



**AUTHORITY FOR ADVANCE RULING  
ANDHRA PRADESH GOODS AND SERVICES TAX**

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

Present:

**D. Ramesh**, Additional Commissioner of State Taxes...Member(State Tax)

**S. Narasimha Reddy**, Additional Commissioner of Central Tax...Member(Central tax)

AAR No.03/AP/GST/2019 dated:30.01.2019

|   |  |   |
|---|--|---|
| 1 | Name and address of the applicant  | M/s Sealwel Corporation Private Limited,<br>Door No. 50/83/15, 2nd floor,<br>Opp: Saibaba Temple,<br>Madhuranagar,Seethammapeta,<br>Visakhapatnam – 530016, A.P.  |
| 2 | GSTIN  | 37AAOCS4141F2Z8   |
| 3 | Date of filing of Form GST ARA-01  | 31 -07-2018   |
| 4 | Date of Personal Hearing   | 10-12-2018  |
| 5 | Represented by   | D.Dastagiri , Accountant  |
| 6 | Jurisdictional Authority –Centre   | Assistant Commissioner, CGST<br>Seethammapeta   |
| 7 | Jurisdictional Authority – State   | Assistant Commissioner (ST),<br>Dwarakanagar Circle-Visakhapatnam   |
| 8 | Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised | b) applicability of a notification issued under the provisions of this Act; and<br>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 Services Tax Act, 2017 and 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 APSGT Act respectively) by M/s Sealwel Corporation Private 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.

**3. Brief Facts of the case:**

M/s Sealwel Corporation Private Limited, Door No. 50/83/15, 2nd floor Opp: Saibaba Temple, Madhuranagar, Seethammampeta, Visakhapatnam - 530016 (hereinafter referred to as the Applicant) are engaged in the business of execution of works contracts relating to electrical works and electrical infrastructure. The applicants submitted that they, at present, executed the following works:

| Name of the Contractee  | Nature of work (scope of work) awarded   |
|---|--|
| Southern Power Distribution Company Limited of Andhra Pradesh State | System improvement project for conversion of existing LT network into High voltage Distribution System (HVDS) for Agricultural feeders in Kurnool District on selected agricultural feeders under REC funding  |
| Eastern Power Distribution Company Limited of Andhra Pradesh State  | Supply, Erection, Testing & Commissioning of 11 KV Autorecloers, 11KV Sectionalizers to Industrial Feeders including supply of all necessary materials in APEPDCL for Rural Feeders under T&D on "Full Turn-key basis"                                     |
| Eastern Power Distribution Company Limited of Andhra Pradesh State  | Supply, Erection, Testing 11 KV Autorecloers, 11KV & Commissioning of Sectionalizers to Industrial Feeders including supply of all necessary materials in 5 Districts of APEPDCL under Integrated Power Development Scheme (IPDS) on "Full Turn-key basis" |

Further, the applicant revealed that for all the works the bills are being raised on the Accounts Officer, Pay & Accounts of respective APSPDCL and APEPDCL.

**4. QUESTION RAISED BEFORE THE AUTHORITY:**

The applicant seeks Advance Ruling on the following;

- (a) Whether in the terms and conditions of the following contracts that the applicant entered into, the contractees therein the 'supply of service' involved therein would amounts to a supply to Government, Government Agency or Government Entity in terms of the Notification No.20 dated:22-08-2017, Notification No. 24 dated:21-09-2017, Notification No.31 dated:13-10-2017 and Notification No. 32 dated:13-10-2017.



(b) What would be the norms to decide a contractee is Government / Government Agency / Entity.

Contracts Descriptions being done to Andhra Pradesh Power Distribution Corporations (DISCOMS)

i) HVDS-High Voltage Distribution Systems

ii) SCADA-Supervisory Control and Data Acquisition

2. When the contractee gets funds/grants from Central or State Government for given work, can it be called as work being done to a Government / Government agency/Entity? In this situation can the work be called as non-commercial?
3. Whether all these contractees shall basically be Government / Government Agencies/ Entities or is there any possibility in a particular work it can be said that a contractee is of this kind?
4. In respect of HVDS to Agriculture Sections, the State Government reimburses the money for agriculture service i.e. reimbursement to APSPDCL (Electricity consumption). In this situation, whether the supply by the applicant would amounts to a supply to Government /Government Agency/Entity?
5. Whether APSPDCL and APEPDCL falls under the definition of Government Authority/Government Entity as defined in Notification No 31/13.10.2017 central Tax (Rate) and other connected Notifications?
6. What is the applicable rate of tax on the works executed to APSPDCL and APEPDCL mentioned in above?

On Verification of basic information of the applicant, it is observed that the applicant falls under State jurisdiction, i.e. Assistant Commissioner, Dwarakanagar Circle-Visakhapatnam. Accordingly, the application has been forwarded to the jurisdictional officer and 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 concerned jurisdictional officer stated that there are no pending proceedings relating to the applicant and no proceedings were passed on the issue, for which the Advance Ruling sought by the applicant.

#### **5. RECORD OF PERSONAL HEARING:**

Sri D. Dastagiri, Accountant of the applicant company, who was authorized to represent the applicant appeared for personal hearing on 10.12.2018 and they reiterated the submission already made in the application.



## 6. DISCUSSIONS AND FINDINGS:

We have examined the issues raised in the application. The taxability, classification of the services, applicable rate of tax, eligibility of exemption etc., for the goods and services supplied or to be supplied, as governed under the provisions of respective GST Acts are examined.

The Government of India, vide Notification No.11/2017 - Central Tax (Rate), dated - 28th June 2017 notified the rate of GST applicable on supply of services. Under this notification for heading 9954 the applicable rate of GST is 9%. The said notification has been amended from time to time and till date Five notifications are issued by the Government of India and the said amendment Notifications are as follows:-

- 1) Notification No- 20/2017 Central Tax (Rate), Dated - 22/08/2017.
- 2) Notification No- 24/2017 Central Tax (Rate), Dated - 21/09/2017.
- 3) Notification No- 31/2017 Central Tax (Rate), Dated - 13/10/2017.
- 4) Notification No- 46/2017 Central Tax (Rate), Dated - 14/11/2017.
- 5) Notification No- 01/2018 Central Tax (Rate), Dated - 25/01/2018.

Vide notification No. 24/2017 - Central Tax (Rate), Dated - 21/09/2017, Government of India by inserting entry No. (vi) notified concessional GST rate of 6% for the construction services provided to Central Government, State Government, Union Territory, a local authority or a Governmental Authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

- a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
- b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or
- c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.

Further, vide Notification No.31/2017 - Central Tax (Rate), Dated:13/10/2017, Government of India substitute the word "Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity" in place of "Central Government, State Government, Union Territory, a local authority or a Governmental Authority"

Now, we examine the question that the Applicant Contractee i.e. M/s APEPDCL is a Government entity or not. As per Notification No. 31/2017 - Central Tax (Rate), Dated - 13/10/2017 issued under CGST Act, 2017 and corresponding notification under APGST Act, 2017 Government Entity is defined as under.



"Government Entity" means an authority or a board or any other body including a society, trust, corporation,

- i) set up by an Act of Parliament or State Legislature; or
- ii) established by any Government, with 90 percent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.

The Applicant Contractee i.e. APEPDCL is a Government Company i.e. wholly owned by the Government of Andhra Pradesh. When a copy of Audited Annual Accounts of M/s APEPDCL for the Financial Year 2016-17 is examined, it is evident from the schedule of Equity Share Capital of the Annual Statement that 100% share capital is held by the Government of Andhra Pradesh in the name of Honourable Governor of Andhra Pradesh. Thus, based on the above facts, it is concluded that the Government of Andhra Pradesh is having full control over the APEPDCL and covered under the definition of Government Entity.

As per the Memorandum of Association of the APEPDCL Company, Main objects to be pursued by the Company on its incorporation is to engage in the business of procurement, supply and distribution of electricity; to take over the distribution and supply of electricity business from the Transmission Corporation of Andhra Pradesh Limited; to acquire business/companies; to acquire know-how etc. The applicant is engaged in execution of works awarded by APSPDCL and APEPDCL as detailed in Para 3 above. The works under discussion have been undertaken to execute/implement various projects for (a) conversion of existing LT network into High Voltage Distribution system (HDVS); (b) supply, erection, testing & commissioning of 11 KV autorecloers, 11 KV sectionalisers to industrial feeders on full turn-key basis; and (c) supply, erection, testing & commissioning of 11 KV autorecloers, 11 KV sectionalisers to industrial feeders on full turn-key basis under Integrated Power Development Scheme (IPDS).

As seen from the nature of the work stated in Annexure-II by the applicant, the works are of industrial nature as those works are to be done to industrial feeders too. Further, the applicant revealed that the contractee is collecting security deposits from the customers. Moreover, the Government of Andhra Pradesh is reimbursing the money for agricultural services to the contractee on behalf of the customers. Therefore, the works executed are to a business entity by the applicant. The contractee is not rendering any non-commercial services in as much as they are getting reimbursed for their commercial activity on behalf of their customers. Therefore, this situation cannot be called as non-commercial at no stretch of imagination.



The above works undertaken by APEPDCL are for business purpose and the benefit of Concessional Rate of 12% (6% under Central tax and 6% State tax) are any other concessional rate is NOT available to the applicant.

As per Section 2 of CGST Act, 2017 and APGST Act, 2017 defines "works contract" as 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;

The composite supply of works contract as defined at Section 2 of CGST Act '2017 and APGST Act, 2017 is treated as supply of service in terms of Serial No.6, Schedule II of CGST Act '2017 and APGST Act, 2017.

In the instant case, the contract entered by the applicant squarely falls under the works contract and falls under 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).

#### **RULING**

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

The Applicant is not entitled for the benefit of concessional rate of GST @12 % (6% under Central tax and 6% State tax) for the stated works executed, in terms of Notification No.24/2017-Central Tax (Rate) dated 21.09.2017 read with Notification No.31/2017-Central Tax (Rate) dated 13.10.2017 or any other concessional rate. The applicable rate of tax is 18% (9% under Central tax and 9% State tax) for the services referred by the Applicant.

Whether a particular person is a Governmental authority or a Governmental Entity is to be decided in terms of the definition given in the Notification no.31/2017 CT (Rate) by applying the facts of each case.



Neither the contractee nor the stated works executed are "non-commercial" in the facts and circumstances as discussed above and the said stated works are taxable under GST.

Sd/-D. RAMESH  
Member (State Tax)

Sd/-S.NARASIMHA REDDY  
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 Sealwel Corporation Private Limited, Door No. 50/83/15, 2nd floor Opp: Saibaba Temple, Madhuranagar, Seethammapeta, Visakhapatnam - 530016, A.P. **(By Registered Post)**.

**Copy To**

2. The Assistant Commissioner (ST), Dwarakanagar Circle, Visakhapatnam. **(By Registered Post)**
3. The Assistant Commissioner, CGST, North Division, Visakhapatnam, 10-50-22, Siripuram Circle, Behind Varun Bajaj Showroom, Visakhapatnam,, Andhra Pradesh, OPPOSITE HSBC MAIN GATE, Visakhapatnam, Andhra Pradesh 530003 **(By Registered Post)**

**Copy submitted to**

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

**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.

