RAJASTHAN AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX

NCR BUILDING, STATUE CIRCLE, C-SCHEME
JAIPUR – 302005 (RAJASTHAN)

सत्यमेव जयते

राष्ट्र कर बाजार

ADVANCE RULING NO.RAJ/AAR/2018-19/08

Nitin Wapa Joint Commissioner	:	Member(Central Tax)
Sudhir Sharma Joint Commissioner	:	Member(State Tax)
Name and address of the applicant	:	M/S RFE SOLAR PRIVATE LIMITED, D-43, JANPATH, SHYAM NAGAR, Jaipur, Rajasthan, 302019
GSTIN of the applicant	:	08AAICR3819D1ZE
Clause(s) of Section 97(2) of CGST / SGST Act, 2017, under which the question(s) raised	:	(i) classification of goods and/or services or both (v) determination of the liability to pay tax on any goods or services or both
Date of Personal Hearing	:	25.06.2018
Present for the applicant	:	CA Yash Dhadda, Counsel (Authorised Representative). CA Rajeev Tiwari
Date of Ruling	:	01.07.2018

Note:

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

The Issues raised by the applicant is fit to pronounce advance ruling as they fall under ambit of the Section 97(2)(a) and (e), they are as given under :

(a) Classification of any goods or services or both;

(e) Determination of the liability to pay tax on any goods or services or both;

Further, the applicant being a registered person, GSTIN is 08AAICR3819D1ZE, as per the declaration given by him in Form ARA-01, the issue raised by the applicant is neither pending for proceedings nor proceedings were passed by any authority. Based on the above observations, the application is '**admitted**' to pronounce advance ruling.

1. SUBMISSION OF THE APPLICANT:

M/s RFE Solar Private Limited is engaged in business of developing power projects in India. It is undertakes development, design, engineering, supply, installation, testing and commissioning to establish solar power plant at various states in India.

M/s RFE Solar Private Limited is private limited company under the provisions of the Companies Act 2013 and is also registered under the provisions of the Central Goods and Services Tax Act 2017 read with the provisions of the Rajasthan State Goods and Services Tax Act 2017 ("Assessee"). It will undertake itself in executing 'Engineering Procurement and Commissioning "EPC" contacts for Solar Power Generation System commonly known as "Solar Power Plants".

The contract between the assessee and its clients flows in a way wherein firstly they (assessee) shall agree and enter into 'Terms of Engagement' with each other defining the scope of work to be executed by assessee for client, the commercials for and timelines for EPC work as a whole to be undertaken. Thereafter in some cases, for the sake of convenience and clarity for steps to be undertaken specific terms are agreed and executed for Procurement and Supply of Goods and components forming part of solar power plant and for Installation& Commissioning to be undertaken for the Solar Power Plant as detailed in contract entered

In a nutshell, assessee undertakes following activities for effecting Supply of Solar Power Plants –

1) Consulting in Procurement of Land on which Solar Power Generation System shall be installed.
2) Procurement and Supply of components of Solar Power Generation System (these materials are mostly imported by assessee on the basis of order received from its clients)
3) Installation of Components which have been supplied by the assessee
4) The said installation can be roof mounted or land mounted depending upon the location as pre decided between the parties for establishing Solar Power Generating System
5) Engaging in Construction of support civil Inverter Room
6) Handing over of Solar Power Plant

Solar Power Plant has two blocks namely Solar Block and Power Block which has various components. The essential ingredients of Solar Power Plant and it's blocks are PV Modules, Panels, Cables, Module Mounting Structures; Fuse Connectors, Inventors and Transformers to be installed by assessee on any piece of land.

A solar Power Plant is affixed to land or roof (depending upon the nature of the Solar Power Plant). For the same some civil work is undertaken to affix the Solar Power Plant for its efficient functioning. However almost all ingredients of the Solar Power Plant (except some civil work) can be effectively shifted from one location to another in case it is required to do so. No substantial damage shall be caused to any of the components of the Solar Power Plant.

Thus the plant is effectively movable and can be reinstalled on any other piece of land.

The assessee wants to understand that whether supply under consideration is Supply of Goods or Supply of Service.

That **Section 9** of the CGST Act 2017 which is charging section of Goods & Services Tax states:

9(1) Subject to 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 **"goods"** has been defined under section 2(52) as "goods" means **every kind of movable property** other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

The term **"services"** has been defined under section 2(102) "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Further, section 7(1)(d) of the CGST Act 2017 provides for the activities which shall be treated as either supply of goods or supply of services in accordance with Schedule II of the Act.

The point no 6 of the Schedule II is read as under:

The following composite supplies shall be treated as a supply of services, namely:— (a) works contract as defined in clause (119) of section 2.

The term works contract has been defined under Section 2(119) as

(119) "works contract" means a contract for building, construction, fabrication, completion, erection, installation fitting out, improvement,

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*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.*

Since given work executed by the assessee includes supply of goods and also performance of services hence it can be treated as amalgamation of 2 supplies. To decide whether the given amalgamation is composite or mixed supply, there definitions have to be understood.

As per **Section 2(30) composite supply** is defined as

*(30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are **naturally bundled** and supplied in conjunction with each other in the ordinary course of business, **one of which is a principal supply**;*

Further **principal supply** is defined under Section 2(90) as

*(90) "principal supply" means the supply of goods or services which **constitutes the predominant element** of a composite supply and to which any other supply forming part of that composite supply is ancillary;*

The term **mixed supply** is defined under Section 2(74) as

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

On-going through the terms of the terms of the contract and definition of composite and mixed supply, the given work can be classified as composite supply only. Since the contract is in relation to solar plant (supply and installation) they are bundled in ordinary course of business.

To further decide whether the principal supply is of goods or service, the concept of works contract can be explored first. Works contract in itself is a composite supply in which construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning etc. are involved along with transfer of property in goods.

However under GST, there is a monumental shift in concept of Works Contract which was prevalent under erstwhile VAT and Service Tax regime. In GST, as per definition of works contract service if construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning is **for immovable property only**, then it will classify as works contract only. Hence it means that aforesaid activities if they are undertaken for a movable property then it will not be works contract service.

That the contract between the client and the assessee covers not only supply of material but extends to erection and commissioning of the plant as well. That the assessee is required to undertake all the activities necessary for beginning the operations of the Solar Power Plant and then handover the same to the client. However, the consideration involved in the contract pre-dominantly consists of the value of material. The value of supply of material is almost 90%. Hence it can be deduced that under the given supplies, if the supply cannot be classified as works contract service then the principal supply shall be of goods.

Now whether given supply is a works contract or not is dependent on whether the solar power plant is a movable or immovable property. The given terms have not been defined under the Act and hence the reliance needs to be placed on other laws and judicial precedents.

Under the General Clauses Act 1897 the term immovable property has been defined under Section 3(26) as "immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or **permanently fastened to anything attached to the earth**.

As per the definition the term permanently fastened or attached to earth can be treated as immovable property. Any attachment with earth which is temporary in nature or can be shifted from part of earth to another without causing substantial damage to it cannot be treated as immovable property.

Further, on the given issue, CBEC has also clarified in its **circular number 58/1/2002-CX dated 15/1/2002** where in para (e) it was clarified that

*e) If items assembled or erected at site and attached by foundation to earth cannot be **dismantled without substantial damage** to its components and thus cannot be reassembled, then the items would not be considered as moveable and will, therefore, not be excisable goods.*

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In case of **Sirpur Paper Mills Ltd. v. Collector — 1998 (97) E.L.T. 3 (S.C.)** it was held by Hon'ble Supreme Court that:

Apart from this finding of fact made by the Tribunal, the point advanced on behalf of the appellant, that whatever is embedded in earth must be treated as immovable property is basically not sound. For example, a factory owner or a house-holder may purchase a water pump and fix it on a cement base for operational efficiency and also for security. That will not make the water pump an item of immovable property. Some of the components of water pump may even be assembled on site. That too will not make any difference to the principle. The test is whether the paper making machine can be sold in the market. The Tribunal has found as a fact that it can be sold. In view of that finding, we are unable to uphold the contention of the appellant that the machine must be treated as a part of the immovable property of the company. Just because a plant and machinery are fixed in the earth for better functioning, it does not automatically become an immovable property.

Further in case of **Municipal Corporation of Greater Bombay &Ors. v. Indian Oil Corporation Ltd. [1991 Suppl. (2) SCC 18]**, one of the questions SC Court considered was whether a petrol tank, resting on earth on its own weight without being fixed with nuts and bolts, had been erected permanently without being shifted from place to place. **It was pointed out that the test was one of permanency; if the chattel was movable to another place of use in the same position or liable to be dismantled and re-erected at the later place, if the answer to the former is in the positive it must be a movable property but if the answer to the latter part is in the positive then it would be treated a permanently attached to the earth.**

It is pertinent to note that Solar Power Plant has two blocks namely Solar Block and Power Block which has various components. The essential ingredients of Solar Power Plant and it's blocks are PV Modules, Panels, Cables, Module Mounting Structures; Fuse Connectors, Inventors and Transformers to be installed by assessee on any piece of land.

A solar Power Plant is affixed to land or roof (depending upon the nature of the Solar Power Plant). For the same some civil work is undertaken to affix the Solar Power Plant for its efficient functioning. However it is pertinent to note that almost all ingredients of the Solar Power Plant (except some civil work)

can be effectively shifted from one location to another in case it is required to do so. No substantial damage shall be caused to any of the components of the Solar Power Plant. The damage shall be only of some cables and civil structure. Same does not hold more than even 10% of the total cost of the plant. Thus the plant is effectively movable and can be reinstalled on any other piece of land.

Thus there is no substantial damage in the movement of solar power plant from one location to another location. Hence in the view of the assessee the given composite supply cannot be treated as supply of works contract service since the property coming into existence shall not result into immovable property and will remain a movable property only.

Next point for consideration is if it is supply of goods then what shall be principal supplies. It is important to note that various items from panels, batteries, cables, transformer etc are supplied for the solar power plant. Whether it can be treated as supply of individual items or supply of solar power plant as a whole remains a question.

In this regard the decision in case of **Shree Venkateswara Engg. Corporation Versus C.C.E., Coimbatore reported in 2016 (335) E.L.T. 62 (Tri. - Chennai)** can be referred.

It was held by Hon'ble CESTAT that Energy device/system (Non-conventional) - Clearance of in knocked down condition as parts - Exemption Notification No. 6/2002-C.E. - Denial of - Serial No. 16 of List 9 to said notification covering complete device and not parts during relevant period - HELD : Impugned device consisting of Agro based fired steam generator meant for producing energy from waste covered under description of non-conventional energy system in Serial No. 16 of Notification No. 6/2002-C.E. which is wide and comprehensive enough to cover all types of conversion devices - When a description is wide without excluding any specific category of items, denial of exemption on the basis of description of individual parts not permissible - ***All individual items supplied in knocked down condition contribute to ultimate product, namely boiler/generator which cannot be supplied in one lot - Following ratio of decision in case of Hemraj Gordhandas [1978 (2) E.L.T. (J350) (S.C.)], if items cleared in parts have individual identity, it cannot be said that product cleared is not a device for purpose of generating non-conventional energy -*** *Appellant eligible for exemption under Notification No. 6/2002.*

The ultimate intention of parties is also to supply the Solar Power Plant and not the individual components. Hence in view of above precedence and facts of the case, the given supply should be treated as supply of Solar Power Plant Only.

Further under notification No 01/2017-CT (Rate) dated 28.06.2017, at S.No. 234, under HSN Classification 84, 85 and 94, for description

Following renewable energy devices & parts for their manufacture

(c) Solar Power Generating System

The rate of CGST has been mentioned as 2.5%. In given case also, it has been specified that intention of parties was to supply solar power plant only. Hence according to assessee, the correct classification of given supply should be Chapter 84: Solar Power Generating System at the rate of 5%.

2 Issues to be decided:

1) Question 1: Whether contract for Erection, Procurement and Commissioning of Solar Power Plant shall be classifiable as Supply of Goods or Supply of Services under the provisions of the Central Goods and Services Tax Act 2017 and Rajasthan State Goods and Services Tax Act 2017?

2) Question 2: If answer to the above question is supply of goods, then under which HSN Classification the said supply of solar power plant would fall and what shall be the rate of tax on it in accordance with the Notification No 01/2017-Central Tax (Rate),dt. 28-06-2017?

3) Question 3: If the answer to the question 1 above is supply of service, then under which HSN Classification the said supply of solar power plant would classify and what shall be the rate of tax in accordance with the notification No 11/2017-Central Tax (Rate) ,dt. 28-06-2017

3 Personal Hearing (PH)

In the matter personal hearing was given to the applicant, Shri Yash Dhadda , CA & Counsel and Shri Rajeev Tiwari CA (Dealer Firm) who appeared for personal hearing on 25.06.2018. During the PH they submitted a

written additional statement containing the applicant's interpretation of law and facts in respect of the aforesaid questions which was placed on record. They reiterated the submission already made in the application for Advance Ruling and further requested that the case may be decided as per the submission made earlier in Advance Ruling Application.

4. Findings and analysis:

As per copy of contract submitted by the applicant the contractor i.e. M/s RFE Solar Private Limited has to execute a **"Composite EPC Contract".** After going through the written submissions, copy of contract and other additional statements following findings and analysis is made:

a) It is a composite EPC contract which has been entered between Kushtagi Solar Power Private Limited (owner) and RFE Solar Private Limited (contractor) on 01.03.2018 for setting up of Solar Power Plant where the contractor has to, *inter alia.* design, engineer, procure, transport, deliver, develop, erect, install, test and commission the project .

b) The contract is to set up a Solar Power Plant and related interconnection facilities (including 110 KV transmission line, 110 Kv pooling substation , main control room and bay extension) and other related infrastructure for evacuation of power (Evacuation Infrastructure) at Kushtagi village , Karnataka.

c) Contract includes civil work such as development of site, structure foundation, Structure for 110kv transmission , building cable trenches, civil work relating to invertors and control buildings, store rooms , canopies and such other civil structure and related activities as set out in Scope of work and the Technical Specifications.

d) The intention of the owner and the contractor is not to procure **goods of solar power generating system** but to procure a **completely functional solar power plant as a whole** wherein applicant undertakes end to end responsibility of supply of equipments of solar power plant including

designing, engineering, supplies, installation to technical specification, testing and commissioning of a functional solar power plant as well as laying of transmission lines for transmission of the electricity generated up to storage or the grid.

e) In clause 4.26 of the Contract , all risk and liabilities accruing in relation of works (temporary or permanent), and of all equipments, machinery, materials, shall be with contractor until occurrence of the Final Acceptance.

f) Schedule 2 – Scope of works clearly spells out the terms and condition of "Composite EPC Contract" where contractor has to undertake works of installation, testing and commissioning of Solar Power Plant as per specific demands of owner. So it is not something sold out of shelf.

g) There is a single lump sum price for the entire contract.

h) The applicant has laid claim under notification No 01/2017-CT (Rate) dated 28.06.2017, at S.No. 234, under HSN Classification 84, 85 and 94, for description :

- *Following renewable energy devices & parts for their manufacture*

(c) Solar Power Generating System,

The rate of CGST has been mentioned as 2.5%. According to assessee, the correct classification of given supply should be Chapter 84: Solar Power Generating System at the rate of (2.5%+ 2.5%) 5%.

As can be seen, the above entry is under the notification describing the Tax rate on 'Goods'. If the transaction is supply of goods then the applicable Schedules would have to be seen but the intent of parties is always for supply of Solar Power Generating System **as a whole** which includes supply, installation, testing and commissioning and it is not chattel sold as chattel.

i)Applicant has submitted that under GST, there is a monumental shift in concept of Works Contract which was prevalent under erstwhile VAT and Service Tax regime. In GST, as per definition of works contract service if construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning is **for immovable property only**, then it will classify as works contract only. Hence it means that aforesaid activities if they are undertaken for a movable property then it will not be a works contract service.

j) Applicant has relied upon following judgments in furtherance of their arguments of solar power plant being movable property and not immovable:

i) **Sirpur Paper Mills Ltd. v. Collector — 1998 (97) E.L.T. 3 (S.C.)**

ii) **Municipal Corporation of Greater Bombay &Ors. v. Indian Oil Corporation Ltd. [1991 Suppl. (2) SCC 18],**

iii) **Shree Venkateswara Engg. Corporation Versus C.C.E., Coimbatore reported in 2016 (335) E.L.T. 62 (Tri. - Chennai)**

iv) **CBEC circular number 58/1/2002-CX dated 15/1/2002**

v) **Board of Revenue, Chepauk, Madras v. K. Venkataswami Naidu (AIR 1955 Mad 620, 1955 CriLJ 1369)**

vi) **Commissioner of Central Excise v. Solid and Correct Engg Works & Ors. (2010 (175) ECR 8 (SC)) = 2010-TIOL-25-SC-CX**

Relying on aforesaid judgements and citations the applicant contends that as the solar plant, once installed is capable of being removed and transferred from one place to another without substantial damage hence same should qualify as movable property. Hence in view of above precedence and facts of the case, the given supply should be treated as supply of Solar Power Plant Only.

k) As per the terms and conditions laid in EPC Contract the contractor i.e. the applicant has to undertake activities from engineering, design, to procurement of the material and has also to test and commission a functional plant before Final Acceptance . In contracts of such a nature, the liability of the contractor doesn't end with the procuring of materials but it extends till the successful testing and commissioning of the system. The transaction is a 'work contract' but it is for us to decide whether it is a 'work contract' in terms of GST Act. So, we come to the crux of the issue, which is as to whether the transaction results into any immovable property. The term 'immovable property' has not been defined under the GST Act. However, there are a plethora of judgments of the Hon. Supreme Court and the Hon. High Courts which have helped understand the term 'immovable property'.

1. In decision of Allahabad High Court in ***Official Liquidator v. Sri Krishna Deo and Ors.*** **[AIR 1959 All. 247],** wherein, the Court held that a machinery fixed to their bases with bolts and nuts although easily removable are not movable property when they have been set up with definite object of running an oil mill and not with intention of being removed after a temporary use.

2. In decision **of M/S. T.T.G. Industries Ltd., vs Collector of Central Excise, 2004 (167) ELT 501 (SC) on 7 May, 2004.** The facts of the case are as follows:

The facts of the case are not in dispute. The appellant- Company pursuant to the acceptance of its tender, entered into an agreement with M/s SAIL, Bhilai Steel Plant for design, supply, supervision of erection and commissioning of four sets of Hydraulic Mudguns and Tap Hole Drilling Machines required for blast furnace Nos.4 and 6 of the Bhilai Steel Plant. For this purpose, it imported several components and also manufactured some of the components at their factory in Marai Malai Nagar, Chennai. These components were transported to the site at Bhilai where the manufacture and commissioning of the aforesaid machines took place. It is undisputed that duty was paid in respect of the components manufactured at its workshop in Chennai, but no duty was paid on manufacture of the aforesaid Mudguns and Drilling Machines which were erected and commissioned on site

In their reply to the show cause, the respondents explained the processes involved, the manner in which the equipments were assembled and erected as also their specifications in terms of volume and weight. It was explained that the function of the drilling machine is to drill hole in the blast furnace to enable the molten steel to flow out of the blast furnace for collection in ladles for further processing. After the molten material is taken out of the blast furnace, the hole in the wall of the furnace has to be closed by spraying special clay. This function is performed by the mudgun which is brought to its position and locked against the wall for exerting a force of 240 - 300 tons to fill up the hole in the furnace. The blast furnace in which the inputs are loaded is a massive vessel of 1719 m cubic metre capacity and the size of its outer diameter is 10.6 metres, and the height 31.25 metres. Hot air at 1200 degrees centigrade is fed into the blast furnace at various levels to melt the raw materials. With a view to protect the shell against heat, the blast furnace is lined with refractory brick of one metre thickness. Thus, the drilling machine has to drill a hole through one metre thickness of the refractory brick lining. The drilling machine as well as the mudgun are erected on a concrete platform described as the cast house floor which is in the nature of a concrete platform around the furnace. The cast house floor is at a height of 25 feet above the ground level. On this platform concrete foundation intended for housing drilling machine and mudgun are erected. The concrete foundation itself is 5 feet high and it is grouted to earth by concrete foundation. The first step is to secure the base plate on the said concrete platform by means of foundation bolts. The base plate is 80 mm mild sheet of about 5 feet diameter. It is welded to the columns which are similar to huge pillars. This fabrication activity takes place in the cast house floor at 25 feet above ground level. After welding the columns, the base plate has to be secured to the concrete platform. This is achieved by getting up a trolley way with high beams in an inclined posture so that base plate could be moved to the concrete platform and secured. The same trolley helps in the movement of various components to their determined position. The various components of the mudgun and drilling machine are mounted piece by piece on a metal frame, which is welded to the base plate. The components

are stored in a store-house away from the blast furnace and are brought to site and physically lifted by a crane and landed on the cast house floor 25 feet high near the concrete platform where drilling machine and mudgun has to be erected. The weight of the mudgun is approximately 19 tons and the weight of the drilling machine approximately 11 tons. The volume of the mudgun is 1.5 x 4.5 x 1 metre and that of the drilling machine 1 x 6.5 x 1 metre. Having regard to the volume and weight of these machines there is nothing like assembling them at ground level and then lifting them to a height of 25 feet for taking to the cast house floor and then to the platform over which it is mounted and erected. These machines cannot be lifted in an assembled condition.

The judicial member noticing these facts observed that it is a physical and engineering impossibility to assemble mudguns or the drill tap hole machines elsewhere in a fully assembled condition and thereafter erect or install the same at a height of 25 feet on the cast floor of the blast furnace. She found that even the Adjudicating Authority conceded the fact that the equipments have to be assembled/ erected on the base frame projection of the furnace. She also accepted the submission urged on behalf of the appellant that if the machines are to be removed from the blast furnace, they have to be first dismantled into parts and brought down to the ground only by using cranes and trolley ways considering the size, and also considering the fact that there is no space available for moving the machines in assembled condition due to their volume and weight. She considered the authorities on the subject and came to the conclusion that erection of mudgun and tap hole drilling machine results in erection of immovable property. She noticed the judgment of this Court in Narne Tulaman Manufacturers Pvt. Ltd. (supra) and also noticed the judgment of the Tribunal in Gwalior Rayon Silk Manufacturing (Weaving) Co. Ltd. Vs. CCE // 1993 (65) ELT 121; which held that the issue of immovable property was never raised before the Supreme Court in Narne Tulaman Manufacturers Pvt. Ltd. She found support for her conclusion in the decision of this Court in Municipal Corporation of Greater Bombay & Ors. Vs. The Indian Oil Corporation Ltd. (1991) Supp. (2) SCC 18; and held that the twin tests laid down by this Court to determine whether assembly/ erection would result in immovable property or not were fully satisfied in the facts of this case. She concluded :-

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

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

The core question that still survives for consideration is whether the processes undertaken by the appellant at Bhilai for the erection of mudguns and drilling machines resulted in the emergence of goods leviable to excise duty or whether it resulted in erection of immovable property and not "goods".

The appellant has placed considerable reliance on the principles enunciated and the test laid down by this Court in Municipal Corporation of Greater Bombay (supra) to determine what is immovable property. In that case the facts were that the respondent had taken on lease land over which it had put up, apart from other structures and buildings, six oil tanks for storage of petrol and petroleum products. Each tank rested on a foundation of sand having a height of 2 feet 6 inches with four inches thick asphalt layers to retain the sand. The steel plates were spread on the asphalt layer and the tank was put on the steel plates which acted as bottom of the tanks which rested freely on the asphalt layer. There were no bolts and nuts for holding the tanks on to the foundation. The tanks remained in position by its own weight, each tank

being about 30 feet in height 50 feet in diameter weighing about 40 tons. The tanks were connected with pump house with pipes for pumping petroleum products into the tank and sending them back to the pump house. The question arose in the context of ascertaining the rateable value of the structures under the Bombay Municipal Corporation Act. The High Court held that the tanks are neither structure nor a building nor land under the Act. While allowing the appeal this Court observed :-

"The tanks, though, are resting on earth on their own weight without being fixed with nuts and bolts, they have permanently been erected without being shifted from place to place. Permanency is the test. The chattel whether is movable to another place of use in the same position or liable to be dismantled and re-erected at the later place? If the answer is yes to the former it must be a movable property and thereby it must be held that it is not attached to the earth. If the answer is yes to the latter it is attached to the earth. If the answer is yes to the latter it is attached to the earth".

Applying the permanency test laid down in the aforesaid decision, counsel for the appellant contended that having regard to the facts of this case which are not in dispute, it must be held that what emerged as a result of the processes undertaken by the appellant was an immovable property. It can not be moved from the place where it is erected as it is, and if it becomes necessary to move it, it has first to be dismantled and then re-erected at another place. This factual position was also accepted by the Adjudicating Authority.

The technical member, however, held that the aforesaid decision was of no help to the appellant inasmuch as a leading international manufacturing firm had offered such machines for export to different parts of the world. He further observed that though on account of their size and weight, it may be necessary to shift or transport them in parts for assembly and erection at the site in the steel plant, they must nevertheless be deemed as individual machines having specialized functions. We are not impressed by this reasoning, because it ignores the evidence brought on record as to the nature of processes employed in the erection of the machine, the manner in which it is installed and rendered functional, and other relevant facts which may lead one to conclude that what emerged as a result was not merely a machine but something which is in the nature of being immovable, and if required to be moved, cannot be moved without first dismantling it, and then re-erecting it at some other place. Some of the other decisions which we shall hereafter notice clarify the position further.

In Quality Steel Tubes (P) Ltd. Vs. Collector of Central Excise, UP 1995 (75) ELT 17 (SC); the facts were that a tube mill and welding head were erected and installed by the appellant, a manufacturer of steel pipes and tubes by purchasing certain items of plant and machinery in market and embedding them to earth and installing them to form a part of the tube mill and purchasing certain components from the market and assembling and installing them on the site to form part of the tube mill which was also covered in the process of welding facility. After noticing several decisions of this Court, the Court observed that the twin tests of exgibility of an article to duty under the Excise Act are that it must be a goods mentioned either in the Schedule or under Item 68 and must be marketable. The word "goods" applied to those which can be brought to market for being bought and sold and therefore, it implied that it applied to such goods as are movable. It noticed the decisions of this Court laying down the marketability tests. Thereafter this Court observed :-

"The basic test, therefore, of levying duty under the Act is two fold. One, that any article, must be a goods and second, that it should be marketable or capable of being brought to market. Goods which are attached to the earth and thus become immoveable do not satisfy the test of being goods within the meaning of the Act nor it can be said to be capable of being brought to the market for being bought and sold. Therefore, both the tests, as explained by this Court, were not satisfied in the case of appellant as the tube mill or welding head having been erected and installed in the premises and embedded to earth they ceased to be goods within meaning of Section 3 of the Act".

In Mittal Engineering Works Pvt. Ltd. Vs. CCE ll 1996 (88) ELT 622 (SC); this Court was concerned with the exigibility to duty of mono vertical crystallisers which are used in sugar

factories to exhaust molasses of sugar. The material on record described the functions and manufacturing process. A mono vertical crystaliser is fixed on a solid RCC slab having a load bearing capacity of about 30 tons per square meter. It is assembled at site in different sections and consists of bottom plates, tanks, coils, drive frames, supports, plates etc. The aforesaid parts were cleared from the premises of the appellants and the mono vertical crystalliser was assembled and erected at site. The process involved welding and gas cutting. The mono vertical crystalliser is a tall structure, rather like a tower with a platform at its summit. This Court noticed that marketability was a decisive test for dutiability. It meant that the goods were saleable or suitable for sale, that is to say, they should be capable of being sold to consumers in the market, as it is, without anything more. The Court then referred to the decision in Quality Steel Tubes (supra) and distinguished the judgment in Narne Tulaman (supra) holding that the contention that the weigh bridges were not goods within the meaning of the Act was neither raised nor decided in that case. After considering the material placed on the record it was held that the mono vertical crystalliser has to be assembled, erected and attached to the earth by a foundation at the site of the sugar factory. It is not capable of being sold as it is, without anything more. This Court, therefore, concluded that mono vertical crystallisers are not "goods" within the meaning of the Act and, therefore, not exigible to excise duty. In Triveni Engineering & Indus Ltd. Vs. CCE 2000 (120) ELT 273; a question arose regarding excisability of turbo alternator. In the facts of that case, it was held that installation or erection of turbo alternator on a concrete base specially constructed on the land cannot be treated as a common base and, therefore, it follows that installation or erection of turbo alternator on the platform constructed on the land would be immovable property, as such it cannot be an excisable goods falling within the meaning of heading 85.02. In reaching this conclusion this Court considered the earlier judgments of this Court in Municipal Corporation of Greater Bombay, Quality Steel Tubes and Mittal Engineering Works Pvt. Ltd. (supra) as also the earlier judgment of this Court in Sirpur PaperMills Ltd. V. Collector of Central Excise, Hyderabad [1998 (97) ELT 3 (SC). This Court observed :-

"There can be no doubt that if an article is an immovable property, it cannot be termed as "excisable goods" for purposes of the Act. From a combined reading of the definition of 'immovable property' in Section 3 of the Transfer of Property Act, Section 3 (25) of the General Clauses Act, it is evident that in an immovable property there is neither mobility nor marketability as understood in the Excise Law. Whether an article is permanently fastened to anything attached to the earth require determination of both the intentions as well as the factum of fastening to anything attached to the earth. And this has to be ascertained from the facts and circumstances of each case".

It was also held that the decision of this Court in Sirpur Paper Mills Ltd. must be viewed in the light of the findings recorded by the CEGAT therein, that the whole purpose behind attaching the machine to a concrete base was to prevent wobbling of the machine and to secure maximum operational efficiency and also safety. In view of those findings it was not possible to hold that the machinery assembled and erected by the appellant at its factory site was immovable property as something attached to earth like a building or a tree.

Keeping in view the principles laid down in the judgments noticed above, and having regard to the facts of this case, we have no doubt in our mind that the mudguns and the drilling machines erected at site by the appellant on a specially made concrete platform at a level of 25 feet above the ground on a base plate secured to the concrete platform, brought into existence not excisable goods but immovable property which could not be shifted without first dismantling it and then re-erecting it at another site. We have earlier noticed the processes involved and the manner in which the equipments were assembled and erected. We have also noticed the volume of the machines concerned and their weight. Taking all these facts into consideration and having regard to the nature of structure erected for basing these machines, we are satisfied that the judicial member of the CEGAT was right in reaching the conclusion that what ultimately emerged as a result of processes undertaken and erections done cannot be described as "goods" within the meaning of the Excise Act and exigible to excise duty. We find considerable similarity of facts of the case in hand and the facts in Mittal Engineering and Quality Steel Tubes (supra) and the principles underlying those decisions must apply to the facts of the case in hand. It cannot be disputed that such drilling machines and mudguns are not equipments which are usually shifted from one place to another, nor it is practicable

to shift them frequently. Counsel for the appellant submitted before us that once they are erected and assembled they continue to operate from where they are positioned till such time as they are worn out or discarded. According to him they really become a component of the plant and machinery because without their aid a blast furnace cannot operate. It is not necessary for us to express any opinion as to whether the mudgun and the drilling machines are really a component of the plant and machinery of the steel plant, but we are satisfied that having regard to the manner in which these machines are erected and installed upon concrete structures, they do not answer the description of "goods" within the meaning of the term in the Excise Act.

Thus, it can be seen that the Hon. Supreme Court while holding the machines as immovable property took into account facts such that the machines could not be shifted without first dismantling it and then re-erecting it as another site. It was also sought to distinguish as to how a concrete base meant just to prevent wobbling of the machine would not place the machine in the category of 'immovable property' as something attached to the earth.

5. In light of above judgements and scope of work it is observed:

1) That the Solar Power Plant is a big project and has a permanent location as it is meant for onward sale of power to the consumer. Such plant would therefore have an inherent element of permanency.
2) The output of the project i.e. power, would be available to an identifiable segment of consumer. Thus this output supply would involve an element of permanency for which it would not be possible and prudent to shift base from time to time or locate the plant elsewhere at frequent intervals.
3) The Solar Power Plant cannot be shifted to any other place without dismantling the same. Further it is a tailor made system which cannot be sold *as it is* to the other person.
4) Solar Power Plant includes civil work such as development of site, structure foundation, Structure for 110kv transmission , building cable trenches, civil work relating to invertors and control buildings, store rooms , canopies and such other civil structure and related activities as set out in Scope of work and the Technical Specifications. Civil structure cannot be dismantled and moved.

5) Schedule II of Scope of work of Composite EPC Contract , clearly states that the " design and engineering of the project should be such that it is consistent with a design life of at least 25 years from the COD (commissioning date) ." The applicant has himself agreed to be bound by this clause which reflects permanency of the instant Solar Power Plant. Contract between an EPC contractor and the counter-party is entered into on the premise that the plant would continue to be situated at the place of construction.

6) Case laws citied by applicant have to be understood in terms of the facts as available therein. As in the case of M/S Solid and Correct Engineering Works (cited Supra) the plant was not intended to be permanent and was to be shifted after completion of road repair and Construction work hence it was regarded as moveable. But in the instant case the solar power plant has an element of permanency.

7) An Overview of all makes us observe that the impugned transaction for EPC Contract for the Solar Power Plant which includes engineering, design, procurement, supply, development, testing and commissioning is a "works contract" in terms of clause (119) of section 2 of the GST Act.

8) Since the impugned transaction for EPC Contract for the Solar Power Plant is a works contract under section 2(119) as supply of services hence question of principal supply does not arise and so GST tax rate of Solar power Generating System under notification No 01/2017-CT (Rate) dated 28.06.2017, at S. No. 234, under HSN Classification 84, 85 and 94 is not applicable.

Based on above facts along with provisions of law, the ruling is as follows:

RULING

1. As per the statement of facts submitted by the applicant, the scope of work in respect of "Turnkey EPC Contract" includes civil works, procurement of goods and erection and commissioning. Accordingly, "Turnkey EPC Contract" are not getting covered under supply of 'Solar Power Generating System' under Entry 234 of Schedule I of the Notification no. 1/2017 – Integrated Tax (Rate), Entry 234 of Schedule I of the Notification no. 1/2017 – Central Tax (Rate) both dated 28 June, 2017 and Entry 234 of Schedule I of the Notification no 1/2017 – State Tax (Rate) dated 29 June, 2017. EPC Contract for Solar Power plant comes under the purview of Works Contract as per Section 2(119) of GST Act.

2. The contract for Erection, Procurement and Commissioning of Solar Power Plant falls under the ambit " Works Contract Services" (SAC 9954) of Notification no. 11/2017 Central Tax (Rate) dated 28 June, 2017 and attracts 18% rate of tax under IGST Act, or 9% each under the CGST and SGST Acts, aggregating to 18%.

1/7/18

(NITIN WAPA)
Member
Central Tax

RAJASTHAN AUTHORITY FOR ADVANCE RULING, JAIPUR * G.S.T. *
सत्यमेव जयते

1/7/18

(SUDHIR SHARMA)
Member
State Tax

SPEED-POST
M/S RFE SOLAR PRIVATE LIMITED,

D-43, JANPATH, SHYAM NAGAR,

JAIPUR, RAJASTHAN- 302019

पत्रा. स. IV(4)8/AAR/RAJ/2018-19/37 दिनांक: 1/8/2018

प्रतिलिपि:-

1. The Chief Commissioner of CGST & Central Excise (Jaipur Zone) & Member, Appellate Authority for Advance Ruling, NCR Building, Statue Circle , Jaipur-302005.

2. The Commissioner of SGST & Commercial Taxes Rajasthan & Member, Appellate Authority for Advance Ruling, Kar Bhawan,Bhawani Singh Road, Ambedkar Circle, C-Scheme, Jaipur-302005

3. STO, Ward-3, Circle-I, Jaipur Zone-III. Divisional Kar Bhawan, Jhalana Institutional Area, Jaipur.

4. Deputy Commissioner, GST Division –G Jaipur,
(GST Range –XXXIII, Jaipur).

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सत्यमेव जयते

(चन्द्रवीर सिंह राजवी)
अधीक्षक