

**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 10.06.2019 from M/s SICE-VAAAN Joint Venture, KLP0020504, Kalyspo Court, Jaypee Greens Wish Town, Sector 128, Gautam Buddha Nagar, Uttar Pradesh – Order– Reg.

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1) M/s SICE-VAAAN Joint Venture, KLP0020504, Kalyspo Court, Jaypee Greens Wish Town, Sector 128, Gautam Buddha Nagar, Uttar Pradesh - 201304 (here in after called the applicant) is a registered assessee under GST having GSTN: 09ABAAS1466J1Z9.

2) The applicant is a joint venture between Sociedad Iberica De Construcciones Electricas, S.A (“SICE”), a foreign company incorporated under the laws of Spain and VAAAN Infra Private Limited (“VAAAN”), a company incorporated under the laws of India.

3) The applicant has executed a contract with “NHAI for development of six lane Eastern Peripheral Expressway: ITS (Intelligent Transport System) Installation Project”, which includes Advanced Traffic Management System (ATMS), Toll Management System (TMS) and Digital Transmission System.

4) The applicant has submitted application for Advance Ruling dated 22.05.2019 enclosing duly filled Form ARA-01(the application form for Advance Ruling) along with annexures and attachments (physically received by the Authority on 10.06.2019).



**5)** The applicant, in his application, has sought clarification and Advance Ruling as follows : –

- I.** Whether the composite supply of works contract provided by the Applicant to NHAI shall be classified under entry (vi) to serial no. 3 of the Notification No. 11/2017-CT(R) dated 28 June 2017 (hereinafter referred to as 'the CGST Rate Notification') read with Notification No.KA.NI.-2-842/XI-9(47)/17- U.P. Act-1-2017-Order- (09) -2017 dated 30 June 2017 (hereinafter referred to as 'the UPGST Rate Notification') liable to effective rate of GST ('Goods and Services Tax') @ 12% including CGST and UPGST?
- II.** Whether the composite supply of works contract provided by the Applicant to NHAI shall also be classified under entry (iv) to serial no. 3 of the CGST Rate Notification read with the UPGST Rate Notification liable to effective rate of GST @ 12% including CGST and UPGST?
- III.** Whether the rate of GST with respect to the services rendered by the sub-contractor to the main contractor i.e. the applicant would be applicable @ 12% in view of entry (vi) and (iv) of the CGST Rate Notification read with the UPGST Rate Notification or @ 18%?

**6)** The applicant was granted a personal hearing on 02.09.2019. Shri Varun Garg and Ms. Rashmi Kedia, Authorized representatives of the applicant appeared for hearing.

During the personal hearing they informed that they have already submitted their detailed explanation about their claim and reiterate the same at the time of personal hearing.





### **DISCUSSION AND FINDING**

**7)** We have gone through the submissions made by the applicant and have examined the detailed explanation submitted by them. We observe that the questions sought by the applicant are-

- I.** Whether the “composite supply” of “works contract” provided by the applicant to NHAI shall be classified under entry (vi) to serial no. 3 of the CGST Rate Notification read with the UPGST Rate Notification liable to effective rate of GST @ 12% including CGST and UPGST?
- II.** Whether the “composite supply” of “works contract” provided by the applicant to NHAI shall also be classified under entry (iv) to serial no. 3 of the CGST Rate Notification read with the UPGST Rate Notification liable to effective rate of GST @ 12% including CGST and UPGST?
- III.** Whether the rate of GST with respect to the services rendered by the sub-contractors to the main contractor i.e. the applicant would be applicable @ 12% in view of entry (vi) and (iv) of the CGST Rate Notification read with the UPGST Rate Notification or @ 18%?

**8)** As the question number I & II asked by the applicant are interrelated, we take up both the questions together for discussion.

**9)** As regard to the classification of supply made by the applicant to the NHAI under entry no. (iv) or (vi) to serial no. 3 of the Notification No. 11/2017-CT(R) dated 28 June 2017, we observe that the said entry no. (iv) reads as follows:

*“(iv) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-*



*(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;”*

Whereas the entry no. (vi) of the said Notification reads as:

*“Composite supply of works contract as defined under clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, 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 –*

*(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;*

*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.”*

and in both the cases the applicable rate of GST is @12% including CGST and SGST.

**10).** Now, we observe that the question before us to decide, is:

- i. Whether the supply made by the applicant to the NHAI is a “composite supply of works contract”, and, if yes,
- ii. Whether the said supply is being used for construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a road, bridge, tunnel, or terminal for road transportation for use by general public”, or
- iii. Whether the said supply is being provided to the Central Government, 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 –
  - (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;





- iv. Which classification will be more appropriate among entry (iv) or entry (vi) of the CGST Rate Notification.

**11)** As per the Sub Section 30 of Section 2 of the CGST Act 2017, the “Composite supply” is defined as:

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

Further the term “works contract” is defined in sub section 119 of Section 2 of CGST Act 2017 as:

*“(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.”*

**12)** We observe that the agreement entered into between the applicant and NHAI is for the “Development of six lane Eastern Peripheral Expressway: ITS (Intelligent Transport System) Installation Project”, which involves design, supply, installation, testing, commissioning of ITS which primarily includes Advanced Traffic Management System (ATMS), Toll Management System (TMS) and Digital Transmission System along with operation & maintenance of ATMS for a period of 4 years on turnkey basis. From this, it appears that the scope of work involves supply of goods as well as services, which are in conjunction with each other to complete the ITS installation.

**13).** As per the General Conditions of the contract entered between the applicant and NHAI, each item of plant and materials shall become the



property of the NHAI and free from liens and other encumbrances at the earlier of the (a) when it is incorporated in the works (b) when the applicant is paid the corresponding value of the plant and materials.

**14)** Further, as per the General Clauses Act, 1987, the term "Immovable property" is defined as "*immovable property' shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.*" The applicant has relied upon various case laws to vindicate their stand that an immovable property means a property that is attached to the land which cannot be easily detached and ITS installation undertaken by them under the NHAI contract qualifies as immovable in nature. We also observe that in the case of M/s Solid & Correct Engineering Works {2010(252)ELT481(SC)}, Hon'ble 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."*

From the aforementioned discussions, we are in unison with the applicant that the ITS (Intelligent Transport System) Installation work undertaken by the applicant, qualifies as 'works contract' as per Section 2(119) of the CGST Act.





**15)** As regard to the question “Whether the supply is being used for construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a road, bridge, tunnel, or terminal for road transportation for use by general public”, we noticed that ITS system is required to monitor the entire stretch of expressway to provide real time information about traffic conditions, pollution, weather conditions and status of the expressway to the road users, making road travels more convenient, faster and safer. The expressway opens up for the general public only when the ITS is installed and starts functioning. Further, the applicant in their submissions has also mentioned that the Project undertaken by the applicant under the NHAI contract is for installation of ITS in the Toll structure and also on the expressway which involves design services, supply of equipment, installation of equipment/ systems, operation and maintenance to facilitate its long term use.

**16).** From the above discussions, we observe that installation of ITS (Intelligent Transport System) is part and parcel of the construction of road transportation system for use by general public and the supply made by the applicant is more appropriately classified under entry (iv) to serial no. 3 of the CGST Rate Notification rather than entry (vi) of the said Notification.

**17).** As regard to the question of GST rate with respect to the services rendered by the sub-contractor, we observe that as per the Section 95 (a) of CGST Act 2017, the definition of the advance ruling is as under:

*(a) “advance ruling” means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in Sub-Section (2) of Section 97 or sub-section (1) of Section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;*

**18).** From the above, it is seen that any person/applicant can seek advance ruling in relation to the supply of goods or services or both being undertaken or



proposed to be undertaken by him. However, in the instant case the applicant wishes to know the GST rate for the Sub-contractor providing input services to them, which is outside the preview of Advance Ruling. Accordingly, we observe that no ruling can be issued on this question.

In view of the above discussions, we, both the members unanimously rule as under;

### **RULING**

- I. Whether the composite supply of works contract provided by the applicant to NHAI shall be classified under entry (vi) to serial no. 3 of the CGST Rate Notification read with UPGST Rate Notification liable to effective rate of GST @ 12% including CGST and UPGST?

Ans: The answer is negative in view of the discussions held in above paras.

- II. Whether the composite supply of works contract provided by the applicant to NHAI shall also be classified under entry (iv) to serial no. 3 of the CGST Rate Notification read with the UPGST Rate Notification liable to effective rate of GST @ 12% including CGST and UPGST?

Ans: From the above discussions, it is clear that installation of ITS (Intelligent Transport System) is part and parcel of the construction of road transportation for use by general public and the contention of the applicant that the supply made by them stands covered under entry (iv) of serial no. 3 of the CGST Rate Notification, liable to effective rate of GST @ 12% including CGST and SGST, is correct.

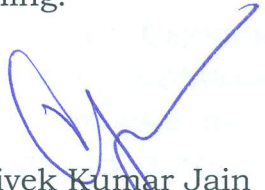
- III. Whether the rate of GST with respect to the services rendered by the sub-contractor to the main contractor i.e. the applicant would be applicable @





12% in view of entry (vi) and (iv) of the CGST Rate Notification read with the UPGST Rate Notification or @ 18%?

Ans: No ruling can be issued on this as the question is outside the preview of the Advance Ruling.

  
Vivek Kumar Jain  
Member of Authority for Advance  
Ruling

  
Sanjay Kumar Pathak  
Member of Authority for Advance  
Ruling

To,

M/s SICE-VAAAN Joint Venture,  
KLP0020504, Kalyspo Court,  
Jaypee Greens Wish Town, Sector 128,  
Gautam Buddha Nagar,  
Uttar Pradesh – 201304



## AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

Order No. 39

Date: 06.09.2019

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 Commissioner, CGST & Central Excise, Noida Commissionerate, C-56/42, Renu Tower, Sector-62, Noida, Uttar Pradesh.
4. The Assistant Commissioner, CGST & Central Excise, Noida Division-I, E-23-B, Udhog Marg, E Block, Sector 8, Noida, Uttar Pradesh.
5. Through the Additional Commissioner, <sup>Noida</sup> Commercial Tax, Lucknow, Uttar Pradesh to jurisdictional tax assessing officers.

**Note:** An Appeal against this advance ruling order lies before the Uttar Pradesh Appellate Authority for Advance Ruling for Goods and Service Tax, 4, Vibhuti Khnad, Gomti Nagar, Lucknow – 226010, within 30 days from the date of service of this order.

