

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
14 Beliaghata Road, Kolkata – 700015
(Constituted under section 96 of the West Bengal Goods and Services Tax Act, 2017)

BENCH

Mr Brajesh Kumar Singh, Joint Commissioner, CGST & CX
Mr Joyjit Banik, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Tax Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	UTKARSH INDIA LIMITED
Address	NH-2, Gurap, Hooghly, West Bengal-712303
GSTIN	19AAACW4982C1Z6
Case Number	21 of 2021
ARN	AD191021003565J
Date of application	November 02, 2021
Order number and date	01/WBAAR/2022-23 dated 07.04.2022
Applicant's representative heard	Mr. Nirmal Kumar Chowdhury, Authorized Advocate

1.1 At the outset, we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like matter except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the WBGST Act. Further to the earlier, henceforth for the purposes of these proceedings, the expression 'GST Act' would mean the CGST Act and the WBGST Act both.

1.2 The applicant submits that he was awarded a contract by East Coast Railways, Khurda Road Division, Orissa for execution work for dismantling of existing bridge timber/steel channel sleepers on bridge including removal of all fittings of sleepers and removing footpath, tie bar lacing/angle lacing etc. and fabrication, manufacture and supply of H- beam steel sleepers and installation of the same. According to the Letter of Acceptance, the

applicant was awarded work for renewal of existing of 466 nos of steel channel sleepers with H-Beam sleepers inclusive of all fixtures fastening over Br. No 66(Dn), 13(Up), 63(Up) under the jurisdiction of Assistant Divisional Engineer, Track, Khurda Road.

1.3 The applicant has made this application under sub section (1) of section 97 the GST Act and the rules made there under raising following questions vide serial number 14 of the application in FORM GST ARA-01:

- (i) Whether dismantling of existing sleeper fixing and/or installation of new (H-Beam Steel sleepers) is amounting to execution of original work and would attract IGST @12% in terms of Notification No. 20/2017-Integrated Tax (Rate) dated 22.08.2017?
- (ii) Whether the applicant is eligible for getting the benefit of Notification No. 20/2017-Integrated Tax (Rate) dated 22.08.2017 by paying IGST @ 12% for construction, erection, commission or installation of original works pertaining to Railways?

1.4 The aforesaid question on which the advance ruling is sought for is found to be covered under clause (b) sub-section (2) of section 97 of the GST Act.

1.5 The applicant states that the question raised in the application has neither been decided by nor is pending before any authority under any provision of the GST Act.

1.6 The officer concerned from the revenue has raised no objection to the admission of the application.

1.7 The application is, therefore, admitted.

2. Submission of the Applicant

2.1 The applicant submits that the work undisputedly is pertaining to Railways. The work involves dismantling of existing bridge timber/steel channel sleepers and fabrication, manufacture and supply of galvanized H-Beam Steel Sleepers made out of materials as per specification. The said works contract is being carried out by way of construction, erection, commissioning or installation of original works. Since it is not a case of completely new construction and the work is not in the nature of repair and maintenance, the instant work can only be considered under the category of original works. The applicant is dismantling the existing bridge timber/steel channel sleepers of bridge including removal of all fittings of sleepers and removing footpath, tie bar lacing/angle lacing etc. and installation H- Beam Steel Sleepers. Since no repair and maintenance is involved in this work, the said work can be classifiable as original works only and therefore, the applicant is eligible for the benefit of Notification No. 20/2017-Integrated Tax (Rate) dated 22.08.2017 (as amended) for the nature of works/services provided by the applicant to the Railways.

2.2 The applicant contends that the scope of work in terms of Letter of Acceptance (LoA, for short) clearly shows that the applicant is required to fabricate, manufacture and supply galvanized H-Beam steel sleepers made out of the materials as per specification after dismantling of existing bridge/ steel channel sleepers on bridge. The applicant, therefore, for the purpose of execution of the instant work dismantles the existing one and installs a new one.

2.3 The applicant contends further that though the work order refers the term 'renewal', it cannot be the decisive factor for ascertaining the nature of contract. The entire scope of the work is required to be seen for understanding actual nature of contract. The applicant places reliance on the decision in the matter of Super Poly Fabrics Limited reported in 2008 (10) STR 545 wherein the Hon'ble Supreme Court of India has held that *'There cannot be any doubt whatsoever that a document has to be read as a whole. The purport and object with which the parties thereto entered into a contract ought to be ascertained only from the terms and conditions thereof. Neither the nomenclature of the document nor any particular activity undertaken by the parties to the contract would be decisive.'* The applicant has further relied on the decision in the matter of Great Easter Shipping Company vs State of Karnataka wherein the Hon'ble Apex Court has held that *'there is no super check formula to find out the nature of the contract. It depends upon the terms and conditions of each contract. Merely use of specific words, as mentioned above, is not determinative, but the real crux is to be seen as per relevant conditions as agreed to between the parties.'*

2.4 The applicant submits that he has raised invoices charging tax 12% according to the rate applicable vide Notification No. 20/2017 Integrated Tax (Rate) dated 22.08.2017. However, at the insistence of the Railway Authorities, the applicant subsequently has charged balance tax amount calculated @ 18% by way of debit/credit note though the applicant doesn't accept the same.

2.5 The applicant submits that the term 'original works' has been defined in clause 2 (zs) of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 which reads as under:

"original works" means- all new constructions;

- (i) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
- (ii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

In this instant case the work executed by the applicant is original work and squarely covered by the aforesaid definition. The applicant dismantled the existing bridge timber/steel channel sleeper on bridge including removal of all fittings of sleeper and removing footpath, tie bar lacing/angle lacing etc. including leading and stacking at the nearest bridge and removal of bearing plates from the release bridge sleeper after dismantling the same. The applicant has also undertaken fabrication, manufacture, supply of galvanized 'H' Beam steel sleeper made out of materials as per the specifications given as per the approved drawings and fixing the same as per the instruction of the engineer. The scope of work includes not only the fixing of sleepers after completion of the manufacture and fabrication but also laying of rails on the sleepers. The rails were being supplied by the Railway Authorities.

2.6 The applicant thus put his argument that the work being undertaken by the applicant is undoubtedly not in the nature of repair and maintenance to make something workable but in the nature of doing new construction work which otherwise can be called as original work. Once it is expected that the above work is in the nature of original work then the applicant is eligible for the benefit of the said Notification No. 20/2017-Integrated Tax (Rate) dated 22.08.2017.

3. Submission of the Revenue

3.1 The concerned officer from the revenue has not expressed any view on the issue raised by the applicant.

4. Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorised advocate of the applicant during the course of personal hearing.

4.2 The issue involved in the case is to decide whether the execution of the work being undertaken by the applicant can be treated as execution of original work so as to attract IGST @12% under Notification No. 20/2017-Integrated Tax (Rate) dated 22.08.2017.

4.3 Relevant portion of clause (v) of serial number 3 of the aforesaid notification, as amended, is reproduced below:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
3	Heading 9954 (Construction services)	<p>(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 items (i), (ia), (ib), (ic), (id), (ie) and (if) above supplied by way of construction, erection, commissioning, or installation of original works pertaining to,—</p> <p style="padding-left: 40px;">(a) railways, including monorail and metro;</p> <ul style="list-style-type: none"> ● * * * * * ● * * * * * ● * * * * * 	12	

4.4 In the instant case, the supply is admittedly found to be made against the contract awarded by East Coast Railways, Khurda Road Division, Orissa i.e., there is no dispute that the supply is pertaining to railways. It, therefore, appears that in order to get covered under the aforesaid entry No. 3(v) (a), the supply which is made in pursuance to the contract further needs to satisfy the following conditions:

- (i) The supply would be a composite supply of works contract as defined in clause (119) of section 2 of the GST Act;
- (ii) The supply would be by way of construction, erection, commissioning or installation of original works; (emphasis supplied)

4.5 Clause (119) of section 2 of the GST Act speaks that '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.

4.6 The scope of work awarded to the applicant is found to be involving both supply of goods and services which comprises of, inter alia, fabrication, manufacturing, supply of galvanized sleepers and fitting out of the same. Further, the work is relating to railway bridge which is an immovable property. As a result, supply made by the applicant is found to be covered under the definition of works contract under section 2(119).

4.7 The issue left with us is to decide whether the composite supply of works contract involved in the instant case can be considered as 'original work' as mentioned in clause 3(v) of the Notification No. 20/2017-Integrated Tax (Rate) dated 22.08.2017, as amended.

4.8 For the sake of convenience, definition of 'original works' given in clause 2 (zs) of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 is reproduced again:

"original works" means- all new constructions;

- (i) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
- (ii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

4.9 The applicant has contended that that the work being undertaken by him is undoubtedly not in the nature of repair and maintenance to make something workable but in the nature of doing new construction work which otherwise can be called as original work. We, therefore, proceed to decide whether the instant work can be considered as a new construction.

4.10 On perusal of the detailed scope of work, it transpires that the applicant has been awarded the contract which involves fabrication, manufacture and supply of galvanized H-Beam steel sleepers after dismantling of existing bridge timber/steel channel sleepers on bridge. The applicant doesn't construct a new bridge nor is the applicant entrusted to lay a new railway track. The applicant, as we find, undertakes the work of replacing the old sleepers with new one which essentially requires dismantling as well as removal of existing sleepers first. We also find that the work order has been issued wherein "Unit" has been specified as 'per sleeper' and the rate has been determined based on (i) number of sleepers

to be dismantled and removed and (ii) number of sleepers to be supplied and installed which also establishes the fact that the applicant has been awarded the contract to replace the existing sleepers only.

4.11 Further, nowhere in the work order, it has been mentioned that the work is related to additions and alterations to abandoned or damaged structures that are required to make them workable.

4.12 We are therefore of the view that the instant composite supply of works contract cannot be considered as 'original work' in terms of definition given in clause 2 (zs) of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

In view of the above discussions, we rule as under:

RULING

Question: Whether dismantling of existing sleeper fixing and/or installation of new (H-Beam Steel sleepers) is amounting to execution of original work and would attract IGST @12% in terms of Notification No. 20/2017-Integrated Tax (Rate) dated 22.08.2017?

Answer: The instant supply is found to be a composite supply of works contract as defined in clause (119) of section 2 of the GST Act but the supply cannot be regarded as composite supply of 'original work' as defined in clause 2 (zs) of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. The instant supply, therefore, shall not be covered under serial number 3(v) of Notification No. 20/2017 Integrated Tax (Rate) dated 22.08.2017, as amended, to attract tax @ 12%.

Question: Whether the applicant is eligible for getting the benefit of Notification No. 20/2017 Integrated Tax (Rate) dated 22.08.2017 by paying IGST @ 12% for construction, erection, commission or installation of original works pertaining to Railways?

Answer: The answer is in negative.

(BRAJESH KUMAR SINGH)

Member

West Bengal Authority for Advance Ruling

(JOYJIT BANIK)

Member

West Bengal Authority for Advance Ruling