



**RAJASTHAN AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX**

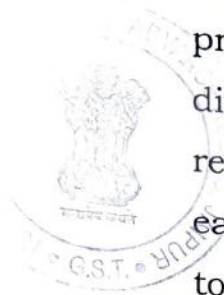
**KAR BHAWAN, AMBEDKAR CIRCLE, NEAR
RAJASTHAN HIGH COURT
JAIPUR - 302005 (RAJASTHAN)**



ADVANCE RULING NO. RAJ/AAR/2019-20/34

J.P.Meena Additional Commissioner	:	Member (Central Tax)
Hemant Jain Additional Commissioner	:	Member (State Tax)
Name and address of the applicant	:	Gaurish Sharma (M/s G K Enterprises), A-3, Adarsh Nagar, Jaipur, Rajasthan 302004
GSTIN of the applicant	:	08ARNPS7996R1Z3
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	(a) Classification of any goods or services or both; (b) Applicability of a notification issued under the provisions of this act;
Date of Personal Hearing	:	5.2.2020, 19.02.2020
Present for the applicant	:	Shri Rahul Lakhwani (CA)
Date of Ruling	:	05.03.2020

Note: 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.

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- At the outset, we would like to make it clear that the provisions of both the CGST Act and the RGST 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 RGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / RGST Act would be mentioned as being under the "GST Act".

- The issue raised by Gaurish Sharma, (M/s G K Enterprises), A-3, Adarsh Nagar, Jaipur, Rajasthan 302004 (hereinafter the applicant) is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2) (a) & (b) given as under: -

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

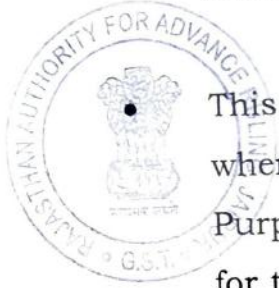
(b) Applicability of a notification issued under the provisions of this act;

- Further, the applicant being a registered person (GSTIN is 08ARNPS7996R1Z3 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 applicant is admitted to pronounce advance ruling.

1. **SUBMISSION AND INTERPRETATION OF THE APPLICANT:**

- The National Highway Authority of India ("NHAI") is an agency of the government which carries out the function of construction of roads and matters incidental thereto. The task of development of highways by the NHAI is a multi-faceted process which involves various phases that must be carried out. In such cases, organisations like the NHAI may get this work executed through contractors.
- In the present case, the work to be undertaken is described below:

"Four Laning of Dangiwas (km 96.595 of NH-112) to Jajiwai (km 283.500 of NH 65 Nagaur road) section- Package-I (Design length 74.619 km) of Jodhpur Ring Road (In Principally declared NH) in the State of Rajasthan under NHDP Phase VII on design, build, operate and transfer (the "DBOT Annuity" or Hybrid Annuity") basis"



This contract has been awarded to a private entity ("Contractor"), wherein the Contractor has entered into an agreement with a Special Purpose Vehicle 'Sadbhav Jodhpur Ring Road Private Limited' ("SPV") for the development of a four-lane highway as a part of the NHDP. The aforementioned SPV has been granted a 17-year concession by NHAI for the four-laning of the specified highway. Under this agreement, the scope of work of the Contractor involves the four-laning of the highway, as well as highway facilities that are listed in Schedule C of the Agreement. The relevant extract of Schedule C is as below:

Annex-1

Schedule-C

Project Facilities

The Concessionaire shall construct the Project Facilities described in Annex-1 to form part of the Four Lane Project Highway. The Project Facilities shall include

a. Toll Plaza, b. Pedestrian facilities, c. Street lighting, d. Truck lay-bye e. Bus bays and Passenger shelters, f. Rest areas, g. Traffic Aid Posts, h. Medical Aid Posts, i. Vehicle Rescue Posts, j. Telecom System, k. Operation and Maintenance Centre, l. Roadside furniture, m. Landscaping and tree plantation, n. Highway Patrol, o. Ambulance, p. Cranes, q. Others, r. ATMs

- The Applicant is a proprietorship concern engaged in the business of construction and is proposing to submit a bid to the aforementioned Contractor for carrying out the work of construction of the project at the site, as detailed in Article XI of the Agreement.



- That as per the notifications issued under the Central Goods and Service Tax Act, 2017 ("CGST Act") supply of services of construction has been classified under Heading 9954 as 'Construction Services' vide Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 as amended from time to time ("Rate Notification").
- That under the above-mentioned Rate Notification, the rate of GST applicable in relation to construction services with respect to 'construction of roads' has been given in Heading 9954 (iv) as 6% Similar rates have been prescribed under Rajasthan Goods and Services Tax Act, 2017 ("RGST Act"). On a combined reading of notifications issued under CGST Act and RGST Act, the effective rate of tax comes to 12% on construction of roads. The Rate Notification also notifies the applicable rate of GST for various kinds of construction services. As per the said Rate Notification, the rate of tax for civil structures or any other original works has been specified at the rate of 6% under Heading 9954(vi), and the effective rate of tax comes to 12%.
- That the Applicant has filed the present application in order to determine whether Entry (iv) of Heading 9954 of the Rate Notification would be applicable to them for the contract proposed to be undertaken. The relevant text of the notification is reproduced as below:

Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
Heading 9954 (Construction services)	(iv) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above] supplied by way of construction, erection, commissioning, installation,	6	-



	completion, fitting out, repair, maintenance, renovation, or alteration of, — (a) a road, bridge, tunnel, or terminal for road transportation for use by general public; (b) ***		
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Works Contract as Defined in Section 2(119) of the CGST Act.

(119) "works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;

- As per the above definition, the requirements to qualify as a 'works contract' are:
 - ❖ a contract for
 - ❖ building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning
 - ❖ of immovable property and
 - ❖ ownership of goods used for execution of contract is transferred.

Therefore, the abovementioned criterion needs to be fulfilled in order to be regarded as a contract as Works Contract.

- That since there exists a written agreement between the Applicant and the Contractor for a part of the work of the highway development project, it is clear that there exists a contract between the parties for such work.
- That a contract will be termed as 'works contract' only when it is for construction of immovable property. Therefore, it is imperative to analyse

definition of 'immovable property'. The meaning of term 'immovable property' is not provided under the GST law. Therefore, we have to refer to other laws, case-laws and dictionaries to ascertain the meaning of said terms which are reproduced below for reference:

Immovable Property

Section 3(26) of General Clauses Act, 1897

Section 3 of Transfer of Property Act, 1882

'immovable property' does not include standing timber, growing crops or grass.,

'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.

- That in the present case, the construction at the site of the highway project including utilities like cables and wires are fastened to the earth by using cement and concrete or by using nuts and bolts and if in case they are required to be shifted from one location to another then they are first dismantled and then re-erected at another site. The scope of work of the Applicant also involves activities like drilling through the ground to lay down such new electrical lines. That within the scope of work, the Applicant will also have to erect "lattice towers", which are structures commonly used for transmission of power through electrical conductors on which conductors and electric wires can be affixed at a suitable height above the ground. Structurally these towers are required to be able to resist loads such as wind load, snow load and self-weight. In order to erect these structures, it is clear that the previously existing lattice towers will be dismantled and thereafter new towers shall be erected.

In light of the above cited law and interpretation, it is submitted that the activity proposed to be undertaken by the Applicant will be in the nature of a 'works contract' in terms of Section 2(119) of the CGST Act since the supply involves transfer of goods along with construction services and such supply is resulting in the formation of immoveable property.

- The scope of the Project (the "Scope of the Project") shall mean and include, during the Concession Period:

(a) construction of the Project on the Site set forth in Schedule-A and as specified in Schedule-B together with provision of Project Facilities as specified in Schedule- C, and in conformity with the Specifications and Standards set forth in Schedule- D;

(b) operation and maintenance of-the Project in accordance with the provisions of this Agreement; and

(c) performance and fulfillment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement

- As per 'Article V: Obligations of The Concessionaire' in the Agreement, para 5.2.1 specifies the obligations of the Contractor as follows:

It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.

- Next, 'Article XI: Utilities, Associated Roads and Trees' makes it clear that the scope of work of Contractor also involves the shifting, relocation, rebuilding and erection of dismantled utilities that were obstructing the course of the four-lane highway. The extract of Article XI is as below:

❖ The Concessionaire shall, subject to Applicable Laws and with assistance of the Authority, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site if and only if such utility causes or shall cause a material adverse effect on the construction, operation or maintenance of the Project. The cost of such shifting shall be borne by the Authority or by the entity owning such utility, If the Authority so directs, and in the event of any delay in shifting thereof, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

❖ That on a reading of Article II and V it is clear that each component of the scope of work as listed in the Agreement has to be carried out by the contractor in order for the Agreement to be fulfilled. Since the Agreement includes the obligations as given in Article XI of the



Agreement as well, it is evident that carrying out the work as prescribed therein is a part of the process and a vital component of the work of construction of a four-lane highway to be carried out by the main Contractor in order to carry out the highway development project. Thus, it is submitted that the work proposed to be carried out by the Applicant in the present case is nothing more than the obligations of the main Contractor as specified in Article XI, which consists of construction as well as completion of a road.

In the present case, the main contract awarded by NHAI to the Contractor itself includes in its scope of work the construction of project facilities as specified in Article XI. It can be said that these facilities will be a part of the four-lane highway and it is essential for the development of the highway as per the Agreement that all the project facilities and other structures as specified in the Agreement are constructed.

- Applicability of Entry (iv) on sub-contractors

That as per the facts of the current case, NHAI has executed an agreement with a Contractor for the development of a four-lane highway. The Applicant proposes to enter into a contract with the said Contractor for carrying out a specified part of this work. Thus, it can be said that the Applicant is a sub-contractor for NHAI, providing services of a works contract. However, it is to be noted that to be eligible under Entry (iv) it is not required that the service should be supplied to a government entity, or that a sub-contractor qualifying the requirements of the said entry cannot avail the rate prescribed therein.

That in addition to the above, it is also mentioned that though entry no. (ix) and (x) of the rate notification specifically mention sub-contractors, however, no part of the Rate Notification places a bar on the sub-contractors qualifying under any other Entry even if they do not fall within the parameters of Entry (ix) and (x), since Entry (iv) is not specific to a service supplier or a service recipient.

- Intention of GST Council

That it is also the intent of the GST Council that in cases where the main contractor is falling within the any entry, the same entry should also be made applicable on a sub-contractor providing those services. This intent has clearly been reflected in one of the recommendations that was made by the GST Council in their 25th Meeting held on 18.01.2018, the text of which is as follows:

"to reduce GST rate (from 18% to 12%) on Works Contract Services (WCS) provided by sub-contractor to the main contractor providing works contract services to Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity from which attracts the GST rate of 12%. Likewise, WCS attracting 5% GST, their sub-contractor would also liable @ 5%."

- On a reading of the above, it is clear that the purpose or object of the GST Council is to extend benefit to the last chain of said supply and reason for the same is to provide equal opportunities and equal level playing fields to business entities and avoid discrimination. Based on this reason, as well as the interpretation of the notification as explained above, it is submitted that the rate that should be applicable on the Applicant should be the same as that of the main contractor for providing the service of construction of civil works through a works contract.

- That this intent of the GST Council has also been recognised by the Maharashtra AAR in the case of Shree Constructions [2018 (17) G.S.T.L. 504 (A.A.R. - GST)], which has been upheld by the Appellate Authority as well [2019 (23) G.S.T.L. 473 (App. A.A.R. - GST)]. The relevant text of the Maharashtra AAAR is reproduced below for reference:

It is very much clear that any supply of works contract pertaining to the railways including monorail and metro is subject to concessional rate of 12% GST. In the instant case, though the respondent i.e. M/s. Shree Construction is providing works contract services to its main contractor who has entered into works contract agreement with railways, the composite supply of works contract being carried out by M/s. Shree Construction is ultimately going to the use of railways without being subjected to any change or modification, thus the said works contracts, though undertaken by the sub-contractor, is undoubtedly pertaining to the railways and no one else. Thus, the condition specified under item (v) of the Sr. 3 of the said notification is completely fulfilled and therefore the services provided by the sub-contractor would attract concessional rate of 12% GST.

- As regards the appellant's contention that there is no specific mention of sub-contractor providing services in Sr. (v) as provided in item (ix) and (x) which were incorporated into the Notification No. 11/2017-C.T. by the amending Notification No. 1/2018, dated 25-1-2018, we are of the opinion that there was no need to include such sub-contractors in

the item (v) of the Notification as there was no confusion whether the sub-contractor will be eligible to such concessional rate of GST, since the activities described under item (v) of Sr. No. 3 of the notification are services specific. The service provider and the service recipient are immaterial for the determination of beneficiary of this concessional rate of GST. That is, if the works contract services provided by the main contractor or sub-contractor are pertaining to the railways, the concessional rate of 12% GST is allowed to the person who carries out the such works contract pertaining to railways.

That based on a reading of the above cited case laws and interpretation above, it is submitted that the current contract is one of construction of road and thus should be covered in Entry (iv) of Heading 9954 and the effective rate for the contract proposed to be undertaken by the Applicant will thus be 12% (6% CGST + 6% SGST).

Applying this interpretation to the present facts, it can be said that since the language used in Entry (iv) of Heading 9954 is very similar to the exemption entry with relation to roads in the service tax regime, the activity of shifting/laying down of electric cables should be interpreted as part of a road, and thus should be considered to be covered under Entry (iv).

ISSUE 2: ALTERNATIVELY, WHETHER IN THE FACTS AND CIRCUMSTANCES OF THE CASE, DOES THE ACTIVITY CARRIED OUT BY THE APPLICANT FALL UNDER ENTRY NO. (IX) OF NOTIFICATION NO. 11/2017-CIYR)?

That alternatively, and without prejudice to the above, the contract proposed to be undertaken should be considered as a contract covered under entry (ix) of Heading 9954 under sub-clause (a), which relates to sub-contracting of construction services. The Rate Notification entry has been reproduced below:

Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
Heading 9954	(ix) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act,	6	Provided that where the services are supplied to a Government Entity, they

(Construction services)	2017 provided by a sub-contractor to the main contractor providing services specified in item (Hi) or item (vi) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity		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.
	<p>(vi) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above provided to the Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of—</p> <p>(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or</p> <p>(b) profession; ***</p> <p>(c) ***</p> <p>Explanation.—For the purposes of this item, the term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local</p>	6	-

	authority in which they are engaged as public authorities.		
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❖ That it has already been stated above that the present case involves a works contract, and that the contract will be between the Applicant and the Contractor, wherein the Contractor has entered into a contract with a Special Purpose Vehicle 'Sadbhav Jodhpur Ring Road Private Limited' ("SPV") for the development of a four-lane highway. The aforementioned SPV has been granted a 17-year concession by NHAI for the four-laning of the specified highway.

❖ That for the above, the main contract should be considered as a contract covered under entry (vi) of Heading 9954 under sub-clause (a), which relates to construction of civil structures. To qualify under Entry (vi), the following conditions need to be fulfilled:

-Should be a works contract as defined in Section 2(119) of the CGST Act

- Should not be covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) of Heading 9954 of the Rate Notification.

-Should be provided to the Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity

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

-Should be of a civil structure or any other original works

-Should be meant predominantly for use other than for commerce, industry, or any other business or profession.

That the main contract is a 'works contract' in terms of Section 2(119) of the CGST Act since it the contract is for development and four-laning of a highway, which includes construction of the road, flyover, bridges and project facilities as specified in Schedule C of the Agreement.

Since the main contract does not relate to the construction of any residential or commercial apartment in any manner, it is clear that the same will not be covered under the items listed in items (i), (ia), (ib), (ic), (id), (ie) and (if) of Heading 9954.

- ❖ That Government Entity has been defined in the Rate Notification and the same reads as reproduced under:

"Government Entity" means an authority or a board or any other body including a society, trust, corporation,

(i) set up by an Act of Parliament or State Legislature; or

(ii) established by any Government,

with 90 per cent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority."

Reading the above with the definition of 'governmental authority', it is clear that NHAI will be a government entity since it is an agency of the Government of India itself, where the functions of the NHAI is to develop, maintain and manage the National Highways and other Highways vested in or entrusted to it by the Government of India.

- The services by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration has to be supplied for the civil structure or any other original works. For this it is important to understand the meaning of term 'civil structure' and 'original works'. The term 'civil structure' has not been defined in the CGST Act. Hence, as per the rules of statutory interpretations the generic meaning of the said terms has to be referred. Further, the term 'original works' has been defined under the Exemption Notification. The meanings of the said term are as under:

*Civil: of or relating to the state or its citizenry. *** (Pg. 244 of Black's Law, 6th Edition)*



*Of or relating to citizens; of or relating to the state or its citizenry
(Merriam- Webster)*

*Structure: Any construction, or any production or piece of work artificially built up or composed of parts joined together in some definite manner. That which is built or constructed; an edifice or building of any kind. (Pg. 1424 of Black's Law, 6th Edition)
something (such as a building) that is constructed; something arranged in a definite pattern of organization (Merriam- Webster).*

❖ "original works" means-

(i) all new constructions;

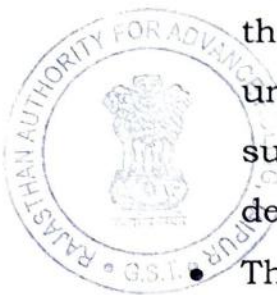
(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether prefabricated or otherwise;

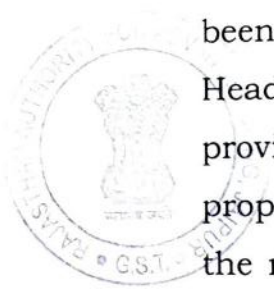
From the perusal of the aforesaid meanings it is evident that any construction or any piece of work artificially built and is related to the general public shall be considered to be the 'civil structure'. In the present case, the highway is meant for public use and to increase connectivity on the Jodhpur Ring Road for better road access and transportation of the residents of the country. Reliance can also be placed on a notification issued under service tax read with the National Road Traffic Act, the relevant extract of which is reproduced below:

That the said road will be a national highway constructed for the purpose of providing better road connectivity on the Jodhpur Ring Road, and thus by no means can it be construed for the purpose of commerce, industry, or any other business or profession. A perusal of the above notification and statute indicates that roads are for use by general public.

- That based on the above discussion it is also clear that the main contract is for construction of the road, flyover, bridges, grade separators and project facilities as described in Schedule C of the Agreement. Additionally, the Agreement also includes dismantling and then constructing, erecting and installing electric cables, both underground and overhead, along with all the necessary structures to support such cables. Thus, the main contract will clearly fall within the definition of 'civil structure'.



- That from the above discussion it is evident that the main contract in the present case will be for providing services of works contract by way of erection and installation, of a civil structure or the original works which is not meant for commerce, industry, or any other business or profession. Further, as discussed above, the main contract is for supply to NHAI, which is a 'governmental entity'. Hence, main contract shall fall under Entry (vi) of Heading 9954 of the Rate Notification"
- Service provided to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity 35. That in the present case, the NHAI has entered into an Agreement with a Contractor for development of a four-lane highway. The Applicant is proposing to enter into a contract with the aforementioned Contractor, to carry out a part of this Agreement, and thus it is clear that the supply by way of the main contract is to a government entity, i.e., NHAI.
- If services 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 36. That NHAI has been entrusted with the functions of construction of roads by the government, and acts in the capacity of an agency of the government in constructing and maintaining roads. Thus, it is clear that the activity being carried out by NHAI is one that has been entrusted to them by the government itself.
- Thus, it can be said that the activity in the present case is that of a 'works contract', as has been discussed in detail in 'Issue 1'. It has also



been discussed how the main contract shall qualify under entry (vi) of Heading 9954 of the Rate Notification, and that the service is being provided to NHAI, which is a government entity. That the Applicant proposes to undertake this work the capacity of a sub-contractor, where the main contractor is providing the service of construction of a civil structure for a government entity. There is also no doubt that the work being carried out by NHAI is one that is being carried out on behalf and as per the direction of the Central Government.

- That based the interpretation of the notification as explained above, it is submitted that the rate that should be applicable on the Applicant should be the same as that of the main contractor for providing the service of construction of civil works through a works contract. Thus, the Applicant will qualify under Entry (xi) of Heading 9954 of the Rate Notification and the said services shall attract GST @ 12% (6% SGST + 6% CGST).
- In light of the above cited law and interpretation, it is humbly submitted that the activity proposed to be undertaken by the Applicant should be held to be falling under Entry (ix) of Heading 9954 in the Rate Notification, since the Applicant is a sub-contractor proposing to undertake an activity where the main contractor is has been given the activity of development of four-lane highway, along with flyovers, bridges, grade separators and project facilities as per Schedule C of the Agreement, and such activity is covered by Entry (vi). Moreover, the supply is being made by the Contractor to NHAI, which is a government entity and task of construction of roads has been conferred on NHAI in the capacity of an agency of the government.

2 QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT

- Whether in the facts and circumstances of the case, does the activity carried out by the Applicant falls under Entry No. (iv)(a) of Notification No. 11/2017-CT(R)?
- Alternatively, whether in the facts and circumstances of the case, does the activity carried out by the Applicant falls under Entry No. (ix) of Notification No. 11/2017- CT(R)?

3 PERSONAL HEARING

In the matter personal hearing was granted to the applicant on 5.2.2020 for which the applicant requested for adjournment. Further personal hearing was granted on 19.02.2020 at Room no. 2.29 NCRB, Statue Circle, Jaipur. On behalf of the applicant Shri Rahul Lakhwani, C.A appeared for PH. During the PH, he reiterated the submissions already made in the application. Additional submissions viz. concession agreement between NHAI and M/s Sadbhav Jodhpur Ring Road Pvt. Ltd., Letter dated 5.12.2019 and Order No. AAR/GST/PB/010 dated 6.9.2019 were also submitted. He also requested for early disposal of the application.

4 COMMENTS OF THE JURISDICTIONAL OFFICER

The jurisdictional officer (Assistant Commissioner, State Tax, Circle-A, Jaipur, Zonal Kar Bhavan, Jhalana Doongri, Jaipur, Rajasthan 302004) has submitted his comments vide letter dated 31.01.2020 which can be summarized as under: -

Being a main contractor or sub-contractor the applicant who happens to be a sub-contractor has been awarded electrification work, while Notification No.11/2017-CT (R) clause (iv)(a) allows concessional rate in case of works contract of road, bridge, tunnel or terminal for road transportation for used by general public. Hence does not fall under entry No. (iv)(a) of Notification No.11/2017-CT (R).

The applicant has stated that he is a sub-contractor of the main contractor but the scope of the works contract does not fall under the works mentioned in entry No. (ix) of the Notification No.11/2017-CT (R).

5 FINDINGS, ANALYSIS & CONCLUSION:

- After going through the submissions and additional submissions made by the applicant we observe that the applicant is a proprietorship concern engaged in the business of construction and is proposing to submit a bid to M/s Sadbhav Jodhpur Ring Road Pvt. Ltd who is the main Contractor of NHAI.

- The applicant will carry out the work as mentioned in Article XI of the concession agreement between NHAI and M/s Sadbhav Jodhpur Ring Road Pvt. Ltd who is the main Contractor.

- The extract of Article XI is as below:

Utilities, Associated Roads and Trees

11.2.1 "The Concessionaire shall, subject to Applicable Laws and with assistance of the Authority, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site if and only if such utility causes or shall cause a material adverse effect on the construction, operation or maintenance of the Project. The cost of such shifting shall be borne by the Authority or by the entity owning such utility, If the Authority so directs, and in the event of any delay in shifting thereof, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be."

- During the personal hearing the authorized representative of the applicant submitted a letter dated 5.12.2019, issued by M/s Sadbhav (main contractor), addressed to the applicant, in which description of activities to be undertaken has been stipulated as under:-
"Electrical utility shifting / erection of 11 KV & LT lines (due to road widening) for completion of Jodhpur Ring Road under (Sub Division CSD-B-V, Division-CD-II Jodhpur from Km. 27+290 to 34+000)"
- In view of the above description of the work it is clear that the applicant is proposing to submit a bid for shifting / erection of electrical lines only to M/s Sadbhav Jodhpur Ring Road Pvt. Ltd who is the main Contractor of NHAI. Thus the activity to be carried out by the applicant is restricted to shifting / erection of electrical lines only as discussed above.
- Further, the details mentioned in the Article XI of the agreement as well as description of work mentioned in said letter dated 05.12.2019, specifically indicates the independent nature of work to be carried out by the applicant for which such cost will be borne by the authority or by the owning entity of the respective utility.

- Thus, we observe that as per the details mentioned in the Article XI of the agreement and description of work mentioned in the letter dated 05.12.2019, the supply made by the applicant is regarding *Electrical utility shifting / erection of 11 KV < lines* and is of independent nature. Further, such cost will be borne separately by the Authority or the utility owning entity. Hence, we observe that the payment of the above said work which will be made to the concessionaire (Main Contractor) is not part of the main contract (concession agreement) which also indicates the work is of independent nature.
- To determine whether the activity carried out by the applicant falls under entry No. (iv)(a) of Notification No 11/2017-CT (Rate) dated 28.6.2017 we have to go through the said Notification. The relevant extract of the said Notification is as under:-


Notification No 11/2017-CT (Rate) dated 28.6.2017

Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
Heading 9954 (Construction services)	<p>(iv) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above] supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, —</p> <p>(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;</p> <p>(b) ***</p>	6	-

- We observe that entry number 3(iv)(a) of the Notification No 11/2017-CT (Rate) dated 28.6.2017 allows concessional rate in case of works contract is for construction of road, bridge, tunnel or terminal for road transportation for use by general public. We observe that in the present case the proposed activity carried out by the applicant is of shifting /erection of 11 KV < lines only and the same cannot be categorised as construction of road as classified under Entry number 3(iv)(a) of the Notification No 11/2017-CT (Rate) dated 28.6.2017 (as amended).
- We further, observe that since such cost of the above said activity will be borne by the Authority or by the entity owning such utility therefore such payment of above mentioned activity is not the part of the main contract i.e. construction of road as awarded to main contractor by NHAI. Thus, there establish no nexus between the main contract awarded for construction of road by the NHAI and the work proposed to be undertaken by the applicant. Therefore, the question of covering the activity under entry number 3(iv)(a) of the Notification No 11/2017-CT (Rate) dated 28.6.2017 does not arises.
- Whether the activity carried out by the Applicant falls under Entry No. (ix) of Notification No. 11/2017- CT(R) dated 28.6.2017 or otherwise requires examination of the conditions mentioned in the said Notification. The relevant extract of Notification No. 11/2017- CT(R) dated 28.6.2017 is as under-:

Notification No. 11/2017- CT(R) dated 28.6.2017

Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition



Heading 9954 (Construction Services)	(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 the 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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- We observe that to qualify under Entry (ix) of the Notification No. 11/2017 - CT(R) dated 28.6.2017, following conditions requires to be fulfilled:-

- a) supply of works contract provided by a sub-contractor to the main contractor
- b) main contractor should be providing services specified in item (iii) or item (vi) of Heading 9954
- c) service provided by main contractor to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity
- d) if services 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.

- In the instant case we observe that the proposed activity carried out by the applicant is of shifting /erection of 11 KV< lines only as already discussed above. We further, observe that the cost of the above said activity will be borne by the Authority or by the entity owning such utility as such payment of above mentioned activity is not the part of the main contract which is evident from the lines *"The cost of such shifting shall be borne by the Authority or by the entity owning such utility"* written in the Article XI of the main

contract (concession agreement) awarded to main contractor by NHAI. Thus, there establish no nexus between the main contract awarded for construction of road by the NHAI and the work proposed to be undertaken by the applicant.


- As already discussed above the activity to be undertaken by the applicant cannot be treated as a part of main contract of NHAI thus the applicant who is supposed to execute an independent work cannot be treated as sub-contractor of the main contractor.


Hence the conditions mentioned in entry No. (ix) of the Notification No.11/2017-CT (Rate) dated 28.6.2017 are not fulfilled.

In view of the foregoing, we rule as follows: -

RULING

- a. The activity proposed to be undertaken by the applicant does not fall under entry no. (iv)(a) of the Notification No. 11/2017- CT(R) dated 28.6.2017.
- b. The activity proposed to be undertaken by the applicant does not fall under entry no. (ix) of the Notification No. 11/2017- CT(R) dated 28.6.2017.


(J.P. MEENA) 5/3/2020
MEMBER
CENTRAL TAX


(HEMANT JAIN) 5/3/2020
MEMBER
STATE TAX

SPEED POST

Gaurish Sharma
(M/s G K Enterprises),
A-3, Adarsh Nagar, Jaipur,
Rajasthan 302004

F.No.AAR/Gaurish Sharma/2019-20/273, 277.

Date: 6/03/2020

Copy to:-

1. The Chief Commissioner, CGST and central Excise, (Jaipur Zone), NCRB, Statue Circle, Jaipur, Rajasthan 302005
2. The Commissioner, State Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005.
3. The Commissioner, CGST and Central Excise, Commissionerate Jaipur, NCRB, Statue Circle, Jaipur, Rajasthan 302005.
4. The Assistant Commissioner, State Tax, Circle-A, Jaipur, Zonal Kar Bhavan, Jhalana Doongri, Jaipur, Rajasthan 302004.