

**AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH****Goods and Service Tax****O/o THE COMMISSIONER, COMMERCIAL TAX,****MOTI BUNGALOW,****MAHATMA GANDHI MARG, INDORE (M.P.) - 452007****e-mail :aar@mptax.mp.gov.in Phone : 0731- 2437315 fax. no. : 0731-2536229****PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING  
U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017****Members Present**

1. **Manoj Kumar Choubey**  
Joint Commissioner,  
Office of the Joint Commissioner of Commercial Tax, Indore Division-1
2. **Virendra Kumar Jain**  
Joint Commissioner,  
Office of the Commissioner,CGST and Central Excise, Indore

<b>GSTIN Number. If any/User-id</b>	<b>23AHNPD5948E1ZE</b>
<b>Name and address of the applicant</b>	<b>M/s Vihan Enterprises (Legal Name - Swati Dubey) H.No. 118, Shubhlaya Bungalows, Trilanga Main Road, Bhopal, 462039</b>
<b>Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised</b>	<b>b) Applicability of a Notification issued under the provisions of this Act.  c)Determination of time and value of supply of goods or services or both.</b>
<b>Present on behalf of applicant</b>	<b>Shree Sandeep Mukharjee, CA</b>
<b>Case Number</b>	<b>24 /2019</b>
<b>Order dated</b>	<b>16-01-2020</b>
<b>Order Number</b>	<b>05 /2020</b>

**PROCEEDINGS****(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)**

1. The present application has been filed u/s 97 of the Central Goods and Services Act,2017 and MP Goods and services Act, 2017 (hereinafter also referred to CGST Act and SGST Act respectively) by M/s Vihan Enterprises (hereinafter referred to as the Applicant), registered under the Goods & Services Tax.





2. The provisions of the CGST Act and MP GST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MP GST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

**3. BRIEF FACTS OF THE CASE:**

3.1. The applicant, M/s Vihan Enterprises is engaged in works contract. The applicant is engaged in inter alia, in construction of new 33 / 220 kV Pooling Substation at Badwar, REWA along with associated 220 kV DCDS Transmission line (Route length 3.0 Kms) and associated feeder bay work on total Turnkey basis against Bid Identification No. RUMS/2016-17/372/014 (Lot-I) under World Bank Financing for Rewa Ultra Mega Solar Limited, hereinafter referred to as RUMS.

3.2 The work was allotted vide Notification of Award No. 04-01/RUMS/2016-17/372/14 (Lot-I) / TK – II/89 dated 23.09.2016 read with revised Notification of Award No. 04-01/RUMS/2016-17/372/14 (Lot-I) / TK – II/119 dated 17.11.2016.

**4. QUESTIONS RAISED BEFORE THE AUTHORITY:-**

The following questions have been posted before the Authority in the application:-

4.1 Whether the explanation to Entry No. 234 of Schedule I to Notification No. 01/2017 – Central Tax (Rate), as amended from time to time, shall apply to construction of new 33 / 220 kV Pooling Substation at Badwar, REWA along with associated 220 kV DCDS Transmission line (Route length 3.0 Kms) and associated feeder bay work on total Turnkey basis against Bid Identification No. RUMS/2016-17/372/014 (Lot-I) under World Bank Financing?

4.2 Whether in the facts and circumstances of the case, value of all the goods supplied under the contract, independent of the Works Contract being executed in the contract shall form part of the Works Contract and taxed as service?

**5. CONCERNED OFFICER'S VIEW POINT:**

The concerned officer is his view point submitted that the Explanation to Entry No. 234 of Notification No. 1/2017 - Central Tax (Rate) and corresponding notifications issued under MP GST Act shall not apply to the supply of the said Works Contract Service.

**6. RECORD OF PERSONAL HEARING:**

6.1. Shree Sandeep Mukherjee, CA appeared for personal hearing and reiterated the submissions already made in the application. They reiterated the facts submitted along with the application. The Applicant states that –

6.2. The applicant is engaged, inter alia, in construction of new 33 / 220 kV Pooling Substation at Badwar, REWA along with associated 220 kV DCDS Transmission line (Route length 3.0 Kms) and associated feeder bay work on total Turnkey basis against Bid Identification No. RUMS/2016-17/372/014 (Lot-I) under World Bank Financing for Rewa Ultra Mega Solar Limited, hereinafter referred to as RUMS.

6.3. The work was allotted vide Notification of Award No. 04-01/RUMS/2016-17/372/14 (Lot-I) / TK – II/89 dated 23.09.2016 read with revised Notification of Award No. 04-01/RUMS/2016-17/372/14 (Lot-I) / TK – II/119 dated 17.11.2016.

6.4. The Scope of work given in para 4 of the Contract includes the following :



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a) Supply of Transmission Line material and Sub-station equipment, Station Transformers, Fabricated, Galvanized Sub-station Structures and other materials, with related civil works, erection work and test / commissioning for construction of substation;

b) Engineering, Manufacture, Assembly, Inspection and Testing at manufacturer's works and supply on FOR destination basis including transportation, unloading, storage, insurance of Plant / Equipment, materials and recommended spares complete in all respect as per technical specification;

c) Civil work as per specifications described in Volume – II of the Bid document.

d) Erection, Testing and Commissioning of all items indicated in Annexure – III and IV.

e) Supply, erection testing and installation fabricated, galvanized sub-station structures, stringing and earthing material, supplies testing and commissioning of all outdoor;/indoor plant. Civil work associated with construction of substation works.

f) Carryout erection work as stipulated in the Bid Document which involves fabrication, galvanizing and delivery of Double Circuit /Multi Circuit Towers, there body extensions, river / line crossing gantries, hangars, U Bolts, D Shackles, Bolts Nuts, spring washers, pack washers, step bolts, tower accessories, earthing rods with clamps, danger boards, number plates, face plates and anti-climbing devices (including fixing arrangements and barbed wire) and ground wire, ACSR Conductor, ground wire, disc insulators, hardware and accessories for conductor and ground wire and complete erection of transmission lines including detailed/check survey, casting of foundations, tower erection, stringing etc and testing of commissioning of transmission lines.

6.5. Under the contract, the list of materials and their cost is mentioned in detail in Annexures – I to V of the Contract, which fact is detailed in para 4.17.

6.6. The contract price at para 5.1 clearly mentions the rates for supply of goods and that for service of construction separately.

6.7. It is mentioned in para 7.11 of the contract that the Civil Works and the installation services are Works Contract and that VAT @ 2% shall be deducted from our bills.

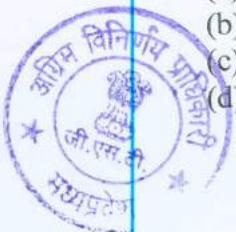
6.8. In accordance with the terms of the contract, the work was commenced and is being executed at present. Extract of the Relevant pages of the Contract are enclosed herewith, marked as Annexure – I.

6.9. After the amendment of Notification No. 1/2017 Central Tax (Rate) vide Notification No 24/2018 – Central Tax (Rate), read with Notification No. 11/2017 – Central Tax (Rate), as amended by Notification No. 27/2018 – Central Tax (Rate) and the corresponding notifications issued under MPGST Act, it was the opinion of Rewa Ultra Mega Solar Limited that the all the supplies of the goods and services being made under this contract was covered under the explanation to entry no. 234 in Schedule – I of the Notification No. 1/2017 – Central Tax (Rate) and the corresponding notifications issued under MPGST Act.

6.10. Based on such understanding, RUMS was of the opinion that on all the supplies of the contract, the rate of tax was 8.9%. However, in our opinion, the explanation in entry no. 234 supra is not applicable to the supplies made by us under this contract.

6.11. The entry no. 234 is for the supply of the following items :

- (a) Bio-gas plant
- (b) Solar power based devices
- (c) Solar power generating system
- (d) Wind mills, Wind Operated Electricity Generator (WOEG)



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(e) Waste to energy plants / devices

(f) Solar lantern / solar lamp

(g) Ocean waves/tidal waves energy devices/plants

6.12. The supplies made by them under the contract are not for any of the items listed above in 6.11 and therefore they were of the opinion that this beneficial notification was not applicable to them upto the explanation inserted in the Notification.

6.13. Under the contract, they are required to supply goods as well as provide construction service, which includes supply of material for construction. The value of the supply of materials independent of the services relating to construction is separately mentioned in the contract and invoices for the same are raised separately. Therefore, they charged GST at the rate applicable to the goods and have not included them in the value of the supply of construction service.

6.14. Regarding applicability of Entry No. 234 in Schedule – I of Notification No. 1/2017 – Central Tax (Rate) and the corresponding notifications issued under MPGST Act and Entry No. 38 in Notification No. 11/2017 – Central Tax (Rate) and the corresponding notifications issued under MPGST Act:

6.14.1. The provisions of law, which form the basis of the dispute of interpretation are Entry No. 234 in Schedule – I of Notification No. 1/2017 – Central Tax (Rate) and the corresponding notifications issued under MPGST Act and Entry No. 38 in Notification No. 11/2017 – Central Tax (Rate) and the corresponding notifications issued under MPGST Act.

6.14.2. Notification No. 1/2017 – Central Tax (Rate) contains the rate of CGST on goods being supplied. Entry No. 234 of Schedule – I of the said notification is as under:

S.No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
(1)	(2)	(3)
234	84 or 85	<p>Following renewable energy devices &amp; parts for their manufacture</p> <p>(a) Bio-gas plant</p> <p>(b) Solar power based devices</p> <p>(c) Solar power generating system</p> <p>(d) Wind mills, Wind Operated Electricity Generator (WOEG)</p> <p>(e) Waste to energy plants / devices</p> <p>(f) Solar lantern / solar lamp</p> <p>(g) Ocean waves/tidal waves energy devices/plants</p> <p>Explanation: If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 [G.S.R. 690(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service.</p>



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The explanation to the entry was added by Notification No. 24/2018 – Central Tax (Rate) dated 31.12.2018. Similar entry was incorporated in the corresponding notifications issued under MPGST Act.

6.14.3. Entry No. 38 was introduced as an amendment to Notification No. 11/2017 – Central Tax Rate vide Notification No. 27/2018 – Central Tax (Rate) dated 31.12.2018, which stated as under:

S.No.	Chapter, Section or Heading	Description Services	Rate (Per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
38	9954, 9983 or 9987	Service by way of construction or engineering or installation or other technical services, provided in relation of setting up of following, - (a) Bio-gas plant (b) Solar power based devices (c) Solar power generating system (d) Wind mills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants / devices (f) Ocean waves/tidal waves energy devices/plants <i>Explanation:-</i> This entry shall be read in conjunction with serial number 234 of Schedule I of the notification No. 1/2017- Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 673(E) dated 28th June, 2017.	9	-

Similar entry was incorporated in the corresponding notifications issued under MPGST Act.

6.14.4. Prior to 31.12.2018, in case of works contract service, where the supplies included any of the items included in Sl.No. 234, such were taxed at the rate applicable to the Works Contract under which the goods were being supplied, i.e. 18%. Even though the supply of the goods was taxable @ 5%, but owing to the composite nature of supply, the goods and the service were taxed in aggregate @ 18%.

6.14.5. To remove this anomaly, the explanation was added, along with introduction of Entry No. 38 in Notification No. 11/2017 – Central Tax (Rate) and in corresponding notifications issued under MPGST Act. which stated that out of the gross value of the supply, 70% shall be deemed to be on account of goods and 30% was deemed to be on account of service. Accordingly, the effective rate came to 8.9% as under:

S.No.	Particulars	% of value	Rate of tax	Effective Rate of tax
1.	Goods	70	5%	3.5 %
2.	Services	30	18%	5.4%
Total				8.9%



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6.14.6. This fact was clarified in Press Release by the Board, communicating the recommendations made during 31st meeting of the GST Council held on 22nd December, 2018 (New Delhi) vide C.B.I. & C. Press Release No. 78/2018, dated 22-12-2018. The relevant extract of the Press Release is reproduced hereunder:

III. GST on solar power generating plant and other renewable energy plants

- GST rate of 5% rate has been prescribed on renewable energy devices & parts for their manufacture (bio gas plant/solar power based devices, solar power generating system (SGPS) etc.) [falling under chapter 84, 85 or 94 of the Tariff]. Other goods or services used in these plants attract applicable GST.
- Certain disputes have arisen regarding GST rates where specified goods attracting 5% GST are supplied along with services of construction etc. and other goods for solar power plant.
- To resolve the dispute the Council has recommended that in all such cases, the 70% of the gross value shall be deemed as the value of supply of said goods attracting 5% rate and the remaining portion (30%) of the aggregate value of such EPC contract shall be deemed as the value of supply of taxable service attracting standard GST rate.

6.14.7. The benefit of the notification was for the goods being supplied and not for the services being supplied. If and when the goods covered under Entry No. 234 supra were supplied along with services of the nature contemplated in Entry No. 38 supra, the benefit was available. The primary condition therefore was supply of items covered under Entry No. 234. The entry refers to "renewable energy devices & parts for their manufacture". Supply of ancillary / incidental goods or services are not included in the Entry.

6.14.8. The contract that they have been allotted is for construction of new 33 / 220 kV Pooling Substation at Badwar, REWA along with associated 220 kV DCDS Transmission line (Route length 3.0 Kms) and associated feeder bay work on total Turnkey basis. they are NOT engaged in supply of -

- (a) Bio-gas plant
- (b) Solar power based devices
- (c) Solar power generating system
- (d) Wind mills, Wind Operated Electricity Generator (WOEG)
- (e) Waste to energy plants / devices
- (f) Solar lantern / solar lamp
- (g) Ocean waves/tidal waves energy devices/plants or their parts.

6.14.9. The Applicant stated that their work starts after the Solar Power is generated through Solar Power Generating System. They are engaged in Evacuation of the power generated by the Solar System. The Solar Power is supplied to the Sub-Station that is set up by us. From this sub-station, the power is further transmitted for supply.

6.14.10. The work done by them is identical to the work done for any other Power Generating System, be it Hydro Power, Thermal Power or any Power Generating System.

6.14.11. After electricity is generated in power plant, its transmission is done by using step-up transformers that increases the voltage. This high voltage electricity is transmitted through a network of electrically conductive wires of aluminium or copper. These lines are called high-voltage transmission lines that can transmit electricity over long distances. Thereafter, electricity is distributed via electric distribution substation. At the substation, the high voltage electricity from the high-voltage transmission lines is passed through step-down transformers that lower the voltage. The electricity is then transmitted to network of local electric distribution lines. Before electricity enters a home, the voltage is



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again lowered using step-down transformers. In most countries the voltage is 220 V AC or 110 V DC. In a home, electricity is distributed to different outlets by network of wires through electrical wiring.

6.14.12. The Applicant's role in this system is limited to construction of Sub-station at Badwar, REWA along with associated 220 kV DCDS Transmission line (Route length 3.0 Kms) and associated feeder bay work. They are neither engaged in construction of Power Plant nor in supplying any renewable energy devices & parts for their manufacture.

6.14.13. The items that we supply in the execution of this contract do not fall under the Entry No. 234 supra but are items that fall under Chapter 84 or 85.

6.14.14. For the reasons stated above, in their opinion GST is leviable @ 18% of the Works Contract Services being provided by them.

6.15. Regarding taxability of goods supplied independent of works contract:

6.15.1. During the course of the execution of the work, they are engaged in two kinds of supplies, one is supply of goods and the other is supply of services in the nature of a Works Contract.

6.15.2. The scope of work in the contract is explicitly clear in this regard, in so far as the Value of both kinds of supplies is separately mentioned in the body of the contract itself. In this regard, kindly refer to para 4.17 of the contract and Annexures – I to V of the contract.

6.15.3. Further, the fact that the execution of the work under the contract involves Works Contract also, it duly stated in the contract itself. In this regard, kindly see para 7.11 of the contract, which states as under:

*“7.11 The Civil Works and Installation Services (installation, erection, testing & commissioning) part of the contract is work contract, therefore VAT (Present rate-2%) will be applicable on this part of the contract which shall be deducted by RUMS from your bills before release of payment.”*

6.15.4. Accordingly, the supply of goods, which are independent of the Civil Works or Installation Services are taxed at the rates applicable to the goods. The goods supplied alongwith the construction services where such supplies are part of the construction service, as referred to in the contract at para 7.11 of the contract, their value is clubbed with the value of the construction services and taxed accordingly.

6.15.5. In their opinion, only because the supply of goods and supply of works contract service is specified in the same contract, the whole of the supply does not become a works contract. Only where transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract, then such value of such goods form part of the Works Contract.

## 7. DISCUSSIONS AND FINDINGS:

7.1. We have carefully considered the submissions made by the applicant in the application and during time of personal hearing.

**The first issue is regarding applicability of explanation to Entry No. 234:**

7.2. In the GST laws, Works Contract is defined under section 2(119). The text of the provision is as under:

*“(119) “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*



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wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;”

Work Contract, by way of deeming provision is treated to be a supply in the nature of a service and is taxed as a service as per the rate applicable, notified in Notification No. 11/2017 – Central Tax (Rate) and corresponding notifications issued under MPGST Act. The value of the goods whose property is transferred during the execution of the works contract is included in the assessable value of the supply.

7.3. Irrespective of the rate of tax on the goods whose property is transferred during the execution of the works contract, the whole of the value of the supply is taxed as service and the value of goods component is included in the value of the supply. Therefore, irrespective of the rate of tax on the goods being supplied during the course of the execution of the Works Contract, the tax rate applied on the supply is the rate applicable on the type of works contract being executed.

7.4 In the case of goods covered under Sl. No. 234 of the Notification, where the goods are supplied under a Works Contract, where the transfer of property in the goods is involved in the execution of such contract, such goods were taxed at the rate applicable to the Works Contract under which the goods were being supplied, i.e. 18% or such other rate as may be applicable on such supply of works contract service, even though the supply of the goods was taxable @ 5% if supplied otherwise than under a Works Contract.

7.5 So as to remove this anomaly, an explanation was added to Entry No. 234 in Notification No. 1/2017 – Central Tax (Rate) and corresponding notifications issued under MPGST Act, along with introduction of Entry No. 38 in Notification No. 11/2017 – Central Tax (Rate) and corresponding notifications issued under MPGST Act which stated that out of the gross value of the supply, 70% shall be deemed to be on account of goods and 30% was deemed to be on account of service in certain cases. This amendment brought the effective rate of tax on the supply to 8.9%.

7.6 The explanation to Entry No. 234 states that the deemed bifurcation of the value of supply into goods and services shall be made where, the goods specified in Entry No. 234 are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38. Thus, this explanation is applicable to supply of goods in Entry No. 234, where such supplier is engaged in supply of goods or service which is to be taxed under Entry No. 38.

Entry No. 38 covers service by way of construction or engineering or installation or other technical services, provided in relation of setting up of the goods that are listed in Entry No. 234.

It is worth noting that the wording of Entry No. states that construction services are “in relation of”, thus, there may be situations, where construction or engineering or installation or other technical services are being provided in relation of setting up of Bio-Gas Plants, Solar Plants etc., as mentioned in Entry No. 38, but such service does not include supply of the goods listed in Entry No. 234. In such cases, the explanation to Entry No. 234 shall not be attracted.



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To summarize, the applicability of deemed bifurcation of the value of supply into goods and services is where the goods mentioned in Sl.No. 234 are being supplied along with or under a Works Contract of the nature covered in Entry No. 38.

The list of goods in the Entry is exhaustive and not in the nature of an inclusive list. Thus for the applicability of the Notification, the supply has to be of an item mentioned in Entry No. 234 or parts of items mentioned in the Entry.

7.7 From the agreement the applicant has entered into with RUMS, it is seen that the applicant has been awarded a contract, where some of the supply is in the nature of a Works Contract and the contract relates to solar power. Solar Power Plants are included in the list given in Entry No. 234 of the Notification.

The question therefore arises as to the rate of tax that shall be applicable on the supply being made under the contract i.e., whether the supply shall be that of goods, falling under Entry No. 234, or supply of service in the nature of a works contract, attracting tax under Entry No. 38.

7.8 From perusal of the contract, it is seen that the contract is in relation to a Solar Power Plant, which finds mention in Entry No. 234. However, the goods being supplied in the execution of the works contract are not covered in Entry No. 234. The goods being supplied by the applicant are not renewable energy devices or their parts. The relation of the work being done by the applicant and renewable energy is that the electricity being generated by the renewable energy plant is evacuated by the infrastructure erected by the applicant. It is further seen that during the course of the execution of the works contract, the applicant is not supplying any of the items listed in Entry No. 234. Further, Entry No. 38 is for service by way of construction or engineering or installation or other technical services in relation to items listed in Entry No. 234 and explanation to Entry No. 234 states that where any item listed in the entry is supplied along with a service covered in Entry No. 38, the rate of tax shall be as per the Explanation to Entry No. 234.

It is very clear in the explanation that for the explanation to apply, the supply of goods listed in Entry No. 234 along with service listed in Entry No. 38 is essential. Therefore, unless the goods listed in Entry No. 234 are supplied too, the explanation to this entry no. 234 shall not be applicable.

7.9 It is pertinent to note that the explanation which provides for splitting the value of the supply into goods and supplies is in Entry No. 234 and not in Entry No. 38. The contention that supply of the goods in Entry No. 234 is essential is further supplanted by the inclusion of the explanation in Entry No. 234.

7.10 It therefore appears that in case of a Works Contract, the explanation to Entry No. 234 shall apply if and only if, the goods the title in which is/are being transferred during the execution of Works Contract find a place in Entry No. 234. Works Contract in relation to any of the goods listed in Entry No. 234, where such goods are not part of the Works Contract shall not merit taxation under Entry No. 234.

**The second issue is regarding rate of tax on goods supplied under the contract:**

7.11 From the contract entered into by the applicant, it is seen that the contract is in the nature of a Turnkey Contract and has been divided into different parts. The whole contract is





a single contract but the activities are clearly defined and segregated, with the values for each segregated supply being duly stated in the Annexures to the Agreement.

The contract price of the Agreement is also mentioned separately in para 5.1 of the contract. The para states the value of supply separately for :

- Equipment for Sub-Station and Feeder Bays;
- Material for Transmission Line;
- Erection Testing and Commissioning of Outdoor and Indoor Equipment;
- Erection Testing and Commissioning of Transmission Line and
- Civil Work for Substation and Feeder Bay.

Annexure I to V of the agreement contains the detailed item-wise break-up of the cost.

7.12 These separate activities in aggregate form the Turnkey contract, but the contract is divisible into independent activities and values of such independent activities are also ascertainable under the contract. Each independent activity has a value assigned to it with detailed list of Equipment and Materials which form part of the independent contract within the contract.

Under the GST Act, where transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract, then the value of such goods is subsumed in the value of the supply of the works contract service and is not taxed as goods. The contract, in this case, it self identifies such portion of the contract and has identified this defined segregation in the Para 7.0 relating to taxes and duties. The relevant extract of the para is as under:

“7.11 The Civil Works and Installation Services (installation, erection, testing & commissioning) part of the contract is work contract, therefore VAT (Present rate- 2%) will be applicable on this part of the contract which shall be deducted by RUMS from your bills before release of payment.”

7.13 Thus the contract identifies the goods that form part of the works contract and goods that form part of supply as goods and not as part of a works contract. Also, unless the goods being supplied are part of contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property, they shall not form part of Entry No. 38 and it is explicitly clear in the contract, where the goods are part of the construction activity and otherwise. The work related to supply of goods, civil construction and erection are clearly delineated in the contract.

In the supply of equipment for Sub-Station and transmission line, transfer of property is not in the execution of a works contract, but during the course of Erection Testing and Commissioning, as well as in the execution of the Civil Construction work, there is transfer of title in goods during the course of the execution of the contract. Therefore, in the supply of equipment for Sub-Station and transmission line, the supply is that of goods and accordingly the rates given in Notification No. 1/2017 – Central Tax (Rate) and corresponding notifications issued under MPGST Act shall apply. Further in the case of Erection Testing and Commissioning, as well as in Civil Work for Substation, the supply shall be taxed as service and rates applicable to a Works Contract shall apply.



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## 8. RULING

(Under section 98 of Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)


In view of deliberation above we pass the advance ruling as under-


8.1. Goods listed in Entry No. 234 of Notification No. 1/2017 - Central Tax (Rate) and corresponding notifications issued under MPGST Act are not part of the supply and therefore, the Explanation to Entry No. 234 of Notification No. 1/2017 - Central Tax (Rate) and corresponding notifications issued under MPGST Act shall not apply to the supply of works contract service in contract of construction of new 33 / 220 kV Pooling Substation at Badwar, REWA along with associated 220 kV DCDS Transmission line (Route length 3.0 Kms) and associated feeder bay work on total Turnkey basis against Bid Identification No. RUMS/2016-17/372/014 (Lot-I) under World Bank Financing for Rewa Ultra Mega Solar Limited.

8.2 Supply of goods under a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property are included in the value of contract for supply of service only where the transfer of property in goods (whether as goods or in some other form) is involved in the execution of the contract. Goods supplied under a Turnkey Contract, where there are multiple independent contracts, of which some are not in the nature of Works Contract, shall not be included in the value of contract in the nature of a works contract merely on account of the fact that goods are being supplied under Turnkey Contract, part of which is in the nature of a Works Contract, unless such supply of all such goods is a part of and made in the execution of a works contract.

The supply of equipment and materials for Sub-stations, Feeder Bays and Transmission line under contract of construction of new 33 / 220 kV Pooling Substation at Badwar, REWA along with associated 220 kV DCDS Transmission line (Route length 3.0 Kms) and associated feeder bay work on total Turnkey basis against Bid Identification No. RUMS/2016-17/372/014 (Lot-I) under World Bank Financing for Rewa Ultra Mega Solar Limited shall not be included in the value of the Works Contract for Civil Work for Substation and Feeder Bay ..

8.3 This ruling is valid subject to the provisions under section 103(2) until and unless declared void under Section 104(1) of the GST Act.

  
Virendra Kumar Jain  
(MEMBER)

  
MANOJ KUMAR CHOUBEY  
(MEMBER)

Copy to:- No. 24/2019/A.A.R./R-28/09 Indore, date-16-01-2020

1. Applicant
2. The Chief Commissioner, CGST& Central Excise, Bhopal Zone, Bhopal
3. The Commissioner(SGST) Indore
4. The Commissioner, CGST& Central Excise, Indore
5. The Concerned Officer
6. The Jurisdictional Officer – State/Central

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