

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

**ADVANCE RULING NO. UP ADRG 83 /2021**  
**PRESENT:**

**DATED 24-9-2021**

**1. Shri Abhishek Chauhan**

Additional Commissioner, Central Goods and Service Tax

Audit Commissionerate, Lucknow

.... Member (Central Tax)

**2. Shri Vivek Arya**

Joint Commissioner, State Goods and Service Tax

.....Member (State Tax)

1.	Name of the Applicant	Toshiba JSW Power Systems Private Limited Meja TPP Site, Kodhar, Allahabad-212305
2.	GSTIN or User ID	09AADCT0151D1ZS
3.	Date of filing of Form GST ARA-01	29.06.2021
4.	Represented by	Shri Sivarajan Kalyanraman Authorized representative
5.	Jurisdictional Authority-Centre	Range- Naini-I, Division -Allahabad-I
6.	Jurisdictional Authority-State	Sector- Corporate-Circle, Range-Prayagraj (A)
7.	Whether the payment of fees discharged and if yes, the CIN	Yes SBIN21020900471694

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

1. M/s Toshiba JSW Power Systems Private Limited, Meja TPP Site, Kodhar, Allahabad 212305 (here in after referred to as the applicant) is a registered assessee under GST having GSTN: 09AADCT0151D1ZS.

2. The applicant has filed application for advance ruling in Form ARA-01 and submitted as under-

(1) They are engaged in the business of erection, procurement and commissioning ('EPC') of thermal power plants in India. The applicant was awarded the erection, procurement and commissioning package for 1x660 MW Harduaganj TPS Extn-II thermal power station located in Harduaganj, Aligarh, Uttar Pradesh by the Uttar Pradesh Rajya Vidyut Utpadan Nigam Limited (hereinafter referred to as the UPRVUNL). The said project is composed of the following four separate contracts:

Contract 1: Supply of plant and equipment from abroad

Contract 2: Supply of domestically manufactured plant and equipment. Under the contract there are two categories of supplies –



a) Supply of goods manufactured by the Claimant (hereinafter referred to as 'Contract 2 – Direct Transactions')

b) Supply of goods directly from sub-contractor's premises (hereinafter referred to as 'Contract 2 – Bought Out Items')

Contract 3: Supply of services including inland transportation, inland transit insurance, installation, testing & commissioning, guarantee test and other incidental services (hereinafter referred to as 'Contract 3 – Transportation, Installation and Testing Services' or 'Contract 3')

Contract 4: Supply of civil & structural works and all other related installation services (hereinafter referred to as 'Contract 4 – Civil Works' or 'Contract 4')

(2) The above-mentioned contracts were awarded to the applicant in response to a single tender notification, and the general terms and conditions are commonly applicable to all the four contracts.

(3) Contract – 3 was awarded to the applicant vide NOA No. 2205/PPMM/SE-II/Harduaganj Extn.-II dated 08 September 2015 as part of the EPC package for the Harduaganj power plant project. Under the contract the Company is obligated to provide various services including handling, inland transportation, inland transit insurance, receipt, unloading, handling, storage, risk insurance, installation, testing, commissioning and conducting guarantee tests with respect to goods and equipments to be supplied under Contract 1 and Contract 2 of the EPC package of the Harduaganj power plant project. The scope and consideration for the above-mentioned services have been provided separately under the said contract.

(4) Based on clarification being sought by the applicant, the above-mentioned services can be categorized in to two parts-

a) Services of goods transport by road

b) All other services to be provided under the Contract

(5) The scope and consideration for the services of goods transport by road to be provided under the contract have been mentioned separately under the contract.

(6) The applicant does not transport the goods itself. The services of goods transportation by road to be provided under the Contract have been sub-contracted by the applicant to third party goods transport agencies, and the same are not provided directly.

(7) In this regard, the applicant seeks clarification whether GST would be applicable on the services of goods transportation by road to be provided by it under the said contract.

(8) The applicable legal provisions which are relevant in the instant case as under.

(8.1) The taxable event under GST law is supply of goods and services and as per GST law, all forms of supply of goods or services or both are liable to tax under GST, unless specifically exempted.

(8.2) With respect to services of goods transport by road, an exemption from GST has been provided except where such services are provided by a goods transport agency (GTA) or by a courier agency as per entry no. 18 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

(8.3) The term GTA has been defined as per Para 2(ze) of N/N 12/2017-Central Tax (Rate) dated 28th June 2017 as under-

*"goods transport agency means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called"*



(8.4) The term consignment note has not been defined under the GST law. Guidance in this regard can be taken from the meaning prescribed to the term in the erstwhile Service tax regime. As per Explanation to rule 4B of the Service Tax Rules, 1994

*"For the purposes of this rule and the second proviso to rule 4A, "consignment note" means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the name of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency."*

(8.5) on the basis of above, it is submitted that the term GTA includes in its ambit only those service providers who provide services of transport of goods by road, and who issue a document against the receipt of goods for the purpose of transport of goods by road (i.e. a consignment note).

(8.6) there have been various judicial precedents wherein it has been held that a consignment note means a document which transfers the lien or right to possession of goods to the person transporting the goods, (i.e., the transporter of the goods becomes responsible for transportation of the goods till its safe delivery to the consignee) and only that person, who is issuing a consignment note would only be construed as a 'goods transport agency'. Details of such rulings have been mentioned below:

(a) The Appellate Authority for Advance Ruling ('AAAR') of Rajasthan in the case of M/S. K.M. Trans Logistics Private Limited observed that the person to whom the lien of goods has been transferred, i.e., the one responsible for the transportation of the goods till safe delivery to the consignee essentially undertakes the responsibility cast upon a goods transport agency.

(b) The Authority for Advance Ruling ('AAR') of Andhra Pradesh in the case of M/S. Chitra Transport observed that:

(i) Issuance of a consignment note is the sine qua-non for a supplier of service to be considered as a Goods Transport Agency. If such a consignment note is not issued by the transporter, the service provider will not come within the ambit of goods transport agency.

(ii) If a consignment note is issued, it indicates that the lien on the goods has been transferred (to the transporter) and the transporter becomes responsible for the goods till its safe delivery to the consignee

Only the services of such GTA, who assumes agency functions, that is being brought into the GST net

(c) The Customs Excise and Service Tax Appellate Tribunal (CESTAT) in the case of Nandganj Sihori Sugar Co. CCE observed that-

(i) Mere transportation of the goods in a Motor Vehicle is not the service provided by a Goods Transport Agency.

(ii) The transportation of goods without issue of consignment note would be simple transportation and not the service of Goods Transport Agency.

(iii) Consignment note issued by GTA represents its liability to – (a) transport consignment handed over to it to destination, (b) undertake delivery of same to consignee, and (c) temporarily store till delivery. Mere bill issued for



transportation of goods cannot be treated as a consignment note.

(8.7) as per the 'Carriage by Road Act, 2007' a common carrier is a person who carries out the specified activities under a goods receipt. Only such persons are required to undertake registration under the said act, and only such persons may engage in the activities of a goods carrier. Under the said act, issuance of a document specifying the liability of the person transporting the goods (or of the person having the physical possession of the goods) with respect to the goods being transported by such transporting person is sine qua-non for such person to be considered as a goods carrier

(8.8) It is submitted that such provisions of 'Carriage by Road Act' are similar in nature and in requirement to the provisions of the GST law and the erstwhile Service tax law. Thus, the term "goods carrier" can be treated as analogous to the term "GTA" and "goods receipt" to "consignment note". On the basis of this, it is submitted that if a person does not issue a document such as a goods receipt or a consignment note to declare his liability with respect to the goods being transported then he would not qualify as a goods carrier or a GTA.

(8.9) the applicant hires third-party transporters for the purpose of transportation of goods. Such transporter undertakes physical possession of the goods for safety point of view during transportation and he is responsible for transportation of the goods till delivery at UPRVUNL's site and issues a consignment note to the Company. Further, the applicant discharges GST under reverse charge mechanism, as per N. N. 13/2017 Central Tax (Rate) dated 28 June 2017, against the services received from such transporters or GTAs.

(8.10) In light of the above-mentioned provisions and their implication in the present scenario, it is submitted that the applicant is not liable to issue a consignment note and thus does not qualify as a GTA. Thus, the exemption provided on services of goods transport by road vide entry no. 18 of N/N 12/2017-Central Tax (Rate) dated 28th June 2017 should be available to the applicant, and the services of goods transport by road to be provided by the applicant under Contract 3 to UPRVUNL should be exempt.

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

*'Whether tax would be applicable on the service of transportation of goods by road to be provided by the company under one of its contracts?'*

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 application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report on the matter. The Joint Commissioner, (Corporate), Commercial Taxes, Prayagraj vide his letter C.No. 48/2021-22/Joint Comm. (Corporate) Va. Ka. Prayagraj Dated 12.07.2021 (addressed to Additional Commissioner Grade-1, Commercial Taxes, Prayagraj) submitted that as per entry no. (V) of notification No. 11/2017 dated 28.06.2017, the rate of tax is 9% CGST and 9% SGST on Goods transport services other than (i), (ii), (iii) and (iv). It is also mentioned in the report that no proceedings on the question raised by the applicant are pending.



6. The applicant was granted a personal hearing on 22.09.2021 which was attended by Shri Sivarajan Kalyanraman, Authorized representative through video conferencing during which he reiterated the submissions made in the application of advance ruling and submitted a Paper Book containing relevant details.

#### **DISCUSSION AND FINDINGS-**

7. 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'.

8. 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-

(v) Determination of the liability to pay tax on any goods or services or both

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.

9. 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-

*'Whether tax would be applicable on the service of transportation of goods by road to be provided by the company under one of its contracts?'*

10. We find that the applicant had been awarded the erection, procurement and commissioning (EPC) package for 1x660 MW Harduaganj TPS Extn-II thermal power station by M/s UPRVUNL. The said project is comprised of the following four separate contracts:

- (1) **Contract 1** bearing Ref No. PPMM/SE-II/2015-16/01 dated 22.03.2016 for Supply of plant and equipment from abroad.
- (2) **Contract 2** bearing Ref. No. PPMM/SE-II/2015-16/0 dated 22.03.2016 for Supply of domestically manufactured plant and equipment. Under the contract there are two categories of supplies –
  - a) Supply of goods manufactured by the applicant
  - b) Supply of goods directly from sub-contractor's premises
- (3) **Contract 3** bearing Ref. No. PPMM/SE-II/2015-16/03 dated 22.03.2016 for Supply of services including inland transportation, inland transit insurance, installation, testing & commissioning, guarantee test and other incidental services
- (4) **Contract 4** bearing Ref. No. PPMM/SE-II/2015-16/0 dated 22.03.2016 for Supply of civil & structural works and all other related installation services

11. During personal hearing, the authorized representative of the applicant submitted a Paper Book containing relevant documents. Perusal of these documents contained in the Paper Book



reveals that the applicant have subcontracted the work of transportation to M/s NTC LOGISTICS INDIA (P) LIMITED, Chennai vide PO Number TJPSG/17-18/39480 dated 27.10.2017. M/s NTC LOGISTICS INDIA (P) LIMITED, Chennai have issued Invoice No. DLHB/1819/00057 dated 31.07.2018 to the applicant for transportation wherein IGST @ 12% has been charged on transportation charges under SAC 996791 which is in accordance with the rate prescribed vide Notification No. 11/2017-CT(rate) dated 28.06.2017 as amended. But, the applicant have also issued Invoice No. UPSD1804210008 dated 29.06.2018 to M/s UPRVUNL for local transportation wherein CGST 9% and SGST 9% have been charged under SAC 996749.

12. Moreover, the applicant have submitted that they are not Goods Transport Agency (GTA) as they do not issue consignment note so GST on transportation services provided by them to M/s UPRVUNL is exempted as per entry no. 18 of Notification No. 12/2017-CT(rate) dated 28.06.2017.

13. The arguments of the applicant regarding exemption on the transportation service is in fact based on the assumption that the supply of service is in total isolation from the whole contract and without considering the terms and obligations created under all the contracts of supply of goods and services under erection, procurement and commissioning (EPC) package for 1x660 MW Harduaganj TPS Extn-II thermal power station by M/s UPRVUNL. As such, the applicant is isolating transportation services not only from other services (i.e. installation services and training charges) envisaged under third contract but also isolating it from whole contract of supply of goods and services allotted to the applicant. Hence most important issue to be examined by us is to verify whether the transportation services and other services provided by the appellant are altogether separate contract independent of any obligation cast on the applicant under the whole contract or not.

14. We find that the Contract – 3 was awarded to the applicant vide Notification of Award (NOA) No. 2205/PPMM/SE-II/Harduaganj Extn.-II dated 08 September 2015 as part of the EPC package for the Harduaganj power plant project. Corrigendum to the said NOA was issued by the M/s UPRVUNL vide letter No. 2379/PPMM/SE-II/Harduaganj Extn. II dated 30.11.2015 vide which the contract was split and separate civil contract was made as 'fourth contract'. The Para C and D of the Corrigendum dated 30.11.2015 of the NOA No. 2205/PPMM/SE-II/Harduaganj Extn.-II dated 08 September 2015 is reproduced below-

*C. We have also notified you vide our notification of Award letter no. 2203/PPMM/SE-II/Harduaganj, Ectn.-II dated 8<sup>th</sup> September, 2015, Notification of Award letter no. 2204/PPMM/SE-II/Harduaganj Extn-II, dated 8<sup>th</sup> September 2015 and Notification of Award letter no. 2380/PPMM/SE-II/Harduaganj Extn-II, dated 30<sup>th</sup> September 2015 for award of 'First Contract', 'Second Contract' and Fourth Contract respectively on you for the work of Design Engineering, Manufacturing, Shop fabrication, Assembly, Inspection and Testing of supplier's work, Type testing, Packing, Forwarding at site of all plant equipments /materials/ special tools & tackles and mandatory spares etc. to be supplied from abroad for the work of design Engineering, Manufacturing, Shop fabrication, Assembly, Inspection and Testing of supplier's work, Type testing, Packing, Forwarding at site of all domestically work of Civil and Structural works and all other services leading to successful completion of facilities and handing over to Employer of the plant*



Equipments/Materials including Mandatory spares of the EPC Package for Harduaganj Thermal Power Station Extension-II (1\*650 MW) as per bidding documents no. specification no. D-1-4029-4100-00-T-RSB (hereinafter refer to as the 'First Contract', 'Second Contract' and Fourth Contract). You shall also be fully responsible for the works to be executed under the 'First Contract' 'Second Contract' and Fourth Contract and it is expressly understood and agreed by you that any breach under the First Contract and/or 'Second Contract' and/or "Fourth Contract" shall automatically be deemed as a breach of this 'Third Contract' and vice-versa and any such breach or occurrence or default giving us a right to terminate the First Contract, and/or Second contract and/or 'Fourth Contract' and recover damages thereunder, shall give us an absolute right to terminate the Contract and/or recover damages under this 'Third Contract' as well and vice-versa. However, such breach of default or occurrence in the 'First Contract' and/or 'Second Contract' and/or 'Fourth Contract' shall not automatically relieve you of any of your responsibilities/obligations under this 'Third Contract'. It is also expressly understood and agreed by you that the equipments/materials to be supplied by you under the 'First Contract and 'Second Contract' and civil and structural works under 'Fourth Contract', when installed and commissioned under this 'Third Contract' shall give satisfactory performance in accordance with the provisions of the contract.

D. The total contract price for the entire scope of work under this Contract shall be INR 3,729,877,295.00 (inclusive of all taxes and duties) as per the following breakup:-

SL.No.	Particulars	Price in INR (inclusive of all taxes and duties)
1	Local Transportation including Port Handling, Port Clearance and Port Charges, Inland Transit Insurance charge and other local costs incidental to delivery of Plant and Equipments covered under First Contract and Second Contract'	461,948,371.00
2	Local Transportation including Port Handling, Port Clearance and Port Charges, Inland Transit Insurance charge and other local csts incidental to delivery of Mandatory Spares covered under First Contract and Second Contract'	39,822,412.00
3	Installation services (Erection & Allied works) including insurance (other than transit insurance and other services as specified in the Bidding documents)	
3(a)	Installation services	3213897224.00
3(b)	Training charges	15211288.00
4	TOTAL CONTRACT PRICE [1+2+3(a)+3(b)]	3729877295.00



15. The Contract 3 (bearing Ref. No. PPMM/SE-II/2015-16/03 dated 22.03.2016) between M/s UPRVUNL and the applicant has mention that Notification of Award No. 2205/PPMM/SE-II/Harduanj Extn.-II dated 08 September 2015 and Corrigendum Ref. No. 2379/PPMM/SE-II/Harduanj Extn. II dated 30.11.2015 shall be read and construed as an integral part of the Contract 3.

16. We find that the scope of work is Erection, Procurement and commissioning package, for 1x660 MW Harduanj TPS Extn. II Thermal Power Station and all the contracts were awarded to the applicant in response to a single tender notification. Apart from this, all the contracts are linked by a 'cross fall breach clause' which means that a breach in one contract will automatically be classified as a breach of the other contract. Thus, the 'cross fall breach clause' provides the recipient M/s UPRUVNL an absolute right to either terminate all the contracts or claim damages accordingly. The 'cross fall breach clause', settles unambiguously that supply of goods, their transportation to the contractee's site, delivery and related services are not separate contracts, but only form parts of an indivisible composite works contract supply, as defined under Section 2 (119) of the CGST Act, 2017. The composite nature of the contract is clear from the facts that first Contract and second contract cannot be performed satisfactorily unless the goods have been transported and delivered to the contractee's site as per third contract. The contracts for supply of the goods and allied services are not separately enforceable. The recipient M/s UPRUVNL has not entered into contract of ex - factory supply of material, but for the supply at site alongwith design, engineering, manufacturing, shop fabrication, assembly, inspection, testing, forwarding to site of all equipments, erection, commissioning, handling, storage etc for EPC package for Harduanj thermal Power Extension-II.

17. The 'cross fall breach clause', settles unambiguously that supply of goods, their transportation to the contractee's site and related services of insurance, unloading and handling at site, installation including civil work, testing etc. are not separate contracts, but only form parts of an indivisible composite supply of goods and services with single source responsibility. Thus, from the above it is seen that the supply of the goods and the supply of services are inextricably linked with each other. The contract awarded in substance and essence is a composite contract as defined in section 2(30) of the C.G.S.T. Act, 2017 for supply of goods and services.

18. The term 'composite supply' is defined under clause 30 of Section 2 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;

19. The Contracts involve two supplies, one for the supply of goods and the other for the supply of services. The contracts fulfill the conditions of the 'composite supply' as the supply of goods and services are naturally bundled in the sense that both the goods and services may require to fulfill the intention of the buyer in completion of the contract. The supply of goods



and services are provided as a package and if one or more is removed, the nature of the supply would be affected. It is important to note that in GST, under composite supply, whether the two taxable supplies are arising from one indivisible contract or from two separate contract is immaterial till these two supplies are naturally bundled and one supply being principal supply & other being ancillary supply to principal supply. Even if the considerations for two taxable supplies are separately quoted or there is single consideration for two supplies, both types of scenarios are covered under composite supply till the conditions as mentioned above for composite supply are fulfilled (i.e. naturally bundled supplies and one being principal supply and other ancillary supply to principal supply). The entire transaction of providing the goods and the services is naturally bundled and hence this is clearly a case of composite supply of goods and supply of services.

20. Now, we proceed to examine as to whether the contracts/agreement before us is a 'works contract as defined in clause (119) of section 2 of the CGST Act, 2017 or otherwise. The definition of works contract is reproduced below.

(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;

21. It is seen from the definition that works contract involves activities of 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. However, these activities should be in respect of immovable property. In order to decide whether the transaction is a works contract, it is for us to decide whether it is in respect of immovable property. The term 'immovable property' has not been defined under the GST Act. As per Section 3(26) of the General Clauses Act, 1897, immovable property includes "land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth". From the said definition, it is clear that anything which become the integral part (i.e., coming within the civil structure) of anything attached to the earth is termed as immovable property.

22.1 We find that Contract 4 (bearing Ref. No. PPM/SE-II/2015-16/04 dated 22.03.2016) is for the work of providing Civil and Structural works and all other installation services related to Civil and structural works leading to successful "completion of facilities" of the EPC Package for Harduaganj Thermal Power Station Extension-II. The contract price of the said contract is as under-

SL.No.	Particulars	Price in INR (inclusive of all taxes and duties)
1	Installation services (Civil and Structural works) including Insurance (other than transit insurance and other services as specified in the Bidding Documents)	461,948,371.00



1(a)	Civil Works	5,701,990,000
1(b)	Civil Structural works	733,954,000
4	TOTAL CONTRACT PRICE [1+2+3(a)+3(b)]	6,435,944,000

**22.2** It is seen from the nature of contract which envisages installation, which involves civil works to erect the structure for execution of the project in its entirety. It is an entire system comprising of a variety of different structures which are installed after a lot of prior work which involves detailed designing, ground work. Further foundations in cement concrete, cement concrete walls as well as cement concrete structures are to be constructed during the execution of the project. The mode of annexation shows that the groundwork, being the necessary foundation, is an important part of the project. The object of annexation, as said earlier, cannot be to make it movable from one place to the other. Hence considering the scope of the work, it can be concluded that completion of the installation, erection of the total project is resulting into immovable property wherein transfer of property in goods is involved.

**23.1** We find that the Hon'ble Supreme Court decision in the case of *Duncans Industries Ltd vs State Of U.P. & Ors* on 3 December, 1999 is relevant to the instant case where the SC had to decide whether the 'plant and machinery' in the fertilizer is 'goods' or 'immovable property'. The Apex Court held that the same is immovable property and observed the following-..

*.. "The question whether a machinery which is embedded in the earth is movable property or an immovable property, depends upon the facts and circumstances of each case. Primarily, the court will have to take into consideration the intention of the parties when it decided to embed the machinery whether such embedment was intended to be temporary or permanent. A careful perusal of the agreement of sale and the conveyance deed along with the attendant circumstances and taking into consideration the nature of machineries involved clearly shows that the machineries which have been embedded in the earth to constitute a fertilizer plant in the instant case, are definitely embedded permanently with a view to utilize the same as a fertilizers plant. The description of the machines as seen in the Schedule attached to the deed of conveyance also shows without any doubt that they were set up permanently in the land in question with a view to operate a fertilizer plant and the same was not embedded to dismantle and remove the same for the purpose of sale as machinery at any point of time. The facts as could be found also show that the purpose for which these machines were embedded was to use the plant as a factory for the manufacture of fertilizer at various stages of its production. Hence, the contention that these machines should be treated as movables cannot be accepted."*

**23.2** Thus, what can be seen from the above is that when machines are embedded with no visible intention to dismantle them and they are intended to be used for a fairly long period of time, they are 'immovable property'.

**24.** Hence, in our view the total project assigned to the applicant is nothing but composite supply of works contract as envisaged under Section 2 (119) of CGST Act, 2017 and the entire contract is a supply of services as per entry 6(a) of schedule II of the GST Act and liable to GST @ 18% as per entry at Sr. no. 3(ii) of the Notification No. 11/2017 of Central Tax (Rate) dt. 28/06/2017 and corresponding notification under the UPGST Act

**25.** Accordingly, we pass the following ruling.



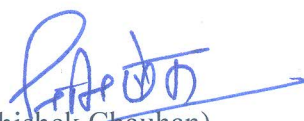
## RULING

**Que-** Whether tax would be applicable on the service of transportation of goods by road to be provided by the company under one of its contracts?

**Answer-** Replied in affirmative.

**26.** 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.

  
(Vivek Arya)  
Member of Authority for Advance  
Ruling

  
(Abhishek Chauhan)  
Member of Authority for Advance  
Ruling

To,

M/s Toshiba JSW Power Systems Private Limited  
Meja TPP Site, Kodhar,  
Allahabad-212305

## 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., 38, MG Marg, Civil Lines, Allahabad
4. The Deputy/Assistant Commissioner, CGST & Central Excise, Division I, 38, MG Marg, Civil Lines, Allahabad
5. Through the Additional Commissioner, Gr-I, Commercial Tax, Prayagraj Zone, Prayagraj, 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, VibhutiKhnad, Gomti Nagar, Lucknow – 226010, within 30 days from the date of service of this order.