

**AUTHORITY FOR ADVANCE RULING  
GOODS AND SERVICE TAX  
UTTAR PRADESH  
4, Vibhuti Khand, Gomti Nagar, Lucknow-**

ADVANCE RULING NO. UP ADRG 70 /2020

DATED 21-12 2020

**PRESENT:**

**1. Shri Abhishek Chauhan**

Joint Commissioner, Central Goods and Service Tax

Audit Commissionerate, Lucknow

.....Member (Central Tax)

**2. Shri Dinesh Kumar Verma**

Joint Commissioner, State Goods and Service Tax

.....Member (State Tax)

1.	Name of the Applicant	M/s Meera Tubes Pvt. Ltd. C-15, Bulandshaher Road Industrial Area, Ghaziabad, Uttar Pradesh 201009
2.	GSTIN or User ID	09AAACM7896F1ZO
3.	Date of filing of Form GST ARA-01	24.09.2020
4.	Represented by	Shri Rajesh Kumar Gupta (Director), Shri Mukul Gupta & Shri Prateek Gupta (Both Advocates & Authorized representative)
5.	Jurisdictional Authority-Centre	Range-14, Division-III, Ghaziabad
6.	Jurisdictional Authority-State	Ghaziabad, Sector-17
7.	Whether the payment of fees discharged and if yes, the amount CIN	Yes UTIB20090900032636

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 & UNDER SECTION 98  
(4) OF THE UPGST ACT, 2017**

1. M/s Meera Tubes Pvt. Ltd. C-15, Bulandshaher Road Industrial Area, Ghaziabad, Uttar Pradesh 201009 (here in after referred to as the applicant) is a registered assessee under GST having GSTN: **09AAACM7896F1ZO**.

2. The applicant is engaged in "Fabricating Tank" for M/s. Indian Oil Corp. Ltd. (hereinafter referred to as "IOCL") U.P. State Office-2 (which covers Moradabad, Agra & Noida Divisional offices) and for Delhi & Haryana State office (which covers Gurgaon and Delhi Divisional offices). The applicant has submitted as under-

(a) For the said purpose-



(i) UPSO-2 office of M/s IOCL has issued a tender document vide Tender No. RCC/NR/UPSO-II/ENG/PT-84/2018-19 concerning Rate Contract for Fabrication and Transportation of 20 KL & 70 KL Horizontal Tanks including transportation of Steel Plates from its Depot to Applicant's works, for Dehradun, Bareilly, Moradabad, Agra & No. 10 Divisional offices of IOCL.

(ii) Delhi & Haryana State office of IOCL has issued a tender documents vide Tender No. RCC/NR/DSO/ENG/PT-109/2018-19 concerning Rate Contract for Fabrication and Transportation of 20 KL & 70 KL Horizontal Tanks for Delhi, Gurgaon, Hissar & Panipat Divisional offices of IOCL.

(b). IOCL for this specified purpose of fabrication has also supplied Steel Plates from its depots Free of Cost (FoC) and has obtained Bank Guarantee from the Applicant to cover the cost of these Steel Plates. The detailed list of components which are required by the applicant under the Contract for effecting the principal supply of fabricating 20 KL & 70 KL tanks in following Table. The items have been bought/ manufactured by the Applicant company and used as per the terms of the contract, in fabrication of tanks as per the specification mentioned in the Tender Documents of M/s IOCL:

<b>List of Fittings Required to Fabricate 20 KL Tanks-As Specified by IOCL Tender Documents</b>			
<b>S.No</b>	<b>Item Description</b>	<b>Qty.</b>	<b>Unit</b>
1	90 x 90 x 8 Thk, Angle Stiffeners, 1920 Long 2 Nos & 1600 Long 4 Nos. for both ends	6	No
2	40 x 40 x 6 Thk, Angle Stiffeners, 6593 Long for both ends	2	No
3	15 Thk MS Hexagonal Bushing to Suit 80 dia Fill Pipe (110 O.D.)	2	No
4	150mm long 100mm dia nozzle with flange in manhole covers.	1	No
5	80 x 50 MS Hexagonal Bushing Threaded on Both Sides (80 O.D.) to Suit 50 dia Pipe	5	No
6	Standard Lifting Eyes 40 Internal Dia (as per details)	2	No
7	Holding Down Brackets, including buried portion as per sketch/drawing	8	No
8	25 dia Bolt with Hexagonal Heads, 520 Long with RH Threads	8	No
9	25 dia Bolt with Hexagonal Heads, 200 Long with LH Threads	8	No
10	225 Long Turn Buckles as per Details	8	No
11	75 x 50 x 8 Thk, 200 Long (Used) in Holding Down Arrangement	8	No
12	6mm Thk MS Plate for Manhole Neck, Size 340 x 1885	2	No
13	10 mm Thk, 742 dia MS Plate for Manhole Cover	2	No
14	65 x 65 x 8 angle rings 610 ID (for manhole)	2	No
15	EARTHING BOSS CONNECTION AS PER DRAWING	2	No
16	6 mm thick m.s. pad plate for manhole size - 50x2040	2	No
17	5 mm thick m.s. pad plate for dip rod to be welded inside shell plate	1	No
18	12 sq.mm aluminium dip rod 2750 long graduated on side in cm and 1/5 cm.	1	No
19	Nut Bolts for two manhole covers	2	Set

**List of Fittings Required to Fabricate 70 KL Tanks-As Specified by IOCL Tender Documents**



S.No	Item Description	Qty.	Unit
1	75 x 75 x 6 Thk, Angle Iron Rings as Stiffeners, 9420mm Long	8	No.
2	50 x 50 x 6 Thk, Angle Iron Stiffeners for End Plates, 3000mm Long	4	No.
3	15 Thk MS Hexagonal Bushing to Suit 80 dia Fill Pipe (110 O.D.)	1	No.
4	80 x 65 MS Hexagonal Bushing Threaded on Both Sides (80 O.D.) to Suit 65 dia Pipe.	1	No.
5	2357 x 640 x 8 Thk Plate for Manhole Neck 750 Dia	1	No.
6	950 dia x 6 Thick, Reinforcement Plate for Manhole	1	No.
7	65 x 65 x 8 Thk Angle Ring with 24 Nos. 14 dia Holes Welded to Manhole Neck	1	No.
8	880 x 10 Thk, Manhole Cover with 24 Nos. 14 dia Holes and 3mm Fire Fly Gasket	1	No.
9	6 mm thick m.s. pad plate for dip rod to be welded inside shell plate	1	No.
10	12 sq.mm aluminium dip rod 3791 long graduated on one side in cm & 1/5 cm	1	No.
11	40 Internal dia x 390 Long Lifting Eye made out of 25 dia MS Rod (as per Details)	2	No.
12	Holding Down Bracket Welded to Tank Shell (as per Details)	12	No.
13	225mm Long Turn Buckle (as per Details)	12	No.
14	25 dia x 970 Long Bolt with Hexagonal Head and RH Thread	12	No.
15	25 dia x 200 Long Bolt with Hexagonal Head and LH Thread	12	No.
16	75 x 75 x 8 Thk Angle 200 Long in Holding Down Arrangement	12	No.
17	Earthing Boss Connection as Per Drawing Details.	1	SET

(c) The process of fabrication involves usage of various consumables e.g. Welding Electrodes, Gas etc. as well as all the items mentioned above along with Free of Cost Steel Plates. All these components/materials together with the labour charges constitute the value of this work undertaken by the applicant.

(d) Only the Steel Plates are being provided by IOCL on Free of cost to the applicant and all other structural material and fittings required for the tank are to be arranged by the applicant without any extra financial implication to IOCL

(e) It has been further stated in the Tender Document that the fabrication and erection of all MS Structural shall conform to BIS 800 (latest edition). In conformity to Section 17 of BIS 800, the Tender Document in Clause 12 specifies that the fabrication procedures inter alia involve the following:

- *Straightening* of material to the specified configuration by methods that will not reduce the properties of the material below the values used in design
- *Cutting* to be effected by sawing, shearing, cropping, machining, or thermal cutting process.
- *Welding*
- All parts of bolted members shall be pinned or bolted and rigidly held together during assembly
- Inspection and Testing



(f) Similarly, the said Clause 12 states that the steel plates shall be cut, rolled and welded *“accurately to the required curvature and maintain uniform curvature...”*

(g) That the applicant is responsible for transporting these steel plates on basis of delivery challan along with proper e-way bill issued by IOCL. The reference of these receipt documents is being duly mentioned on the final documents issued to IOCL i.e. delivery challan and tax invoice etc. i.e. relationship of the receipt material is created on documents with the fabricated material.

(h) Further, the applicant load and transport Steel Plates from IOCL's different divisional offices which is further used in manufacturing activities involving fabrication of Tank as per design in the factory /workshop of the applicant are being carried mainly using the said FoC steel plates to produce the Tank.

(i) Further, the proportion of weight and value of the components and material used by the applicant over and above the steel plates is **quite substantial** in the process of fabrication of tank on the basic material of steel plate as provided on FoC basis by IOCL.

(j) the final product in form of Tanks, which results from the above activity of fabrication, is delivered to retail outlet site of the IOCL or its designated dealer subject to the unloading there at and after quality check at the premises of applicant before the delivery.

(k) the loading and transportation of FoC Steel Plates from IOCL premises to applicant premises and delivery & unloading of finished fabricated Tanks from applicant premises to designated site of IOCL is charged and billed separately by applicant to IOCL (but in case of Gurgaon and Delhi Divisional offices, the loading and transportation of Steel Plates is included in the fabrication charges and is not separately billed) thereby also charging similar rate of tax under the same HSN code i.e. the HSN code of the main supply.

(l) At present, the applicant company is **charging 18% rate** of GST under the HSN code **7309** from IOCL on the above stated supply without including or providing any treatment for FoC Steel Plates.

(m) Further, as per directions to the applicant by IOCL vide email dated 31/08/2020, IOCL has referred to CBIC Circular No. 126/45/2019-GST dated 22/11/2019 post amendment/reduction in rate of tax for job work services under the SAC code 9988 from 18% to 12% and directed vide email dated 31.08.2020 that the applicant shall charge 12% instead of 18% on the above referred supply.

3. The applicant has sought advance ruling on following questions-

- I. What should be the Correct Classification with respect to the nature of 'Supply' i.e. whether the questioned supply tantamount to 'Supply of Goods' or 'Supply of Service' on the basis of the facts of the whole activity as mentioned above and supported by the documents enclosed/discussed here under?
- II. Whether Circular No. 126/45/2019-GST dated 22/11/2019 shall at all apply in the instant case if answer to Query (a) is 'Supply of Service' as job work service?



- III. What should be the Correct HSN/SAC code applicable to the said supply?  
IV. What is applicable Rate of Tax of GST based on answers of queries mentioned in above Queries?

4. As per declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending nor decided in any proceedings under any of the provisions of the Act, against the applicant.

5. The applicant have further submitted that-

(a) they would be normally charging CGST & SGST on supply within the state of Uttar Pradesh while IGST shall be charged for the supplies made to Delhi and Haryana Depot of IOCL in accordance with place of supply provisions of the Integrated Goods Service Tax Act 2017 .

(b) According to sub-section (1) of Section 7 of the CGST Act, for the purposes of this Act, the expression "**supply**" includes—

*“all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.”*

(c) according to sub-section (1A) of Section 7 of the CGST Act, *“Where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II”*

(d) Further as per Schedule-II which provides Activities or Transactions to be treated as Supply of Goods or Supply of Services in Entry No. 3 it states that *“Treatment or process- Any treatment or process which is applied to another person's goods is a supply of services”*

(e) as per *“Section 2 (68) of the CGST Act, 2017, "Job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly”*

(f) definition of Job Work has three major limbs which is the basis for classifying any supply under the scope of Job Work i.e.

- i. Treatment or Process
- ii. By any Person on Goods
- iii. Belonging to another Registered Person.

(g) the term “Treatment” or “Process” have not been defined anywhere under the GST Law. As per Lexico Dictionary powered by Oxford ‘process’ means *“A series of actions or steps taken in order to achieve a particular end.”* As per Wikipedia ‘process’ means *“A process is series or set of activities that interact to produce a result; it may occur once-only or be recurrent or periodic.”*

(h) On the basis of above definition and based on general trade parlance, ‘process’ means a continuous mode, method, or operation by which some activity is carried



over raw or semi-finished commodity to create an altogether new commercial commodity. Sometimes it results as input for another final product. In other words, process is development, change, or preparation for the purpose of sale.

(i) the term 'Treatment' in trade parlance refers to correct something, apply some method, or way to make the product in commercial existence.

(j) According to the second limb, the treatment or process shall have been provided by any "person" on registered person's "goods". Both 'person' and 'goods' have been defined under sections 2(84) and 2(52) consecutively.

(k) the third limb of the definition focus on the term 'registered person' which is defined under Section 2(94) of the CGST Act 2017 as "*Registered person means a person who is registered under section 25 but does not include a person having a Unique Identity Number*"

(L) The Central Government has notified the rate of GST applicable on categories of 'intra-state supply of services' by virtue of Notification No. 11/2017-Central Tax (Rate) dated 28/06/2017 which is amended time to time. The relevant extract of service specified under Sl. No. 26 of the Notification with the SAC code 9988 is reiterated here under:

<b>S.No.</b>	<b>Description</b>	<b>Rate of Tax</b>
(id)	Services by way of job work other than (i), (ia), (ib) and (ic) above;	12%
(iv)	Manufacturing services on <u>physical inputs (goods) owned by others</u> , other than (i), (ia), (ib), and (ic), (id), (ii), and (iia) and (iii) above.	18%

(m) In the above table item (id) under heading 9988 of Services Rate Notification was inserted with effect from 01/10/2019, prescribes 12% GST rate for all services by way of job work other than specific entries in item (i), (ia), (ib) and (ic) above. So, the 'supply under consideration' must first fall under the ambit of 'Job-Work' and then only it can be considered as 'Service'.

(n) Entry at item (iv) which covers "manufacturing services on physical inputs owned by others" was enforced right from the beginning of GST i.e. from 01/07/2017 onwards. This entry levy GST at a rate of 18%. The applicant falls under the item (iv) up to 30/09/2019 i.e. before amendment in the Principal Services Rate Notification. However, the issue arose post amendment i.e. whether the applicant is covered in entry item (id) or (iv) of the said heading 9988.

(o) Both the above discussed competing entries belong to the same Heading 9988 with description 'Manufacturing services on physical inputs (goods) owned by others, other than (i), (ia), (ib), and (ic), (id), (ii), and (iia) and (iii) above'. However, the insertion of Entry (id) w.e.f. 01/10/2019, a distinction between the services of 'job-work' amounting to 'manufacture' and that not amounting to 'manufacture' can be made out.

(p) While the definition of 'job work' does not include the term 'manufacture' but 'process' and 'treatment', the term 'manufacture' as used under Sl No. 26(iv) of the



Services Rate Notification has been specifically defined under the GST law. Hence, the entry under Sl. No. 26(id) dealing with 'job work' is to be read in exclusion of the 'job work' dealing with 'manufacture'. Such exclusion from the entry concerning 'manufacturing' is also apparent from the use of words 'other than (id)' which specifically refer to 'job work'.

(q) Further, the above dilemma of classification of a 'service' under (iv) or (id) of Sl. No. 26 has been tried to be clarified by CBIC through Circular No. 126/45/2019-GST dated 22/11/2019 in para 4 -

*"In view of the above, it may be seen that there is a clear demarcation between scope of the entries at item (id) and item (iv) under heading 9988 of Notification No. 11/2017-Central Tax (Rate) dated 28-06-2017. Entry at item (id) covers only job work services as defined in section 2 (68) of CGST Act, 2017, that is, services by way of treatment or processing undertaken by a person on goods belonging to another registered person. On the other hand, the entry at item (iv) specifically excludes the services covered by entry at item (id), and therefore, covers only such services which are carried out on physical inputs (goods) which are owned by persons other than those registered under the CGST Act"*

(r) The Central Government in exercise of the powers conferred by sections 9(1) and 15(5) of the CGST Act, 2017 has notified the rate of GST applicable on categories of 'intra-state supply of goods' by virtue of Notification No. 1/2017-Central Tax (Rate) dated 28/06/2017 which is amended time to time. The following entry specifying the rate of GST applicable on the 'supply of tank' shall be noted.

S.No.	HSN Code	Description	Rate of Tax
223	7309	Reservoirs, tanks, vats and similar containers for any material (other than compressed or liquefied gas), of iron or steel, of a capacity exceeding 300 l, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment	18%

(s) It is also important to note that under the erstwhile regime, the term 'manufacture' has been defined under sub-section (f) of the Central Excise Act, 1944 to include "any process, -

(i) incidental or ancillary to the completion of a manufactured product;

(ii) which is specified in relation to any goods in the Section or Chapter notes of [the Fourth Schedule] as amounting to [manufacture; or]

[iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption



of any other treatment on the goods to render the product marketable to the consumer,]

and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account;]"

(t) under the present regime of GST Law under Sub-section (72) of Section 2 of the CGST Act, 2017 defines the term 'manufacture' to mean "*processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly*".

(u) the 'supply of goods' or a 'supply of service' are absolutely mutually exclusive concepts in themselves with no overlapping under the GST law except as provided in Section 8 i.e. 'Composite Supply' or 'Mixed Supply' as well as 'Principal Supply' u/s 2(74). The aforementioned concepts may hence form a basis for determination of whether the impugned supply shall form a supply of 'good' or of 'service'.

(v) In the impugned transactions undertaken by the applicant, is engaged in the process of converting FoC steel plates to Tanks as per the specification given in the work order and tender documents of IOCL. However, in preparation of the Tanks, applicant uses various other/additional abovementioned inputs/ material which brings the tanks into existence i.e. without the use of additional inputs/material, complete final product in the form of tanks.

(w) It is pertinent to point out that throughout the tender documents, invoice and other documents emphasis has been placed on the word "**Fabrication**" as well as the actual activity in bringing the Tanks in its desired commercial form can more closely or specifically be covered under 'Fabrication'. According to The Free Dictionary, 'fabricate' means "*To construct by combining or assembling diverse, typically standardized parts.*"<sup>1</sup> As per Oxford Dictionary 'Fabrication' means "*the process of making or producing goods, equipment, etc. from various different materials*".

(x) The above definitions clarifies that while 'manufacturing' is when raw material is processed to generate a complete new commercial product having its own distinct name, character and use, 'fabrication' is the process of making a product assembling various standardized parts. The key difference between 'fabrication' and 'manufacturing' is that 'manufacturing' involves building a product from the bottom-up whereas 'fabrication' involves assembling of standardized parts.

(y) It has been held by Larger Bench of Tribunal in the case of *Bhayana Builders Ltd. v. CST* [2013] 38 taxmann.com 271/42 GST 76 (New Delhi - CESTAT). Further, the Hon'ble Supreme Court, in *CST v. Bhayana Builders (P) Ltd* [2018] 91 taxmann.com 109/66 GST 320 (enclosed as *Annexure D*), has dismissed the appeal



filed by the revenue against the judgment of the larger bench of Tribunal and this upholds the aforementioned position of law.

*“Free supplies”, incorporated into construction (cement or steel for instance), even on an extravagant inference, would not constitute a non-monetary consideration remitted by the service recipient to the service provider for providing a service, particularly since no part of the goods and materials so supplied accrues to or is retained by the service provider.”*

(z) Hence, it is clear that a supply of goods on FoC basis for delivering the property back to IOCL would not result in a change of ownership with the applicant for the sole reason that neither part of the goods and materials so supplied accrues to or is retained by the applicant (as has been stated above).

(aa) The concept of ‘job work’ established under the excise duty jurisprudence laid by the Hon’ble Supreme Court and inapplicable in the present context in the case of ***Prestige Engineering (India) Ltd. and Ors. v. Collector of Central Excise, Meerut and Ors.*** (01.09.1994 - SC) MANU/SC/0863/1994 is laid as follows:

*“19. Now, let us look at the process involved in this appeal. All that Modipon does is to supply steel pipes. The appellant purchases guide rings and strengthening rings from the market. It fits these rings into those steel pipes by itself or gets them fitted in another unit. Thereafter, adopters are fitted on the sides of the cops and then the plastic sleeves are fitted on the cylinders of the cops. This is not a case where the rings and the adopters and sleeves are supplied by Modipon. It is not suggested that the value of rings, adopters and sleeves is very small vis- a-vis the value of steel pipes. The additions made by the appellant are not minor additions; they are of a substantial nature and of considerable value. Except the pipes, all other items which go into the manufacture of cops are either purchased or procured by the appellant himself and he manufactures the cops out of them. The work done by him cannot be characterized as a job-work. If all the requisite rings, adopters and sleeves had also been supplied by Modipon, it could probably have been said that the appellant's work is in the nature of job-work. But that is not the case here.”*

(ab) The above precedent has been followed in number of cases. These inter alia include the decisions of the Mumbai Bench in ***Navbharat Packaging Indus. Ltd. v. CCE*** (17.04.1996 - CESTAT - Mumbai): MANU/CM/0219/1996, ***Bholanath International Ltd. vs. CC*** (06.01.2003 - CESTAT - Delhi): MANU/CE/1207/2003 and has also been referred by the Mumbai Advance Ruling Authority ***In Re: S.B. Reshellers Pvt. Ltd.*** (02.03.2019 - Authority for Advance Rulings): MANU/AR/0160/2019.

(ac) Also, both substantial supplies of FoC Steel Plates and other supplies of various material which are employed by the applicant at his own cost are all necessary for rendition of the supply of the tank. Omission of any of the supplies can result in derogation of the specifications and might even lead to breach of the contract. Hence, as far as the present contract defined by the Tender Document is concerned, every supply is dependent on each other and cannot be undertaken independently.



(ad) In the present transaction or activity, it has been established by way of facts above that the additions made by the applicant are of a lesser value and weight in proportion to the value and weight of substantial material supplied by IOCL. The principle as is laid in the above Supreme Court case is not applicable in the present case for the aforementioned reason.

(AE) Reliance is to be placed on Circular No. 38/12/2018 dt 26/03/2018 inter alia clarify the following:

“ ...

*2. As per clause (68) of section 2 of the CGST Act, 2017, “job work” means any treatment or process undertaken by a person on goods belonging to another registered person and the expression “job worker” shall be construed accordingly. The registered person on whose goods (inputs or capital goods) job work is performed is called the “Principal” for the purposes of section 143 of the CGST Act. The said section which encapsulates the provisions related to job work, provides that the registered principal may, without payment of tax, send inputs or capital goods to a job worker for job work and, if required, from there subsequently to another job worker and so on. Subsequently, on completion of the job work (by the last job worker), the principal shall either bring back the goods to his place of business or supply (including export) the same directly from the place of business/premises of the job worker within one year in case of inputs or within three years in case of capital goods (except moulds and dies, jigs and fixtures or tools).*

...

***5...Further, it is clarified that the job worker, in addition to the goods received from the principal, can use his own goods for providing the services of job work...”***

(af) In light of the above clarification where it has been stated that the job worker can use his own goods in addition to the goods received from the principal, this activity is squarely covered under the ambit of ‘Job Work’ in accordance to the provisions of GST Law.

(ag) The said Circular dated 22/11/2019 only states that there is demarcation between item (id) & (iv) of the referred heading of 9988, wherein there is difference between ‘Job Work’ done on goods of registered person and unregistered person.

(ah) The activity of converting the FoC steel plates also using the applicant’s own material would result in ‘manufacturing’ of a new and commercial identifiable product as ‘tank’ need to be analyzed within the provisions of the GST law. If a reference to the Goods Rate Notification as mentioned above is made, then the same indicates that a rate of 18% shall be applicable on the supply of ‘tanks’.

(ai) It is submitted for the kind consideration of the Advance Ruling Authority, that under the erstwhile regime of Central Excise Act 1944, the Delhi and Kolkata



Benches of CESTAT have examined the process of fabrication i.e. conversion of FoC steel plates into a product as 'tanks' in cases of

- i. V.D. Engineering vs. Commissioner of Central Excise, Jabalpur (21.05.2018 - CESTAT - Delhi): MANU/CE/0700/2018
- ii. H.S. Builders v. CCEx., Cus., S. Tax, BBSR and Ors. (28.07.2020 - CESTAT - Kolkata): MANU/CK/0047/2020
- iii. Sesa Goa Ltd. v CCE 2000 (119) ELT 150 Tri Mumbai
- iv. CCE v. Shri Shanker Engineering Works (2014) 36 STR 436 (Tri-Del).

The Hon'ble Benches ruled that the fabrication of tanks from steel plates provided on FoC basis has been adjudged as manufacturing of a new commercial product and were liable to excise duty.

(aj) The activity of 'fabrication' amounts to 'manufacturing' was the established view under the erstwhile regime but the analysis is yet to be made under the jurisprudence in the new regime considering the stated facts and the applicable relevant law as mentioned above.

(ak) It is significant to consider as to what actually is supplied, whether is a 'Job Work Service' under the scope of 'Supply of Service' and/or such 'Job Work service' is amounting to 'manufacture' or a 'Supply of Goods' in form of 'Fabricated Tank'. The two nature of supplies i.e. 'supply of goods' or 'supply of service' has been treated differently under CGST/SGST/IGST Act and respective Rules as well as Notifications issued there under. The circulars or removal of difficulty orders or procedural orders to be followed are specific for two different types of supply. So, it was important to firstly determine the correct nature of the supply whether it is of Goods or of Services.

(al) After determination of the nature of the impugned activity, an in depth analysis of the appropriate HSN or SAC code needs to be made in view of the established and prescribed procedure for classification of goods or services.

(am) A reference to the Service Rate Notification above indicate that a rate of 12% shall be applicable on service of fabrication by way of 'job work' other than (i), (ia), (ib) and (ic) of the relevant entry stated above. It is clear that IOCL shall fall within the definition of the 'Principal' and the activity as has been defined and elaborated by relevant circulars is that of a 'job work' eligibility to a GST rate of 12%.

(an) If the questioned 'supply' qualifies as manufactured 'goods' then HSN code of the final product needs to be analyzed, the following entry specifying the rate of GST applicable on the 'supply of tank' shall be noted.

<i>S.No.</i>	<i>HSN Code</i>	<i>Description</i>	<i>Rate of Tax</i>
223	7309	<i>Reservoirs, tanks, vats and similar containers for any material (other than compressed or liquefied gas), of iron or steel, of a capacity exceeding 300 l, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment</i>	18%



6. The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report on the matter. The Assistant Commissioner, CGST & Central Excise Division III, Ghaziabad vide his C.No.V(30)Tech/CGST Div II/GZB/D-I/GBN/131/19/Pt.I/935 dated 29.10.2020 submitted that as only steel plates are being provided by IOCL on FoC to the applicants and all other structural items/material and fitting required for the tank will be arranged by the applicant. The various consumable e. g. welding electrodes, Gas etc are also part of process of fabrication of tanks. All these constitute the value of this work undertaken by the applicant and the same is chargeable from M/s IOCL. He opined that fabrication of tanks from steel plates falls under the category of supply of goods and the Circular No. 126/45/2019-GST dated 22.11.2019 is not applicable in the instant case. As per the said report, the HSN is 7309 and rate of tax is 18%. It is also mentioned in the report that no proceedings on the question raised by the applicant are pending or decided.

7. The applicant was granted a personal hearing on 09.12.2020 which was attended by Shri Rajesh Gupta (Director), Shri Mukul Gupta & Shri Prateek Gupta (Both Advocates & Authorized representative) through video conferencing during which they reiterated the submissions made in the application of advance ruling.

#### DISCUSSION AND FINDING

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

9. We have gone through the Form GST ARA-01 filed by the applicant and observed that the applicant has ticked following issues on which advance ruling required-

- (1) classification of any goods or services or both;
- (2) applicability of a notification issued under the provisions of this Act;
- (5) determination of the liability to pay tax on any goods or services or both;
- (7) 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.

At the outset, we find that the issue raised in the application is squarely covered under Section 97(2) of the CGST Act 2017. We therefore, admit the application for consideration on merits.

10. We have gone through the submissions made by the applicant and have examined the same. We observe that the applicant has sought advance ruling on the following questions-



- I. What should be the Correct Classification with respect to the nature of 'Supply' i.e. whether the questioned supply tantamount to 'Supply of Goods' or 'Supply of Service' on the basis of the facts of the whole activity as mentioned above and supported by the documents enclosed/discussed here under?
- II. Whether Circular No. 126/45/2019-GST dated 22/11/2019 shall at all apply in the instant case if answer to Query (a) is 'Supply of Service' as job work service?
- III. What should be the Correct HSN/SAC code applicable to the said supply?
- IV. What is applicable Rate of Tax of GST based on answers of queries mentioned in above Queries?

11. The applicant is engaged in fabrication of tanks from steel sheets supplied free of cost by M/s IOCL and during the process, the applicant also use self procured items (Angle stuffners, Hexagonal bushings, nozzle, lifting eyes, brackets, hexagonal heads, turn buckles, MS Plate, angle rings, earthing boss connection, pad plate, aluminum dip rod, nut bolts) and consumables such as welding electrodes & gas etc. The applicant also carry steel plates from M/s IOCL to their works and fabricated tanks are delivered by the party at the depot of M/s IOCL and both the activities involves transportation of goods by them. The applicant has sought ruling on classification with respect to nature of supply (supply of goods or supply of service), applicability of Circular no 126/45/2019-GST dated 22/11/2019, correct HSN/SAC code and rate of GST.

12. The applicant in para 1.13 of Statement of Relevant facts submitted alongwith Form ARA-01 has submitted that presently they are charging 18% GST under HSN Code 7309 from IOCL on the supply of tanks and in para 4.19, the applicant has submitted that the activity falls under SAC 9988 under sl.no. iv of sl. No. 26 of the Notification No. 11/17-Central Tax (Rate) dated 28.06.2017 (i.e. manufacturing services on physical inputs (goods) owned by others, other than (i), (ia), (ib), and (ic), (id), (ii) and (iia) and (iii) above attracting rate of tax @ 18%) upto 30.09.2019. As such, the applicant has submitted contrary submission in respect of classification adopted by them presently in as much as they are classifying the tank as supply of goods under HSN 7309 and simultaneously submitted that the merit classification is supply of service under SAC 9988.

13. As per the Section 7(1)(a) of the CGST Act, 2017, supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

14. The applicant is presently classifying the same supply of goods and charging GST @ 18% under HSN code 7309 and there is no change in composition of final product and process of fabrication of steel tanks. As per submission of the applicant, only steel plates are being provided by IOCL on free of cost basis to the applicant and all other structural items/material & fittings (as detailed in para 11 above) required for the tank are to be arranged by the applicant. The various consumable e.g. welding electrodes, Gas etc are also part of process of fabrication of tanks. All these constitute the value of this work undertaken



by the applicant and the same is chargeable from M/s IOCL. The applicant had also submitted that the proportion of weight and value of the components and material used by them in the process of fabrication of tank on the steel plates provided on FoC basis by IOCL is **quite substantial** (Para 1.10 of Statement of relevant facts). As such, it is not a case that entire inputs required for fabrication of tanks are provided by M/s IOCL but substantial items are used by the applicant during the process. We are therefore of the view that the nature of supply in the instant case is supply of goods.

15. We are also convinced that the activity performed by the applicant in the process of supply of tank is not covered in the services by way of job work or in manufacturing service under Notification No. 11/17-CT(Rate) date 28.06.2017. The legislature has defined job-work and manufacture separately. As such, the legislature does not intend to cover a treatment or process resulting into a distinct commodity under the scope of job work. The steel plates and tank are different commodities and after processing on steel plates, a new product Tank has been manufactured which is distinct in name, character and use. The applicant has submitted in para 5.29 of Statement of relevant facts that in following cases, it has been ruled that the fabrication of tanks from steel plates provided on FoC basis is manufacturing of a new commercial product and were liable to excise duty.

- i. V.D. Engineering vs. Commissioner of Central Excise, Jabalpur (21.05.2018 - CESTAT - Delhi): MANU/CE/0700/2018
- ii. H.S. Builders v. CC Ex., Cus., S. Tax, BBSR and Ors. (28.07.2020 - CESTAT - Kolkata): MANU/CK/0047/2020
- iii. Sesa Goa Ltd. v CCE 2000 (119) ELT 150 Tri Mumbai
- iv. CCE v. Shri Shanker Engineering Works (2014) 36 STR 436 (Tri-Del).

16. As such, we are of the view that fabrication of tank from steel plates supplied free of cost from M/s IOCL is manufacture as per CGST Act, 2017. Accordingly, supply of tanks by the applicant is supply of goods.

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

### RULING

18.

**Que 1.** What should be the Correct Classification with respect to the nature of 'Supply' i.e. whether the questioned supply tantamount to 'Supply of Goods' or 'Supply of Service' on the basis of the facts of the whole activity as mentioned above and supported by the documents enclosed/discussed here under?

Answer- The nature of supply is Supply of goods.

**Que.2** Whether Circular No. 126/45/2019-GST dated 22/11/2019 shall at all apply in the instant case if answer to Query (a) is 'Supply of Service' as job work service?

Answer- Not answered as the nature of supply is supply of goods.

**Que.3** What should be the Correct HSN/SAC code applicable to the said supply?



Answer- HSN 7309

**Que. 4** What is applicable Rate of Tax of GST based on answers of queries mentioned in above Queries?

Answer- The rate of GST is 18% (9% CGST & 9% SGST or 18% IGST).

**19.** This ruling is valid only within the jurisdiction of Authority for Advance Ruling Uttar Pradesh and subject to the provisions under Section 103(2) of the CGST Act, 2017 until and unless declared void under Section 104(1) of the Act.



(Dinesh Kumar Verma)  
Member of Authority for Advance  
Ruling



(Abhishek Chauhan)  
Member of Authority for Advance  
Ruling

To,

M/s Meera Tubes Pvt Ltd,  
C-15, Bulandshahar Road,  
Industrial Area, Ghaziabad,  
UP- 201009

**AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH**

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 & C. Ex, GCO Complex II, Kamla Nehru Nagar, Near Hapur Chungi, Ghaziabad.
4. The Deputy/Assistant Commissioner, CGST & Central Excise, Division I, GCO Complex II, Kamla Nehru Nagar, Near Hapur Chungi, Ghaziabad.
5. Through the Additional Commissioner, Gr-I, Commercial Tax, ....., 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 Khand, Gomti Nagar, Lucknow – 226010, within 30 days from the date of service of this order.