



AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH
Goods and Service Tax

D. No. 5-56, Block-B, R.K. Spring Valley Apartments,
Edupugallu, Vijayawada-521151

Present:

Sri.D. Ramesh, Additional Commissioner...Member (State Tax)
Sri.S.Narasimha Reddy, Additional Commissioner ...Member (Central tax)

AAR No. 21/AP/GST/2019 dated:27.05.2019

1	Name and address of the applicant	M/s. McNally Bharat Engineering Company Limited Project site, C/o RINL, Visakhapatnam Steel Plant, Visakhapatnam
2	GSTIN	37AABCM9443R1ZO
3	Date of filing of Form GST ARA-01	04-12-2018
4	Date of Personal Hearing	01-02-2019
5	Represented by	Bipin verma
6	Jurisdictional Authority - State	The Assistant Commissioner of State Tax, Steel Plant Circle, Vishakhapatnam Division
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	a)classification of any goods or services or both and b) applicability of a notification issued under the provisions of this Act. e) determination of the liability to pay tax on any goods or services or both

ORDER

(Under sub-section (4) of section 98 of Central Goods and Service Tax Act, 2017 and under sub- section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)



1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to as CGST Act and APGST Act respectively) by M/s McNally Bharat Engineering Company Limited (hereinafter referred to as applicant), registered under the Goods & Services Tax.
2. The provisions of the CGST Act and APGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the APGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or AP GST Act would be mentioned as being under the GST Act.

1. Brief Facts of the case:

1. M/s McNally Bharat Engineering Company Limited ("Applicant") is engaged in providing turnkey solutions in the areas of Power, Steel, Coal & Mining, Ports, Aluminium, Material Handling, Mineral Processing, Cement, Water, Oil & Gas and Infrastructure sectors such as Buildings & Townships, High Rises, Roads, Metro Rail, etc.
2. The applicant has entered into three contracts under Pre-GST regime with M/s Andhra Pradesh Power Generation Corporation Limited ('APGENCO') namely,
 - i. Supply Contract;
 - ii. Erection Contract; and
 - iii. Operation and Maintenance Contract.

for the purpose of establishment and Operation & Maintenance of 100MW grid connected Solar PV Project at Talaricheruvu Village, Near Tadipatri, Anantapur District in Andhra Pradesh.

3. The scope of the supply/ work under each of the above mentioned three contracts

is as follows:



A. Supply Contract:

Design, Engineering, Manufacture/ Procurement Testing at manufacturer's works, Inspection, Supply, Packing and Forwarding of all plant and equipment including Mandatory Spares of 100MW grid connected Solar PV Power Project at Talaricheruvu (V), Near Tadipatri, Anantapuramu District in Andhra Pradesh.

B. Erection Contract:

Providing of all services i.e. loading, inland Transportation for delivery at site, inland Transit Insurance, Unloading, Storage, Handling at site, Installation of the equipment, Civil Works Testing and Commissioning including carrying out guarantee tests in respect of all the equipment supplied for 100MW grid connected Solar PV power project at Talaricheruvu (V) Near Tadipatri Anantapuramu District in Andhra Pradesh.

C. Operation & Maintenance Contract:

The Scope of the contract provides that the applicant shall provide operation and maintenance of Solar PV Plant along with grid connecting system for a period of five years from the date of successful completion of trial run. The applicant shall be responsible for supply of all spares, repairs/replacement of any defective equipment(s) at his own cost as required from time to time during the operation & maintenance period.

4. The consideration for all the three contracts is not single price. Consideration for each contract is mentioned separately under the respective contracts. The value of consideration involved in the supply contract i.e. value of material is predominant, and which is higher than the consideration offered for providing services under erection contract and the operation & maintenance contract.
5. Further, there is a clause in all the above three contracts which specifies that the award of separate contracts shall not in any way dilute the responsibility for successful completion of the facilities, achieving the guaranteed performance of the plant, proper operation & maintenance of the plant after final acceptance by APGENCO. Further, a breach in one contract shall automatically be construed as a breach of the other contracts which will confer a right on the APGENCO to terminate the other contracts. The extract of the said clause is mentioned below:



"The contractor shall note that the total price of all three contracts is the accepted price for carrying out the contract on Lumpsum basis and thus the billing break up that will be issued from time to time against any of the contracts in future, will be meant only for regulating the payments based on completed supplies /works. Therefore, the award of separate contracts shall not in any way dilute the responsibility for successful completion of the facilities, achieving the guaranteed performance of the plant, proper O & M of the plant after final acceptance by the corporation, etc. as per the tender specification and a breach in one contract shall automatically be construed as a breach of the other contracts which will confer a right on the Corporation to terminate other contracts also at the risk and the cost of the contractor."

7. Presently, the applicant is charging GST @ 5% on supply of solar modules and 18% on the other supplies of goods under the supply contract. In respect of civil works and other services covered under erection contract, the applicant is charging GST @ 18%.

On Verification of basic information of the applicant, it is observed that the applicant falls under State jurisdiction, Assistant Commissioner, O/o. the Asst. Commissioner of State Tax, Steel Plant Circle, Visakhapatnam Division. Accordingly, the application has been forwarded to the State jurisdictional officer, with a copy marked to the Central Tax authorities to offer their remarks as per the Section 98(1) of CGST /APGST Act 2017. In response the jurisdictional officer concerned stated that there are no pending proceedings relating to the applicant and no proceedings were passed on the issue, for which the advance ruling is sought by the applicant.

2. Questions Raised Before the Authority:

- a. Whether the activities carried out by the applicant under all 3 contracts entered for establishment of Solar PV Power Project can be treated as Composite Supply? If yes, whether the said supply can be classified under Sl. No.234 of Schedule I of the Notification No.1/2017- Central Tax (Rate) dt.28.06.2017 and GST shall be paid at the rate of 5%



- b. If not, whether GST can be paid on value relating to supply of solar modules alone at 5 % as per Sl. No.234 of Schedule I of the Notification No.1/2017- Central Tax (Rate) dated. 28.06.2017.

3. APPLICANT'S INTERPRETATION OF LAW AND FACTS:

The Applicant believes that the supplies made under present contracts shall be classifiable under Entry No.234 of Schedule I of the Notification No. 1/2017- Central Tax (Rate) dated 28th June, 2017 and Entry 234 of Schedule I of the Notification No. 1/2017- State Tax (Rate) dated 29th June, 2017 and shall be liable to GST (CGST and SGST) at the rate of 5%.

Applicable provisions:

Composite supply- Section 2 (30) of CGST Act,

"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;

Principal Supply - Section 2 (90) of the CGST ACT;

"Principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply is ancillary;

Section 8 of the CGST Act;

The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:

- (a) A composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and
- (b) A mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax



Notification No. 1/2017 - Central (Rate) dated 28.06.2107;

Notification No. 01/2017- Central (Rate) specified the applicable rate of tax that shall be levied on intra-state supply of goods. The applicant claims that goods under question fall in 'Solar Power Generating system' under the entry No.234 of Schedule 1 of chapter heading /subheading 84 or 85.

In the present case, the applicant has entered into three contracts with APGENCO namely, Supply contract, Erection contract and Operation & Maintenance contract

Thus, the intention of APGENCO is to procure a completely functional solar power plant as a whole wherein applicant undertakes end to end responsibility of supply of equipment solar power plant including designing, engineering, supply of Solar modules and other equipment, installation, testing and commissioning of a functional solar power plant as well as operation and maintenance of the power plant for a period of 5 years.

Therefore, the applicant submits that, though it has entered into three different contracts with APGENCO, it is only for the purpose of clear understanding of the scope & terms of each activity and for better execution of the project. Hence, the applicant submits that all the contracts are meant for supply, installation and operation & maintenance of the Solar Power Project only. Further, it is also stated that the consideration involved in the contract (consideration specified in all the three contracts put together) predominantly consists the value of solar modules being supplied as per the supply contract. The following table summarizes the break-up of consideration of all the 3 contracts:

Sl.No.	Description	Contract Value (in 'INR')
1	Supply Contact	351,74,43,040
2	Erection Contract	51,37,87,418
3	Operation & Maintenance Contract	12,17,30,542
TOTAL		415,29,61,000



In the present case, the applicant is providing taxable supplies i.e. supply of goods (solar modules and other equipment), services relating to transportation, storage, civil works, installation, testing and commissioning etc. and also operation & maintenance of the Solar Power Plant to APGENCO. Therefore, it is amply clear that the present case involves 'supply of two or more taxable supplies' Accordingly, it would fall under the definition of composite supply as defined under Section 2 (30) of the CGST Act.

Further, the applicant submits that, in the present case, the design, engineering, procurement and supply of solar modules is essential part of the contract and supply of transportation, storage, civil works, installation, testing and commissioning of the equipment for establishment of Solar PV Power Project and operation & maintenance of Solar Power Plant are incidental and ancillary to supply of Solar Modules. The applicant submits that services relating to installation and commissioning of the Solar Power Project and operation & maintenance thereof are naturally bundled and supplied in the ordinary course of business along with supply of Solar Modules.

Thus, applying the provisions relating to composite supply, the applicant submits that supply of solar modules for establishment of 100MW grid Solar PV Power Project is essential part of the contract, therefore, it shall be treated as principal supply among the other supplies made by the applicant. Further, supply of transportation, storage, civil work, installation, testing, commissioning and operation & maintenance of the Solar Power Plant are incidental and naturally bundled in the ordinary course of business.

As per the provisions of Section 8 (a) of the CGST Act, composite supply comprising two or more supplies, one of which is a principal supply, **shall be treated as a supply of such principal supply.** Accordingly, the rate applicable for the said principal supply shall be applied for the entire composite supply.



As mentioned above, supply of Solar modules would fall under 'Solar Power Generating System' as mentioned under entry 234 of schedule I of the Notification No. 1/2017 - Central Tax (Rate) dated 28th June, 2017 and the applicable rate of CGST is @ 2.5% and similar notification is also issued under AP GST Act. Therefore, the applicant submits that, in the present case, the principal supply is supply of solar modules and for which the applicable rate of GST (CGST + SGST) is @ 5%.

In view of the above, the applicant submits that the supply of goods and services to APGENCO for establishment of 100MW Solar PV Power Project and operation & maintenance thereof is a composite supply and the principal supply is supply of solar modules and other equipment which would fall under the entry 234 of Schedule I of the Notification No. 1/2017- Central Tax (Rate). Accordingly, the applicable rate of GST is @ 5% (CGST and SGST) for all the supplies made/to be made by the applicant under the above said three contracts.

Supply of goods and services for establishment of Solar Power Plant in the present case would not amount to Work Contracts:

The applicant also submits that the supply of goods and services under three contracts to APGENCO would not fall under the definition of work contract as provided under Section 2 (119) of the CGST Act for the following reasons:

Section 2 (119) of the CGST Act,

*"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;*

From the above definition, it is clear that works contract means a contract in which construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of an **immovable property** and which involves transfer of property in goods.



The applicant submits the Solar Power Plant is fixed to the land for its efficient functioning involving minor civil works. They claim that Solar modules are merely fitted with nuts and bolts on mounting structure, which can be uninstalled and easily shifted from one location to another without any significant damage to the modules and components of the Solar Power Plant and it shall be considered as moveable property.

Further, the applicant relied on the following judgments to submit that Solar Power Plant is movable and not an immovable property

- i. Sirpur Paper Mills Ltd. v. Collector [1998 (97) E.L.T. 3 (S.C.)]
- ii. Commissioner v. Solid and Correct Engineering Works [2010 (252) E.L.T. 481 (S.C.0)]

Relying on the aforesaid judgments, the applicant submits that the solar plant, once installed is capable of being removed and transferred from one place to another without substantial damage and it should qualify as movable property

The applicant claims that the supplies to APGENCO by the applicant shall be treated as Composite supply of Solar Power Plant only and further, supply of Solar Modules would be treated as principal supply and supply of transportation, storage, civil work, erection, installation, etc, and operation & maintenance of Solar Power Plant are incidental to supply of Solar Modules and other equipment.

Alternative Submission:

Alternatively, the applicant submits that, if supply of Solar Modules/Panels supply of transportation of materials, civil structures, erection, installation, testing, commissioning etc. and operation & maintenance of Power Plant is not a composite supply under GST law, then supply of materials i.e., Solar Modules are liable to CGST @ 2.5 % under entry 234 of Schedule I of Notification No.1/2017- Central Tax (R) dated 28.06.2017, since these are the parts & devices of the Solar Power Generating System. Similar notification is also issued under AP SGST act also.



Therefore, effective rate of GST would be 5 % (CGST 2.5 % and SGST 2.5 %).

Accordingly, the applicant submits that, if Supply of Solar modules, transportation, civil work, transportation, testing, installation and commissioning services for establishment of Solar Power Projects and operation & maintenance of Solar Power Project is not a composite supply under GST law, then, supply of Solar Modules and other accessories are liable to CGST @ 2.5 % (and SGST @ 2.5 %), civil work, erection, installation of Solar Power Plant and operation & maintenance of Solar Power Plant Shall be liable to GST @ 18 %.

Record of Personal Hearing:

During personal hearing on 01.02.2019, the authorised representative Bipin Verma appeared and made the following additional submissions

Additional Submission:

At the outset, they reiterated that the activities carried out by the applicant under all 3 contracts entered for establishment of Solar PV Power Project shall be treated as Composite Supply. The principal supply under the said project is supply of solar PV modules which falls under Sl. No.234 of Notification No. 01/2017-Central (Rate) dated 28.06.2017 and applicable GST would be 5% (CGST 2.5% and SGST 2.5%). Accordingly, the present contract should be taxable @5% only.

Further, the applicant also placed reliance on ruling passed by Hon'ble Authority for Advance Ruling - Andhra Pradesh in the case of Dinesh Kumar Agarwal AAR/AP/3(GST)/2018 dated 08.05.2018.

Issue 3 in the above said advance ruling is relevant for the present case wherein the Hon'ble authority dealt with the issue of division of contract into two viz., supply of material and erection/commission of such materials. It was held that if the contracts are artificially split into two in order to avoid legitimate tax then these contracts would not fall under Sl. No.234 of Notification No.1/2017 - Central Tax (Rate) dated 28.06.2017. On the other hand, if the contracts are separated for better execution, then supply of goods would fall under the said Sl. No.234 and supply of service attracts rates specified under Notification No.11/2017 - Central Tax (Rate) dated 28.06.2017.



In the present case, the question of artificially splitting the contract for the purpose of evading/avoiding GST does not arise as the contract was awarded by APGENCO in the month of May 2017 which is much before introduction of GST i.e., 1st July 2017. Therefore, it is amply clear the present contracts were not artificially split in order to avoid tax. In such a case, as per above ruling passed by the Andhra Pradesh Authority for Advance Ruling, the goods supplied under supply contract would be eligible to be classified under Sl. No.234 of Notification No.1/2017 - Central Tax (Rate) dated 28.06.2017. Hence, it would be subjected to tax at the rate of 5% (CGST 2.5% and SGST 2.5%) only.

Further, the applicant also places reliance on the order passed by appellate authority for Advance ruling, Karnataka in the case of Giriraj Renewables Pvt. Ltd. 2018 (17) G.S.T.L. 156 (App. A.A.R. - GST). In the said case, the issue was relating to EPC contract entered for solar power project wherein the authority has recognized the concept of divisibility and pronounced separate treatment for taxability of supply of PV modules and supply of balance components and services.

Amendments effective from 1 January 2019:

Further, it is submitted that recently the Government has issued two notifications viz., Notification No.24/2018- Central Tax (Rate) dated 31.12.2018 and Notification No.27/2018-Central Tax (Rate) dated 31.12.2018 amending earlier Notification No.1/2017- Central Tax (Rate) dated 28.06.2017 and Notification No.11/2017- Central Tax (Rate) dated 28.06.2017 respectively. Through the above amendments, even in case of indivisible works contracts the material portion shall be subject to GST @ 5% rate and for this purpose 70% of the gross consideration shall be deemed to be the value for the material portion for assessment under entry 254 of Notification 1/2017-CT

It is submitted that the above notifications would be applicable to cases wherein contracts are of indivisible nature wherein separate value for goods and services are not available. Whereas, in the applicant's case, contracts are divisible in nature and separate values goods and service are provided in the contracts. Therefore, the amendments made vide above said notification would not be applicable to present case.



5. Discussion and Findings:

We have gone through the records of the application, entire submission made by the applicant regarding the applicability of the GST rate to his activities, also the additional submission made by the applicant and the relevant facts submitted by the applicant before this authority at the time of personal hearing on date 04-02-2019.

With reference to the 1st question sought by the applicant,

a) Whether the activities carried out by the applicant under all 3 contracts entered for establishment of Solar PV Power Project can be treated as Composite Supply? If yes, whether the said supply can be classified under Sl. No.234 of Schedule I of the Notification No.1/2017- Central Tax (Rate) dt.28.06.2017 and GST shall be paid at the rate of 5%?

Before going into the question whether activities of the applicant fit into the definition of composite supply, we take up the study of the facts of the case with reference to all the three contracts entered by the applicant with APGENCO vide contract numbers

- 1) 3000000014 CE/HPC/SE/HPC1/ EME2/ C85/D.NO.28/17, DT:02.05.2017
- 2) 3000000015 CE/HPC/SE/HPC1/ EME2/ C85/D.NO.29/17, DT:02.05.2017
- 3) 3000000016 of CE/HPC/SE/HPC1/ EME2/ C85/D.NO.27/17, DT:02.05.2017

under the heading "General", it reads as follows:

"The Supplier shall note that the total price of all three contracts is the accepted price for carrying out the contract on Lumpsum basis and thus the billing break up that will be issued from time to time against any of the contracts in future, will only meant for regulating the payments based on completed supplies/ works. Therefore, the award of separate contracts shall not in any way dilute the responsibility for successful completion of the facilities, achieving the guaranteed performance of the plant, proper O&M of the plant after final acceptance by the corporation, etc as per the tender specification and **a breach in one contract shall automatically be construed as a breach of the other contracts** which will confer a right on the corporation to terminate other contracts also at the risk and the cost of the supplier".



In the instant case, "The cross fall breach clause" as mentioned above establishes the indivisibility of the contract and reinforces the conditionality that all the three contracts in unison obligate the applicant to take up all activities i.e., end to end setting up of Solar Power Plant right from procurement of equipment to Erection and Operation & Maintenance of the same.

The details are as under

- i. Supply Contract;
- ii. Erection Contract; and
- iii. Operation and Maintenance Contract.

i) Supply Contract:

Design, Engineering, Manufacture/ Procurement Testing at manufacturer's works, Inspection, Supply, Packing and Forwarding of all plant and equipment including Mandatory Spares of 100MW grid connected Solar PV Power Project at Talaricheruvu (V), Near Tadipatri, Ananatapuramu District in Andhra Pradesh

ii) Erection Contract:

Providing of all services i.e. loading, inland Transportation for delivery at site, inland Transit Insurance, Unloading, Storage, Handling at site, Installation of the equipment, Civil Works Testing and Commissioning including carrying out guarantee tests in respect of all the equipment supplied for 100MW grid connected Solar PV power project at Talaricheruvu (V) Near Tadipatri Anantapuramu District in Andhra Pradesh.

iii) Operation & Maintenance Contract:

The Scope of the contract provides that the applicant shall provide operation and maintenance of Solar PV Plant along with grid connecting system for a period of five years from the date of successful completion of trial run. The applicant shall be responsible for supply of all spares, repairs/replacement of any defective equipment(s) at his own cost as required from time to time during the operation & maintenance period.

Now we take up the question whether activities of the applicant would fit the bill under "Composite Supply".



As per section 2(30) composite supply is defined as, 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;

In the present case, the applicant received the contracts for providing the design, procurement, supply, installation, testing & commissioning and the operation & maintenance of the Solar PV Plant along with grid connecting system for a period of 5 years from the date of successful completion of trial run. There is both supply of goods and services in the case as per agreement and they are naturally bundled as a package. We therefore agree with the contention of the applicant that it's a composite supply. At the same time, the said composite supply falls under the ambit of works contract.

The Clause 6 of the schedule II of the GST Act is read as under:

The following composite supplies shall be treated as supply of services, namely:-

- i. works contract as defined in clause(119) of Section 2

Section 2 (119) of the CGST Act,

" 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;

Now the issue under question is whether the composite supply of the applicant would fall under works contract or not.

As per Sec 2(119) of the CGST Act works Contract in itself is a composite supply in which construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning etc., are involved satisfying two conditions, wherein one is "transfer of property in goods" and the other is "the afore said activities being under taken on immovable property". There is no dispute in the first condition as it is evident that there is transfer of property in goods as per the agreement.



Now we determine whether the activities are being under taken on immovable property. The term immovable property is not defined under GST Act. Section 3(26) of the General Clauses Act, 1897 defines immovable property as

"immovable property shall include land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth".

In the present case, the applicant submits that the solar Plant is fixed to land for its efficient functioning and for this purpose, minor civil work is undertaken to fix the solar power Modules.

Further, the term "attached to earth" was defined under section 3 of Transfer of Property Act, 1882

- a) Things rooted in the earth, as in the case of trees and shrubs,
- b) Things embedded in the earth, as the case of walls and buildings
- c) Things attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached.

If we look into the activities of the applicant in the process of establishment of Solar Power plant, the following are the notable activities involving civil works,

- 1) Soil Test and survey of Project Site
- 2) Drilling of hole for structure column at 1.2 to 1.5 Mts depth with 300 to 250 dia.
- 3) Grouting of column structure with sand and cement
- 4) Fixing of Rafter, Purlin, Bracing etc., with the help of nuts and bolts on the column structures.

It is evident from the said activities that the project has an element of permanence. But the applicant had taken a different stance by furnishing certain photographs of the project and stating that the solar modules /panels are merely fitted with nuts and bolts on mounting structure and claimed that it is a movable property. This presentation of the issue is in clever manner but not in bonafide manner in view of the fact that the very mounting structure is embedded permanently to the earth by civil foundation and support. In fact the



solar modules are fixed on civil foundation and the degree/mode of annexation has the character of permanence and immovability. As it involves permanent beneficial enjoyment of the land to which the power plant is installed, it satisfies the condition of things embedded in the earth. Therefore, the view of the applicant that the project is movable is incorrect.

Thus the instant case satisfies the condition of "**immovable property**" and falls under the purview of works contract, which is essentially a service and rate of tax shall be determined in accordance with notification no 11/2017 CT (Rate) dt:28-06-2017 as amended from time to time.

In the present case, the contract entered by the applicant is composite supply of works contract as defined at Section 2 of CGST Act '2017 and APGST Act, 2017 and is treated as supply of service in terms of serial no.6, Schedule II of CGST Act '2017 and APGST Act, 2017. It falls under heading 9954, entry no. (ii) of S. No. 3 of the table of notification no. 11/2017 - Central Tax (Rate), Dated - 28th June 2017 as amended from time to time and corresponding notifications under APGST Act, 2017, and the applicable rate of tax is 18% (9% under Central tax and 9% State tax).

The recent developments in the form of amendments to the GST Act i.e. amendments of the GST rate vide notification No.24/2018 Central Tax (Rate) dated:31.12.2018 and notification No.27/2018, Central Tax (Rate) dated:31.12.2018, amending earlier notifications No.01/2017, Central Tax (Rate) dated:28.06.2017 and notification No.11/2017, Central Tax (Rate) dated:28.06.2017 respectively, which came into force from 01.01.2019, added clarity to the rate of taxation of the Solar Power Plant Projects as such. Against S.No.234 in column 3 of the notification No.24/2018 Central Tax (Rate) dated:31.12.2018 following explanation is inserted.

"Explanation: *If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S.No.38 of the table mentioned in the notification No.11/2017- Central Tax (Rate), dated:28.06.2017 (G.S.R.690(E)), the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent of the gross consideration charged for all such supplies, and the remaining thirty per cent of the gross consideration charged shall be deemed as value of the said taxable service."*



RULING**(Under section 98 of Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017)**

a. Whether the activities carried out by the applicant under all 3 contracts entered for establishment of Solar PV Power Project can be treated as Composite Supply? If yes, whether the said supply can be classified under Sl. No.234 of Schedule I of the Notification No.1/2017- Central Tax (Rate) dt.28.06.2017 and GST shall be paid at the rate of 5%.

Ruling: The activities carried out by the applicant under all 3 contracts entered for establishment of Solar PV Power Project can be treated as Composite Supply, which is a composite supply of works contract as defined at Section 2 of CGST Act '2017 and APGST Act, 2017 and is treated as supply of service in terms of serial no.6, Schedule II of CGST Act '2017 and APGST Act, 2017. Hence, the said supply cannot be classified under Sl. No.234 of Schedule I of the Notification No.1/2017- Central Tax (Rate) dt.28.06.2017 and GST at the rate of 5% is not applicable.

Instead it is classified under heading 9954, entry no. (ii) of S. No. 3 of the table of notification no. 11/2017 - Central Tax (Rate), Dated - 28th June 2017 as amended from time to time and corresponding notifications under APGST Act, 2017, and the applicable rate of tax is 18% (9% under Central tax and 9% State tax).

Further, the amended rate of tax vide notification No.24/2018 Central Tax (Rate) dated: 31.12.2018 and notification No.27/2018, Central Tax (Rate) dated:31.12.2018, amending earlier notifications No.01/2017, Central Tax (Rate) dated:28.06.2017 and notification No.11/2017, Central Tax (Rate) dated:28.06.2017 respectively, which came into force from 01.01.2019, is applicable.

b. If not, whether GST can be paid on value relating to supply of solar modules alone at 5 % as per Sl. No.234 of Schedule I of the Notification No.1/2017- Central Tax (Rate) dated. 28.06.2017.



Ruling: This question finds no relevance in the context of negation of the same in the earlier question.

Sd/- S.NarasimhaReddy
Member (State Tax)

Sd/-D.Ramesh
Member (Central tax)

//t.c.f.b.o//

Assistant Commissioner (ST)
Assistant Commissioner (State Tax)
O/o. Chief Commissioner of State Tax,
Andhra Pradesh, Vijayawada.

To

1. M/s McNally Bharat Engineering Company Limited, Project site, C/o RINL, Visakhapatnam Steel Plant, Visakhapatnam-530031 **(By Registered Post)**
2. M/s McNally Bharat Engineering Company Limited, 2B, 11F/2, Eco space Business park, campus -2B, 4th floor, New town, Rajarhat, North 24 Parganas, Kolkata, West Bengal-700156 **(By Registered Post)**

Copy to

2. The Assistant Commissioner of State Tax, Steel Plant Circle, Vishakhapatnam
3. The Superintendent, Central Tax, Sheelanagar Range, Visakhapatnam Central, CGST Division, Visakhapatnam.

Copy Submitted to

4. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Government of A.P., Eedupugallu, Vijayawada
5. The Chief Commissioner (Central Tax), O/o Chief Commissioner of Central tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035.

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act 2017, with in a period of 30 days from the date of service of this order.

