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

ADVANCE RULING NO. UP ADRG 92 /2021 **Dated 24/01/2021**

PRESENT:

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	M/s HYT Engineering Company Private Limited New Electric Loco Shed, Opp Saiyedpur Railway Station, Chochakpur Saidpur Road, Saiyedpur Bhitri, Ghazipur-233304
2.	GSTIN or User ID	09AAACH5158H1ZI
3.	Date of filing of Form GST ARA-01	02.11.2021
4.	Represented by	Shri Ravi Kumar Somani, Chartered Accountant
5.	Jurisdictional Authority-Centre	CGST & Central Excise Division-II, Allahabad
6.	Jurisdictional Authority-State	Sector-Prayagraj Sector-12 Range- Prayagraj (B)
7.	Whether the payment of fees discharged and if yes, the amount CIN	Yes MAHB20090900010788

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

1. M/s HYT Engineering Company Private Limited, New Electric Loco Shed, Opp Saiyedpur Railway Station, Chochakpur Saidpur Road, Saiyedpur Bhitri, Ghazipur-233304 (here in after referred to as the applicant) is a registered assessee under GST having GSTN: 09AAACH5158H1ZI.

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

(1) They had entered into Joint Venture with M/s. Indwell Constructions Private Limited and constituted M/s. INDWELL – HYT (JV) (hereinafter referred as "JV").

(2) Rail Vikas Nigam Limited (hereinafter referred as "RVNL") has invited a tender Tender no. RVNL/BSB/SYH/1 dated 25.05.2018 for the Construction of PEB shed, structure, building, water supply arrangement, drainage, sewerage, road works, track works, power supply and general electrical works, OHE works, signal & telecommunication works and supply, installation and commissioning of machinery and plant in connection with setting up of Electric Loco Shed at Saiyedpur Bhitri, Uttar Pradesh (India).

(3) The JV had made a bid for the tender and the said tender was allotted to the JV, and the Letter of acceptance (hereinafter referred to as LOA) bearing No. RVNL/BSB/SYH/1/1416 dated 24.09.2018 was issued to the JV. The JV has duly accepted the same and signed.

(4) JV had awarded the contract to the JV partners on a back to back basis vide the JV agreement dated 10.10.2018 with the specific execution of the works contract between the partners. Applicant was allocated with the work of supply, installation and commissioning of the plant and machinery, mechanical engineering works, electrical works etc

(5) The Applicant being one of the partners in the JV is engaged in providing works contract service as sub-contractor to JV for original works pertaining to RVNL. They execute and undertake composite supply of works contract as defined in clause (119) of section 2 of Central Goods and Services Tax Act, 2017(hereinafter referred as "CGST Act").

(6) The nature of works awarded is that of works contract whereby in terms of Section 7 of CGST Act, 2017 read with Schedule II to the said Act, it has to be construed as supply of services. Accordingly, the rate of tax is to be determined in terms of Notification No. 11/2017-CT(R) as amended.

(7) On perusal of the said notification Sl. No. 3 covers the following:

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (Per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
3	Heading 9954 (Construction services)	(v) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017,(other than that covered by item (i), (ia), (ib), (ic), (id), (ie) and (if) above) supplied by way of construction, erection, commissioning, or installation, of original works pertaining to,- (a) railways, including monorail and metro;	6%	-

(8) Similarly, relevant Notification issued under Uttar Pradesh CGST Act, also provides for the rate of tax as 6% for the relevant entry.

(9) RVNL is a Government of India undertaking under Indian Railways and since the works are pertaining to railways, applicant understands that the applicable rate of tax for the works in question is 6% CGST and 6% SGST.

3. The applicant has sought advance ruling on following questions as per Form GST ARA-01 -

a. Whether the works awarded to the applicant is a composite supply of the works contract services?

b. Whether the benefit of Sl. No. 3(v)(a) of notification no. 11/2017-Central Tax (Rate) as amended vide notification no. 20/2017-Central Tax (Rate) is applicable to the subject works.

4. As per declaration given by the applicant in Form GST 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 submitted their interpretation of law as under-

(1) When it is works contract, it has to be construed as supply of services in terms of Section 7 of CGST Act, 2017 read with Schedule II to the said Act. Accordingly, the rate of tax is to be determined in terms of Notification No. 11/2017-CT(R) as amended.

(2) As per the entry 3(v) in the notification No. 11/2017-CT(R), following conditions has to be fulfilled:

a. The works should be a composite supply;
b. It should be falling within the definition of works contract as defined in Section 2(119) of the Central Goods and Services Tax Act, 2017;
c. Such works should be original works;
d. Such original work supply should be by way of construction, erection, commissioning, or installation;
e. Such original works should be pertaining to railways including monorail and metro

(3) The term "Composite Supply" is defined in Section 2(10) 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"*

(4) In case of **Bharat Sanchar Nigam Limited vs UOI 2006 (002) STR 0161 (SC)**, it was held that if there is an instrument of contract which may be composite in form in any case other than the exceptions in Article 366(29-A), then unless the transaction in truth represents two distinct and separate contracts and is discernible as such, then the state would not have the power to separate the agreement to sell from the agreement to render service, and impose tax on the sale. It was further held that the test for composite contracts other than those mentioned in Article 366 (29A) continues to be - did the parties have in mind or intend separate rights arising out of the sale of goods. The test for deciding whether a contract falls into one category or the other is to as what is the substance of the contract.

(5) In the given transaction, there are various elements i.e. mechanical works, civil works, electrical works etc. However, as discussed above the intention of the RNVL is not dominantly met merely by supplying of mechanical works or civil works or electrical works instead the expectation of the RNVL is to provide the entire set up of electric loco shed. Therefore, in the present contract, the works are being undertaken on lumpsum basis which consists of various elements of goods as well as services in order to construct and set up Electric Loco Shed. This is bundled in the ordinary course of business wherein the principal supply is that of setting up of Electric Loco shed. Accordingly, it is composite supply.

(6) The Works Contract has been defined in Section 2(119) of the CGST Act, 2017 as under-

"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;"

(7) From the above meaning, following are the various ingredients that needs to be satisfied for the contract to be termed as a works contract:

a) The contract must be for building, construction, fabrication, completion, erection etc.,

b) Such construction, fabrication etc. must be of any immovable property,
c) Transfer of property in goods must be involved in the execution of such contract.

(8) In the present case, the contract received by JV from RVNL is to set up the entire electric loco shed for them, which is an immovable property, completion of which requires construction, installation, commissioning of machinery, plants, civil work, electric work, mechanical work etc. Therefore, it can be very well said to be the contract covering various elements of works as stated within the meaning of the term works contract as per the definition given in section 2(119) of the GST act

(9) JV has been allocated with the project by RVNL and further parts of the project are being divided between the partners of the JV in order to execute the complete project. Therefore, the main contract is allocated to the JV only responsibilities got divided between the partners. Merely dividing the responsibilities or work between the partners does not change the colour of the original contract which is the setting up of the electric loco shed which is immovable in the nature.

(10) in order to execute the entire project, part of the work is allotted to the Applicant which is in relation to supply, installation and commissioning of the plant and machinery, mechanical engineering works and electrical works etc. thereby the work awarded to the Applicant in order to execute the complete contract has to be construed to be "works contract".

(11) The Applicant carries out all the mechanical, electrical and machine related work in order to execute the entire project. In this regard, applicant submits that all these mechanical, plant and machinery related work have a sense of permanence and cannot be dismantled without causing substantial damage to it and can not be just take away. Moreover, other works like electrical works are also such that they cannot be removed and relocated without substantial damage. Furthermore, once the entire work allocated to the Applicant has been completed then only the entire project of setting up of electric loco shed will be completed and then only it acquires the identity of the desired electric loco shed. Thus, the contracted activities and the supply of the required material are in relation to an immovable property.

(12) In *Larsen & Toubro Ltd.* [(2013) 12 SCALE 77] a three-member Constitution Bench of the Apex Court sums it up, describing works contract as a composite contract involving contracts for both service and sale of goods irrespective of dominant intention

(13) Further, the applicant submits that various courts have held that supply of various components and equipment along with the supply of services by way of its installation and maintenance are covered under the ambit of 'works contract'. The applicant places reliance on the decision of in the case of ***Kone Elevator India Pvt. Ltd.* v. *State of Tamil Nadu*** **[2014 (34) S.T.R. 641 (S.C.) = 2014 (304) E.L.T. 161 (S.C.)]** anddecision in the case of ***Ram Singh & Sons Engineering Works* v. *Commissioner of Sales Tax***.

(14) However, it is imperative here to analyse whether the above activities of installation, commissioning, testing, supplying, mechanical work, electrical work etc. is of an immovable property. The term Immovable property has not been defined in the GST law, however as per section 3(26) of General clauses act, "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".

(15) Hon'ble Supreme Court in the case of Quality Steel Tubes (P) Ltd vs Collector of Central Excise, U.P 1995 (75) E.L.T. 17 (S.C) held that Goods which are attached to the earth and thus become immovable do not satisfy the test of being goods within the meaning of the act nor it would be said to be capable of being brought to the market for being bought and sold. Both the tests were not satisfied in the case of appellant as the tube mill or welding head having been erected and installed in the premises and embedded to earth, they ceased to be goods within the meaning of Section 3 of the Act. Erection and installation of a plant cannot be held to be excisable goods

(16) The above case has been distinguished in Commr. Of C. Ex., Ahmedabad Vs. Solid & Correct Engineering Works civil appeal nos.960-966 of 2003 where the assessee has attached the plant with nuts and bolts intended to provide stability and prevent vibration not covered as attached to earth. The Hon'ble Supreme Court in this case has held that "all that has been said by assessee is that the machine is fixed by nuts and bolts to a foundation not because the intention was to permanently attach it to the earth but because a foundation was necessary to provide a wobble free operation to the machine. At attachment of this kind without the necessary intent of making the same permanent, in our opinion, constitute permanent fixing, embedding or attachment in the sense that would make the machine a part and parcel of the earth permanently. In that view of the matter we see no difficulty in holding that the plants in question were not immovable property so as to be immune from the levy of excise duty.

(17) It is important to note from the above case law that the attachment of the plant and machinery in the above scenario was detachable from foundation and the same was not permanent. The plant would be moved after road construction or repair project is completed

(18) In the present case, the project covers mechanical engineering and electrical engineering for installation of plant and machinery in the railway sites on lump sum basis. The breakup of the contract in various schedules is more for the logical division of the work in various baskets for ease in determination of pricing and release of milestone payments to the applicant, however this itself cannot be said to be an individual contracts in themselves and the ultimate objective of the contract does not changes due to such bifurcation.

(19) Therefore, from the above it can be said that the work undertaken results into an immovable property consisting of various elements being machineries & plants, mechanical work and electrical works and once all the elements are accretion and built-up into the unit, then later its removal is not simple and is not possible without causing substantial damage therefore the work undertaken by the Applicant can be termed as a works contract.

(20) In the present case, the Applicant is to construct, supply, install, test & commission machinery & plant and electrical equipment of Electric Loco shed which is immovable property. It is, therefore, works contract, as defined under Section 2(119) of the GST Act.

(21) In this regard Applicant relies on the ruling given by Tamil Nadu Authority of Advance Ruling vide **Order No. 8/AAR/2019 dated 22.01.219 in case of M/s HYT SAM India (JV).**

(22) Further in the case of other M&P items, Applicant would like to draw the attention to the Order No. 58/1/2002-CX dated 15.01.2002 wherein the excisability was clarified in respect of specific instances.

(23) Applicant places reliance in the case of **VOLTAS LTD. Vs COMMISSIONER OF CENTRAL EXCISE, MUMBAI-VII 2011 (270) E.L.T. 541 (Tri. - Mumbai),** wherein it is stated that it is not in dispute that the chiller plant erected and commissioned at site is an immovable property.

(24) The definition of 'Original Works' is given in Notification No. 12/2017-CT(R) dated 28th June 2017 is relevant since there is no specific definition given under notification No. 11/2017-CT(R) dated 28th June 2017.

- The definition read as follows:
  "original works" means- all new constructions;
  - all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
  - erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;
  - In the instant case as per the contract, it clearly involves erection, commissioning or installation of plant, machinery, equipment and structures as well.
  - Thereby it can be construed to be original works.

(25) As it is clear from the scope of work, it involves construction, erection, commissioning, as well as installation. Therefore, this condition is fulfilled.

(26) The term 'railway' is not defined in the notification. The definition given for it under Section 2(31) of Railways Act, 1989 is as follows:

> *"(31) "railway" means a railway, or any portion of a railway, for the public carriage of passengers or goods, and includes-*
>
> *(a) ……*
>
> *(d) all rolling stock, stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, roads and streets, running rooms, rest houses, institutes, hospitals, water works and water supply installations, staff' dwellings and any other works constructed for the purpose of, or in connection with, railway;*
>
> *(e) ……*

(27) As per the said definition, *manufactories, fixed plant and machinery, and any other works constructed for the purpose of, or in connection with, railway is also covered.* Further also the entry says if it is pertaining to railway and not of railway. This indicates that the construction, installation etc., should be pertaining to railway and need not only be confined to railway itself.

(28) Further also the contract is awarded by Rail Vikas Nigam limited. Hence this condition also is fulfilled

(29) Further Applicant submits that entry No. (v) covers the composite supply of works contract pertaining to the original works supplied to railways, but the applicant being the sub-contractor is not supplying directly to railways but to the main contractor who has received the contract from the railways.

(30) As per Notification No 01/2018 CT (Rate) dated 25.01.2018 the service provided by the sub-contractor to main contractor for railway original work contract services is not specified in the notification. However, the Applicant being a subcontractor providing services to the main contractor effecting original works contract for railways believe that the rate applicable to them for the said supply is 6% CGST & 6% SGST

(31) Further the terms contractor and sub-contractor are not defined under the GST Act, 2017 but as per the general definition the contractor means a person who

undertakes the job from the employer for the supply of goods or provide the labour to perform the a service at a specified price and sub-contractor means person who is hired by the general contractor to perform a specific task as part of the overall project or the total project.

(32) Further, when the principal contractor hired the sub-contractor contract remains same and the identity of the original contract doesn't change. Further the work performed by the original contractor as well as sub-contractor remains same and identical to what is specified in the original contract awarded by the employer.

(33) In this regard appellant places reliance in the case of ***M/s Lanco infratech Ltd Vs. Commissioner of Customs, Central Excise and Service Tax 2015-TIOL-768-CESTAT-BANG-LB***, wherein it was stated that *"we conclude, on the basis of the judgment in Larsen and Toubro Ltd. (SC-2008) that where under an agreement (whether termed as a works contract, turnkey or EPC project contract), the principal contractor, in terms of the agreement with the employer/ contractee assigns the works to a sub-contractor and the transfer of property in goods involved in the execution of such contract passes from the sub contractor by accretion to or incorporation into the works, the principal contractor cannot be considered as having provided the taxable (works contract) service, enumerated and defined in Section 65 (105)(zzzza) of the Act."*

(34) Hence, it can be said that the sub-contractor is only an agent of the contractor and the work undertaken by him passes directly from the sub-contractor to the employer. As the work get transferred directly to the employer by the subcontractor the works contract remains the same and therefore leads to the conclusion that there is only one contract which is undertaken by the contractor as well as subcontractor.

(35) Hence, main contractor and sub-contractor should not be seen separately and the rate applicable to the main contractor shall be applicable to the sub-contractor also

(36) As discussed above, the conditions of both the entries i.e. Sl. No. 3(v)(a) and 3(vi)(a) are fulfilled in the subject contract and therefore it is eligible for the benefit of the rate of tax contained in the said entries

(37) In this regard the Applicant wishes to submit that in the case of Shree Construction 2019(23) G.S.T.L. 473 (App. A.A.R – GST), the Appellate authority for Advance Ruling, Maharashtra uphold the ruling pronounced by the Advance Ruling Authority vide their order number GST-ARA-09/2018-19/B-65 Mumbai, dated 11.07.2018. Relevant para:

10.*We do not find any merit in the above mentioned contention of the Jurisdictional Officer as from the plain reading of the item (v) of the Sr. No. 3 of the Notification, it is very much clear that any supply of works contract pertaining to the railways including monorail and metro is subject to concessional rate of 12% GST. In the instant case, though the respondent i.e. M/s. Shree Construction is providing works contract services to its main contractor who has entered into works contract agreement with railways, the composite supply of works contract being carried out by M/s. Shree Construction is ultimately going to the use of railways without being subjected to any change or modification,* ***thus the said works contracts, though undertaken by the sub-contractor, is undoubtedly pertaining to the railways and no one else. Thus, the condition specified under item (v) of the Sr. 3 of the said notification is completely fulfilled*** *and therefore the services provided by the sub-contractor would attract concessional rate of 12% GST.*

(38) Further Applicant also wishes to rely on the Advance ruling given by the Karnataka Authority in the case of **Quatra Rail Tech Solutions Ltd 2019**

(31)G.S.T.L 620 (A.A.R-GST) vide order number KAR ADRG 93/2019 dated 27.09.2019, wherein it was held that the contract work of the applicant to the main contractor, who is executing the works contract to M/s. DFCCIL, is liable to tax at 6% under CGST Act and at 6% under KGST Act or 12% under IGST Act, 2017

6. The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report on the matter. The Deputy Commissioner, CGST & Central Excise Division-II, Allahabad vide C.No. VI(30)16/Advance Ruling/Audit/Lko/2021/84 dated 12.01.2022 submitted his report wherein following comments were made-

(i) the applicant is providing sub contract services to a JV who has been allotted work by RVNL for entire loco shed.

(ii) construction of electric loco shed seems to be akin to an immovable property and with transfer of this property after works of building construction, fabrication, it may be considered as a work contract service.

(iii) from available documents, the exact nature of works to be given by applicant to JV can not be ascertained. So, the nature of supply whether composite or not, can not be ascertained by his office.

(iv) Benefit as per any notification should only be given as per due process of GST laws & relevant rules. It may not be proper to extend benefit, as per Notification No. 11/2017, unless it is proven to be composite supply.

(v) there is no proceedings pending against the applicant at present.

7. The applicant was granted a personal hearing on 17.01.2022 which was attended by Shri Ravi Kumar Somani, Chartered Accountant 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 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 find that the applicant has sought advance ruling on following questions-

a. Whether the works awarded to the applicant is a composite supply of the works contract services?

b. Whether the benefit of Sl. No. 3(v)(a) of notification no. 11/2017-Central Tax (Rate) as amended vide notification no. 20/2017-Central Tax (Rate) is applicable to the subject works.

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

11. We find that M/s Rail Vikas Nigam Limited vide Letter of Acceptance No. RVNL/BSB/SYH/1/1416 dated 24.09.2018 issued to the M/s INDWELL-HYT JV (JV) issued Notification of Award for the work of "*Construction of PEB shed, structure, building, water supply arrangement, drainage, sewerage, road works, track works, power supply and general electrical works, OHE works, signal & telecommunication works and supply, installation and commissioning of machinery and plant in connection with setting up of*

Electric Loco Shed at Saiyedpur Bhitri, Uttar Pradesh". The summary of the schedule was detailed as under-

Bill No.	Description of schedule
Civil Engineering Works	
1	Earthwork in formation
2A	Civil Works (Other than steel items)
2B	Civil Work (steel items involving fabrication and erection)
2C	Supply of steel items
3	Ballast supply
4A	P. Way supply (other than steel items)
4B	P. Way supply (steel items)
5A	P. Way Linking (installation works)
5B	P. Way Linking (supply and installation works)
6	Buildings
7A	Miscellaneous works (other than steel items)
7B	Miscellaneous works (steel items)
8	Supply of cement
9	Site Facility
10	Miscellaneous items of NER's USSOR 2012
S & T Engineering Works	
11	Signal and Telecommunication items
Mechanical Engineering Works	
13A	Supply, installation, testing and commissioning of major M&P items
13B	Supply, installation, testing and commissioning of other M&P items
13C	Supply and commissioning of tools, gauges, instruments and plants
13D	Supply and commissioning of office equipment and furniture
Electrical Engineering Works	
16 to 30	Electrical works other than general services electrical work
33	General services Electrical works

12. As per the Joint Venture Agreement dated 10.10.2018, the distribution of share and responsibilities between the JV partners are as under-

(a) Lead Partner M/s Indwell Constructions Pvt. Ltd- Share 60% (Approx)

Responsibilities -

(i) Key Activities

-Fabrication and erection of steel structures including an industrial/pre-engineered building shed with gantry

-Execution of boring and installing of cast in situ reinforced piles

(ii) BOQ Schedule/Bill No. 1, 2A, 2B, 2C, 3, 4A, 4B, 5A, 5B, 6, 7A, 7B, 8, 9, 10, 11

(b) JV partner M/s HYT Engineering Co. Pvt. Ltd. (applicant)- Share 40% (Approx)

Responsibilities-

(i) Key Activities- Supply and commissioning of Machinery and Plant

(ii) BOQ Schedule/Bill No. 13, 13A, 13B, 13C, 13D, 16 to 30, 33

13. As per Sl. No. 12B of Form GST ARA-01, the applicant is providing sub-contract services in relation to supply and commissioning of machinery and plants, mechanical engineering, electrical works etc. to 'JV' who has been allotted with a work by RVNL for construction of PEB shed, structure, building, water supply arrangement, drainage, sewerage, road works, track works, power supply and general electrical works, OHE works, signal & telecommunication works and supply, installation and commissioning of machinery and plant in connection with setting up of Electric Loco Shed at Saiyedpur Bhitri, Uttar Pradesh.

14.1 The applicant has sought ruling as to whether the works awarded to the applicant is a composite supply of the works contract service. We shall now discuss the provisions relating to Works Contract and Composite Supply. We refer to the definition of `Composite Supply' as mentioned in sub-section (30) of Section 2 of CGST Act, 2017 which is 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'.

14.2 We find that as per the Joint Venture Agreement, the applicant has been entrusted the work of Supply and commissioning of Machinery and Plant by the JV which consists of following-

Bill No.	Description of schedule
13A	Supply, installation, testing and commissioning of major M&P items
13B	Supply, installation, testing and commissioning of other M&P items
13C	Supply and commissioning of tools, gauges, instruments and plants
13D	Supply and commissioning of office equipment and furniture
16 to 30	Electrical works other than general services electrical work
33	General services Electrical works

14.3 We find that the major part of the contract is supply of goods i.e. Machinery and Plant, tools, gauges, instruments, office equipment & furniture and electrical goods. These goods are delivered to the client (JV) by the applicant and such goods are used by the applicant to provide services of installation, testing, commissioning and electrical works. Without supply of these goods, the services cannot be supplied by the applicant and therefore we find that the goods and services are supplied as a combination and in conjunction and in the course of their business where the principal supply is supply of goods. Thus we find that there is a composite supply with supply of goods being the principal supply.

14.4 As per Section 2(119) of the CGST Act, 2017, "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".

14.5 Immovable property has not been defined in the GST Act. Definition of Immovable Property is given in Clause 3 (26) of General Clauses Act, 1897 which says that "immovable property shall include land, benefits arising out of land and things attached to earth, or permanently fastened to anything attached to earth." As per Section 3 of the Transfer of Property Act 1882, the phrase "attached to earth" means- (a) rooted in the earth, as in the case of trees and shrubs; (b) imbedded in the earth, as in the case of walls or buildings; or (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

14.6 The applicant has made following submission in support of their claim that the works performed by them are covered in works contract-

(a) the project covers mechanical engineering and electrical engineering for installation of plant and machinery in the railway sites on lumpsum basis.

(b) The breakup of the contract (of Electric Loco shed) in various schedules is more for the logical division of the work in various baskets for ease in determination of pricing and release of milestone payments to the applicant, however this itself cannot be said to be an individual contracts in themselves and the ultimate objective of the contract does not changes due to such bifurcation.

(c) the entire contract could be construed as complete only if the entire installation of plant and machinery is completed at site.

(d) the work undertaken results into an immovable property consisting of various elements being machineries & plants, mechanical work and electrical works and once all the elements are accretion and built-up into the unit, then later its removal is not simple and is not possible without causing substantial damage therefore the work undertaken by the Applicant can be termed as a works contract.

(e) the Applicant is to construct, supply, install, test & commission machinery & plant and electrical equipment of Electric Loco shed which is immovable property. It is, therefore, works contract, as defined under Section 2(119) of the GST Act.

15. We find it is the Joint Venture Company and not the applicant which has been awarded the contract for construction of Electric Loco Shed. A Joint Venture Company, which is formed by two or more entities, has a separate existence than that of the said entities. The applicant has himself submitted that they are providing sub-contract services in relation to supply and commissioning of machinery and plants, mechanical engineering, electrical works etc. to 'JV'. The supply of goods/services by the applicant can't be bundled with the JV which is separate entity, both having their separate GSTINs. As such, the goods/services supplied by the applicant to JV are to be examined for the purpose of their coverage in works contract.

16.1 We find that the applicant has not claimed that the mechanical engineering work and electrical engineering work for installation of plant and machinery in the railway sites is immovable property and have submitted that it is the part of electric loco shed which is immovable property. The applicant has been entrusted the work of supply, installation, testing and commissioning of M& P items.

16.2 In case of M/s Sirpur Paper Mills Ltd. Vs. Collector of Central Excise, Hyderabad (1998 (97) ELT 3 (SC)), CEGAT recorded finding that whole purpose behind attaching machine to a concrete base was to prevent wobbling of machine and to secure maximum operational efficiency and also for safety. Supreme Court held that in view of those findings it was not possible to hold that the machinery assembled and erected by the appellant at its factory site was immovable property as something attached to earth like a building or a tree.

16.3 In the case of Virgo Industries (Eng.) Pvt Ltd vs CCE, Chennai, 2015 (4) TMI 247(Mad.), the Madras High Court observed that an item fixed to the earth can continue to be movable if the same is capable of being shifted to another place without having to dismantle the same into constituent components and without causing substantial damaging to such individual components.

16.4 The Supreme Court of India in the case of Commissioner of Central Excise, Ahmedabad Vs. Solid and Engineering Works, (2010) 5 SCC 122 has explained in detail the law relating to Immovable property. In that case the asphalt drum/ hot mix plants were

claimed to be immovable property. The observations of the Court in that case as regards immovable property are reproduced below -

Para 24-Section 3 (26) of the General Clauses Act includes within the definition of the term" immovable property" things attached to the earth or permanently fastened to anything attached to the earth. The term attached to the earth has not been defined in the General Clauses Act, 1897. Section 3 of the Transfer of Property Act, however gives the following meaning to the expression "attached to the earth"

(a) rooted in the earth, as in the case of trees and shrubs;

(b) imbedded in the earth, as in the case of walls or building; or

(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

Para 25-it is evident from the above that the expression 'attached to the earth' has three distinct dimensions.... Attachment of the plant in question with the help of nuts and bolts to a foundation not more than one and half feet deep intended to provide stability to the working of the plant and preventing vibration/wobble free operation does not qualify for being described as attached to the earth under any one of the three clauses extracted above. That is because attachment of the plant to the foundation is not comparable or synonymous to trees and shrubs rooted in the earth. It is also not synonymous to imbedding in the earth of the plant as in the case of walls and buildings, for the obvious reason that a building imbedded in the earth is permanent and cannot be detached without demolition. Imbedding of a wall in the earth is also in no way comparable to attachment of a plant to a foundation meant only to provide stability to the plant especially because the attachment is not permanent and what is attached can easily be detached from the foundation. So also the attachment of the plant to the foundation at which it rests does not fall in the third category, for an attachment to fall in that category it must be for permanent beneficial enjoyment of that to which the plant is attached. It is nobody's case that the attachment of the plant to the foundation is made for permanent beneficial enjoyment of either the foundation or the land in which the same is embedded.'

16.5 For the goods/services supplied by the applicant to be covered in the works contract, it is necessary that the contracts enumerated therein should relate to immovable property. If the contract is otherwise or if the same results in movables, then it may be a composite supply but not the works contract.

16.6 We are of the view that the activities of installation, commissioning, testing, supplying mechanical work and electrical work are not in respect of immovable property as the Machinery and plant is attached to concrete base to prevent vibration/wobble free operation and preventing vibration/wobble free operation does not qualify for being described as attached to the earth under any one of the three clauses described above (para 14.5). Hence, the said supply of goods/services by the applicant to JV is not works contract.

17. We find that the applicant has sought ruling as to whether the benefit of Sl. No. 3(v) of notification no. 11/2017-Central Tax (Rate) as amended vide notification no. 20/2017-Central Tax (Rate) is applicable to the subject works. We find that sl. No. 3(v) of the Notification No. 11/2017-Cetral Tax (Rate) dated 28.06.2017, as amended prescribed CGST rate @ 6% for composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017,(other than that covered by item (i), (ia), (ib), (ic), (id), (ie) and (if) above) supplied by way of construction, erection, commissioning, or installation, of original works pertaining to railways, including monorail and metro.

18. The rate prescribed vide sl. No. 3(v) of the Notification No. 11/2017-Cetral Tax (Rate) dated 28.06.2017, as amended is applicable to composite supply of works contract and as the supply entrusted to the applicant vide JV Agreement is not a works contract, the applicant is not entitled for the benefit of the said notification.

19. In view of the above discussions, we pass an order as follows:

ORDER

Question 1. Whether the works awarded to the applicant is a composite supply of the works contract services?

Answer 1- Replied in negative.

Question 2- Whether the benefit of Sl. No. 3(v)(a) of notification no. 11/2017-Central Tax (Rate) as amended vide notification no. 20/2017-Central Tax (Rate) is applicable to the subject works.

Answer 2- Replied in negative.

20. 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 HYT Engineering Company Private Limited,
New Electric Loco Shed,
Opp Saiyedpur Railway Station,
Chochakpur Saidpur Road, Saiyedpur Bhitri,
Ghazipur-233304

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- 211001.
4. The Deputy Commissioner, CGST & Central Excise, Division-II, 38 MG Marg, Civil Lines, Allahabad- 211001.
5. Through the Additional Commissioner, Gr-1, 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, Vibhuti Khnad, Gomti Nagar, Lucknow – 226010, within 30 days from the date of service of this order.

Ashutosh Ranjan 11-04-22
HYT Engg. Saiyedpur

Received