

AUTHORITY FOR ADVANCE RULING – CHHATTISGARH
3rd & 4th Floor, VanijyikKar GST Bhawan, North Block Sector-19,
Atal Nagar, District-Raipur (C.G.) 492002

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PROCEEDING OF THE AUTHORITY FOR ADVANCE RULING
U/s. 98 OF THE CHHATTISGARH GOODS AND SERVICES TAX ACT, 2017

Members Present are

Smt. Sonal K. Mishra
Joint Commissioner
O/o Commissioner, State Tax
(CGGST), Raipur, Chhattisgarh.

Shri Rajiv Kumar Agrawal,
Additional Commissioner,
O/o Principal Commissioner,
CGST & Central Excise, Raipur (C.G)

Subject :-Chhattisgarh GST Act, 2017 – Advance Ruling U/s 98 Chhattisgarh GST Act, 2017 –

Advance Ruling U/s 98 sought by M/s Shreejirupa Project Limited, H.No. 289, Behind C.S.E.B Office, Sunder Nagar, Raipur-492001, Chhattisgarh GSTIN- 22AALCS6689K1ZN, vide application dated 23/06/2022 regarding applicability of GST Rate of 12% on receipt of contract for new construction of CBD railway station, platform, parking, building and all other civil constructions within the boundary of the station, as per Entry No.3(v) of Notification No.11/2017- Central Tax(Rate) Dated 28 June 2017.

Read :-Application dated 23/06/2022 from M/s Shreejirupa Project Limited, H.No. 289, Behind C.S.E.B Office, Sunder Nagar, Raipur-492001, Chhattisgarh GSTIN- 22AALCS6689K1ZN.

PROCEEDINGS

[U/s 98 of the Chhattisgarh Goods & Services Tax Act, 2017 (herein- after referred to as CGGST Act, 2017)]

No.STC/AAR/07/2022

Raipur Dated 17-08-2022

M/s Shreejirupa Project Limited, H.No. 289, Behind C.S.E.B Office, Sunder Nagar, Raipur 492001, Chhattisgarh GSTIN- 22AALCS6689K1ZN. hereinafter also referred to as the applicant] has furnished application in Form ARA-01 dated 23.6.2022 U/s 97 of the Chhattisgarh Goods & Services Tax Act, 2017 seeking advance ruling regarding applicability of GST Rate of 12% on receipt of contract for new construction of CBD railway station, platform, parking, building and all other civil constructions within the boundary of the station, as per Entry No.3(v) of Notification No.11/2017- Central Tax (Rate) Dated 28 June 2017.



2.1 M/s Shreejkrupa Project Limited is a company registered under The Companies Act, 2013 and is involved in construction of building and civil works (herein after called the Company). The company has a GST registration in the state of Chhattisgarh.

2.2 The company applied for a Tender for construction of CBD Railway Station in Sector 22, Naya Raipur, Chhattisgarh. The company was awarded the tender as per the prescribed rules by Naya Raipur Atal Nagar VikasPradhikaran (hereinafter called NRANVP).

2.3 There is a tripartite agreement vide No 03/CBD-Rly-Strn/CE/SE-II/NRANVP/2022-23 dated 25 April 2022 between the Company as the contractor, NRANVP as the agency and employer being Naya Raipur Atal Nagar Smart City Corporation Limited (hereinafter called NRANSCCL) for the execution of the construction of the Railway Station. The railway station will be used for the connectivity of Naya Raipur with rest of India and will be called CBD Railway Station, as per the official website of Naya Raipur Atal Nagar. The copy of tripartite agreement was enclosed.

2.4 With reference to the tender document and drawings following civil construction, erection, commission and installation of original works are to be completed by the Company, which can be summarised as below:

- Railway Platform
- Railway station offices
- Parking area
- Internal drop off lanes and roads
- Pavements, footpath
- Buildings within the boundary
- Footover bridge
- Boundary

3. Contentions of the applicant: -

3.1 The nature of services as per the above facts for construction of railways to be done by the Company falls under Sr no 3 (v) of Notification 11/2017 Central Tax (Rate) dated 28 June 2017 as amended by Notification 20/2017 dated 22 August 2017 which provided the GST rate @ 12% for such services.

Below is the relevant excerpt of the Sr. no 3(v) of the notification:

.....
[(v) 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] 18 supplied by way of construction, erection, commissioning, or installation of original works pertaining to, -

including monorail and metro;



-
- 3.2 With reference to above notification, it has not bifurcated or indicated to whom the services are to be provided like the other services in Sr no 3(v) of Notification No 11/2017 dated 28 June 2017 emphasize to whom the service is provided and are charged at 18% as prescribed. Further, that in their case, Sr no 3(v) of Notification No 11/2017 dated 28 June 2017 does not specify to whom the service is to be provided.
- 3.3 From the above excerpt, following conditions should be satisfied for the service to fall under Sr no 3(v) of Notification No 11/2017 dated 28 June 2017:

- Works Contract service
- Composite Supply
- Original Works
- Pertains to Railways

i) **Works Contract**

The 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."

The service to be provided as per the agreement and clearly falls under works contract as per above definition which is a contract for 'Construction of railway station, platform, buildings, parking etc' on the land allotted by NRANSCL in Sector 22 Atal Nagar Nava Raipur.

ii) **Composite Supply:**

As per Sec. 2(30) of CGST Act of 2017, 'Composite Supply' is a kind of supply made by a taxable person to a recipient that includes two or more taxable supplies of goods or services or both, or their combination, that are naturally bundled and supplied in conjunction to each other in the ordinary course of business out of which one constitutes to be a Principal Supply.

That, in their case, the supply is a composite that includes taxable services of construction service (labour) and taxable goods (construction material) for execution of the works. Both the taxable service and goods are naturally bundled and interrelated with each and hence falls under composite supply. The Company has to provide both labour service and material without which the construction will not be completed and the entire work is to be provided by the Company only. Hence the works contract service provided is a composite supply.

iii) **Original Works**

Original work is defined para 2(zs) of the Notification 12/2017 Central Tax (Rate) as below:

(zs) "original works" means- **all new constructions;**

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



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(ii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

It is clearly evident by the tender and agreement that the construction of the railway station is a new project and new construction and hence the condition of original works is satisfied for the service to be under Sr no 3(v) of Notification no 11/2017 dated 28 June 2017.

iv) **Pertains to railways:**

Meaning of pertains to:

In addition, original works pertain to railways and that the meaning of 'pertains to' which means 'relates to' or 'connected to'. The purpose behind interpretation is to clarify the meaning of the words used in the statutes which might not be that clear. The true meaning 'pertains to railways' should be taken into consideration which is all works related to railways and hence will include all the structures like railway platform, station, offices, buildings, stay areas, parking, roads etc.

3.4 **Meaning of railways:**

- The word 'railways' is not defined under GST Act however the same is defined as mentioned above in Section 2(31) of the Railways Act, 1989 and also to be interpreted in its popular sense. In this regard, The Apex Court in the case of M/s Mscopvt Ltd Vs Union of India, reported 1985 AIR 76, 1984(10) TMI 44 held, "But while construing a word which occurs in a statute or statutory instrument in the absence of any definition in that very document it must be given the same meaning which people conversant with the subject matter understand it. It is hazardous to interpret a word in accordance with its definition in another statute or statutory instrument and more so when such statute is statutory instrument is not dealing with any cognate subject".

- Definition of 'Railways' as per section 2(31) of The Railway Act, 1989 as below:

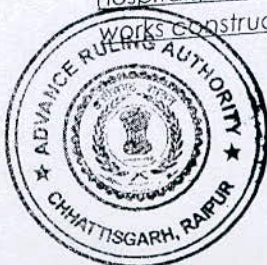
(31) "railway" means a railway, or any portion of a railway, for the public carriage of passengers or goods, and includes—

(a) all lands within the fences or other boundary marks indicating the limits of the land appurtenant to a railway;

(b) all lines of rails, sidings, or yards, or branches used for the purposes of, or in connection with, a railway;

(c) all electric traction equipments, power supply and distribution installations used for the purposes of, or in connection with, a railway;

(d) all rolling stock, stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, roads and streets, running rooms, rest houses, institutes, hospitals, water works and water supply installations, staff dwellings and any other works constructed for the purpose of, or in connection with, railway;



(e) all vehicles which are used on any road for the purposes of traffic of a railway and owned, hired or worked by a railway; and

(f) all ferries, ships, boats and rafts which are used on any canal, river, lake or other navigable inland waters for the purposes of the traffic of a railway and owned, hired or worked by a railway administration, but does not include—

(i) a tramway wholly within a municipal area; and

(ii) lines of rails built in any exhibition ground, fair, park, or any other place solely for the purpose of recreation;

- From the above the relevant sub clause (d) of Sec 2(31) of The Railways Act, 1989 covers the all the points as per agreement included in construction of railway station. Hence construction of railways includes railway platform, station, offices, buildings, stay areas, parking, roads and all other such structures as per the drawings provided in the tender.

3.5 From the above explanation, the nature of works contract to be performed by the Company under the said agreement clearly falls under 'original works pertaining to railways' and hence can be construed that the same falls under Sr no 3(v) of Notification No 11/2017 dated 28 June 2017. Also, on the complete reading of Sr no 3(v) of Notification No 11/2017 dated 28 June 2017 of the said notification the nature of the services comprises for the public benefit and development and hence GST at 12% and not higher rate.

3.6 The applicant has cited reference to the following Advance Rulings:

- i) The expansion of expression 'pertaining to' has also been appreciated by the Hon'ble Authority for Advance Ruling, Karnataka in the case of M/s. Quatro Rail Tech Solutions limited reported as 2019(10)TMI 1134 dated 27.9.2019 in paragraphs 4.8 and 4.9:
"4.8 Since this involves the works related to railway network, the contract can be said to be pertaining to Railways. The term 'pertaining to Railways' is more expansive and includes other establishments other than Indian Railways. Hence the contract is pertaining to Indian Railways.
4.9 There is no stipulation in the said entry that this contract must be executed to the Railways but it is sufficient, that it must be pertaining to Railways and the supplier and the recipient in each of the contract is immaterial."

- ii) Another advance ruling in case of Bindu Projects & Co. [2021] 130 taxmann.com 372 [AAR - KARNATAKA dated 30 July 2021] which has held that the new construction pertaining to railways will be taxable under Sr no 3(v) of Notification no. 11/2017



dated 28 June 2017. The gist of the advance ruling is that the applicant was awarded a contract with Railways for construction of new building of railway station along with alterations and repairs of existing structure and question raised whether the same is original works and falls under Sr no 3(v) of the notification 11/2017 dated 28 June 2017 (one of the questions for which applicant has applied for advance ruling).

The Ld Authority in this case has emphasized on the meaning of 'Original Works' and held in the ruling that:

"The new constructions involved in the contract are liable to tax at 12% (6% CGST and 6% SGST) as per entry no.3(v) of Notification No. 11/2017 - Central Tax (Rate), dated 28-6-2017 as amended by Notification No. 20/2017 - Central Tax (Rate), dated 22-8-2017.

3.7 Thus it was applicant's opinion that in their case the works contract pertains to original works i.e., new construction of CBD Railway station platform, offices, buildings, foot over bridge, stay areas, parking, roads and all structures within the boundary very well falls under the GST rate of 12% under Sr no 3(v) of the Notification 11/2017 dated 28th June 2017.

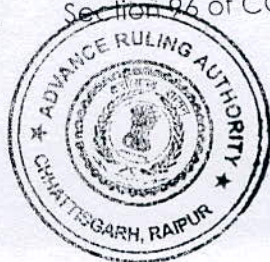
4. Personal Hearing: - Keeping with the established principles of natural justice, virtual hearing in the matter was extended to the applicant through virtual mode as requested by them, and accordingly, Smt. Anuja Shukla C.A & Shri Arif Memon, C.A. and authorized representative of the company appeared online for hearing on 10.08.2022 and reiterated their contention as furnished in the ARA-01.

5. The legal position, analysis and discussion: -

At the very outset, we would like to make it clear that the provisions for implementing the CGST Act and the Chhattisgarh GST Act, 2017 [hereinafter referred to as "the CGST Act and the CGGST Act"] are similar and thus, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the CGGST Act, 2017. Now we sequentially proceed to discuss the issues involved in the ruling so sought by the applicant and the law as applicable in the present case.

We have gone through the submissions made by the applicant and have examined the points raised by them. We find that the issue raised in the instant application is squarely covered under Section 97(2)(b) of the CGST Act 2017 being a matter related to applicability of a notification issued under the provisions of this Act. We therefore, admit the application for consideration on merits.

6. Section 96 of CGST Act, 2017, Authority for advance ruling, stipulates as under: -



Subject to the provisions of this Chapter, for the purposes of this Act, the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory.

Section 97(2) of CGST Act, 2017 stipulates that: -

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.

Further 103 of CGST Act, 2017 stipulates about the ruling pronounced as under: -The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only -

- a. On the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;
- b. On the concerned officer or the jurisdictional officer in respect of the applicant.

Thus, in view of the above section 103 of CGST Act, 2017, the ruling so sought by the Applicant would be binding only on the Applicant and on the concerned officer or the jurisdictional officer as stipulated above.

7. The applicant in support of their point of view furnished the copy of E-Tender Document for the construction of CBD Railway Station at Sector-22, Nava Raipur, Atal Nagar, Raipur, Chhattisgarh issued by Chief Executive officer, (NRANVP) under NITNo: 61/CBD-Rly-Str/SE-II/CE/NRANVP/2021-22 dated 31.01.2022. They also furnished the copy of letter of acceptance cum work order dated 31.3.2022 issued by CEO, NRANVP, Raipur in this regard. The applicant has accepted above letter of acceptance cum work order amounting to Rs.51,91,14,365.01 (Fifty-One Crore Ninty One Lakhs Fourteen Thousand Three Hundred Sixty-Five and One Paisa Only) with the specified time period of work being 15 months from 07.04.2022. The applicant has also furnished the copy of Tripartite contract agreement dated 25.4.2022 between NRANSCCL Nava Raipur Atal Nagar Smart City Corporation Limited of Chhattisgarh (the employer), NRANVP (the



Agency) and the applicant for construction of CBD Railway station at Nava Raipur, Atalgar, Raipur (CG).

Before getting in to the issues involved, we would first like to go through the relevant text of the issue in hand, as appearing at S.No. 3(v)(a) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended, vide Notification 01/2018 Central Tax (Rate) dated 25.01.2018 and various other amendments from time to time, amended vide Notification no. 22/2021-Central Tax (Rate) dated 31.12.2021. In the instant case the eligibility or otherwise of reduced rate of GST under Notification no. 11/2017 Central Tax (Rate) as amended, provided under S.no. 3(v) ibid, is the subject matter of this proceeding. The aforesaid Notification stands amended vide Notification No. 03/2022-Central Tax (Rate) New Delhi, the 13th July, 2022, effective from 18.7.2022. For the sake of brevity, the relevant text of the same (prior to amendment and post amendment dated 13.7.2022) is reproduced hereunder.

9.1 Rate of GST on intra-State supply of specific services with Service Code Tariff (SAC)

Government of India
Ministry of Finance
(Department of Revenue)
Notification No. 11/2017-Central Tax (Rate)

New Delhi, the 28th June, 2017

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1), [sub-section (3) and sub-section (4)] 1 of section 9, sub-section (1) of section 11, sub-section (5) of section 15[.2 sub-section (1) of section 16 [and section 148] 3 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby notifies that the central tax, on the intra-State supply of services of description as specified in column (3) of the Table below, falling under Chapter, Section or Heading of scheme of classification of services as specified in column (2), shall be levied at the rate as specified in the corresponding entry in column (4), subject to the conditions as specified in the corresponding entry in column (5) of the said Table:-

TABLE

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
1	Chapter 99	All Services		
2	Section 5	Construction Services		
3	Heading 9954 (Construction)	(i) (ia) (ib)



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	services) (if)		
		(ii) [***]	-	-
		(iii) Composite supply of works contract as defined in clause (119) of section 2 of the	6	[***]
		(a)		
		(b)		
		(c)		
		(iv) Composite supply of works contract	6	-
		(a)		
		(b)		
		(c)		
		(d)		
		(da)		
			
		(v) 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, or installation of original works pertaining to, -	6	-
		(a) railways, [including monorail and metro;		
		(b) a single residential unit otherwise than as a part of a residential complex;		
			
		(va)		



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		(vi).....		
		(vii).....		
		(viii).....		
		(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 or a local authority.	6	***]
		(x) 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 (vii) above to the Central Government, State Government, Union territory or a local authority.	2.5	***]
		(xi).....		
		(xii) Construction services other than (i), (ia), (ib), (ic), (id), (ie), (if), (iii), (iv), (v), (va), (vi), (vii), (viii), (ix), (x) and (xi) above. Explanation. -For the removal of doubt, it is hereby clarified that, supply by way of services specified at items(i), (ia), (ib), (ic), (id), (ie) and (if) in column (3) shall attract central tax prescribed against them in column (4) subject to conditions specified against them in column (5) and shall not be levied at the rate as	9	-]]]]



		specified under this entry		

9.2 The aforesaid Notification No. 11/2017-Central Tax (Rate), dated the 28th June, 2017 was amended vide Notification No. 03/2022-Central Tax (Rate) New Delhi, the 13th July effective from 18.7.2022 as under:-

GOVERNMENT OF INDIA MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)

Notification No. 03/2022-Central Tax (Rate)

New Delhi, the 13th July, 2022

G.S.R.....(E).-In exercise of the powers conferred by sub-section (1), sub-section (3) and sub-section (4) of section 9, sub-section (1) of section 11, sub-section (5) of section 15, sub-section (1) of section 16 and section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No. 11/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 690(E), dated the 28th June, 2017, namely:-

In the said notification, -

(A) in the Table, -

(i) against serial number 3, in column (3), -

(a) items (iii), (iv), (v), (va), (vi) and (ix) and the corresponding entries relating thereto in columns (4) and (5) shall be omitted;

(b) against items (vii) and (x), for the entry in column (4), the entry "6" shall be substituted;

(c) in item (xii), for the brackets and figures "(iii), (iv), (v), (va), (vi), (vii), (viii), (ix)", the brackets and figures "(vii), (viii)," shall be substituted

9.3 Thus from the above it gets abundantly clear that for the applicability of the reduced rate of GST as stipulated supra at 3(v)(a) supra (till 17.7.2022), all the conditions mentioned therein has to be necessarily fulfilled viz.

(i) the service should be under the Heading 9954 (Construction Service)



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(i) the supply should be a 'Composite Supply'

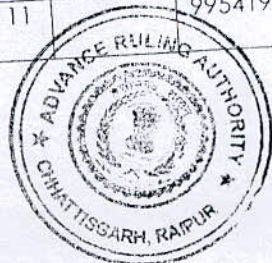
(iii) the work should be 'works contract' as, defined in Clause (119) of Section 2 of CGST Act and

(iv) The work should be 'by way of construction, erection, commissioning, or installation of "original works" "pertaining to railways", including monorail and metro.

9.4 Coming to the first criterion above, the Scheme of Classification of Services as provided in the Annexure to Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 supra, the SAC relating to construction services reads as under:

ANNEXURE : SCHEME OF CLASSIFICATION OF SERVICES

S. No.	Chapter, Section, Heading or Group	Service Code (Tariff)	Service Description
(1)	(2)	(3)	(4)
1	Chapter 99		All Services
2	Section 5		Construction Services
3	Heading 9954		Construction services
4	Group 99541		Construction services of buildings
5		995411	Construction services of single dwelling or multi dwelling or multi-storied residential buildings
6		995412	Construction services of other residential buildings such as old age homes, homeless shelters, hostels and the like
7		995413	Construction services of industrial buildings such as buildings used for production activities (used for assembly line activities), workshops, storage buildings and other similar industrial buildings
8		995414	Construction services of commercial buildings such as office buildings, exhibition and marriage halls, malls, hotels, restaurants, airports, rail or road terminals, parking garages, petrol and service stations, theatres and other similar buildings
9		995415	Construction services of other non-residential buildings such as educational institutions, hospitals, clinics including veterinary clinics, religious establishments, courts, prisons, museums and other similar buildings
10		995416	Construction services of other buildings nowhere else classified
11		995419	Services involving repair, alterations, additions, replacements, renovation, maintenance or



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			remodeling of the buildings covered above
12	Group 99542		General construction services of civil engineering works
13		995421	General construction services of highways, streets, roads, railways and airfield runways, bridges and tunnels
14		995422	General construction services of harbours, waterways, dams, water mains and lines, irrigation and other waterworks

Further, the 'Explanatory Notes to the Scheme of Classification of Service', indicates the scope and coverage of the Scheme of classification of service and is a guiding tool for classification of services, the Explanatory notes to SAC 995421 are as follows:

EXPLANATORY NOTES TO SCHEME OF CLASSIFICATION OF SERVICES UNDER GST

Preface

The Scheme of Classification of Services adopted for the purposes of GST is a modified version of the United Nations Central Product Classification.

2. The Explanatory notes for the said Scheme of Classification of Services is based on the explanatory notes to the UNCP, and as recommended by the committee constituted for the purpose, is annexed.
3. The explanatory notes indicate the scope and coverage of the heading, groups and service codes of the Scheme of Classification of Services. These may be used by the assessee and the tax administration as a guiding tool for classification of services. However, it may be noted that where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description.

EXPLANATORY NOTES FOR SUPPLY OF SERVICES UNDER GST

[Chapter 99]

9954 Construction services :

This heading includes :

- i. General construction services for all complete constructions.
- ii. Specialized construction services i.e., services related to parts of buildings or civil engineering works, rather than the complete construction object.



421 General construction services of highways, streets, roads, railways, airfield runways, bridges and tunnels

This service code includes construction services

- i. for formations of highways, including elevated highways, roads, streets, other vehicular and pedestrian ways and open car parks;
- ii. footpaths, traffic-calming structures, cycle tracks, etc.;
- iii. vehicular and pedestrian underpasses and overpasses;
- iv. construction or restoration of road surface and parking lots with asphalt, concrete, etc.;
- v. installation services of crash barriers, low separating walls, traffic signs, etc.;
- vi. creation, maintenance and signposting of tracks and paths;
- vii. painting services of markings on roads, parking lots and similar surfaces;
- viii. railway roadbeds for long-line and commuter rails, street tramways and underground or elevated urban rapid transit systems;
- ix. railway electrification structures including laying services of ballast and rails;
- x. installation services of switch gear, points and crossings;
- xi. construction services of control and safety systems for railway tracks;
- xii. construction services of funicular railways and cable car systems;
- xiii. construction services for airfield runways, including taxiways, aprons and related airport structures other than buildings;
- xiv. construction of bridges, highway, road and railway tunnels and tunnels for underground railway traffic

9.5 In the instant case under consideration, the applicant has furnished the copy of letter of acceptance cum work order dated 31.3.2022 issued by CEO, NRANVP, Raipur for construction of CBD Railway station at Nava Raipur.

As SAC 9954 supra covers construction services we now proceed to analyse the compliance of other vital conditions much essential for being eligible to the reduced rate of tax claimed by the applicant, as stipulated under S.no. 3(v)(a) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended.

9.6 Coming to the second criteria as to whether the instant supply is a "Composite supply", we would first like to get in to the definition of Composite supply which stands defined under Section 2, (30) of the CGST Act, 2017 as under:

"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;

Illustration. - Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

On perusal of the copy of letter of acceptance supra, furnished by the applicant it is seen that the intended works to be undertaken by the applicant is construction of CBD Railway station. Now for the instant supply of Civil works to be undertaken by the applicant to be categorized as "composite supply" there needs to be supply of goods and services and the same should be a natural bundle of supply of both and supplied in conjunction with each other in the ordinary course of business. No such details of supply of goods for the intended civil works is forthcoming from the letter of acceptance furnished by the applicant. Thus without substantial evidence of the works contracted/undertaken, like materials/ goods to be supplied, related schedules, etc., it is practically impossible for this authority to conclude or for that matter hold that the works undertaken as is forthcoming from the "letter of acceptance cum work order" and the tripartite agreement dated 25.4.2022 furnished by the applicant is 'composite supply' perse. Accordingly, this authority on the basis of records furnished and available on record, is not in a position to conclusively hold that the works mentioned in the "letter of acceptance cum work order" issued by Chief Executive Officer, Nava Raipur Atal Nagar Vikas Pradhikaran supra or tripartite agreement, intended to be undertaken by the applicant qualifies being treated as 'Composite supply' as per Section 2 (30) of CGST Act, 2017.

9.7 Now we move on the third criterion for the work intended to be undertaken by the applicant being "Works Contract" as defined in Clause (119) of Section 2 of CGST Act, essential for availing exemption as provided under S.no. 3(v)(a) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended.

Under the scheme of things as envisaged under GST law, the definition of "Works Contract" has been restricted to any work undertaken for an "Immovable Property" unlike the erstwhile VAT and Service Tax provisions where works contracts for movable properties were also considered. The 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." Thus, from the above it can be seen that the term works contract has been restricted to contract for building construction, fabrication etc. of any immovable property only. Any such composite supply undertaken on goods say for example a fabrication or paint job done in



[Handwritten signature]

Automotive body shop will not fall within the definition of term works contract per se under GST. Such contracts would continue to remain composite supplies, but will not be treated as a Works Contract for the purposes of GST. 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. Thus, there exist a clear demarcation of a works contract as a supply of service under GST. Besides this, as per section 17(5) (c) of the CGST Act, 2017, input tax credit shall not be available in respect of the works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service. Thus, ITC for works contract also stands restricted and can be availed only by one who is in the same line of business and is using such services received for further supply of works contract service. For example, a building developer may engage services of a subcontractor for certain portion of the whole work. The subcontractor will charge GST in the tax invoice raised on the main contractor. The main contractor will be entitled to take ITC on the tax invoice raised by his sub-contractor as his output is works contract service. However, in case the main contractor provides works contract service (other than for plant and machinery) to a company say in the IT business, the ITC of GST paid on the invoice raised by the works contractor will not be available to the said IT Company.

From the definition, a work shall be treated as Works Contract if that work is done for land or earth or for immovable property and there is transfer of property in goods involved in the execution of such contract. Immovable property by its very definition means that it cannot be moved and cannot be detached or dismantled from the land or earth and further that dismantling of the same would render it defunct / redundant. Immovable property would include in its ambit land and the things which are attached to or embedded in the land such as buildings, bridges etc. However not everything that is attached to the land would automatically constitute an immovable property. Whether the particular property is an immovable property or not is subject to the peculiar facts of each case. Hon'ble courts have pronounced various judicial pronouncements laying down certain criteria for determining whether a property is immovable or not. From these decisions, it can be derived that an immovable property would consist of the following characteristic -

- It should be permanently attached to or affixed to the earth.
- It should come into existence as an immovable property.
- It cannot be shifted from one location to other location without dismantling it. In other words, only individual parts can be shifted and property as such cannot be shifted.
- The dismantling of the property would cause substantial damage to the said property.
- The said property is not attached to earth merely for operational efficiency of the said property such as to prevent it from wobbling during the operations.
- There is an intention of permanently attaching the said property to the ground.



In the present case under consideration, the above referred "letter of acceptance cum work order" Chief Executive Officer, Nava Raipur Atal Nagar VikasPradhikaran and the tripartite agreement dated 25.4.2022 furnished by the applicant supra, only provides a peripheral aspect and indicates towards the outline description of the activity to be undertaken by the applicant, as "construction of CBD Railway station at Nava Raipur", which as per the applicant includes civil construction of railway platform, railway station officers, parking area, internal drop off lanes and roads, pavement, footpath, building within the boundary, foot over bridge, boundary. The other aspect as regards the property i.e., transfer of property in goods as required for categorizing the same under the definition of 'Works Contract' is a prerequisite and can in no way be ignored with. Under GST, only those defined works carried out on any immovable property is covered under 'Works Contract'. Thus, although the intended construction as above by its description as is forthcoming from the said two documents appears to be an immovable property, there must also be transfer of property in goods involved in the execution of such contract. Accordingly, this authority on the basis of records furnished and available on record, comes to considered conclusion that the benefit of reduced rate of GST claimed by the applicant as provided under Notification supra is applicable only when the said civil work intended to be undertaken by the applicant fulfils all the conditions stipulated therein for being treated as 'Works Contract' as defined under Section 2 (119) of CGST Act, 2017, as discussed herein above.

9.8 The other prerequisite to be satisfied in the instant case is that the supply should be by way of 'construction, erection, commissioning, or installation of original works pertaining to railways, including monorail and metro. Original work is defined in Para 2(zs) of the Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 is that : "original works" means- all new constructions; (i) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable; (ii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

From the documents furnished by the applicant and in view of the elaborate discussions above regarding the work undertaken by the applicant as is forthcoming from the same, it is seen that the work awarded to the applicant are 'Original work' as defined in the notification. Further, on a thorough look into the text of the claimed exemption as provided under S.no. 3(v)(a) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended, vide Notification 01/2018 Central Tax (Rate) dated 25.01.2018, we find that the entry at 3(v)(a) is specific to the composite supply of works contract pertaining to railways including monorail and metro.

9.9 Now coming to the aspect of "railways", it is seen that the term "railways" is not defined in the GST Act. It, however stands defined under Section 2(31) of the Railways Act, 1989.



"(31) 'railway' means a railway, or any portion of a railway, for the public carriage of passengers or goods, and includes--

(a) all lands within the fences or other boundary marks indicating the limits of the land appurtenant to a railway;

(b) all lines of rails, sidings, or yards, or branches used for the purposes of, or in connection with, a railway;

(c) all electric traction equipments, power supply and distribution installations used for the purposes of, or in connection with, a railway;

(d) all rolling stock, stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, roads and streets, running rooms, rest houses, institutes, hospitals, water works and water supply installations, staff dwellings and any other works constructed for the purpose of, or in connection with, railway;

(e) all vehicles which are used on any road for the purposes of traffic of a railway and owned, hired or worked by a railway; and

(f) all ferries, ships, boats and rafts which are used on any canal, river, lake or other navigable inland waters for the purposes of the traffic of a railway and owned, hired or worked by a railway administration, but does not include--

(i) a tramway wholly within a municipal area; and

(ii) lines of rails built in any exhibition ground, fair, park, or any other place solely for the purpose of recreation;"

Further sub-sections (20) & (25) of Section 2 of the Railways Act, 1989 define Government Railway as well as non-Government Railway as,

"(20) 'Government railway' means a railway owned by the Central Government;

.....

(25) 'non-Government railway' means a railway other than a Government railway;"

Thus, there can be two types of "railway", Government as well as non-Government. However, for both of them to qualify as "railway" it should be used for the public carriage of passengers or goods. In case for the railways, the track in question is meant exclusively for the private use of the project owners for transport of goods upto/from their plant, the same cannot qualify as "railway" as it is not used for public carriage of passenger or goods. Hence, even though the said track may be constructed by using Rails as per the specifications of the Railway Act, 1989, the same cannot qualify as "railway" and not eligible for exemption provided in the statute. It is actually a "private siding" as explained in Section 94 of the Railway Act, 1989, which deals with the liability of damage to in transit goods on the owner of the private siding upto the specified point of interchange of wagons between the siding and the railway administration.



9.9.1 Hon'ble Delhi High Court, after examining the provisions of the Indian Railways Act, 1989 in the case of DMRC vs. Municipal Corporation of Delhi in the context of levy of local taxes reported in 2008(103) DRJ 369 held as follows:

"9. The word Railway as per the above definition means Railway or any portion thereof, but the same should be used for public carriage of passengers, goods and includes various properties as specified in clauses (a) to (f) therein. The term 'Railway', in the first part of the definition clause relies upon the word "Railway" as is understood in normal parlance, with a stipulation that it should be used for the purpose of transportation of public carriage of passengers or goods. The Supreme Court in the case of Shahadara (Delhi) Saharanpur Light Railway Company vs. Municipal Board reported in AIR 1969 SC 513, had agreed with the contention of the appellant therein that the expression 'Railway' as is commonly understood means carriage of passengers and goods on iron rails. The term 'Railway' as described in Article 366(20) does not include tramway wholly within the municipal area, line of communication wholly situated in one State and declared by the Parliament by law not to be Railway. The petitioner qualifies and is a Railway within the meaning of Section 2(31) of the 1989 Act. It is engaged in transportation of passengers on rails. It is a public carriage. This factual position is not challenged by the respondent.

10. In view of the reasoning given above, it has to be held that Section 184 of 1989 Act grants protection from levy of taxation by a local authority to 'railway administration' be it a Government Railway or a Non-Government Railway. The petitioner, therefore, will be entitled to protection under Section 184 of the Act to the extent it is a 'railway administration' as defined in section 2(32) read with section 2(25) of the 1989 Act."

9.9.2 The issues and circumstances involved in the case in hand of the applicant is quite distinguishable. Here in the impugned case the applicant has been awarded the work of construction of CBD Railway station, commercial complex, boundary etc. at Nava Raipur (C.G) by Nava Raipur Atal Nagar Vikas Pradhikaran [NRANVP] and not by any Railway. Besides this the work allotted and undertaken by the applicant is not for construction of any work related to construction of railway lines or construction of track work relating to any rail project or for that matter any private railway siding.

Construction of complexes, railway station and commercial buildings on land belonging to NRANVP on purely commercial basis can in no way be treated as "pertaining to railways" or works constructed for the purpose of, or in connection with, railway. What NRANVP has awarded the applicant is the work of construction of commercial building / complexes / station / boundary etc. on the land owned by NRANVP which by no reasoning can be attributable as being "pertaining to railways", it not being related to Government railway or non-Government railway. Besides this, on perusal of the copy of drawings of the said project furnished by the applicant we find that at the site where the construction is being undertaken, the applicant appears to have been awarded the construction work of commercial buildings and other business



complexes as well, which by no stretch of imagination can be treated as "pertaining to railways" or works constructed for the purpose of, or in connection with, railway. Any construction project directly related to railways such as railway line / track, railway siding etc. where railway is involved would be attributable as being "pertaining to Railway", which incidentally is not the case here. In the instant construction project being undertaken by the applicant there is neither any involvement of "Government railway" nor any "non-Government railway". Just because construction of a CBD Railway station including commercial complexes/buildings is being undertaken by the applicant, on purely commercial consideration on the basis of a "letter of acceptance cum work order" issued by Chief Executive Officer, Nava Raipur Atal Nagar Vikas Pradhikaran, Raipur does not entitle the work as being categorized as a construction project "pertaining to railways" or for that matter works constructed for the purpose of, or in connection with, railway.

A self-governed, stand-alone construction work of commercial complexes / buildings within the boundary, station, parking area, roads, pavements, footpath, offices, foot over bridge, boundary as brought about by the applicant in their application, on land owned and belonging to Nava Raipur Atal Nagar Vikas Pradhikaran [NRANVP] on the basis of a "letter of acceptance cum work order" issued by the Chief Executive Officer, Nava Raipur Atal Nagar Vikas Pradhikaran and a tripartite agreement dated 25.4.2022 [between the applicant as the contractor, NRANVP as the agency and Nava Raipur Atal Nagar Smart City Corporation Limited (NRANSCCL) being the employer] for the execution of the said construction, can in no way be held as pertaining to railways or works constructed for the purpose of, or in connection with, railway.

Thus, this authority in addition to the non-adherence of the other aspects/conditions for availing the benefit of Notification claimed by the applicant as discussed above by the applicant, comes to the conclusion that the said construction project being undertaken by the applicant cannot be termed as "pertaining to railways", much essential for entitlement of the reduced rate of tax as provided under s.no. 3(v)(a) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended.

9.9.3 The applicant has cited reference to AAR rulings in support of their opinion. In this regard, it has been discussed in the preceding para that the issues involved in the instant case is different and distinguishable to the case referred to. Further as discussed initially, section 103 of CGST Act, 2017 stipulates about the ruling pronounced under the Act, as follows: -

The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only -



- a. On the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;
- b. On the concerned officer or the jurisdictional officer in respect of the applicant.

Thus, in view of the above section 103 of CGST Act, 2017, the ruling given in the cited case would be binding only on the Applicant and on the concerned officer or the jurisdictional officer as stipulated above

Accordingly on the basis of the above discussions, we come to the considered view that it would be appropriate to conclude that till 17.7.2022, the applicability of Sl.no. 3(v)(a) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended to the applicant, M/s Shreejkrupa Project Limited, H.No. 289, behind C.S.E.B Office, Sunder Nagar, Raipur-492001, Chhattisgarh GSTIN- 22AALCS6689K1ZN for the said work, is subject to the fact that apart from the other stipulated conditions therein as discussed, the works undertaken by them satisfy the condition of it being "Composite supply" as defined under Section 2 (30) of the CGST Act, 2017, the same are 'Works Contract' as per Section 2 (119) of the Act and that the same "pertain to railways". As the applicant has been found wanting in compliance of the stipulations provided under Sr. no. 3(v)(a) of Notification no. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended including the condition that the work "pertains to railway", the said construction works attract GST @ 18% [9% CGST + 9% CGGST] under the residual entry at Sr. no. 3(xii) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended.

9.9.4 Further with effect from 18.7.2022, as the exemption claimed by the applicant under Sr. no. 3(v)(a) ibid stands omitted, in view of the amendments made in Notification no. 11/2017 Central Tax (Rate) dated 28.06.2017 vide Notification no. 03/2022 dated 13th July 2022, the construction services undertaken by the applicant would accordingly attract GST @ 18% [9% CGST + 9% CGGST] under the residual entry no. Sr. no. 3(xii) of Notification no. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended supra on 13.7.2022.

10. Having regard to the facts and circumstances of the case and discussions as above, we pass the following order: -

ORDER

(Under section 98 of the Chhattisgarh Goods and Services Tax Act, 2017)

Raipur, dated 17-08-2022

No.STC/AAR/06/2022



The ruling so sought by M/s Shreejirupa Project Limited, H.No. 289, Behind C.S.E.B Office, Sunder Nagar, Raipur-492001, Chhattisgarh GSTIN- 22AALCS6689K1ZN, the applicant is accordingly answered as under:

RULING

For the said work of construction undertaken by the applicant till 17.7.2022, the applicability of Sl.no. 3(v)(a) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 is subject to the fact that the works undertaken by them are "Composite supply" as defined under Section 2 (30) of the CGST Act, 2017 and on getting established that there is transfer of property in goods (whether as goods or in some other form) involved in the execution of such contract for it being "works contract" as stipulated under Section 2 (119) of the Central Goods and Service Tax Act, 2017, which as discussed has been found not to have been adhered by the applicant. In addition to above, as the said construction work undertaken by the applicant has been found not pertaining to railways, the same attracts GST @ 18% [9% CGST + 9% CCGST] under the residual entry at Sr. no. 3(xii) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017, as amended.

Further, with effect from 18.7.2022, as the exemption claimed by the applicant under Sr. no. 3(v)(a) ibid stands omitted, in view of the amendments made in Notification no. 11/2017 Central Tax (Rate) dated 28.06.2017 vide Notification no. 03/2022 dated 13th July 2022, the construction services undertaken by the applicant would accordingly attract GST @ 18% [9% CGST + 9% CCGST] under the residual entry no. Sr. no. 3(xii) of Notification no. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended supra on 13.7.2022.

Sd/-
Sonal K. Mishra
(Member)

Place: - Raipur
Date:-
Seal:-



TRUE COPY

MEMBER
ADVANCE RULING AUTHORITY
CHHATTISGARH, RAIPUR

Sd/-
Rajiv Kumar Agrawal,
(Member)

TRUE COPY

MEMBER
ADVANCE RULING AUTHORITY
CHHATTISGARH, RAIPUR