

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

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PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING
U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017

Members Present

1. Shri Manoj Kumar Choubey
Joint Commissioner

Office of the Joint Commissioner of Commercial Tax, Indore Division-1

2. Shri Virendra Kumar Jain
Joint Commissioner

Office of the Commissioner CGST and Central Excise, Indore

GSTIN Number. If any/User-id	23AFYPM0856K1ZW
Name and address of the applicant	M/S SAISANKET ENTERPRISE, 21- ELECTRONICS COMPLEX, GROUND FLOOR, PARDESHIPURA, INDORE MADHYA PRADESH 452003.
Point on which advance ruling sought	(e) determination of the liability to pay tax on any goods or services or both;
Present on behalf of applicant	Shri Amit Sheode, Authorized Representative
Case Number	14/2020
Order dated	10/12/2020
Order Number	20/2020

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. The Applicant Saisanket Enterprises(hereinafter referred to as the Applicant) is a Works Contractor engaged in executing irrigation related works contracts. The Applicant is duly registered under the CGST/SGST Act in various states. In the State of Madhya Pradesh {MP} the Applicant is registered holding GSTN 23AFYPM0856K1ZW.

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 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 had received a sub contract from M/s Navavuga Engineering Company Ltd holding GSTN 23AAAACN7396RIZP: By virtue of agreement dated 19-08-2015, the Applicant is executing certain works contracts pertaining to Narmada Valley Project. The said works Is part of the work entrusted to M/s Navayuga Engineering Company Ltd by the Narmada Valley Development Authority of M P Government for executing the work of dam in the State of MP.

3.2 On 01-07-2017 GST has been implemented in India replacing excise law, service tax/VAT. By virtue of the enactment the aforesaid contract between the applicant and M/s Navayuga stands governed by GST in the matter of Indirect Taxes, The Government of India has issued certain notifications under the CGST Act which have been co enacted MP for the State of MP. The relevant notifications are:

Notification no 11/2017 (T (R) as amended on 22-08-2017 which runs as under:

(iii) Composite supply of works contract as defined 6 in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied to the Government, a local authority or a Governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, -

(a) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

(b) canal, dam or other irrigation works;

(c) pipeline, conduit or plant for (i) water supply (ii) water treatment or (iii) sewerage treatment or disposal.

3.3 M/s Navyuga Engineering Company Ltd was collecting & paying tax @ 12% as per the above notification on its works contract agreement with the Narmada Valley Authority. Hence for the period from 22-08-2017 the applicant has raised invoices with 12% tax to M/s Navyuga Engineering Company Ltd. The turnover of invoices issued between September 2017 to January 2018 is Rs 140917374/- {taxable turnover}. Meanwhile another entry number (vi) was added to the list Vide notification no 24/2017 with effect from 1-09-2017 to notification 11/2017 referred to above, that laid down as under :-

(vi) Services provided to the Central Government, Union Territory, a local



authority or a authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of-

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a structure meant predominantly for use as (i) an educational, (ii) a Clinical, or (iii) an art or cultural establishment; or

(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule 111 of the Central Goods and Services Tax Act, 2017,

3.4 On 25-01-2018 & w.e.from 25-01-2018 few more entries were added to the above list in notification 11/2017 namely entry (ix) that runs as under:

ix) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (iii) or item (vi) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity	6	Provided that where these services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.
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3.5 As aforesaid the above entry lays down that the rate of tax applicable to a sub contractor shall be 12% if the sub contract work is in full or part a work that supplies to Government & attracts 12% tax in the hands of the principal contractor, The entry has been made effective from 25-01-2018.

3.6 On 20-03-2020, the Officers of DGGSTI visited the place of business of the applicant allegedly by exercising their powers under Section 67 of the Act. It may be noted that the officers have not found any discrepancy till date within the meaning of Section 67(1), Despite the same they have confiscated a pen drive containing commercial data u/s 67(2). The only point raised by the said officers till date, as evidenced by their letters dated 21-05-2020 & 08-06-2020 concerns the tax liability of a sub contractor in respect of works contracts that are liable to tax @ 12% at the hands of principal contractor.

In view of the above facts the applicant poses the following question for determination by the Hon'ble Advance Ruling Authority

"What is (ate of tax applicable to a sub contractor, where, he executes works contract pertaining to dam, wherein the principal contractor is liable for tax @ 12%, for the period from 22-01-2017 to 25-01-2018? "

ARGUMENTS OF THE APPLICANT

3.7 The applicant respectfully submits that the issue raised by the DGGSTI officers does not come within the ambit of Section 67(1) that



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requires suppression of transaction of supply or stock or excess claim of Input Tax Credit While fully admitting the authority of DGGSTI to conduct proceedings u/s 67 in the above circumstances, the applicant is at loss to understand how the issue of rate of tax of sub contractor where the principal contractor is liable @ 12% falls within Section 67. To claim that the issue falls within the term "contravention of any provisions of Act or Rules to evade tax" would be overreach of powers granted u/s 67 on present facts. The above issue, in the respectful submission of the applicant is a pure issue/ dispute on point of law & exercise of powers u/s 67 in the present facts does not entail any intelligence activity, in the respectful submission of applicant. For the aforesaid reasons the applicant respectfully submits that there is no proceeding pending against the applicant on which a Advance Ruling is sought. Even if one was to assume, that the proceeding amounts to a proceeding within the meaning of proviso to Section 98(2), the applicant submits that the issue raised in the present Advance Ruling falls outside the ambit of Section 67(1) &/or mere issue of letters for payment of differential tax does not amount to a proceeding, such as is contemplated by proviso to Section 98(2) to prohibit the applicant from seeking the Advance Ruling.

3.8 The issue of parity In the rate of tax to be applied to sub contractors where their principal contractors are enjoying concessional rate of tax has been favourably decided by the GST Council in its 25th Council in favour of the Sub contractors & consequently notification no. 11/2017 was amended & clause (ix) reproduced at Para no 5 above was inserted with effect from 25-01-2018, It may be noted that the Council did not deliberate on whether to give a prospective effect or retrospective effect. However it fully endorsed the view that there ought to be parity of tax between the contractor & sub contractor.

3.9 The issue as to whether the notification referred to above in Para no .5 is clarificatory & hence retroactive before 25-01-2018 has been addressed by quite a few Advance Ruling Authorities namely:

- (a) In Re: S P Singla Construction Private Ltd { Punjab AAR dated 06-09-2019}
- (b) In Re: NHPC Ltd (Uttarakhand AAR dated 22-10-2018)
- (c) In Re: Mary Matha Construction Company (Kerala AAR dated 26-09-2018)
- (d). In Re: shree Construction (Maharashtra AAR dated 11-07-2018).

In all the above Advance Rulings the Authorities have reiterated that the rate of tax for sub contractor shall be the same as that for the principal contractor right from the date of notification 11/2017 i.e, 22 -08- 2017.

4. QUESTION RAISED BEFORE THE AUTHORITY –

"What is rate of tax applicable to a sub contractor, where, he executes works contract pertaining to dam, wherein the principal contractor is liable for tax @ 12%, for the period from 22-01-2017 to 25-01-2018?"

5. DEPARTMENT VIEW POINT :- The Deputy Director, DGGST Intelligence Regional Unit, Indore vide letter F.No.IV(06)INV/RUI/122/ 19-20/1258 dated 10.09.2020 informed that the proceedings of determination of short



payment/non payment of GST against the Applicant has been initiated and pending. Hence, as per the provisions of the Act, the Application under Advance Ruling of the above applicant shall not be admitted as the question raised in the application is pending or decided in any proceedings in the case of an Applicant.

6. RECORD OF PERSONAL HEARING -

Shri Amit Sheode, Authorised Representative appeared on behalf of the applicant for personal hearing on electronic mode and he reiterated the submission already filed along with the Application. The Applicant have submitted following additional submission on 07.11.2020 which is reproduced as under :-

"1. That the applicant has made an application for Advance Ruling on 14-09-20 vide ARN no AD2309200010023. The application has posed a query in respect of the applicable rate of tax to be collected and paid by a sub contractor concerning a contract where the employer is Government & more particularly the MP State Government Narmada Valley Authority during the period from July 2017 till Jan 2018 when the rate on such contracts were notified by Government.

2. It is an undisputed fact that the DGGSTI Indore has conducted a search at the premises of the applicant on or around March 2020. It is also not disputed that the said authority has issued a letter to the applicant demanding tax @ 18% on the turnover during the period July 2017 to Jan 2018 on the sub contract concerning the Narmada Authority. On the other hand it is the contention of the applicant that the rate of tax of a sub contractor in a Government contract is *pari passu* to that of the principal contractor. It is on the said contract & for the aforesaid period that the applicant is seeking advance ruling.

3. Proviso to Section 98(2) bars an application to the Advance Authority in respect of any matter where the question raised before the Advance Ruling Authority is **pending in any proceeding under the GST Act**. The DGGSTI has purportedly commenced proceedings u/s 67 of the GST Act. It is the humble submission of the applicant that the present question raised is a pure question of law & hence cannot form subject matter of any proceedings that is commenced u/s 67 of the GST Act for the following amongst other grounds of facts & law.

4. To begin with let us first try & understand what is covered under Section 67 or what can be the subject matter of proceedings u/s 67. For quick reference Section 67 is reproduced which is as follows

" 1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that —(a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made there under to evade tax under this Act;"

The above provision can be dissected as being applicable only when there is suppression of supply or stock or when ITC in excess of the entitlement is claimed. The latter words in the provision i.e. contravention of any provisions of this Act or Rules, it is submitted, have to be interpreted in the context & restricted to the earlier instances specified i.e. in the event of suppression or excess claim of ITC. The said reasoning flows from the principle of *ejusdem generis*.

The principle of *ejusdem generis* lays down the principle that, where specific words are followed by general words the meaning of the general words has to be restricted to that of specific words or otherwise there would be incompatibility or inconsistency in the interpretation. Now what incompatibility or inconsistency is that? Simply stated it is the inconsistency due to the fact that the general words already cover the specific words described in the present case. That is, the term, contravention of any provisions of law or Rules, covers suppression of supply or stock or claim of excess ITC. If it is so then why has the Legislature put those words when the mere words that any contravention of any provision of Act or Rule would have sufficed & the earlier portion of suppression or excess ITC would have stood covered by the phrase contravention of provisions of Act or Rules. It is this inconsistency or incompatibility in interpretation that has to be resolved while



interpreting the above provision & the principle of *Ejusdem Generis* precisely covers the above scenario.

It is submitted that the above Rule of *Ejusdem Generis* is binding on all Judicial & Quasi Judicial Authorities in India because it flows from the ratio of umpteen number of decisions of the Hon'ble SC. As per Article 141 of the Constitution of India law laid down by the Hon'ble SC is legally binding on all lower authorities not only Judicial but also quasi judicial as well as Administrative.

The applicant hereby relies on the above principle as laid down in the Hon'ble SC verdict in the matter of *Kavalapprara Kottarathil Kochuni vs State of Madras* (AIR 1960 SC 1080 Page 1103-1960 (3) SCR 887) To quote the Hon'ble SC it laid down that

" The rule is that when general words follow particular and specific words of the same nature, the general words must be confined to the things of the same kind as those specified. But it is clearly laid down by decided cases that the specific words must form a distinct genus or category. It is not an inviolable rule of law, "

To further explain why the above rule is applied the Hon'ble SC in *Tribhuvan Prakash Nayyar vs Union of India* (AIR 1970 SC 540; Pg 545 (1969 3 SCC 99) laid down

"This Rule which is known as the Rule of *Ejusdem Generis* reflects an attempt "to resolve the incompatibility between the specific & general words in view of the other rules of interpretation that all words in a statute are given effect if possible, that a statute is to be construed as a whole & that no words in the statute are presumed to be superfluous"

While laying down when the above rule is applicable the Court laid down in *Amar Chandra vs Collector of Excise Tripura* (AIR 1972 SC 1863)

" The *ejusdem generis* rule strives to reconcile the incompatibility between specific and general words. This doctrine applies when (1) the statute contains an enumeration of specific words; (2) the subjects ,of the enumeration constitute- a class or category; (3) that class or ,category is not exhausted by the enumeration; (4) the general term follows the enumeration and (5) there is no indication of a different legislative intent. "

In the present matter

1. Section 67 specifies the specific instances i.e. suppression of stock or supply or excess ITC.
2. The above specified instances are a class or category of evasion of tax
3. The category is not exhaustive i.e. tax can be evaded through other means other than above eg: misclassification of Tariff entry to apply lower rate of tax.
4. The general term i.e. contravention of any provisions of Act or Rules follows the above specific instances quoted in Section 67.
5. There is no indication of a legislative intent to exclude the application of Rule *Ejusdem Generis*.

Therefore it is submitted that the above Rule is squarely applicable if one was to interpret Section 67 of GST Act. Now, when the above Rule is applied, the only instances that are covered by search, inspection or seizure are the ones having an element of suppression or excess utilization of ITC & other attempts of concealment of fraud to defraud revenue. The present application entails a decision on pure question of law. The present application has no question embedded in it that has an element of suppression or excess ITC. Therefore, even though the DGGSTI authorities have issued a letter to the applicant requiring the latter to deposit the differential tax for the period July 17 to Jan 18, the said letter does not come within the ambit of proceedings u/s 67. The issuance of letter per se or in itself cannot be said to be any proceeding. The attempt of DGGSTI Authorities to cover issues pertaining to pure question of law within the purview of Section 67 are phony & a colourable exercise of its powers. Therefore there is no conflict, apparent or otherwise between the proceedings u/s 67 & this application because the question raised in this application is not covered by Section 67 & hence the bar laid down in Section proviso to 98(2) does not apply in the present matter to prevent the applicant from seeking reply on the question or allowing the AAR to decide the issue involved.

The applicant relies on the following judgments of the Hon'ble SC that have judicially accepted the above rule of interpretation & has applied it & laid down the same as a ratio to be followed by lower authorities.

1. *Thakur Amarsinghji vs State of Rajasthan* (AIR 1955 SC 504 at page 523)



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2. *Housing Board of Haryana vs Haryana Housing Board Employees Union (AIR 1996 SC 434 at page 441)*
3. *State of Karnataka vs Kempaiah (AIR 1998 SC 3047 at page 3050)*
4. *Lokmat Newspapers P Ltd vs Shankar Prasad (AIR 1999 SC 2423 at page 2444)*
5. *Grasim Industries vs Collector of Customs (AIR 2002 SC 1766 at page 1710)*

Alternatively & without prejudice to the contentions made hitherto, the applicant says & submits that in view of the Hon'ble SC verdict in the matter of L & T vs State of Karnataka relied upon in the original application, the law laid down in the said judgment states that the liability of contractor shall be the same as that of the principal contractor & hence if the sub contractor proceeds on the said understanding, then it cannot be said that the lesser payment, if any, is an attempt to evade tax. Therefore even otherwise the question raised by the applicant, in the present proceedings, is not covered u/s 67 & hence, as a proposition of law, it may be stated that there is no proceedings regarding the question raised pending before any authority."

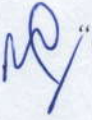
7. DISCUSSIONS AND FINDINGS –

7.1 We have carefully gone through the application, provisions and submission of the Applicant, we proceed to decide the case as under :-

7.2 The question raised by the Applicant is what is rate of tax applicable to a sub contractor, where, he executes works contract pertaining to dam, wherein the principal contractor is liable for tax @ 12%, for the period from 22-01-2017 to 25-01-2018?

7.3 As per the submission of the Applicant and the letter received from the Deputy Director, DGGST Intelligence, Regional Unit, Indore that the DGGST has initiated a proceeding on the issue of wrong availment of benefit of Notification wherein lower rate of GST 12% is prescribed for works contract services pertaining to Irrigation work when provided to Government/Government Authority/ Local Authority for the period July 2017 to Jan.2018 against the Applicant which is pending. We find that the question raised by the Applicant before the Authority is pending with the DGGST and proceeding against the Applicant have already been started by the DGGST Intelligence Regional Unit Indore.

As per the proviso to Section 98(2) of CGST Act, the Authority shall not admit the application where the question raised in the application is already decided in any proceedings in the case of an applicant. The provisions of Section 98(2) of CGST Act, 2017 is reproduced below:-

 (2) *The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:*

Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act."

7.5 The judicial citations relied upon by the applicant have been duly perused and considered by us. However, we find that as per the proviso to Section



98(2) of CGST Act, the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant. Hence, we find that the application is liable to be rejected and the judicial citation relied upon by the applicant has no relevance.

7.6 In view of above, it is concluded that the application is liable to be rejected as per the proviso of section 98(2) of CGST Act.

8. Ruling

8.1 The Application filed by the Applicant under Advance Ruling under CGST Act, 2017 is hereby rejected as per the ^{first proviso of the} provision of Section 98(2) of CGST Act, 2017.

8.2 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.

SK
(Virendra Kumar Jain)
(Member)

SK
(Manoj Kumar Choubey)
(Member)

Copy to:- No. 15/2020/A.A.R./R-28/45

INDORE dated 10/12/2020

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

सत्यप्रतिलिपि

Manoj

