

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

GSTIN Number. If any/User-id	23AAECD4519B1Z8
Name and address of the applicant	M/S DEE VEE PROJECTS LIMITED VILLA EMERALD UNIT NO. 27 VIYAYU ENCLAVE PHASE II, SILVER SPRINT TOWNSHIP INDORE Madhya Pradesh(452020)
Point on which advance ruling sought	(b) applicability of a notification issued under the provisions of this Act; (e) determination of the liability to pay tax on any goods or services or both;
Present on behalf of applicant	Mr. Singal sushil Kumar,CA
Case Number	.05.../2020
Order dated	28.08.2020
Order Number	14/2020

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. M/S DEE VEE PROJECTSLIMITED(hereinafter referred to as the Applicant) is engaged in works contract. The Applicant is having a GST registration with GSTIN 23AAECD4519B1Z8.**



2. The provisions of the CGST Act and MPGST 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 MPGST 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 –**

The applicant is engaged in works contract by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration.

4. **QUESTION RAISED BEFORE THE AUTHORITY -**

1. What is rate of tax applicable to the composite supply of works contract as defined in clause (119) of Section 2 of Central Goods and Services Act, 2017 (The Act), undertaken by the supplier (applicant) i.e., whether the GST rate 18% or 12% is to be charged by the supplier?

2. If the GST rate 18% (9% CGST+ 9% SGST) as prescribed in serial no. 3, against heading no. 9954 (construction services), specified in Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017, is the rate applicable to the nature of works contract undertaken by the applicant, kindly clarify the following related aspects also:

The Notification No. 1.1/2017-Central Tax (Rate) dated 28th June 2017 has been amended by:

- I. Notification No. 20/2017-Central Tax (Rate), dated 22nd August, 2017
- II. Notification No. 24/2017-Central Tax (Rate), dated 21st September, 2017

Wherein the GST rate of 12% (6% CGST + 6% SGST) has been notified in respect of works contract as defined in clause (119) of Section 2 of the Act.

if so, whether the amendment through Notification No. 20/2017 and 24/2017 will be effective from the date of Notification No. 11/2017 and whether it would be in order for the applicant (supplier) to charge GST at the rate of 12% (6% CGST+6% SGST) or is the GST rate 18% (9% CGST 9% SGST) applicable to the nature of works contract undertaken by the applicant?

5. **DEPARTMENT VIEW POINT –** The concerned officer has opined that no specific works contract has been mentioned in the application hence the first question cannot be answered and the said amendment will be applicable from the date of publication of the notification in the official gazette.

6. **RECORD OF PERSONAL HEARING -**



- 6.1. Mr.SingalSushil Kumar, 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 in works contract by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –
 - a) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or(iii) an art or cultural establishment.
 - b) a road, bridge, tunnel, or terminal for road transportation for use by general public;
 - c) a civil structure or any other original works pertaining to the “Beneficiary led individual house construction/ enhancement” under the Housing for All (Urban) Mission/PradhanMantriAwasYojana;
 - d) railways, excluding monorail and metro;
 - e) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.
- 6.3. Subsequently, the Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017 was amended by the following notifications:
 - i) Notification No. 20/2017-Central Tax (Rate), dated 22nd August, 2017
 - ii) Notification No. 24/2017-Central Tax (Rate), dated 21st September,2017 Based on aforesaid notification the applicant has charged and paid CGST at the rate of six percent. Similarly the SGST was also charged at the rate of six percent on the services provided in between July to September, 2017.
- 6.4. Question is what will be the date of effectiveness of notification no.20/2017 and notification no. 24/2017 reducing the tax rate to 12% instead of 18%. As it mentioned in both the notifications that “In the said notification, in the Table, against serial number 3, for item (vi) in column (3) and the entries relating thereto columns (3),(4) and (5), the following shall be Substituted, namely.....”
- 6.5. Statement containing the applicant’s interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s) (i.e. applicant’s view point and submissions on issues on which the advance ruling is :
 - (i) The serial number 3 of Notification Number 11/2017 dated 28th June,2017 relating to Construction Services was amended by Central government on recommendation of Council in public interest through notification Number 20/2017 dated 22nd August,2017 and 24/2017 dated 21st September,2017.
 - (ii) Through this amendment notification the rate of tax for Works contract supplied to Central Government, State Government , Governmental authority , Local Authority was reduced from 18% (CGST 9% and SGST 9%) to 12% (CGST 6% and SGST 6%). However as per the wording of the amended notification (i.e.20/2017 and 24/2017) it substitutes notification no.11/2017 substituting rate of tax from 18% to 12%, so it is interpreted that the rate of GST is 12% w.e.f.1st July, 2017.
 - (iii) Based on the said notifications, the applicant has charged the tax Component and collected and discharged GST Liability at Rate 12% (CGST 6% and



SGST 6%) on invoices issued from 01st July, 2017 itself, and with the presumption, that the rate of GST has been amended w.e.f. 1st July 2017, as the intention of the Honourable GST Council.

- (iv) As it is nowhere mentioned in the notifications itself the date of changes in Rate of GST or effectiveness of the Notification and the rate of GST be applicable, but with the conclusion of the 20th GST Council meeting on 5th August 2017 (a copy of the Details of Decision taken is being enclosed herewith for your kind perusal (ANNEXURE – E)) and it was announced that the Tax Rate of GST on the above services is being reduced from 18% to 12%.

6.6 The applicant further submits that, again the 21st GST Council Meeting Held on 9th September 2017 and corrected a lacuna left in the 20th GST Council Meeting regarding Works Contract Services as defined in Clause 119 of Section 2 of the GST Act.

6.7 The applicant in summary is of opinion that, it is the presumption and interpretation taken from the above episode that the Intention of the Honourable GST Council was only to reduce the Tax rate from very beginning from 18% to 12%.

6.8 Hence the applicant has approached before the authority with the details narrated above for the judicious interpretation of the ambiguity raised due to the above notifications.

7. DISCUSSIONS AND FINDINGS –

7.1. We have carefully considered the submissions made by the applicant in the application, the pleadings on behalf of the Applicant made during the course of personal hearing and the Department's view provided by the jurisdictional officer.

7.2. We find that the extant application seeks Ruling on two questions even though the questions have been placed in para 13 of the application instead of para 14 of the application:

1. What is rate of tax applicable to the composite supply of works contract as defined in clause (119) of Section 2 of Central Goods and Services Act, 2017 (The Act), undertaken by the supplier (applicant) i.e., whether the GST rate 18% or 12% is to be charged by the supplier?

2. If the GST rate 18% (9% CGST+ 9% SGST) as prescribed in serial no. 3, against heading no. 9954 (construction services), specified in Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017, is the rate applicable to the nature of works contract undertaken by the applicant, kindly clarify the following related aspects also:

The Notification No. 1.1/2017-Central Tax (Rate) dated 28th June 2017 has been amended by:

- I. Notification No. 20/2017-Central Tax (Rate), dated 22nd August, 2017
- II. Notification No.24/2017-Central Tax (Rate), dated 21st september,2017

Wherein the GST rate of 12% (6% CGST + 6% SGST) has been notified in respect of works contract as defined in clause (119) of Section 2 of the Act.



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if so, whether the amendment through Notification No.20/2017 and 24/2017 will be effective from the date of Notification No. 11/2017 and whether it would be in order for the applicant (supplier) to charge GST at the rate of 12% (6% CGST+6% SGST) or is the GST rate 18% (9% CGST 9% SGST) applicable to the nature of works contract undertaken by the applicant?

- 7.3. Regarding the rate of GST on the Composite Supply of Works Contract, it may be noted that the rate applicable is dependent on the nature of the supply. The amendments made by Notification Nos 20/2017 – Central Tax (Rate) and 24/2017– Central Tax (Rate) have notified different rates for different nature of works. In Notification Nos 20/2017 – Central Tax (Rate) Entry No. (iii) of the Notification has specified the recipient of the supply for which the rate is applicable. Entry No. (iv) and (v) are for specific type of supply within the four corners of a Composite Supply of Works Contract.

Again, in Entry No. (vi) in Notification Nos 24/2017 – Central Tax (Rate), service as well as the recipient has been specified.

Thus the notifications clearly state the rate applicable on satisfaction of twin condition of the nature of the supply and the recipient.

The applicant has neither given the particulars of the specific nature of the work done by the applicant nor the particulars of the recipient of the supply. Copies of Work Orders are also not on record. Therefore, in the absence of the relevant and necessary information, we are unable to answer the first query of the applicant relating to the rate of tax applicable to the Composite Supply of Works Contract provided by the applicant.

- 7.4. Regarding the effective date of Notification relating to the applicable rate of tax on a supply, we refer to Section 9(1) and 2(80) of the Act, which states as under:

Notification of rate of tax

SECTION 9. Levy and collection. — (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

The term “notified” has been defined under the Act. The text of the provision is as under:

Section 2(80) “notification” means a notification published in the Official Gazette and the expressions “notify” and “notified” shall be construed accordingly;

- 7.5. In Civil Appeal No. 6071 of 1999, Union of India Versus M/s Ganesh Das Bhojraj the Honorable Supreme Court has held that the effective date of a notification is the date



of the publication in the official gazette. The Hon'ble Supreme Court has upheld the decision in Pankaj Jain Agencies Vs. UOI & Other (1994) 5 SCC 198 and have reiterated the decision in B. K. Srinivasan & Others Vs. State of Karnataka & Other (1987) 1 SCC 658, 672, that notification will take effect only when it is published through the customarily recognized official channel viz. the official gazette.

- 7.6. A combined reading of the provisions of Section 9(1), 2(80) of the Act and the Apex Court order in the matter of Ganesh Das Bhojraj leads to the conclusion that the effective date of a Notification is the date of its publication in the Official Gazette.
- 7.7. However, it may be noted that the provisions and the judgement of the Honorable Apex Court is with respect to a Notification, in which the effective date has not been specifically mentioned. Where the date on which notification is to take effect is mentioned in the body of the notification itself, the effective date shall be such date.
- 7.8. In case of a notification in the body of which the effective date is not written, the effect of the amending notification thus shall be the date on which the amending notification is published in the Official Gazette. Therefore, the effective date for the levy of the amended rate of tax as per amended Notification No. 11/2017 – Central Tax (Rate) shall be the date on which Notification No. 20/2017 – Central Tax (Rate) and Notification No. 24/2017 – Central Tax (Rate) were published in the Official Gazette.

8. Ruling

8.1 In respect of Question regarding the rate of tax applicable on the Composite Supply of Works Contract, we are unable to answer the question on account of insufficient information provided by the applicant.

8.2 In respect of the effective date of the amendments to Notification No. 11/2017 – Central Tax (Rate) vide Notification No. 20/2017 – Central Tax (Rate) and Notification No. 24/2017 – Central Tax (Rate) asked by the applicant shall be the date of publication of the Notifications in the Official Gazette.

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

(Manoj Kumar Choubey)
(Member)

Copy to:- NO. 06/2020/A-A-R/R-28/33

(Virendra Kumar Jain)
(Member)

INDORE dated 28/08/20

1. Applicant
2. The Principal 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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