



**RAJASTHAN AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,
KAR BHAWAN, AMBEDKAR CIRCLE,
NEAR RAJASTHAN HIGH COURT,
JAIPUR - 302005 (RAJASTHAN)**



ADVANCE RULING NO. RAJ/AAR/2023-24/19

Mahipal Singh Additional Commissioner	:	Member (Central Tax)
Mahesh Kumar Gowla Additional Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/s Jaipur Metro Rail Corporation Limited, Metro Depot, Admn Building, Bhriugu Path, Jaipur, Rajasthan-302020
GSTIN of the applicant	:	08AACCJ2822J1ZM
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	(c) Determination of time and value of supply of goods or services or both
Date of Personal Hearing	:	01.01.2024
Present for the applicant	:	Shri L.D. Sharma, CA, Shri Vijay Mukherjee(Finance Consultant, JMRC) and Shri K.K. Sharma(G.M. Finance),(all are Authorized Representatives of the applicant)
Date of Ruling	:	29.02.2024

Note 1: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.

Note 2: At the outset, we would like to make it clear that the provisions of both the CGST Act and the SGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the SGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / SGST Act would be mentioned as being under the "GST Act".

A. SUBMISSION OF THE APPLICANT(in brief):-

M/s Jaipur Metro Rail Corporation Ltd. ("JMRC" in short) awarded the contract to M/s. Continental Engineering Corp ("CEC" in short) for the Designing and Construction of Tunnel between Chand Pole and Badi Chaupar and reversal line by Shield TBM, Underground Metro Stations at Choti Chaupar & Badi Chaupar by Cut & Cover Method on East-West Corridor at Jaipur Metro (Phase 1B) at Jaipur, Rajasthan on 5th Oct., 2013.

In this agreement the amount quoted was lump sum including all taxes except VAT, the then tax instead of GST, because the VAT was exempt for the JMRC Project vide Notification issued on 06.10.2010 by Rajasthan Government. The Contractor was supposed to pay all taxes, duties and fees required to be paid by him under the prevailing statutes contract and the contract price was not to be adjusted for any of these costs except as stated in sub clause 13.7(Adjustment for change in Law) of General Condition Clause (GCC) of agreement.

Under pre-GST regime, "Works Contract" has been defined in Section 65B of the Finance Act, 1994 as a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair,

maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property. Hence, the contract between the employer and the contractor above was covered under the ambit of "Works Contract".

Though, "Services by way of construction, erection, commissioning, or installation of original works pertaining to an airport, port or railways, including monorail or metro" was notified to be exempt from the payment to Service Tax vide Notification No. 25/2012-ST dated 20.06.2012. It is pertinent to notice that these services will not include a service used for providing such service. Notification No. 25/2012-ST was substituted by the Notification 09/2016-ST which excluded the monorail and metro from the ambit of the exemption. But there was an exception for the services by way of construction, erection, commissioning or installation of original works pertaining to monorail or metro, where contracts were entered before 1st March 2016, on which appropriate stamp duty, was paid, shall remain exempt. CBEC Circular No. 138/7/2011-ST dated 6 May 2011 opined that every service has to be classified and taxed in terms of its specific description and not in terms of a more general description. Clarification was further sought as to the taxability of works contract service (WCS) provided by sub-contractors for dams, tunnels, etc. which was exempted and for which the contract was awarded to the main contractor. The CBEC clarified that: *"in case the services provided by the sub-contractors to the main contractor are independently classifiable under WCS, then they too will get the benefit of exemption so long as they are in relation to the infrastructure project's mentioned above. Thus, it may happen that the main infrastructure projects of execution of works contract in respect of roads, airports, railways, transport terminals, bridges tunnel and dams, is sub-divided into several sub-projects and each such sub-project is assigned by the main contractor to the various sub-contractors. In such cases, if the sub-contractors are providing works contract service to the main contractor for completion of the main contract, then service tax is obviously not leviable on the works contract service provided by such sub-contractor."* Hence, the above clarifications issued by the CBEC make it clear that there are two categories of sub-contractors for works contract services: (i) those to whom the support services are outsourced and (ii) those to whom part of the main work is outsourced. Work done by (ii) is treated as work of the same nature as the service of the main contractor and the same exemption is available for such work. On the other hand, sub-contractors of category (i) provide services that are different in their nature, and these are treated differently. They are, at best, input services for the main works contract service.

As per Contract between CEC and JMRC, the payments are made in close regard to the contract price and the fluctuations that arise are taken into consideration, in a price variation (P.V) bill. Moreover, the Clause 13.7 also states that *"The contract price shall be adjusted to take account of any increase or decrease in cost resulting from a change in the laws of the country (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official government interpretation of such Laws, made after the Base Date, which affect the contractor in the performance of obligations under the Contract."* Hence, the introduction of GST is covered under the ambit of change in legislation or implementation of any law. Also, there is an understanding that the Contract price quoted by the CEC includes all cost including the taxes as well. Precisely, it included the taxes like excise duty, custom duty, service tax (the part that should be paid to the ancillary services obtained by the CEC and are not covered under the ambit of exemption) etcetera. Moreover, if there is any increase in the price due to the implementation of the new law, the extra burden to be borne by the JMRC.

B. INTERPRETATION AND UNDERSTANDING OF APPLICANT ON QUESTION RAISED (IN BRIEF):-

With the implementation of the GST laws, the exemption was withdrawn for the "Services by way of construction, erection, commissioning, or installation of original works pertaining to Metro", the contractor requested to adjust the contract price due to increase in the cost as the GST was applicable on those services at 18%, which was subsequently reduced to 12%.

Under the GST Regime, "Works Contracts" has been defined in Section 2(119) of the CGST Act, 2017 as *"Works Contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract."*

As per Para 6(a) of Schedule II to the CGST Act, 2017, Works Contracts, as defined in Section 2(119) of the CGST Act, 2017, shall be treated as a supply of services.

Composite supply of works contracts, as defined in clause (119) of Section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to metro is liable to the slab of 12% (6% CGST and 6% SGST).

State Government exempts from the payment of tax payable on purchases of taxable goods and equipment mentioned in annexure -"A" of the notification, made by registered dealer for exclusive use of in execution of Work Contract for Jaipur Metro Rail Project. As per the contract agreement, Value Added Tax (VAT) and Rajasthan State Entry Tax were exempted.

As per Section 15(1) of CGST Act, 2017, the VAT paid was adjusted, and accordingly the value of supply was to be determined.

In this matter, JMRC started making payment of GST by deducting the amount of VAT payable by the CEC (other Party), adjustment of the Central Taxes, CST etc. as per the prevailing laws of the period on the date the agreement was executed, because the amount of taxes included in the cost of the works as per the agreement was kept the duty / liability of the CEC only.

The Service Tax portion was part of the Agreement, to be paid by the CEC itself, and accordingly, the same was presumed to be 40% of the works executed in the bill, and the same was not paid extra, being exempted and not to be included in the Contract Price.

Keeping the same in mind, the following proposal was submitted by JMRC regarding the computation of the additional GST liability to be borne by JMRC:

GST Applicable	12%	18%
Less: CGST Portion payable by the Contractor	6%	9%
Less: Service Tax, currently applicable in this contract (Subsumed in the GST)= $18\% \times 40\%$ component of the contract is service tax liable 7.2% (Half of the same is part of CGST and rest half SGST part, which is not payable by the JMRC	3.6%	3.6%
Balance SGST (This balance part does contain the items for which the exemptions were not provided in the respective notifications)	2.4%	5.4%

The computation of the GST liability by JMRC was not accepted by CEC because of the following views:

1. According to CEC, JMRC in its method of computation had assumed certain % as Service Tax component and further stated it was part of Contract Price and this % of amount to be disallowed in its computation of GST reimbursement to CEC and the same assumption has no basis.

2. Output service tax was exempted on metro railways projects and therefore, was never the part of Contract Price. Hence, CGST cannot be outrightly ignored for reimbursement.

3. JMRC has insisted on non-reimbursement of SGST levied on an assumed 40% service component of the Contract Price, which is not defined in the GST law.

4. JMRC has not considered the benefit of credit availability

Hence, there is a conflict between JMRC and CEC regarding the computation of the GST liability under the new GST regime and the calculation of the amount of reimbursement for CEC. JMRC has computed the service portion of the Works Contract at the ratio of 40:60 (which was specified in the Service Tax laws) and has deducted the proportionate tax on the same from the 6% which amounts to 3.6% and remainder being 2.4% to be reimbursed to CEC.

C. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT:-

Q1. How to assess the net impact of GST on the cost of a pre-GST lump sum contract?

Q2. How to compute the value of supply to levy GST of a lump sum work contract entered under pre-GST tax regime?

D. PERSONAL HEARING

In the matter, personal hearing was granted to the applicant on 01.01.2024. Shri L.D. Sharma, CA, Shri Vijay Mukherjee(Finance Consultant,JMRC) and Shri K.K. Sharma(G.M. Finance),(all are Authorized Representatives of the applicant)appeared for personal hearing. They reiterated the submission already made in written submission.They requested for early disposal of the application.

E. COMMENTS OF THE JURISDICTIONAL OFFICER

Comments received from the Assistant Commissioner, Div-H, Sector-10, Vidhyadhar Nagar, Jaipur, vide letter V(GST-H)30/02/Misc.Reports/25/2021/Pt-1/27 dated 06.04.2023 are as under: -

1. How to assess the net impact of GST on the cost of a pre-GST lump sum contract?

Ans- With regard to works contracts where the supply is of both goods and services:

Works Contracts executed on or after 1st July 2017 and invoice/bill raised on or after 1st July 2017	SGST and CGST rates will be applicable.
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2. How to compute the value of supply to levy GST of a lump sum work contract entered under pre-GST tax regime?

Ans- When invoices are to be raised by the contractor, the value of the bill together with the applicable tax under GST (i.e. SGST + CGST within the State) should not exceed the value that such contractor/supplier would have billed for prior to 1st July, 2017 inclusive of VAT and Service Tax, if any.

For instance, say, as per pre-GST contract agreement (which was inclusive of VAT and service tax, if any) the value of the project is Rs. 100000/-, the bill/RA bill under GST will arrive at the taxable value in accordance with the formula below:

Taxable value	$(\text{Value inclusive of taxes}) \times 100 / (100 + \text{sum of CGST \& SGST tax rates})$
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So here, the project value (excluding tax), with, let's say, a GST rate of 6% CGST and 6% SGST, will be = $100000 \times 100 / 112 = 89285.70 /$

Thus the bill will be raised as follows:

	Rs. 89285.70
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Project value (excluding tax) Add: CGST @ 6% Add: SGST @ 6%	Rs. 5357.15
	Rs. 5357.15

It is clarified that under no circumstances will there be a revision of any contractual values in the contract due to impact of change in tax rate(s), if any, from VAT/Service Tax to GST.

F. FINDINGS, ANALYSIS & CONCLUSION:

- 1) We have carefully examined the statement of facts, supporting documents filed by the Applicant along with application, oral and written submissions made at the time of hearing and the comments of the State Tax Authority. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts. We would like to discuss the submission made by applicant and will take up the above question for discussion one by one.
- 2) JMRC awarded the contract to CEC for designing and construction of Tunnel between Chand Pole and Badi Chaupar and reversal line by Shield TBM, Underground Metro Stations at Choti Chaupar & Badi Chaupar by Cut & Cover Method on East-West Corridor at Jaipur Metro (Phase 1B) at Jaipur, Rajasthan on 5th Oct., 2013.
- 3) In this agreement, the amount quoted was lump sum including all taxes except VAT, the then tax instead of GST, because the VAT was exempt for the JMRC Project vide Notification issued on 06.10.2010 by Rajasthan Government. The Contractor was supposed to pay all taxes, duties and fees required to be paid by him under the prevailing statutes Contract and the contract price was not to be adjusted for any of these costs except as stated in sub clause 13.7 (Adjustment for change in Law) of General Condition Clause (GCC) of agreement.
- 4) The applicant has submitted that as per the contract, the payments are made in close regard to the contract price and the fluctuation which is taken into consideration, in a price variation (P.V) bill. Moreover, the Clause 13.7 also states that *"The contract price shall be adjusted to take account of any increase or decrease in cost resulting from a change in the laws of the country."*
- 5) The questions on which Advance Ruling is sought are as under-
 - (i) How to assess the net impact of GST on the cost of a pre-GST lump sum contract?
 - (ii) How to compute the value of supply to levy GST of a lump sum work contract entered under pre-GST tax regime?
- 6) We find that before the GST Era, the VAT was exempted by the Rajasthan Government and after enactment of GST Act, it was subsumed in the GST including Service Tax, Central Excise duty and many other Taxes so there is increase in cost of CEC.
- 7) Hence, there is a conflict between JMRC and CEC regarding the computation of the GST liability under the new GST regime and the calculation of the amount of reimbursement for CEC.
- 8) We find that the applicant submitted that Clause 13.7 (Adjustment for change in Law) of General Condition Clause (GCC) of Agreement states that *"The contract price shall be adjusted to take account of any increase or decrease in cost resulting from a change in the laws of the country."* So the dispute between applicant and CEC after the GST era is to be resolved as per Clause 13.7 (Adjustment for change in law) of General Conditions Clause (GCC) of Agreement and it is not covered under any question of Section 97(2) of CGST Act, 2017 which is as under-

The question on which the advance ruling is sought under this Act, shall be in respect of,-

- (a) classification of any goods or services or both;

- (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;
(d) admissibility of input tax credit of tax paid or deemed to have been paid;
(e) determination of the liability to pay tax on any goods or services or both;
(f) whether applicant is required to be registered;
(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

In view of the above, the application made by the applicant is liable to be rejected in term of Section 98(2) of CGST Act, 2017 and therefore, we rule as under: -

RULING

(Under Section 98 of the GST Act, 2017)

The subject application for Advance Ruling made by the applicant is not maintainable and hereby rejected under the provisions of the GST Act, 2017.

This Ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act, 2017.

MS
29/02/2024
(Mahipal Singh)
Member (Central Tax)



WJ
28/02/2024
(Mahesh Kumar Gowla)
Member (State Tax)

F. No. AAR/SF/2023-24/206
SPEED POST

Date: 29.02.2024

To,
M/s Jaipur Metro Rail Corporation Limited,
Metro Depot, Admn. Building, Bhargu Path,
Jaipur (Rajasthan)

Copy to: -

1. The Chief Commissioner, CGST and Central Excise (Jaipur Zone), NCRB, Statue Circle, Jaipur, Rajasthan-302005
2. The Chief Commissioner, State Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme, Jaipur, Rajasthan-302005.
3. The Pr. Commissioner, CGST and Central Excise Commissionerate, Jaipur, Rajasthan.
4. The Assistant Commissioner, Div-H, Sector-10, Vidhyadhar Nagar, Jaipur, Rajasthan.