

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, 8th floor, H-Wing, Mazgaon, Mumbai – 400010.

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

BEFORE THE BENCH OF

(1) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)

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

GSTIN Number, if any/ User-id		27888FN0812H1ZP
Legal Name of Applicant		M/S NIKHIL COMFORTS
Registered Address/ Address provided while obtaining user id Corresponding Address		GROUNG AND FIRST FLOOR, MULUND UTKARSHA, CHS LTD., SAJJANWADI MITHAGAR ROAD, MULUND (EAST) MUMBAI 400 081
Details of application		GST-ARA, Application No. 127 Dated 26.02.2019
Concerned officer		Dy. Commissioner of S.T(E-623), LTU-II, Mumbai
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Factory / Manufacturing , Warehouse/Deport , Office/Sale Office, EQU/STP/EHTP, Works Contract
B	Description (in brief)	Supply, installation, testing & commissioning of VRF Indoor and Outdoor Units Air conditioning.
Issue/s on which advance ruling required		(i) classification of goods and/or services or both (ii) applicability of a notification issued under the provisions of the Act
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

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 **M/S NIKHIL COMFORTS**, the applicant, seeking an advance ruling in respect of the following question.

The transaction would be classifiable to cover under the definition of "works contract" liable to CGST/SGST/IGST covered under Sr, no 3 item no 3 of notification No 20/2017 (Central tax rate) dated 22/08/2017.

OR

The transaction is Composite supply liable to co 14% being principal goods involved is Air-Conditioner which falls to cover under schedule IV, Sr. no 119 of notification No 1/2017 (Central tax rate) dated 28/06/2017

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

2. FACTS AND CONTENTION - AS PER THE APPLICANT

“(A) BRIEF HISTORY OF THE CASE

M/s Nikhil Comforts, a Partnership Firm, registered under the Indian Partnership Act, 1932 is having its registered office at 1003, Sampada, Arunodaya Nagar, Mulund (East) Mumbai 400 081 and sales office at Ground & 1st floor, Mulund Utkarsha CHS Ltd., Sajjan Wadi, Mithagar Road, Mulund (East), Mumbai 400 081. The firm is registered under the GST Act having GSTIN No. 27AAAFN0812H1ZP.

M/s Nikhil Comforts (short the firm) entered into an agreement with Goa State Infrastructure Development Corporation Ltd. (in short GSIDC) for execution of "Additional Air-conditioning work for the New building of Director of Education at Porvorim, Goa." GSIDC desires to get air-conditioning work for new building of Directorate of Education at Goa & Nikhil Comforts has agreed to do the works of supply of goods and services for agreed price.

GSIDC is a wholly owned Government Company of the Government of Goa registered under the Companies Act, 1956, with the Registrar of Companies, Panaji-Goa. The Registrar of Companies has allotted, Certificate of Incorporation No. 075112GA2001SGC002954 (CIN) dated 20/02/2001. GSIDC has been floated by the Government of Goa as a Special Purpose Vehicle (SPV) for speedy implementation of all the infrastructural Projects, envisaged by the Government like Roads, Bridges, Fly-Overs, Bus-Stands, Hospitals, Tourism related Projects, etc. all over the State on the similar lines of 23 similar Corporations in other States. This would help in development of infrastructural facilities all over the State of Goa. This Corporation would act as a co-ordinating agency for implementing all the projects.

(B) The scope of work comprises of air-conditioning work for new building of Directorate of Education at Goa -

1. Supply, Installation, Testing & Commissioning of VRF 4 Way Cassette Units.
2. Supply, Installation, Testing & Commissioning of VRF Hi-Wall Units.
3. Supply, Installation, Testing & Commissioning of VRF Outdoor Units,
4. Supply, Installation, Testing & Commissioning of Drain Pump for Hi-wall Units.
5. Supply, Installation, Testing & Commissioning of interconnecting Soft & Hard Copper Pipes with Insulation between IDU and ODU.
6. Supply, Installation, Testing & Commissioning of UPVC Hard Drain Pipes with Insulation.
7. Supplying installation testing and commissioning of surface/ recess mounting vertical type 415 V TPN, double door MCB DB.
8. Supplying and fixing 40 A, C series MCB suitable for lighting and other loads -
TP, Cat Providing and fixing following rating and breaking capacity adjustable 4 pole MCCB inside the existing cubicle panel board-250A Adjustable 35/40 KA, CAT A.

9. Supply & Installation of Cable Tray for Copper Pipe.
10. Supply & Laying of 3 74 of Core Armoured PVC / XLPE Insulated Aluminium & Copper Conductor Cable with Termination.
11. Supply & Fixing of MCB, ELCB for Outdoor units & Switch Socket for Indoor Unit
12. Supplying and Installing 150mm width x 50mm depth-16G MS perforated **type cable tray**.
13. Providing and fixing 25 mm x 5 mm GI strip and 8SWG GI wire for earthing,

(C) DOCUMENTS SUPPLIED FOR CONSIDERATION:

1. Agreement entered between GSIDC and Nikhil Comforts Dated 21st Aug.,2018 for supply, Installation, testing & commissioning of VRF Indoor and Outdoor Units suitable for R-410 Gas, refrigerant piping with insulation, drain piping with insulation, MS stands, Cabling, Additional Refrigerant and associated electrical works etc.
2. **Letter of acceptance dated 24th May 2018**

(D) RATE OF TAX ON THE TRANSACTION:

Whether as 'WORKS CONTRACT' or as 'COMPOSITE SUPPLY' or as 'MIXED SUPPLY

The Question for advance ruling is whether the applicant requires to pay GST considering the transaction as 'Works Contract' or 'Composite supply or 'Mixed supply:

(a) **WORKS CONTRACT:** If the **transaction** is Works Contract the rate of **tax** would be 6% CGST covered under Sr. no 3 item no 3 of notification No 24/2017 (Central tax rate) dated 21/09/2017,

(b) **COMPOSITE SUPPLY:** If the transaction is composite supply the rate of **tax** would be CGST @ 14% being principal goods involved is Air Conditioner which falls to cover under schedule IV, Sr. no 119 of notification No 1/2017 (Central tax rate) dated 28/06/2017.

(c) **MIXED SUPPLY:** if the transaction is Mixed supply the rate of tax would be CGST @ 14% being highest rate of tax would be on Air Conditioner as this item attracts highest **rate of tax** which falls to cover under schedule IV, Sr. No 119 of notification No. 1/2017 **(Central tax rate)** dated 28/06/2017

(E) SUBMISSION

Your applicant is engaged in supplying goods and services and good involved in the contract are mainly 5 Nos. Of 18 HP VRF outdoor units, 12 Nos. of VRF cassette units and 29 Nos. of VRF Hi-wall units of Voltas make and 29 drain pumps of aspen make, refrigerant pipes, indoor and outdoor Stands, Cables, cable tray, Insulation material, electrical goods etc. Works Contract- Under the Goods and Services Tax regime

Section 2(119) defines "works contract" to mean a contract for building, construction, fabrication, completion, erection, installation; fitting out, improvement, modification, repair, maintenance, renovation, alteration on commissioning of any immovable property wherein the transfer of property in goods (whether as goods or in some other forms) is involved in



execution of such contract. The intention of the legislature which is abundantly clear **from the above definition** is that the works contract under the GST should mean only the **contracts in relation to immovable property**. The question therefore would be how would the contract involving supply and services both in relation to movable property **be taxed under the GST regime**. To understand this, we must refer to the definition of composite supply of section 2(30). This definition reads as follows:

"Composite supply means a supply made by a taxable person to a recipient consisting of 2 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 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.

The word composite supply should not be confused with mixed supply, Section 2(74) defines mixed supply as follows:

"Mixed Supply" means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

Illustration: A supply of a package consisting of canned foods, sweets, chocolates; cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately."

The contracts involving supply of goods and services in relation to movable property would also fall in the definition of composite contracts.

1. WHETHER WORKS CONTRACT'?

Section 2(119) defines "works contract" to mean a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration on commissioning of any immovable property wherein the transfer of property in goods (whether as goods or in some other forms) is involved in execution of such contract.

To know whether this is works contract the goods involved in the contract property in which requires to be transferred in immovable property.

(b) Blue Star Ltd. vs Commissioner of Central Excise [2002 (143) ELT 391 Tri Del] In that case the issue before the Central Excise Tribunal was, taxability of Central Air conditioner plant, under excise statute. The facts of that case, in brief are that the appellants engaged in the manufacture, assembly, at site of customers of Central Air-conditioning Plants and rest of the

material/components such as GI sheets for ducting, GI/MS pipes, Electrical Control panels, cables, pumps, motors, valves, grills/diffusers, thermocol of PUF, Aluminium or GI cladding, aluminium foils for insulation of piping, ducting and AHU rooms, **etc., were purchased from various vendors. All the equipments/ materials/components and parts were brought to the site of the customers. That the appellants undertook the work of design, fabrication, supply assembly, erection, testing and commissioning of the CAP at site of various customers against a contracted price which resulted into a distinct and excisable product which is apart from the equipment/component/ material/parts and accessories that have gone into the manufacture of CAPs. This is identifiable as CAPs in the market and is bought and sold as CAPs as is evident from the contract entered into between the appellant and the customers. This distinct product is not embedded in the ground like a tree or building, at the most some of its equipments/components are fixed by bolting, using nuts and bolts, to secure maximum operational efficiency and safety of the plant as a whole.**

The case is decided by majority holding that it is immovable by saying that I am unable to accept this logic for holding the CAPs to be **movables** capable of being marketed. It is the independent function of the department, as held by the Apex Court in the case of Triveni Engineering and Industries Ltd. v CCE [2000 (120) E.L.T. 273 (S.C.)], to **establish the marketability** of any goods before subjecting them to levy of duty of excise and the same has got to be discharged by placing on record independent cogent evidence. In the instant case, the department has not **been able to establish that the CAPs were capable of being taken as such to the market for being sold. Thus the majority has held that Central Air conditioner plant fixed in the contract is immovable.**

The dissenting judgment delivered by Krishna Kumar, Member, however, has taken contrary stand than that of the decision of the majority. He would hold that that the CAP installed at sight is the **movable property of the customers. The Member (J) relied on the decision of the Apex Court in the case of Sirpur Paper Mills reported in 1998 (97) E.L.T. Page 3 (S.C.), wherein the Apex Court considered the levability of excise duty on paper making machine which was erected by the appellant-company by using duty paid components purchased from the market and also by fabricating certain parts of the machines in their factory. The Hon'ble Apex Court held that just because plant and machinery are fixed in the earth for better functioning, it does not automatically become an immovable property**

Thus as per the decision of the majority the transaction is of the **nature which may fall to cover under the definition of 'works' Contract[section 2 sub-section (119)]**

(c) Government of India Ministry of Finance Department of Revenue Central Board of Excise & Customs through its order no 37B Order 58/1/2002-CX dated 15th January 2002 has



issued instructions at para 5.(iii) that "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."

The Department had issued these directions treating Refrigeration/Air conditioning plants are immovable. In light of this authority the transaction is of the nature which may fall to cover under the definition of 'works Contract[section 2 sub-section (119)]

(2) COMPOSITE SUPPLY

The goods involved in the contract are mainly 5 Nos. Of 18 HP VRF outdoor units, 12 Nos. of VRF cassette units & 29 Nos. of VRF Hi-wall units of Voltas make and 29 drain pumps of aspen make, refrigerant pipes, indoor and **outdoor** Stands, Cables, cable trays, Insulation material, electrical goods etc. Now it is required to see whether this is a 'composite supply' of taxable goods and services naturally bundled in conjunction with ordinary course of business.

It is essential to know the meaning of the term 'naturally bundled' - The term bundled goods and or service means a bundle of provisions of various goods and or services wherein an element of provision of any goods or service is combined with an element or elements of provision of other goods or and service then it would be naturally bundled.

It is felt that the nature of contract covers under composite supply being 18 HP VRF outdoor units, VRF cassette units and VRF Hi-wall units of Voltas make and drain pumps, refrigerant pipes, indoor and outdoor Stands, Cables, cable tray, Insulation material, electrical goods etc. are naturally bundled.

Once it is observed that the nature of contract covers as composite supply it **comes out** of the ambit of 'mixed supply'.

(F) Advance ruling:

Considering the decisions, views, directions the applicant desires advance ruling whether the activity of supplying 'Additional Air-conditioning work for the New building of Director of Education at Porvorim , Goa."

The transaction would be classifiable to cover under the definition of "works contact" liable to CGST/SGST/IGST covered under Sr. no 3 item no 3 of notification No 24/2017 (Central tax rate) dated 21/09/2017.

OR

The transaction is composite supply liable to CGST @ 14% being principal goods involved is Air-Conditioner which falls to cover under schedule IV, Sr. no 119 of notification No 1/2017 (Central tax rate) dated 28/06/2017

In continuation of our submission dated 26th March 2019 it is submitted that-

1. The applicant- Company pursuant to the acceptance of its tender, entered into an agreement with GSIDC for design, supply, Installation, testing & commissioning of VRF Indoor and Outdoor Units suitable for R-410 Gas, refrigerant piping with insulation, drain piping with insulation, MS stands, Cabling, Additional Refrigerant and associated electrical works etc. at the site of GSIDC.
2. For supply/installation/erection and assembly of complete Air Conditioning plants were procured by the company and various equipments/components/material/ parts and accessories were brought to the site of the customers GSIDC. The plant is installed /assembled mainly comprising of VRF 4 way Cassette units, VRF Hi wall units, VRF Outdoor units, Drain pump, interconnecting soft & hard copper pipes, cable tray, sheet metal ducts are fabricated at site and installed along with grills and diffusers. The ducts & piping is insulated at site & the plant as a whole is to be handed over to the customer.
3. Section 2(119) defines “works contract” to mean a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein the transfer of property in goods (whether as goods or in some other forms) is involved in execution of such contract. The intention of the legislature which is abundantly clear from the above definition is that the works contract under the GST should mean only the contracts in relation to immovable property.
4. Under the Central Excise Act 1944 (CEA), if an article is an immovable property, it cannot be termed as excisable goods. In catena of decisions it is mentioned that to have been "manufactured" as contemplated under Section 2(f) of the Central Excise Act and to have been mentioned under the Tariff, the goods must necessarily answer the test of marketability affirmatively for being held to be excisable. Classification is only for determining the applicable rate of duty under the Tariff Act, while marketability is the conclusive test for settling the broader issue of excisability of the goods under the CEA.
5. From the provisions of GST Act it is clear that the works contract should mean only the contracts in relation to immovable property i.e. in a contract of supply, where the property in goods passes in immovable, the nature of transaction would be “Works Contract”. Similarly, under the Central Excise Act where the property in goods passes in immovable there would be no excisability. Considering the similarity in both the statutes



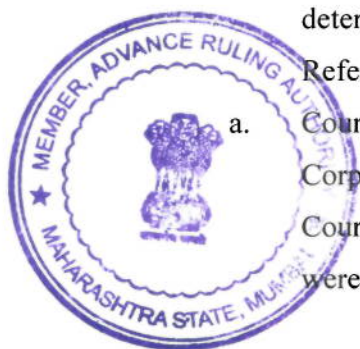
it would be safe to refer to the decisions and authorities under the excise statute for determining the nature of activity whether property passes in immovable or not. To have the attributes of excisable goods as understood in the Excise Law. They are mobility and marketability. The article in question should be capable of being brought and sold in the market a test which is too well established by series of decisions of this Court. There can be no doubt that if an article is an immovable property, it cannot be termed as excisable goods for purposes of the Act. From a combined reading of the definition of immovable property in Section 3 of the Transfer of Property Act, Section 3(25) of the General Clauses Act, it is evident that in an immovable property there is neither mobility nor marketability as understood in the Excise Law. Whether an article is permanently fastened to anything attached to the earth require determination of both the intention as well as the factum of fastening to anything attached to the earth. It also required to see that the test of permanency; if the chattel was movable to another place of use in the same position or liable to be dismantled and re-erected at the later place, if the answer to the former is in the positive it must be a movable property but if the answer to the latter part is in the positive then it would be treated as permanently attached to the earth. Thus test of “marketability” and test of “permanency” is the twin tests laid down by the Court to determine whether assembly/ erection would result in immovable property or not. Reference can be made to following judgments-

a.

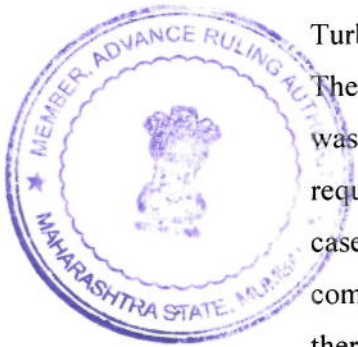
Court in Municipal Corporation of Greater Bombay & Ors. Vs. The Indian Oil Corporation Ltd. (1991) Supp. (2) SCC 18; and held that the twin tests laid down by the Court to determine whether assembly/ erection would result in immovable property or not were fully satisfied in the facts of this case. The court has observed that-

"The test laid down by the Supreme Court is that if the chattel is movable to another place as such for use, it is movable but if it has to be dismantled and reassembled or re-erected at another place for such use, such chattel would be immovable. In the present appeal, even according to the finding of the Collector, mudguns and drill tap hole machines have to be dismantled and disassembled from the cast floor before being erected or assembled elsewhere. We have also arrived at the same conclusion independently, in para 10 above.

Accordingly applying the test laid down by the Supreme Court we hold that the erection and installation of mudguns and drill tap hole machines result in immovable property. In the light of the ratio of the above case law, we hold that the mudguns and tap hole drilling machines do not admit of the definition of goods and, therefore, excise duty is not leviable thereon".



- b. In Quality Steel Tubes (P) Ltd. Vs. Collector of Central Excise, UP 1995 (75) ELT 17 (SC); the court observed that-
- "The basic test, therefore, of levying duty under the Act is two fold. One, that any article, must be goods and second, that it should be marketable or capable of being brought to market. Goods which are attached to the earth and thus become immoveable do not satisfy the test of being goods within the meaning of the Act nor it can be said to be capable of being brought to the market for being bought and sold. Therefore, both the tests, as explained by this Court, were not satisfied in the case of appellant as the tube mill or welding head having been erected and installed in the premises and embedded to earth they ceased to be goods within meaning of Section 3 of the Act".*
- c. In Mittal Engineering Works Pvt. Ltd. Vs. CCE 1996 (88) ELT 622 (SC); the Court was concerned with the exigibility to duty of mono vertical crystallisers which are used in sugar factories to exhaust molasses of sugar. After considering the material placed on the record it was held that the mono vertical crystalliser has to be assembled, erected and attached to the earth by a foundation at the site of the sugar factory. It is not capable of being sold as it is, without anything more. This Court, therefore, concluded that mono vertical crystallisers are not "goods" within the meaning of the Act and, therefore, not exigible to excise duty.
- d. In Triveni Engg. & Industries [2000 (120) E.L.T. 273 (S.C.)], the question was whether a Turbo-Alternator was excisable or not. The Tribunal had held the item to be excisable. The Apex Court set aside the Tribunal's decision, observing that the Tribunal's conclusion was not justified by its own finding. The Apex Court held that the marketability test required that the goods should be in a position to be taken to the market and sold. In that case, as found by the Tribunal, the Turbo-Alternator had to be separated into its components viz. Turbine and Alternator for being taken to the market. The Apex Court, therefore, held that the marketability test was erroneously applied by the Tribunal. In the instant case, the factual position is analogous to that of Triveni Engg. & Industries. Even the Revenue has no case that the CAP was capable of being taken as such to the market for sale. It required to be disassembled or dismantled into its components for the purpose of removal from its site, but then, certain parts would be damaged beyond repair and what could be taken to the market would be only the remaining parts, which would not make a CAP. The marketability test laid down by the Apex Court in Triveni Engg. & Industries is, therefore, not satisfied in the instant case.
- e. Blue Star Ltd. vs Commissioner Of Central Excise [2002 (143) ELT 391 Tri Del] In that case the issue before the Central Excise Tribunal was, taxability of Central Air



conditioner plant, under excise statute. The facts of that case, in brief are that the appellants engaged in the manufacture, assembly, at site of customers of Central Air-conditioning Plants and rest of the material/components such as GI sheets for ducting, GI/MS pipes, Electrical Control panels, cables, pumps, motors, valves, grills/diffusers, thermocole of PUF, Aluminium or GI cladding, aluminium foils for insulation of piping, ducting and AHU rooms, etc., were purchased from various vendors. All the equipments/materials/components and parts were brought to the site of the customers. That the appellants undertook the work of design, fabrication, supply assembly, erection, testing and commissioning of the CAP at site of various customers against a contracted price which resulted into a distinct and excisable product which is apart from the equipment/component/ material/parts and accessories that have gone into the manufacture of CAPs. This is identifiable as CAPs in the market and is bought and sold as CAPs as is evident from the contract entered into between the appellant and the customers. This distinct product is not embedded in the ground like a tree or building, at the most some of its equipments/components are fixed by bolting, using nuts and bolts, to secure maximum operational efficiency and safety of the plant as a whole.

The case is decided by majority holding that it is immovable by saying that I am unable to accept this logic for holding the CAPs to be movables capable of being marketed. It is the independent function of the department, as held by the Apex Court in the case of *Triveni Engineering and Industries Ltd. v. CCE* [2000 (120) E.L.T. 273 (S.C.)], to establish the marketability of any goods before subjecting them to levy of duty of excise and the same has got to be discharged by placing on record independent cogent evidence. In the instant case, the department has not been able to establish that the CAPs were capable of being taken as such to the market for being sold. Thus the majority has held that Central Air conditioner plant fixed in the contract is immovable.

Thus as per the decision of the majority the transaction is of the nature which may fall to cover under the definition of 'works Contract'[section 2 sub-section (119)]

6. It submitted that the Air conditioning plant in the present case emerges by assemblage of various components procured from open market and erection and installation of the system in the customer's premises as per the specifications of the customer. The contract is relating to commissioning of air-conditioning plants as per terms and conditions of the contract and such plants are commonly known as air-conditioning system or facility or plant. It undertakes air conditioning contracts where the contracts cover the design, supply, installation, testing and commissioning of the entire air-conditioning plants and such plants are extended a guarantee for the performance of satisfactory functioning. The



air-conditioning plant is supposed to deliver certain desired comfort to its users, which depends on temperature, relative humidity and cleanliness. Such plant includes all machineries, accessories and parts, which are required to make the plant functional.

"Air-conditioner" is different than "Air-conditioning plant". While "Air-conditioner" is movable item like Refrigerator, Air-cooler etc "Air-conditioning plant" is immovable item. Totality of the plant cannot be shifted from one place to another, once it is installed at a particular place. It can be shifted only after dismantling the plant, which cannot be called "Air-conditioning plant" after it is dismantled.

It is the case that Air conditioning plant cannot be taken as such to the market for sale and, they did not satisfy the test of marketability. It has also submitted that, even if it be assumed that the Air conditioning plant could be disassembled into components and taken to the market for sale, all the components which had gone into the assembly of Air conditioning plant would not be available for sale as some essential components and accessories would have been damaged beyond repair and become unfit for being used again for reassembly. It is submits that the ducts and pipes with their insulations and other accessories were an essential part of the Air conditioning plant and the same would be irretrievably damaged in any dismantling or disassembly of the Air conditioning plant. If at all any dismantled Air conditioning plant could be taken to the market for sale that would be only an assortment of some components viz. VRF 4 way Cassette units, VRF Hi wall units, VRF Outdoor units etc. but never the Air conditioning plant as a whole. Therefore it is submitted that since the Air conditioning plant as a whole is not capable of being taken to the market for sale, it was not a marketable item. If the items assembled or erected at site and attached to earth/wall cannot be dismantled without substantial damage to its components and thus cannot be reassembled, then the items would not be considered as movable.

7. It is also pertinent to refer to the order of Government of India Ministry of Finance Department of Revenue Central Board of Excise & Customs through its order no 37B Order 58/1/2002-Cx dated 15th January 2002 has issued instructions at para 5 (iii) that-

“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.”



The Department had issued these directions treating Refrigeration/Air conditioning plants are immovable. The taxing authorities under excise Act, following these directions have treaded Air conditioning plants as immovable since 2002. It is therefore submitted that there would not be any different view as is followed continuously for years together under Excise Act.

Keeping in view the principles laid down in the judgments and authority noticed above, and having regard to the facts of this case, it is submitted that the Air Conditioning Plant brought into existence is immovable property which could not be shifted without first dismantling it and then re-erecting it at another site and satisfies the test of permanency and non marketability, therefore is immovable hence will cover under the definition of “works contract” under the GST statute, cover under the definition of ‘works Contract’[section 2 sub-section (119)], liable to CGST/SGST/IGST covered under Sr. no 3 item no 3 of notification No 24/2017 (Central tax rate) dated 21/09/2017 being the said supply is made to state Government of Goa, (Goa State Infrastructure Development Corporation Ltd) a special purpose vehicle.

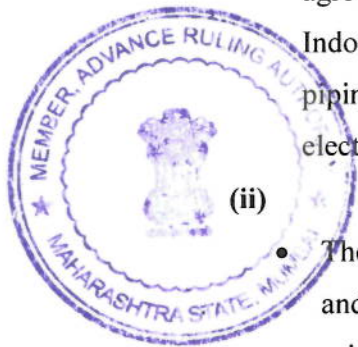
In continuation of our submission dated 3rdth May 2019 it is submitted that,-

- (i) The applicant- Company pursuant to the acceptance of its tender, entered into an agreement with GSIDC for design, supply, Installation, testing & commissioning of VRF Indoor and Outdoor Units suitable for R-410 Gas, refrigerant piping with insulation, drain piping with insulation, MS stands, Cabling, Additional Refrigerant and associated electrical works etc. At the site of GSIDC.

(ii)

BRIEF DETAILS OF WORK OF AIR CONDITIONING:

- The VRF system of each premises is unique in terms of configurations and the sizing and selection of various components. Depending on the interior layout and the orientation of the building, the indoor and outdoor units are selected. The refrigerant piping path is decided as per the site condition. Based on this configuration and path, the refrigerant piping and the branching joints vary from site to site. The refrigerant pipes and branching joints are joined by brazing and are insulated. Thus, the entire VRF system is a network of indoor and outdoor units connected by refrigerant piping and branching joints, suitably sized as described above. This entire network is tested for leakages and then vaccumised and charged with a specifically calculated quantity of gas. The entire network is controlled by microprocessors in indoor and outdoor units which communicate with each other through interconnecting communication cables. The commissioning process involves addressing of various components of network which is unique to each site.



- This VRF system cannot be used and installed at any other site as it is, since the configuration of the new site will be different in terms of various components of the system. The system will need to be dismantled, de-gassed and modified significantly and re-erected for use at another location. Many of the components of this system will either get damaged during dismantling or will not be suitable at the new site and will need to be replaced with components of different capacity and size. Hence, this qualifies as a plant and cannot be compared with a simple split air-conditioner.
- This is 60 TR (72HP) AC plant as per tender BOQ which includes outdoor units and multiple indoor units with specific copper pipe sizes and predetermined pipe route. This system is efficient replacement of Chiller, Air handling units, chilled water piping and ducting etc. With the advent of new technology, Chiller plant is being replaced by VRF system / plant.

➤ **FOLLOWING IS THE SEQUENCE OF ACTIVITIES IN A CHRONOLOGICAL ORDER DURING EXECUTION OR COMPLETION OF AN AIR-CONDITIONING PROJECT –**

- **STUDY OF TENDER DOCUMENTS AND SITE SURVEY** – Tender documents and drawings are thoroughly studied by HVAC design and planning engineer. The physical site survey is done by the design engineer and draftsman team and taking all the site details like area to be air conditioned, Orientation of building, exposed glasses, walls and its area, beam locations and its height beam, drain locations, outdoor unit locations etc.
- **HEAT LOAD ESTIMATION** – Based on tender Design Basis Report and actual site survey, a fresh Heat-Load estimation is prepared and submitted to consultant for their further approvals. These heat-load calculations is different for different sites and depends upon application, building orientation, exposed glass area, wall thickness, number of people in the building, lighting and equipment heat generation.
- **PREPERATION AND APPROVAL OF SHOP DRAWINGS** – As per approved heat-load estimation, type and capacities of VRF Air-conditioning equipments are selected. Selection of equipments shall also in line with better efficiency, site constraint, it's performance, appropriate space for maintenance and best suitable for hassle free, safe installation.
- **The selected machines differ from room to room in terms of capacity and type.**
Once machine selections are approved by the consultant, detailed Shop drawing (AutoCAD format) is prepared with selections of various ancillaries.
Shop drawing includes Indoor locations, outdoor locations, equipment installation details, the size and route of interconnecting copper pipes, Indoor Y-branches,



Outdoor T-Branched, The size and route of cable trays, The size and route of drain pipes, the size and route of interconnecting communication cables and power cables. These layouts are approved by the HVAC consultant, Architect and client.

- **PREPARATION AND APPROVAL OF TECHNICAL SUBMITTALS** – With reference to the approved tender makes and specifications, technical submittals are prepared. The technical submittals include the technical specifications of the material / product to be installed. These also differ from project to project. The HVAC consultant / Client provide the approval for procurement of material.
- **QUANTIFICATION AND PROCUREMENTS OF MATERIAL-** The approved shop drawing is used to estimate / count the material / machines to be required to execute the project. Based on the estimation material procurement request were sent by planning team to purchase departments and further procurement takes place.
- **DELIVERY OF MATERIAL AT SITE** – Based on the project requirement the material can be delivered in multiple phases. This are typical based on the site development and storage space available at site. For example, supporting media like anchor fasteners, nut-bolt, angles are installed prior to installation of cable tray, copper pipes, machines etc. The site manager verifies the material specification and quantity at the time of delivery.
- **INSTALLATION** - Before commencement of any installation work, the project manager, engineer and site supervisor study the approved shop drawing thoroughly.
 - The markings are done for indoor unit locations, outdoor unit locations, copper pipes, cable trays and cabling as shown in approved shop drawings.
 - As per marking, the respective supports are installed for indoor unit, copper pipes, cable trays and drain piping. These supports are permanently fastened to the slab by means of female anchor fasteners, full threaded rod and angles. The supporting activity involves the drilling work in slabs / walls, fabrication works like cutting, welding angles/ full threaded rods. Since supports vary in sizes as well as the entity to be supported.
 - The back plate of hi-wall unit is properly / rigidly fixed to the wall. Similarly, cassette units are fixed from slab with the help of female anchor fastener and full threaded rod.
 - Outdoor units are installed on MS Platform / stand which permanently fastened to Concrete foundation with the use Male Anchor Fasteners.
 - In VRF systems multiple indoor units are connected to bank of outdoor units. The interconnection pipe size and Y-Branch sizes are software generated. The output



containing main header copper pipes, branching pipes and Y-branch sizes differ for different combination of indoor units, their sequence. These software outputs are project specific to the project. The change in pipe sizing will affect the working as well as performance of the entire VRF system. Hence it is highly important to follow the shop drawing and software output while installation of copper pipes. The hard copper pipes are cut to exact lengths and bent by using copper elbows and joined by using copper coupling with the help of brazing process to make a continuous one single pipe for suction and other single pipe for liquid gas. The Y branching joints to split the copper piping and take it to next indoor unit. The pictorial view of the piping network is attached herewith. Proper precautions have to be taken while joining the Elbows, Socket couplings, reducers and offset pipes. The route of the piping to be strictly followed while execution.

- Installation of cable trays require more fabrication work in terms of cutting the cable trays in accurate lengths, fixing of branch trays, elbow and intermediate tray joints. The Cable trays are fastened to the slab or wall by fastening Female Anchor Fasteners to slab and then joined by using full threaded rods and supported by MS angle.
- Drilling, fixing of saddle screw for the laying of communication and power cable. As per requirement for laying of conduit trenching required through wooden and civil opening, Gypsum or Core cut etc. Cable is passed and later the affected area to be finished and make it concealed. Communication Cable cutting is done as per drawing and site requirement measurement.
- As per shop drawing and selection of machine, the dia and length of drain pipe is decided. Accordingly cutting and bending of the drain pipe is done. Insulation of the drain pipe is done as per approved specification. As per the requirement at site condition, trenching is done in the wall and / or civil opening is made and drain piping is laid. Later they are made concealed. The joining of the drain pipes is done using Adhesive or fusion joint so that there shall not be leakage of water. Once drain line is fixed and joints are concealed it cannot be removed.

➤ **TESTING AND COMMISSIONING OF SYSTEM –**

- After the completion of Installation of the machines/Units and before closing of ceiling, pressure testing of the copper piping, Intermediate connections, Y- branching joints is carried out by using Nitrogen gas.
- Apply test pressure in the system as per the OEM Requirement.



- Pressure testing is done by holding the pressure for 24 hours and doing soap bubble test for any leakage at the joints. Removal of the insulation at the location of leakage detection. Post which brazing and other process is follow.
- Vacuumization of entire VRF Refrigeration system.
- Start Commissioning procedure for VRF unit as per OEM guidelines
- Check for visual damage to the external casing of the unit or damage to the internal parts.
- Confirm room is in a condition fit for commissioning to commence. Room cleaned and free of dust, secure with doors installed.
- Start Commissioning procedure for VRF unit as per OEM guidelines
- Release Refrigerant gas from outdoor unit. Charge additional refrigerant gas as per the copper pipe sizes and overall length.
- Room wise temperature reading is prepared on hourly basis.

It is summarised that supply/installation/erection and assembly of complete Air Conditioning plants were procured by the company and various equipments/ components/ material/parts and accessories were brought to the site of the customers GSIDC. The plant is installed /assembled mainly comprising of VRF 4 way Cassette units, VRF Hi wall units, VRF Outdoor units, Drain pump, interconnecting soft & hard copper pipes, cable tray, sheet metal ducts are fabricated at site and installed along with grills and diffusers. The ducts and piping is installed at site and the plant as a whole is to be handed over to the customer.

HVAC LAYOUT for GROUND floor, FIRST floor and SECOND floor, COMMUNICATION LAYOUT and ELECTRICAL LAYOUT is attached herewith and marked as exhibit "A", "B", "C", "D" and "E" to understand the nature of installation of Air Conditioning plant.

(iii) SUBMISSION

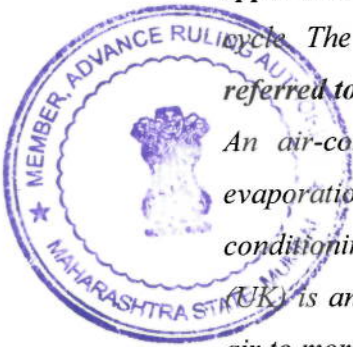
In central air-conditioning system, fabrication has to be undertaken which requires preparation of plant, etc. and, therefore, central air-conditioning system should be treated differently from room air-conditioner or window air-conditioner, etc. In case of supply of air-conditioning plant, what is done by the contractor is to install a complete unit by itself, which is functional in all respects. Central Air-Conditioning Plant erected at the site of the client and by using different refrigeration equipments are not bought and sold like room/window machines or even splits or package units and cannot be installed like room/split air-conditioners. In the air-conditioning industry, these are undertaken as projects or AC jobs or works contract

(A) In the case of Voltas Ltd. vs State Of Gujarat decided on 4 September, 2006 by Gujarat High Court, the Court while deciding the issue rate of tax on works contract for fabrication and installation of air-conditioning plants falls under Entry 2 and, liable to tax at the rate of 15% or under Entry 5 under which it is taxable at the rate of 5%, of the

Schedule to the notification dated 18-10-93 issued under Section 55A of the Gujarat Sales Tax Act, 1969? has observed that -

"It would be relevant to ascertain as to what is the meaning of words installation of air-conditioners and A.C. Coolers and for repairs thereof. It is well settled that for interpreting the meaning of the words used in entries of taxing statute, trade meanings as well as dictionary meanings are required to be considered. In the light of dictionary, meanings of the words 'air-conditioner', 'air-conditioning' etc.

9.2. *As per the Webster's Encyclopedic Unabridged Dictionary of the English Language, the word 'air-condition' means (1) to furnish with an air-Page 1979 conditioning system; (2) to treat (air) with such a system; the word 'air-conditioner' means an air-conditioning device and the word 'air-conditioning' means (1) a system or process for controlling the temperature, humidity and sometimes the purity of the air in an interior, as of an office, theatre, laboratory, house, or the like; (2) an air-conditioning system or unit. As per The New Shorter oxford English Dictionary on Historical Principles, edited by Lesley Brown, Volume 1 A-M, 1993, the word 'air-conditioned' means having air-conditioning. The word 'air-conditioner' means an apparatus for air-conditioning. The word 'air-conditioning' means the process of cleaning air and controlling its temperature and humidity before it enters a room, building, etc. 9.3 Again, as per The Free Encyclopedia Wikipedia, the 'air-conditioner' is an appliance, system or mechanism designed to extract heat from an area using a refrigeration cycle. The construction of a complete system of heating, ventilation, and air conditioning is referred to as HVAC. Some refer to air conditioner or air conditioning as AC or A/C for short. An air-conditioning system equipments may be (1) window or through-wall units; (2) evaporation coolers; (3) absorptive chillers; (4) portable air-conditioners; and, (5) central air-conditioning. The central air-conditioning commonly referred to as central air (US) or air-con (UK) is an air conditioning system which uses ducts to distribute cooled and/or dehumidified air to more than one room, or uses pipes to distribute chilled water to heat exchangers in more than one room, and which is not plugged into a standard electrical outlet. With a typical split system, the condenser and compressor are located in an outdoor unit; the evaporator is mounted in the air handling unit (which is often a forced air furnace). With a package system, all components are located in a single outdoor unit that may be located on the ground or roof. Central air conditioning performs like a regular air conditioner but may have several added benefits. When the air handling turns on, room air is drawn in from various parts of the house through return-air ducts. This air is pulled through a filter where airborne particles such as dust and lint are removed. Sophisticated filters may remove microscopic pollutants as well. The filtered air is routed to air supply ductwork that carries it back to rooms. Whenever the air*



conditioner is running, this cycle repeats continually. Because the central air conditioning unit is located outside the home, it offers a lower level of noise indoors than a free-standing air conditioning unit. Thus, there is no manner of doubt that by executing the works contract relating to installation of air-conditioning plant, what is provided is central air conditioning system/device. Air-conditioning systems are succinctly explained in paragraph 23 of the decision in Collector of Central Excise v. Subros Ltd. (supra)."

The High court has clearly made distinction between "Air conditioner" and "Air conditioning"; 'air-conditioning' means (1) a system or process for controlling the temperature, humidity and sometimes the purity of the air in an interior, as of an office, theatre, laboratory, house, or the like;

(B) In the case of Collector Of C. Ex. vs Subros Ltd. on 7 June, 1989 Equivalent citations: 1989 (24) ECR 219 Tri Delhi, 1989 (43) ELT 543 Tri Del at para 23 Customs and Central excise Tribunal Delhi has given distinction between "Air Conditioner Plant" and "window Air condition machine or Split Air conditioner.

"23. Before we come to any conclusion we would like to refer to McGraw-Hill Encyclopaedia of Science and Technology Vol. I, 5th Division. Relevant extracts from pages 201 and 202 are reproduced below :-

"Air conditioning systems. - A complete air-conditioning system is capable of adding and removing heat and moisture and of filtering dust and odorants from the space or spaces it serves. Systems that heat, humidify, and filter only, for control of comfort in winter, are called winter air-conditioning systems; those that cool, dehumidify, and filter only are called summer air-conditioning systems, provided they are fitted with proper controls to maintain design levels of temperature, relative humidity, and air purity.

"Design conditions may be maintained by multiple independent subsystems tied together by a single control system. Such arrangements, called split systems, might consist, for example, of hot-water baseboard heating convectors around a perimeter wall to offset window and wall heat losses when required, plus a central cold-air distribution system to pick up heat and moisture gains as required and to provide filtration for dust and odor.

"Air-conditioning systems are either unitary or built-up. The window or through-the-wall air-conditioner (Fig.2) is an example of a unitary summer air-conditioning system; the entire system is housed in a single package which contains heat removal, dehumidification, and filtration capabilities. When an electric heater is built into it with suitable controls, it functions as a year-round air-conditioning system. Unitary air-conditioners are manufactured in capacities as high as 100 tons (1 ton of air-conditioning equals 12,000 Btu/hr) and are



designed to be mounted conveniently on roofs, on the ground, or other convenient location, where they can be connected by ductwork to the conditioned space.

"Built-up or field-erected systems are composed of factory-built sub-assemblies interconnected by means such as piping, wiring, and ducting during final assembly on the building site. Their capacities range upto thousands of tons of refrigeration and millions of Btu per hr of heating. Most large buildings are so conditioned.

"Another important and somewhat parallel distinction can be made between incremental and central systems. An incremental system serves a single space; each space to be conditioned has its own, self-contained heating-cooling-dehumidifying-filtering unit. Central systems serve many or all of the conditioned spaces in a building. They range from small, unitary packaged systems to serve single-family residences to large, built-up or field-erected systems serving large buildings.

"When many buildings, each with its own air-conditioning system which is complete except for a refrigeration and a heating source, are tied to a central plant that distributes chilled water and hot water or steam, the interconnection is referred to as a district heating and cooling system. This system is especially useful for campuses, medical complexes, and office complexes under a single management.

"Conditioning of spaces. - Air temperature in a space can be controlled by radiant panels in floor, walls, or ceiling to emit or absorb energy, depending on panel temperature. Such is the radiant panel system. However, to control humidity and air purity and in most systems for controlling air temperature, a portion of the air in the space is withdrawn, processed, and returned to the space to mix with the remaining air. In the language of the engineer, a portion of the room air is returned (to an air-handling unit) and, after being conditioned, is supplied to the space. A portion of the return air is spilled (exhausted to the outdoors) while an equal quantity (of outdoor air) is brought into the system and mixed with the remaining return air before entering the air handler.

"Typically, the air-handling unit contains a filter, a cooling coil, a heating coil, and a fan in a suitable casing (Fig. 3). The filter removes dust from both return and outside air. The cooling coil, either containing re-circulating chilled water or boiling refrigerant, lowers air temperature sufficiently to dehumidify it to the required degree. The heating coil, in winter, serves a straightforward heating function, but when the cooling coil is functioning, it serves to raise the temperature of the dehumidified air (to reheat it) to the exact temperature required to perform its function, in micro-cosm, in room units in each space, as part of a self-contained, unitary air-conditioner, or it may be a huge unit handling return air from an entire building."



The Tribunal has made a distinction that “Air conditioner” or “split air conditioner” are used in a room by individual control for each unit whereas “Air conditioner system/Plant” is central cold-air distribution system.

(C) **Caryaire Equipments India Ltd. vs Ministry Of Finance on 29 September, 2003** Equivalent citations: 2005 (99) ECC 626, 2005 (179) ELT 522 All - while deciding the issue of excisability the grills used with the air-conditioning machine/systems fall under Chapter 84.15 or that the air-conditioning systems/machine erected at the site/building are not movable goods and hence would not be termed as goods liable for excise duty under the Central Excise Act.

At para 14 of the judgment the court has reproduced the contention of the petitioner –
“The petitioner has relied on the decision of the Supreme Court in Triveni Engineering and Industries Ltd. v. Commissioner of Central Excise, 2000 (120) E.L.T. 273 in which it was held that fixing of steam turbine, alternators, coupling and aligning them in a specified manner and installation and erection of turbo alternator on the platform would be immovable property, and as such it cannot be excisable goods. On the same reasoning, the air-conditioning system, the chilling machine, cooling towers, air treatment unit (air handling units), ducting, piping, insulation, pumps and electric panels and grills, diffusers, dampers, fire dampers, etc. are installed/fixed/erected in with each other to form an air-conditioning system or project and hence becomes immovable property and cannot be called as excisable goods. Even the department has not raised any demand or excise duty on such air-conditioning system to any job worker involved for erection of these systems/projects. The grills manufactured by the petitioner are used in air-conditioning systems, ventilation systems, basements, car parking, kitchens, industrial sheds, evaporative coolers and dummy grills for interior decoration in rooms/buildings. However, they cannot be used in the air-conditioning machines, room/split air-conditioners as these are not designed for use therein.”

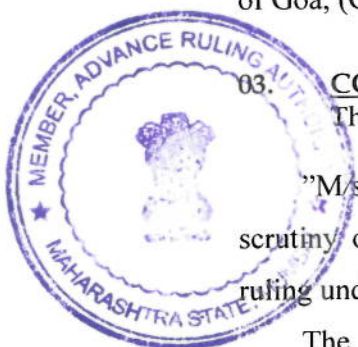
After detailed deliberation court has allowed the petition by observing that-

“These buyers are job workers engaged in erection/installation of air-conditioning systems, air-cooling systems, heating systems and air ventilation systems etc. These grills bought from the petitioner are fixed in the immovable properties like various rooms, industrial sheds, car parking, toilets, kitchens, etc. for ventilation or for covering the opening of ducts of the air-conditioning systems. After fixing the grills on the buildings they become a part of the building. Many grills are fixed on the walls as dummy grills for beautification and interior decoration of the rooms, which are not used even for passing of the air either in the ventilation system or in the air-conditioning system. It is alleged that air-conditioning systems/projects are different from the air-conditioning machines. The grills manufactured by the petitioner are not part of



air-conditioning machines but are accessories of the air-conditioning systems/projects as these are fixed on the ceilings or walls of the building. Hence they are not classifiable under Chapter 8415 of the Central Excise Tariff Act, as they are not attached with any machine nor do they form integral and inseparable part of air-conditioning machine nor change any temperature or humidity.”

Considering the nature of work described at para (1) above and the observation of the court and tribunal supra it is submitted that your applicant is engaged in the business of providing “Air Conditioner Plant” and keeping in view the principles laid down in the judgments above, and judgments and authorities discussed in the submission dated 26/02/109, 03/05/2019 and having regard to the facts of this case, it is submitted that the Air Conditioning Plant brought into existence is immovable property which could not be shifted without first dismantling it and then re-erecting it at another site and satisfies the test of permanency and non marketability, therefore is immovable hence will cover under the definition of “works contract” under the GST statute, cover under the definition of ‘works Contract’[section 2 sub-section (119)], liable to CGST/SGST/IGST covered under Sr. no 3 item no 3 of notification No 24/2017 (Central tax rate) dated 21/09/2017 being the said supply is made to state Government of Goa, (GSIDC Ltd) a special purpose vehicle.”



03. CONTENTION - AS PER THE CONCERNED OFFICER

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

“M/s. Nikhil Comforts is a taxable person allotted to this office for the purpose of scrutiny of returns, Audit, Assessment etc. M/s. Nikhil Comforts has applied for advance ruling under section 97 of CGST/MGST Act, 2017.

The taxable person has mentioned the nature of its business activity as Supply, installation, testing and commissioning of VRF indoor and outdoor Units (Air conditioning).

The taxable person has requested that a ruling be pronounced under section 97 of the CGST/SGST Act 2017 on the following questions: -

The transaction would be classifiable to cover under the definition of “works contract” liable to CGST/SGST/IGST covered under serial No 3 item No 3 of the Notification No 20/2017 (Central tax rate) dated 22/08/2017. OR

The transaction is composite supply liable to CGST @ 14% being principle goods involved is Air conditioner which falls to cover under schedule IV serial No 119 of Notification No 1/2017 (Central tax rate) dated 28/6/2017.

The applicant has submitted a copy of agreement dated 21.08.2018 entered with Goa State Industrial Development Corporation (GSIDC) by which he has undertaken a contract for

Supply, installation, testing and commissioning of VRF indoor and outdoor Units (Air-conditioning).

I have gone through the scope of work as mentioned by the applicant it is observed that the applicant used to supply VRF 4-way Cassette Units, VRF Hi Wall Units, VRF outdoor Units, soft and hard drain pipes and MCB's. The applicant also undertakes installation, testing and commissioning of all these units and execute Additional Air-condition work for the new building of Director of Education, at Porvorim, Goa.

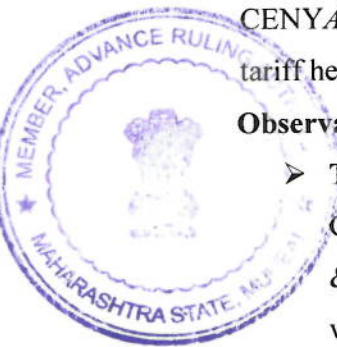
The issue of taxability and availability of input credit on goods/ services involved where supply and installation activity is involved are discussed by various courts but I want to discuss the following case; -

Vodafone Mobile Services Limited y Commissioner of Service Tax, Delhi (2018 VIL-506-DEL-CE), dated 31 October 2018.

The petitioners are telecom operators. They availed CENVAT credit of central excise duty paid on telecom towers, parts thereof, and shelters/ pre-fabricated buildings which house transmission equipment used for providing cellular telephone services. The revenue authorities disputed the availment of the credit on the ground that the telecom towers and shelters were immovable in nature and consequently did not qualify as 'input', as defined under the CENVAT Credit Rules, 2004 (CCR). Further, the said goods did not fall within the specified tariff heading and therefore did not qualify as capital goods', as defined under CCR.

Observation of the court on the question of telecom tower as immovable property: -

- The 'permanency test', as established by the Supreme Court in the case of Commissioner of Central Excise, Ahmedabad v Solid and Correct Engineering Works & Ors (2010 (5) SCC 122) (Solid and Engineering Works), is to be used to determine whether the equipment qualifies as immovable property or not. If the machinery or equipment is permanently fastened or embedded to the earth, it qualifies as immovable property. *However, if the machine is fastened merely to provide a wobble free operation, it would not qualify as immovable property.*
- In the present case, the entire tower and shelter is fabricated in the factory of the manufacturer and is supplied in a Completely Knocked Down (CKD) form. The equipment is fastened to the civil foundation for a 'wobble free operation' and to provide greater stability. A fixation which does not involve assimilation of the property and is necessary for a wobble free operation cannot be considered as an immovable property by applying permanency test.
- The tower/shelter may be unbolted and reassembled without any damage to any other location. There is no intent to annex the equipment to the earth permanently for the beneficial enjoyment of the land owner.



Hon'ble Supreme Court in following paras has held, -

37. On an application of the above tests to the cases at hand, this court sees no difficulty in holding that the manufacture of the plants in question do not constitute annexation and hence cannot be termed as immovable property for the following reasons:

- (i) The plants in question are not per se immovable property,**
- (ii) Such plants cannot be said to be "attached to the earth" within the meaning of that expression as defined in Section 3 of the Transfer of Property Act.**
- (iii) The fixing of the plants to a foundation is meant only to give stability, to the plant and keep its operation vibration free.**
- (iv) The setting up of the plant itself is not intended to be permanent at a given place.**

The plant can be moved and is indeed moved after the road construction or repair project for which it is set up is completed. 38. A machine or apparatus annexed to the earth without its assimilation by fixing with nuts and bolts on a foundation to provide for stability and wobble free operation cannot be said to be one permanently attached to the earth and therefore, would not constitute an immovable property. Thus, the tribunal erred in relying on the Bombay High Court in Bharti Airtel Ltd (supra). It is also important to understand that when the matter was carried out in the Bombay High Court and the judgment was delivered, the whole case proceeded on the presumption that these are immovable properties. The tribunal failed to appreciate the „permanency test as laid down by the Supreme Court in Solid and Correct Engineering (supra).

In present case also the test of permanency is required to be applied to see whether the machinery or equipment after installation is permanently fastened or embedded to the earth, so that the activity would be treated as "works contract "under GST.

The applicant carries out activity of supply/installation/erection and assembly of complete Air Conditioning plants on a building. It is required to ascertain that, merely by piping, drilling, grilling and fixing of the set of Air-conditioners with series pipe and ducts by which a structure like "Plant" is formed. Can this would result into immovable property?

In the present case, the fundamental issue which needs to be decided is whether the towers and shelters are movable or immovable property. In this regard, it would be useful to refer to the relevant statutory provisions to examine, what would constitute as moveable or immovable property. The expression "moveable property" has been defined in Section 3(36) of the General Clauses Act, 1897 as under: "Section 3(36): "movable property" shall mean property of every description, except immovable property,



It is obvious that the answer to the question whether installation of Air conditioners and ducts, pipes in question are movable property, would depend upon whether they are immovable property. That is because anything that is not immovable property is by its definition "moveable" in nature. Section 3 of the Transfer of Property Act, 1882 does not spell out an exhaustive definition of the expression "immovable property". It simply provides that unless there is something repugnant in the subject or context, 'immovable property under the Transfer of Property Act, 1882 does not include standing timber, growing crops or grass. Section 3(26) of the General Clauses Act, 1897, similarly does not provide an exhaustive definition of the said expression. It reads:

"Section 3(26): "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 plain a reading of Section 3 (26), shows that it defines "immovable property as 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.

In the activities conducted by the applicant the principle of permanency occurs first i.e. at the time of fixing of different goods used by the applicant in the activity of installation and the activity of dismantling comes only at the time of removing or destroying the Plant. The principle of permanency is required to be followed as at the time of transfer of property the incidence of tax is occurred and the activity of dismantling could not prove the test of fixation. As the activities carried out by the applicant does not involve assimilation with the property and the work carried out by the applicant is only making the plant for a 'wobble free operation'. And thus activity undertaken by the applicant cannot be considered as an immovable property by applying permanency test'. The issue is permanency is already decided by Hon'ble Supreme Court in case of Commissioner of Central Excise, Ahmedabad v Solid and Correct Engineering Works & Ors (2010 (5) SCC 122). Therefore, it is requested to follow the same ratio in present case.

If the ratio of Commissioner of Central Excise, Ahmedabad v Solid and Correct Engineering Works & Ors (2010 (5) SCC 122) is followed the activity of the applicant will be considered as supply of goods and being a natural bundle of goods + services the activity



would be considered as Composite supply and the rate of tax of principal supply will be applicable. Therefore, it is requested that the activity vide agreement dated 21.08.2018 as referred by the applicant would be termed as composite supply.

04. HEARING

Preliminary hearing in the matter was held on 26.03.2019. Sh. S. S. Gadkari, Advocate along with Sh. Nandkishor Nemade, Partner, Sopan Association of Advocate appeared and requested for admission of their application. Jurisdictional Officer Sh. Vivekanand Savle, Dy. Commissioner of S.T.(E-623), LTU-2, Mumbai appeared.

The application was admitted and called for final hearing on 03.05.2019. Sh. S. S. Gadkari, Advocate, appeared, made oral & written submissions. Jurisdictional Officer Sh. Vivekanand Savle, Dy. Commr. of S.T.(E-623), LTU-2, Mumbai also appeared and made written submissions.

05. OBSERVATIONS

We have gone through the facts of the case, documents on record and submissions made by both, the applicant as well as the jurisdictional office.

The applicant has submitted that they have entered into an agreement with Goa State Infrastructure Development Corporation Ltd. (GSIDC) for execution of "Additional Air conditioning work for the New building of Director of Education at Porvorim, Goa". The agreement dated 21 Aug., 2018, is for supply, installation, testing & commissioning of VRF Indoor & Outdoor Units suitable for R-410 Gas, refrigerant piping with insulation, drain piping with insulation, MS stands, Cabling, Additional Refrigerant and associated electrical works etc. Thus we find that they will be supplying various VRF Indoor and Outdoor units, stands, cables, etc, which will be installed by them. After installation of the said equipments, testing will be conducted to see whether the Air conditioning work has been done properly and after successful testing the commissioning would start.

On perusing the submissions of both, the applicant & the jurisdictional office, we find that the basic issue before us is whether in the subject case there is supply of Works Contract or Composite Supply. We shall therefore discuss all the provisions relating to Works Contract & Composite Supply. GST Sch.-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,*



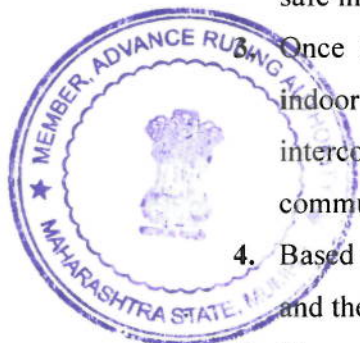
erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract"

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 that the good involved in the contract are mainly 5 Nos. Of 18 HP VRF outdoor units, 12 Nos. of VRF cassette units and 29 Nos. of VRF Hi-wall units of Voltas make and 29 drain pumps of aspen make, refrigerant pipes, indoor and outdoor Stands, Cables, cable tray, Insulation material, electrical goods etc. They have submitted details of the activities to be undertaken for completing their work as per the contract. Their activities include:

1. tender documents, drawings, etc are studied minutely and physical site survey is done to find the area to be air conditioned, Orientation of building, drain locations, etc.
2. Heat-load calculations are made, which depends upon application, building orientation, exposed glass area, wall thickness, number of people in the building, lighting and equipment heat generation. This would help them to understand requirement of types and capacities of equipment to get the Air-conditioning work done and select the same accordingly. Equipments are selected with respect to better efficiency, site constraint, it's performance, appropriate space for maintenance and best suitable for hassle free, safe installation.

3. Once machines are selected, detailed Shop drawing are drawn which includes indoor & outdoor locations, equipment installation details, the size and route of interconnecting copper pipes, size and route of cable trays, drain pipes, interconnecting communication cables and power cables, etc.

4. Based on shop drawings, the material and equipment required are quantified, procured and then delivered at site as and when required.
5. Then as per markings made in the shop drawings, respective supports are installed for indoor unit, copper pipes, cable trays and drain piping. **These supports are permanently fastened to the slab by means of female anchor fasteners, full threaded rod and angles.** The back plate of hi-wall unit is fixed to the wall. Similarly, cassette units are fixed from slab with the help of anchor fastener and full threaded rod. Then outdoor units are installed on MS Platform / stand which permanently fastened to Concrete foundation. Then multiple indoor units are connected to back of outdoor units. The interconnection pipe size and Y-Branch sizes are software generated. These software outputs are project specific to the project. The route of the piping to be strictly followed while execution. Then cable trays are fastened to the slab or wall by fastening



Female Anchor Fasteners to slab and then joined by using full threaded rods and supported by MS angle. Then there is drilling, fixing of saddle screw for the laying of communication and power cable and attaching of drain pipe is done.

6. After completion of Installation of the machines/Units and before closing of ceiling, pressure testing of the copper piping, Intermediate connections, Y- branching joints is carried out by using Nitrogen gas to check leakages. Vacumization of entire VRF Refrigeration system is done, start Commissioning procedure for VRF unit as per OEM guidelines, confirm that rooms are free of dust, secure with doors installed and then release Refrigerant gas from outdoor unit. Charge additional refrigerant gas as per the copper pipe sizes and overall length.

In view of the above the applicant has submitted that the equipment are fixed/ attached to earth or fixed/attached to something which is further fixed/attached to earth and therefore the equipments, etc. in question are nothing but immovable property. According to their contention, the said system when in place, becomes an Air-conditioning plant which cannot be taken from one place to another and is therefore immovable property. They have submitted that their central air-conditioning system should be treated differently from room air-conditioner or window air-conditioner, etc. In case of supply of air-conditioning plant, what is done by the contractor is to install a complete unit by itself, which is functional in all respects. Central Air-Conditioning Plant erected at the site of the client and by using different refrigeration equipments are not bought and sold like room/window machines or even splits or package units and cannot be installed like room/split air-conditioners. In the air-conditioning industry, these are undertaken as projects or AC jobs or works contract.

We find that applicant has installed/combined various equipments & are treating the entire units, components as one air-conditioning plant, which cannot be bought or sold as such. This understanding of the applicant is flawed. They themselves have submitted that their agreement dated 21 Aug., 2018, is for supply, installation, testing & commissioning of VRF Indoor & Outdoor Units suitable for R-410 Gas, refrigerant piping with insulation, drain piping with insulation, MS stands, Cabling, Additional Refrigerant & associated electrical works etc. & now they also are saying that the entire equipments must be treated as one plant, which is not acceptable. We find that every Indoor and Outdoor units, cabling, electrical works can be removed as such and therefore cannot be considered as immovable property.

Thus we find from their submissions and agreement that the contract is considering a clear demarcation of goods & services to be provided by the applicant. Now we have to decide whether the supplies are naturally bundled & in conjunction with each other as required by the

definition of composite supply. Hence we refer to the definition of 'Composite Supply' as mentioned in sub-section (30) of Section 2 of CGST Act, 2017 which is as under:-

'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'.

From the discussions made above we find that in the contract submitted by the applicant the major part of the contract is supply of goods. i.e. VRF Indoor & Outdoor Units, refrigerant piping with insulation, drain piping with insulation, MS stands, Cabling, Additional Refrigerant and associated electrical works etc. These goods are delivered to the client by the applicant and such goods that are supplied are used by the applicant to provide services of installation, testing and commissioning of the substations. Without these goods the services cannot be supplied by the applicant and therefore we find that the goods and services are supplied as a combination and in conjunction and in the course of their business where the principal supply is supply of goods. Thus we find that there is a composite supply in the subject case.

Now that we have found that there is no works contract involved in the subject case and the supply is nothing but a composite supply with supply of goods being the principal supply, we come to the second question raised by the applicant which is, whether their transaction is Composite supply liable to 14% being principal goods involved is Air-Conditioner which falls to cover under Schedule IV, Sr. no 119 of Notification No 1/2017 (Central tax rate) dated 28/06/2017.

The principal supply as mentioned above in this case is a supply of goods and therefore the GST will have to be paid on the goods at the appropriate rate after classification under the appropriate heading. The principal goods in the subject case is Air-conditioner units which are most important for the applicant to render supply as per the contract. We find that the final deliverable is nothing but ready to operate Air-conditioning System, which can control/cool the temperature of the rooms in the buildings/site.

We find from the GST Tariff that Air Conditioner units falling under Chapter 8415 are taxable @28% and covered under Schedule IV, Sr. no 119 of notification No 1/2017 (C.T. Rate) dated 28/06/2017. Hence the principal supply in their composite supply being goods as described under heading 8537, the applicant is liable to pay GST on the whole contract @ 28%.

In view of the fact that the subject agreement envisages a composite supply where the principal supply is supply of goods, we state that the subject supply cannot be considered as a 'mixed supply' because no individual supplies are made in the instant case.



05. In view of the extensive deliberations as held hereinabove, we pass an order as under:

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- 127/2018-19/B-

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Mumbai, dt.

24/05/2019

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

Question 1:- The transaction would be classifiable to cover under the definition of "works contact" liable to CGST/SGST/IGST covered under Sr. No 3 Item No. 3 of Notification No 20/2017 (Central Tax Rate) dated 22/08/2017.

Answer :- Answered in the negative.

Question 2 :- The transaction is Composite supply liable to tax at the rate applicable to Air-Conditioners which are the principal goods involved in the transaction under Schedule IV, Sr. No 119 of Notification No 1/2017 (Central Tax Rate) dated 28/06/2017.

Answer :- Answered in the positive.



—sd—
B. TIMOTHY
(MEMBER)

—sd—
B. V. BORHADE
(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, Churchgate, Mumbai
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.