Line & Cable Through Underground, for Metro Rail Project above said case identifiable main supply particularly underground "LT/HT cable".

The cable is embedded in earth for safety of human and cable itself. Cables can be moved/shifted by excavation of earth and can be re-installed at other place. Transformers are rested on channels which are fitted on cement concrete base for its smooth operation and can be easily shifted/moved to other sites by lifting the same with the help of the crane without damaging the same. It is very clear that material is not installed for beneficial enjoyment of land but it is installed for more beneficial use of that material itself.

Section 2(30) defines composite supply as

"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"

Thus going through the above facts it is crystal clear that above said supply (activity) constitutes composite Supply and not a works contract.

Thus in my humble opinion in the above said work that there is no transfer of immovable property involved and thus the above work cannot be considered as contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of immovable property but it is nothing but a composite supply which is taxable at the rate specified for the main identifiable supply i.e. cables, transformers which is taxable @ 18% under GST Act 2017.

2. Whether these contracts can be classified as works contracts as per GST Law and whether notification no. 11/2017-Central Tax (Rate) dated 28th June 2017 as amended by notification no.01/2018-Central Tax (Rate) dated 25th Jan 2018 is applicable to the present case? .

Relevant extracts of above mentioned notification are re-produced below.

(V) Composite supply of works contracts as defined in clause (119) of section 2 of the central goods and service tax Act 2017 supplied by the way of construction, erection, commissioning or installation of original works pertaining to (a) Railways including monorail and metro. 6%

The Precondition in the said notification is composite supply of works contracts pertaining to metro, as discussed earlier only work relating to immovable property can be classified as works contracts and thus the above said work does not fall in ambit works contract but it is composite supply of various items mentioned in work schedule submitted. Thus the said work can not be classified as works contract and the said notification is not applicable to the applicants case.

Thus going through the above facts it is clear that the above said supply (activity of the dealer does not amounts works contract but said supply constitutes composite supply only

Hon. Forum is humbly requested to admit the application for Advance ruling and consider the above submission while disposing the application of the dealer.

04. HEARING

The case was taken up for Preliminary hearing on dt. 31.07.2018 when Sh. Sidharth Bodas, C.A. along with Sh. Ravindra Nene , M.D. appeared and requested for admission of application as per contentions in their ARA. Jurisdictional Officer, Sh. S. B. Mohite, Dy. Commr. of S.T.(E-009) Raigad division, Navi Mumbai appeared and made written submissions .

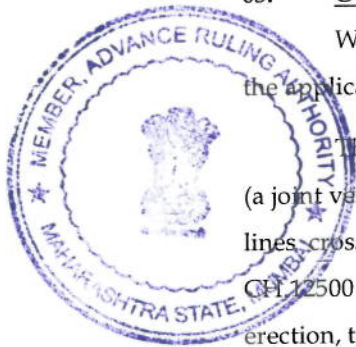
The application was admitted and called for final hearing on 28.08.2018, Sh. Sidharth Bodas, C.A. along with Sh. Ravindra Nene , M.D. appeared and made oral and written submissions. Jurisdictional Officer, Sh. S. B. Mohite, Dy. Commr. of S.T.(E-009) Raigad division, Navi Mumbai appeared and stated that they have already made written submissions.

05. OBSERVATIONS

We have gone through the facts of the case, documents on record and submissions made by both, the applicant and the department.

The applicant has submitted that they have received order from Nagpur Metro Rail Corporation (a joint venture of Govt. of India & Govt. of Maharashtra, with 50:50 equity) for "Shifting of LT,HT O/H lines crossing and providing LT,HT U/G cables from Hingna Depot CH. 19500 to Ambazari Lake CH.12500 for the Nagpur Metro Rail Project. They have also submitted that the work involves Supply, erection, testing and commissioning including transport, loading, unloading, insurance etc of transformer substation, HT & LT Overhead Line & Cable through Underground, for the Metro Rail Project. In the tender/work order, the work schedule separately describes each activity to be carried out to complete the work and also rate for each activity is separately mentioned, by adding amount of each activity total estimated tender cost is derived and they have quoted in percent % above or below of the estimated cost. Thus they had no option to quote the individual prices for each activity and the tender had to be accepted as a whole and they could not accept part activities. They have further stated that NMRCL department is insisting them to charge 12% GST as per Notfn. No. 11/2017-C. T. (Rate) dated 28th June 2017 as amended by Notfn. No. 01/2018-C.T. (Rate) dated 25th Jan 2018, treating above work as Composite supply of works contract as defined in clause (119) of Sec. 2 of the CGST Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to,- (a) railways, including monorail and metro.

The applicant has also submitted that according to them they are not supplying Works Contract Service because in their case there is no involvement of immovable property. They have said that their



supply should be classified as Composite supply, as different goods and services vis. Testing, cable, wires, cement pipes, laying, joints, Insurance, commissioning, transport etc. which are naturally bundled and supplied in conjunction with each other, with principal supply being LT/HT Cable.

Thus we find that the basic issue before us is whether in the subject case there is supply of Works Contract or not. We shall therefore discuss all the provisions relating to Works Contract, which is a mixture of service and transfer of goods. GST Schedule II clearly mentions that the following are supply of services:-

- a. construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly,
- b. works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract

Hence Works contract will be treated as service and tax would be charged accordingly. As per Section 2(119) of the CGST Act, 2017, unless the context otherwise requires, *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"*

Thus what we need to find out is whether the applicant in the subject case is dealing in any immovable property which is transferred in the execution of the contract. The applicant has submitted Schedule B in respect of the work allotted to them by NAGPUR METRO. It is seen from the Schedule that the work also includes as under :-


1. **Providing Cement concrete foundation for pump** in 1:2:4 with required size and length of foundation bolts and nuts (cost with required size and length of foundation bolts and nuts (cost with wooden box is included)
2. **Supplying & erecting 11 kV 630A, Indoor type Ring Main unit** with 1or 2 Incoming & 2 or 1 Outgoing with HRC fuses complete erected **on provided cc foundation/MS channels/trench**, etc, in an approved manner as per specification no SW-HTS / RMU
3. **Supplying and erecting fencing** of section having size 2450 mm in height from ground level and 1200 mm width with angle iron frame work **erected in C C foundation and painted** as per specification No SS-AS/FSG.
4. **Supplying and erecting 50 x 50 x 6 mm. angle iron** as corner support 2m long fixed at the middle of the fencing frame and the other side inclined at 30 degree angle, **in C.C. foundation** of 15 x 15 x 40cm complete duly painted with one coat of red oxide and two coats aluminum paint.
5. **Supplying & laying (including excavation) 15 cms. dia RCC Hume pipe** with coupling collar of standard thickness at required depth up to 90 cms. below road/ground surface, for enclosing provided cable & necessary back filling with light ramming to make the road/ground surface as it was (Except bitumen carpet)



Section 3(26) of General Clauses Act, 1897 defines 'Immovable property' as follows:

"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;"

- a. It is evident from (1) above that they are providing cement concrete (cc) foundation for pump and the pump is attached to the CC foundation with nuts and bolts. It is very clear that the CC foundation is permanently fastened to earth and the pump is attached to it.
- b. It is evident from (2) to (4) above that, they are Supplying & erecting 11 kV 630A, Indoor type Ring Main unit with 1or 2 Incoming & 2 or 1 Outgoing with HRC fuses complete erected on **provided cc foundation/MS channels/trench**; Supplying and erecting fencing of section having size 2450 mm in height from ground level and 1200 mm width with angle iron frame work **erected in CC foundation. Here to the Indoor Unit and fencing section are erected on CC foundation** which is permanently fastened to earth.
- c. In (5) above it is seen that there is Supplying & laying (including excavation) of 15 cms. dia RCC Hume pipe with coupling collar of standard thickness at required depth up to 90 cms. below road/ground surface, for enclosing provided cable & necessary back filling with light ramming to make the road/ground surface as it was. Therefore the implication is that the cables are enclosed in such RCC pipes which are kept under the ground at a certain depth and then the entire pipes with the enclosed cables are covered back with filling to make the road as it is. If this is not attached to earth, then what is it? This clearly satisfies the condition of being attached to earth. The pipes are fixed underneath the ground level underground, covered with filling and in such case it is clear that the said pipes are meant to be affixed permanently underneath the ground and therefore cannot be considered as a movable property.



We further find from the work schedule submitted by the applicant that their work involves supply, erection, testing and commissioning including transport, loading, unloading, insurance etc of transformer substations, HT & LT Overhead Line & Cable Through Underground. Their EPC contract for *electrical cable supply and laying work can be classified as contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.* Hence we have no hesitation in holding that the applicant is supplying Works Contract Services. It is also apparent that the nature of the works undertaken by the applicant are not in the nature of 'Original Works' as per detailed discussions in the latter part of the findings.

The second question raised by the applicant is *whether these contracts can be classified as works contracts as per GST Law and whether notification no. 11/2017-Central Tax (Rate) dated 28th June 2017 as amended by notification no.01/2018-Central Tax (Rate) dated 25th Jan 2018 is applicable to the present case?*

Since it is clear that the applicant is supplying Works Contract Services, we now reproduce the relevant provisions of Notification no. 11/2017-Central Tax (Rate) dated 28th June 2017 which is applicable to the present case.

Sl. No.	Chapter, Section or Heading.	Description of Service	Rate (per cent.)	Condition
1	2	3	4	5
	Chapter 99	All Services		
	Section 5	Construction Services		
	Heading 9954 (Construction services)	(i)	9	-
		(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.	9	-
		(iii) construction services other the (i) and (ii) above.	6	-

Hence as per the said Notfn it is very clear that the composite supply of works contract as in the subject case falls under (ii) attracting 18% GST. The said Notification was amended on 22.08.2017 vide Notfn No. 20/2017 – Central Tax (Rate) and is reproduced as under:-

Sl. No.	Chapter, Section or Heading.	Description of Service	Rate (per cent.)	Condition
1	2	3	4	5
	Chapter 99	All Services		
	Section 5	Construction Services		
	Heading 9954 (Construction services)	(i)	9	-
		(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.	9	-
		(iii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied to the Government,.....alteration of, (a) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);(b) canal, dam or other irrigation works;(c) pipeline, conduit or plant for (i) water supply(ii) water treatment, or (iii) sewerage treatment or disposal.	6	-
		(iv) 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,of - (a) a road, bridge, tunnel, or terminal; (b) a civil structure- under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana; (c) a civil structure under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana,; (d) a civil structure or any other original works pertaining to under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana; (e) a pollution control or effluent treatment plant,.....	6	
		(v) Composite supply of works contract as 6 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, (a) railways, excluding monorail and metro	6	
		(vi) Construction services other than (i), (ii), (iii), (iv), (v) and (vi) above.	6	

As per the said Notfn with the amendment mentioned above also it is very clear that the composite supply of works contract as in the subject case falls under (ii) attracting 18% GST. The said Notification 11/2017 was further amended on 21.09.2017 vide Notfn No. 24/2017 – Cen Tax (Rate) and is reproduced as under:-

Sl. No.	Chapter, Section or Heading.	Description of Service	Rate (per cent.)	Condition
1	2	3	4	5
	Chapter 99	All Services		
	Section 5	Construction Services		
		(i)	9	-

	Heading 9954 (Construction services)	(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.	9	-
		(iii) Composite supply of works contract	6	-
		(iv) Composite supply of works contract	6	
		(v) Composite supply of works contract as 6 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, (a) railways, excluding monorail and metro	6	
		(vi) Services provided to the Central Government, State Government, Union Territory, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of - (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession; (b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or (c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017	6	
		(vii) Construction services other than (i), (ii), (iii), (iv), (v) and (vi) above.		

Vide amendment Notfn No. 31/2017, dated 13.10.2017 and 46/2017 dated 11.11.2017, the original Notfn No. 11/2017 stood as under:-

Sl. No.	Chapter, Section or Heading.	Description of Service	Rate (per cent.)	Condition
1	2	3	4	5
	Chapter 99	All Services		
	Section 5	Construction Services		
	Heading 9954	(i)	9	-
	Construction services)	(ii) Composite supply of works contract as 6 defined in clause. (119) of section 2 of the Central Goods and Services Tax Act, 2017	9	-
		(iii) Composite supply of works contract	6	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
		(iv) Composite supply of works contract	6	
		(v) Composite supply of works contract as 6 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, (a) railways, excluding monorail and metro	6	
		(vi) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017 provided to the Central Government, State Government, Union Territory, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair,	6	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

		<i>maintenance, renovation, or alteration of – (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession; (b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or (c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017</i>		Government, Union territory or local authority, as the case may be
		<i>(vii) Construction services other than (i), (ii), (iii), (iv), (v) and (vi) above</i>		

Even with the amendment the applicants's position has not changed. Their composite supply of works contract as in the subject case falls under (ii) attracting 18% GST. The said Notification 11/2017 was also further amended on 25.01.2018 vide Notfn No. 01/2018 – Cen Tax (Rate) and vide this amendment clause (v) as above was changed to include '**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, pertaining to, (a) railways, INCLUDING monorail and metro.**

In the subject case it is seen that the applicant is providing composite supply of Works Contract in respect of Metro but the reduced rate of tax is available only if the work is of the type of ORIGINAL WORKS.

Original Works would mean ; all new constructions; all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable; erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise, etc. In the present case the work done by the applicant does not appear to be original works. The applicant themselves have stated that " *Here we would like to draw your attention to the fact that our scope of work does not include construction of entire project of Metro stations, railway line, power supply, civil structures etc. but scope include "Shifting LT,HT Overhead lines crossing which are obstructing metro railway path and providing LT,HT underground cables for Nagpur Metro Rail Project. The work is not construction of metro rail project but this is shifting of existing utilities obstructing metro railway path and providing supplying and installation of new underground cable along with its accessories.*

Hence from the above discussions we find that in the present case, the contract is not related to any original work and is in the nature of composite supply of Works Contract Hence we hold that the activity of the applicant in the present case is nothing but a composite supply of Works Contract, not being original works and they will be covered under Sr.No. 3, item no. (ii) of Notification No. 11/2017 dated 28.06.2017 as amended by Notification No. 1/2018 dated 25.01.2018 and attract 18% GST (9% each of CGST and SGST).

05. 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- 47/2018-19/B-

120

Mumbai, dt.

25.09.2018

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

Question 1:- Whether EPC Contract for electrical cable supply and laying work can be classified as contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

Answer :- Answered in the affirmative.

Question 2:- Whether these contracts can be classified as works contracts as per GST Law and whether notification no. 11/2017-Central Tax (Rate) dated 28th June 2017 as amended by notification no.01/2018-Central Tax (Rate) dated 25th Jan 2018 is applicable to the present case?

Answer :- In view of the discussion above these contracts are classifiable as Works Contract as per GST Law and Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017 as amended by notification no.01/2018-Central Tax (Rate) dated 25th Jan 2018 is applicable to the present case but the rate of GST @ 18% would be applicable in respect of applicant as per detailed discussions above.



— sd —
B. V. BORHADE
(MEMBER)

— sd —
PANKAJ KUMAR
(MEMBER)

CERTIFIED TRUE COPY

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.

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, 15th floor, Air India building, Nariman Point, Mumbai - 400021.