

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

4, Vibhuti Khand, Gomti Nagar, Lucknow

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

Sub:- GST ACT, 2017 – Advance Ruling U/s 98 – liability to tax under GST Act in respect to application dated 20.09.2018 from M/s Datamatics Global Services Limited, Lucknow, Uttar Pradesh – Order– Reg.

1) M/s Datamatics Global Services Limited, H.No. 1/100, Vinay Khand, Gomti Nagar, Lucknow, Uttar Pradesh, 226010 (here in after called the applicant) is a registered assessee under GST having GSTN: 09AAACD4471B1Z0.

2) The Applicant is primarily engaged in the business of IT Solutions. They alongwith their Consortium Partner have been awarded the contract for "Design, Manufacture, Supply, Installation, Testing and Commissioning of the Automatic Fare Collection System for Phase 1A of the Lucknow Metro Rail Project by the Lucknow Metro Railway Corporation LMRC'.

3) The Applicant has submitted application for Advance Ruling dated 20.09.2018 enclosing duly filled Form ARA-01(the application form for Advance Ruling) along with annexure and attachment.

4) The Applicant in his application sought following questions for determination by the Authority –

- i) Whether a contract can be treated as Composite Contract under GST if it involves making of supply of goods and services which are inter — connected and inter — dependent on each other even though BOQ mentions separate value of goods and services.
- ii) Whether a pre GST Period Contract can be treated as Composite Contract in GST even though there was separate Sale and Service Billing in Pre — GST period



iii) Whether contract for designing, installation and setting up of Automatic Fare Collection System for Lucknow Metro Project shall amount to a Composite Contract with Principal Supply being Supply of Service or Work Contract.

iv) GST rate to be charged on LMRC Project i.e. Whether 18% or 12% to be charged after considering Rate Change Notification No. 1/2018- Integrated Tax (Rate) dated 25/01/2018 and all other provisions of GST Laws.

5) The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report. The comments of the Jurisdictional GST Officer were received in this office vide letter F.No.01/CGST/DivLKO-1/Tech./Misc.Corres./2018/4835 dated 10.12.2018 of the AC, CGST & CX Division, Lucknow-1.

6) The applicant was granted a personal hearing on 04.12.2018. Shri Devanand Ramandasani, Finance Controller and Shri Mukand Agarwal, C.A. Authorized representatives appeared for hearing. During the personal hearing party submitted/intended/stated:-

that have already submitted the detailed write-up on the issue vide letter dated 20/09/18 and they would like to reiterate the same.

DISCUSSION AND FINDING

7) We have heard the Case, gone through the grounds of the appeal as well as the submissions made during the personal hearing.

8) We observe that the applicant sought Advance Ruling on the following issue:-

- a) Whether a contract can be treated as Composite Contract under GST if it involves making of supply of goods and services which are inter — connected and inter — dependent on each other even though BOQ mentions separate value of goods and services.
- b) Whether a pre GST Period Contract can be treated as Composite Contract in GST even though there was separate Sale and Service Billing in Pre — GST period



- c) Whether contract for designing, installation and setting up of Automatic Fare Collection System for Lucknow Metro Project shall amount to a Composite Contract with Principal Supply being Supply of Service or Work Contract.
- d) GST rate to be charged on LMRC Project i.e. Whether 18% or 12% to be charged after considering Rate Change Notification No. 1/2018- Integrated Tax (Rate) dated 25/01/2018 and all other provisions of GST Laws.
- 9) The Authority for Advance Ruling carefully examined the case and observed the following:

9.1) Observation in respect of Question No.1

Applicant's View

In respect of the first question on which Advance Ruling is required, the appellant submitted its view that as per the definition of "Composite Supply and Mixed Supply" under GST law, where all the goods and services are required to work together in an inter-connected and interdepended manner it naturally results in a 'composite supply' fully covered under the definition contained in 2(30) irrespective of item – wise values specified in BOQ.

Department's View

The Authority noticed that as per Section 2 of the Central Goods and Service Tax Act, 2017 (12 of 2017) the 'composite supply' is defined as under:

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

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;

Further, under 'mixed supply' is defined as



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

Illustration— A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately;

In view of the above definitions, it is clear from the definitions above that if the goods and services are naturally required to work together in an inter-connected and inter dependent manner and are required to complete the principal service as clearly stipulated in the illustration of the ‘composite supply’, the services will fall under the category of ‘Composite Supply’.

9.2) Observation in respect of Question No.2

Applicant’s View

The appellant submitted that GST law is significantly different from Pre-GST taxation laws as taxation on sales was state list and taxation on services was part of central list under the Constitution of India prior to GST and thus, classification of goods /services can necessarily be done as per the GST provisions for Post – GST taxation purpose.

Department’s View

The Authority noticed that in the pre-GST period, there were separate taxation system in respect of both Sale and Service. Sale of the goods was taxed by the State Authorities i.e. VAT and Services were taxed by the Central Tax Authorities i.e. Central Excise & Service Tax. In the GST regime, both sales and services are now covered under GST Law and both State and Center have been given authority for taxation on sales and services under the GST Law.

Further, as discussed in para 1 above that if the goods and services works together in inter-connected and inter-dependent manner and fall under the category of ‘Composite Supply’, the Contract executed under Pre- GST period would be treated as Composite Contract in GST era as in the GST era both sale and supply of



services both are covered under GST Laws. Accordingly, we find that the Contract laid down under Pre GST era be covered under Composite Contract in GST era under GST Laws, if the conditions for 'Composite Supply' are satisfied.

9.3) Observation in respect of Question No.3

Applicant's View

The applicant submitted that as per various definitions of 'Works Contract', 'Immovable Property', 'Composite Supply', provisions under the CGST Act, 2017 and the judgment of the Hon'ble Supreme Court in the case of Solid & Correct Engineering Works 2010 (252) ELT 481(SC) the Automatic Fare Collection System installed on LMRC station are movable property and the essential element of the said system is the service portion and not the goods portion. Thus, the principal supply under the said contract shall be supply of service and accordingly tax will be leviable at the rate applicable for services on the total amount payable for setting up of Automatic Fare Collection System.

Department's View

The Authority has gone through the submission of the applicant and observed the following:

Works Contract has been defined under the Central Goods and Services Act, 2017 (12 of 2017) as under:

"(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"

In view of the above definition, it is clear that any contract meant for installation or maintenance 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 would fall under the category of 'Works Contract'.



The applicant is of the view that the Automatic Fare Collection System involves installation of the Equipment's or Machinery like Computers, Automatic Gates etc which are primarily movable or have been affixed to the building with nuts/ bolts for operation efficiency, thus, the activities not being in relation to any immovable property the supply /services rendered in above respect cannot be treated as covered under 'Works Contract'.

The applicant submitted by stating the definitions of 'immovable property' under Section 2(36) of the General Clauses Act, 1887 and 'attached to the earth' under Section 3 of the Transfer of Property Act that since, the Automatic Fare Machines are not immovable property and has not been attached to the earth shall not fall under the category of services under Works Contract as defined above.

The applicant in support of their stand relied upon the decision of the Hon'ble Supreme Court in the case of Solid & Correct Engineering Works 2010 (252) ELT 481(SC) wherein the Apex Court while analyzing the definition of immovable property has held the following:

"1) Annexation should be with the object of permanent beneficial enjoyment of the land or building.

2) Attachment in order to qualify the expression attached to the earth, must be for the beneficial attachment of that to which it is attached. Doors, windows and shutters of a house are attached to the house, which is embedded in the earth. They are attached to the house which is embedded in the earth for the beneficial enjoyment of the house. They have no separate existence from the house. Articles attached that do not form part of the house such as window blinds, and sashes, an ornamental articles such as glasses and tapestry fixed by tenant are not affixtures.

3) The fixing of the plates (Machinery) to a foundation is meant only to give stability to plant and keep it's operation vibration free."

Thus, the applicant is of the view that in order to become an immovable property, the goods have to be attached to the earth for the permanent beneficial enjoyment of the immovable property.



It is to note that as held by the Supreme Court in its above stated decision that any annexation should be with the object of permanent beneficial enjoyment of the land or building and any attachment in order to qualify the expression attached to the earth must be for the beneficial attachment of that to which it is attached. In the instant case, the Automatic Fare Collection System though movable have been fixed permanently to the building i.e. LMRC station building and meant for permanent beneficial enjoyment of the immovable property i.e. LMRC station building as in absence of the said System, there will be requirement of another system to run the station efficiently.

Further, it is also observed by the Hon'ble Supreme Court that the attachments should not have separate existence from the house. In the instant case, the Automatic Fare Collection System is an integral part of the LMRC station building and has no separate existence.

In view of the above, the submission of the applicant that the Automatic Fare Collection System is not immovable property as the same is not attached to the earth for the permanent beneficial enjoyment of the immovable property, is not correct and therefore, we find that the Automatic Fare Collection System fulfills the conditions laid down while analyzing the definition of immovable property in the above decision of the Supreme Court.

Further, the Authority for Advance Ruling under GST, Rajasthan vide its Ruling reported as 2018(16)GSTL 623 (AAR-GST) has held that *"Big project having permanent location – Plant having an inherent element of permanency – Facts that output of project, i.e., power available to identifiable segment of consumers involved element of permanency – Output supply involved element of permanency and not be possible or prudent to shift base from time to time or locate plant elsewhere at frequent intervals – Construction of civil structure part of project – Civil structure cannot be moved – Solar power plant developed to be treated as immovable property."*

It is clear from the above that and structure or machinery that cannot be located/ moved or shifted elsewhere at frequent intervals will be considered as immovable property. Therefore, we find that the contract given to the applicant by LMRC for designing and installation of the Automatic Fare Collection System



which cannot be shifted or moved to other places/ buildings at frequent intervals and is meant for permanent beneficial of the building i.e. Stations under LMRC; will fall under the 'Works Contract'.

9.4) Observation in respect of Question No.4

Applicant's View

The applicant submitted that GST is to be charged @ 12% being composite services supplied to a government entity procured by the said entity in relation to work entrusted to it by the Central and State Government.

Department's View

Coming to the 4th question for which Advance Ruling is required, the Authority noticed that the Notification No. 1/2018-Integrated Tax (Rate) dated 25.01.2018 has been issued by the Central Government making amendments in the Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017.

Previously, under the Notification dated 28.06.2017, composite supply of works contract as defined in clause 119 of section 2 of the Central Goods and Service Tax Act, 2017 was attracting duty @ 18% under Heading 9954 (Construction Services) at Sl. No.3.

Vide Notification No. 20/2017-Integrated Tax(Rate) dated 22.08.2017, the entries against serial number 3 for item (iii) in column (3) and the entries relating thereto in the Notification No. No. 1/2018-Integrated Tax (Rate) dated 25.01.2018, were substituted with "(v) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Service Tax Act, 2017, supplied by way of construction, erection, commissioning or installation of original works pertaining to, - (a) railways, excluding monorail and metro; attracting the duty rate @ 12%.

Later, vide Notification No. 1/2018-Integrated Tax (Rate) dated 25.01.2018 the notification No. 8/2017-Integrated Tax (Rate) was amended and the word 'excluding' was substituted by 'including' also classifying that the Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Service 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 would attract duty at the rate of 12%.

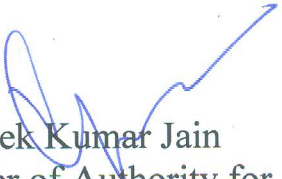
Since, in the instant case, the composite supply of work contract is being provided by a sub-contractor to the main contractor i.e. Government Authority, the same shall be covered under the above amendment carried out vide the above notification dated 25.01.2018, the same shall now attract duty at the rate 12%.

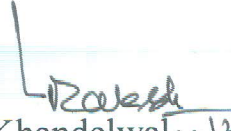
10) In view of the above, both the members unanimously rule as under;

RULING

The point wise clarifications are as under:-

- i) A contract shall be treated as Composite Contract under GST if it involves making of supply of goods and services which are inter-connected and inter-dependent on each other even though BOQ mentions separate value of goods and services.
- ii) A pre GST period contract shall be treated as Composite Contract in GST if it satisfies the condition of Composite Supply.
- iii) A contract for designing, installation and setting up of Automatic Fare Collection System for Lucknow Metro Project will amount to Work Contract.
- iv) GST will be charged @ 12% in terms of Notification No. 01/2018-Integrated Tax (Rate) dated 25.01.2018 being composite services supplied to a Government entity procured by the said entity in relation to work entrusted to it by the Central and State Government.


Vivek Kumar Jain
Member of Authority for
Advance Ruling


R K Khandelwal 14/12/18
Member of Authority for
Advance Ruling



To,

M/s Datamatics Global Service Limited,
H.No. 1/100, Vinay Khand, Gomti Nagar,
Lucknow, Uttar Pradesh 226010.

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

Order No. 19

Date: 14.12.2018

Copy to –

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Deputy Commissioner, CGST & Central Excise, Division-I, Lucknow, Uttar Pradesh;
4. Through the Additional Commissioner, Commercial Tax, Lucknow, Uttar Pradesh to jurisdictional tax assessing officers.

