



सत्यमेव जयते

**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. 20/AP/GST/2019 dated 06.05.2019

1	Name and address of the applicant	M/s. Vikram Solar 11/87/A, 4T, 1 st floor, Madanapalle, Opposite Government Hospital, Andhra Pradesh, Chittoor-517325.
2	GSTIN	37AABCI5168D1ZN
3	Date of filing of Form GST ARA-01	28.12.2018
4	Date of Personal Hearing	Not attended on 01.02.2019
5	Represented by	Bhaskar Thakkar
6	Jurisdictional Authority - Centre	Superintendent, Madanapalle Range, CGST Division, Tirupati.
7	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 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 Vikram Solar (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 APGST Act would be mentioned as being under the GST Act.

1. Brief Facts of the case:

M/s Vikram Solar (hereinafter referred to as the Applicant) having its Office at 11/87/A, 4T, 1st floor, Madanapalle, Opposite Government Hospital, Andhra Pradesh, is a registered firm, under GSTIN 37AABCI5168D1ZN and engaged in manufacturing of high efficiency PV module and providing comprehensive EPC solutions. As part of setting up of solar power plants, the Applicant has entered into three independent contracts, with Andhra Pradesh power Generation Corporation Limited (herein after called APGENCO), viz.,

- a) Contract for supply of goods,
- b) Contract for installation cum erection; and
- c) Contract for O&M of solar PV power project

The contract entered into by the Applicant, includes end to end activities i.e. supply of various good and services intended for installation and erection of equipment for Solar PV Power Plant and after its set up, the Applicant is responsible for its operation and maintenance for the period of 5 years.

The scope of work as outlined in general terms of each of the contracts is briefly explained herein below:

- i) **Supply Contract:** The scope outlined in para 2 of the supply contract is design, engineering, manufacture/procurement, testing at manufacturer's works, inspection, supply, packing and forwarding of all plant and equipment including mandatory spares required to set up 200 MW (2X100 MW) grid connected solar PV project at Talaricheruvu(V), Near Tadipatri, Ananthapuramu district in Andhra Pradesh.



ii) **Installation and Erection Contract:** The scope outlined in Para 2 of the installation and erection contract is for providing all services viz. 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 equipment supplied for 200 MW (2X100 MW) grid connected solar PV power project at Talaricheruvu (V), Near Tadipatri, Ananthapuramu District in Andhra Pradesh.

iii) **O&M Contract:** The scope outlined in para 2 of the O&M contract is for operation and Maintenance for five years of 200 MW grid connected solar PV Power Project at Talaricheruvu(V), Near Tadipatri, Anantapuramu District in Andhra Pradesh.

On Verification of basic information of the applicant, it is observed that the applicant falls under Central jurisdiction, Superintendent, Madanapalle Range, CGST Division, Tirupati. Accordingly, the application has been forwarded to the State jurisdictional officer, Assistant Commissioner, Madanapalli Circle, Chittoor Division 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 sought by the applicant.

2. QUESTIONS RAISED BEFORE THE AUTHORITY:

1. Whether following three separate contracts awarded to a contractor for establishment of a Solar Power Plant namely:
 - a) Contract for supply of Goods.
 - b) Contract for supply of Erection and Installation Services
 - c) Contract for supply of Operation and Maintenance Service for a period of 5 years after Commissioning; would attract applicable GST at their respective rates viz. for supply of goods under the supply Contract at 5%, for erection and installation under Erection and Installation Contract at 18% and for operation and maintenance under O&M contract at 18%?



2. What will be the applicable GST rate on the above contracts?

3. APPLICANT'S INTERPRETATION OF LAW AND FACTS:

The applicant had taken the following stance while interpreting the legal provisions and relevant tariff notifications for all the three contracts as under

i) **Supply of Solar PV Power Plant:**

As per serial number 234(c) of the Notification No.1/2017-Integrated Tax (Rate) dated 28.06.2017, supply of '**Solar Power Generating System**' will be subjected to a levy @5% IGST, falling under Chapter 84 or 85 of the GST Tariff. The applicant further states that, they have entered into a contract for supply of solar power generating system, which is a specific entry under Notification No.1/2017 – Integrated Tax (Rate) dated 28.06.2017. Moreover, the applicant also would like to highlight the principle of classification which inter alia lays down that the specific entry always prevails over the general description.

ii) Installation and Erection services: As per Section 2(102) of the CGST Act, 2017 services 'means anything other than goods...' and is taxable at the general rate of 18%.

As per Serial Number 3(xii) of the Notification No.11/2017 – Central Tax (Rate), service of installation and erection will be subjected to a levy @ 18% IGST, falling under heading 9954(construction services) of the GST Tariff.

iii) **Operation and Maintenance Services:**

As per Serial Number 25(ii) of Notification No.11/2017-CT (Rate) dated 28.06.2017, the operation and maintenance services will be subjected to a levy @18% IGST, falling under heading 9987 of the GST Tariff.

Contract for supply of all equipment including mandatory spares:

This contract should categorically fall under Solar Power Generating System under Serial Number 234(c) of Notification No.1/2017- Integrated Tax (Rate 28.06.2017 and should be taxable at IGST of 5%.



In the present case, the applicant would like to submit that the main intent of the contract is provision of the solar power generation system which consists of design, drawings, manuals along with providing of various components such as PV modules, structures, equipments, inverter transformers, cables, transmission lines, etc and also provision of mandatory spares. The aforesaid supply is for setting up a solar power generating system in totality which consists of various equipments and the customer APGENCO wants a functional solar power system. Therefore, the entire supply contract should be goods itself and taxable as per the serial number 234(c) of the Notification No.1/2017- Integrated Tax (Rate) at the rate of 5%.

Contract in respect of Installation and Erection Services:

This contract would include all services for setting up the solar PV power project and would include 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 equipment supplied for 200 MW (2X 100MW) grid connected solar PV power project. This is purely in the nature of services rendered for construction under s.no.3 (xii) of Notification No.11/2017- Central Tax (Rate) being a separate contract for service and taxable at 18%.

O&M Contract: The operation and maintenance charges including supply of all consumables, spares and equipment included in operation and maintenance charges should be taxable at 18%. The GST rate for AMC charges is 18% as per the SAC code 9987 - Maintenance and repair services.

Finally the applicant concluded as under that each contract is treated as a separate contract and applicable GST rates as envisaged above shall apply, i.e., Supply contract to be taxed at the GST rate of 5%, Erection and Installation contract to be taxed at the GST rate of 18% and the Contract for Operation and Maintenance Service to be taxed at GST rate of 18%.



4. RECORD OF PERSONAL HEARING:

The applicant filed for adjournment, when called for Personal Hearing on 01.02.2019 and thus failed to appear before this Authority on the scheduled date.

5. Discussion and Findings:

We have gone through the entire submission made by the applicant regarding the applicability of the GST rate to his activities. But, before going into the merits of the case, we take into consideration the plea made by the applicant before this authority in his letter dated:28.03.2019 requesting for withdrawal of the Advance Ruling, while admitting that as per the amendment of the GST rate vide Notification No.24/2018- Central tax (Rate) dated 31.12.2018 at serial number 234 in column (3), it has been clarified that if any supplier is making supplies of Solar power generating system and is also supplying other specified supplies in the entry at Sl.38 of Notification 11/2017 Central Tax (Rate) dated:28-06-2017 the value of supply of goods shall be deemed to be considered as 70% of Gross consideration charged for all such supplies, and the remaining 30% of the gross consideration charged shall be deemed as value of the said taxable services.

Thus, the dealer claimed that he had received clarification in view of the aforesaid amendment in the rate Notification that for establishment of solar power generating system, it would be considered that 70% of gross consideration shall be deemed to be supply of goods and same shall be taxed at 5% and the remaining 30% of the gross consideration charged shall be considered as supply of services and taxable at the rate of 18% under Serial number 38 of Notification No.11/2017.

After heeding to the prayer made by the applicant for withdrawal of the application with a declaration that fees already paid shall not be claimed as refund and the same stands as forfeited, this authority passed the following order.



RULING

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

Since the applicant withdrew the application, we find no reason to go into the merits of the case and it is dismissed as withdrawn and therefore no Ruling is given.

Sd/- D.Ramesh
Member (State Tax)

Sd/-S.Narasimha Reddy
Member (Central tax)

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

Sd/-

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

To

1. M/s Vikram Solar, 11/87A, 4T, 1st floor, Madanapalle, Opposite Government Hospital, Andhra Pradesh (By Registered Post)

Copy to

2. Superintendent, Madanapalle Range, CGST Division, Tirupati.
3. The Assistant Commissioner (ST), Madanapalli Circle, Chittoor Division.

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

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.

