

**THE AUTHORITY ON ADVANCE RULINGS  
IN KARNATAKA  
GOODS AND SERVICES TAX  
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD  
GANDHINAGAR, BENGALURU - 560 009**

**Advance Ruling No. KAR ADRG<sup>121</sup> /2019**

**Dated: 30<sup>th</sup> September, 2019**

Present:

1. Sri. Harish Dharnia,  
Additional Commissioner of Central Tax. . . . Member (Central Tax)
2. Dr. Ravi Prasad M.P.  
Joint Commissioner of Commercial Taxes . . . . Member (State Tax)

1.	Name and address of the applicant	M/s Hewlett Packard Enterprise India Private Limited, No.24, Salapuria Arena, Hosur Main Road, Adugodi, Bangalore - 560 030.
2.	GSTIN or User ID	29AADCH5900Q1Z4
3.	Date of filing of Form GST ARA-01	29.11.2018
4.	Represented by	Sri. Harish Bindumadhavan, Advocate
5.	Jurisdictional Authority - Centre	Commissioner of Central Tax, Bangalore South
6.	Jurisdictional Authority - State	LGSTO-040, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000-00 under CGST Act and Rs 5,000-00 under SGST Act vide CIN No. RBIS18112900346477 dt.28-11-2018

**ORDER UNDER SUB-SECTION (4) OF SECTION 98 OF CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SUB-SECTION (4) OF SECTION 98 OF KARNATAKA GOODS AND SERVICES TAX ACT, 2017**

1. M/s. Hewlett Packard Enterprise India Private Limited, No.24, Salapuria Arena, Hosur Main Road, Adugodi, Bangalore - 560 030, having GSTIN number 29AADCH5900Q1Z4, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017, KGST Act, 2017 & IGST Act, 2017 read with Rule 104 of CGST

Hewlett Packard Enterprises

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Rules 2017 & KGST Rules 2017, in form GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The applicant is a private limited company, registered under the Goods and Services Act, 2017, engaged in the sale of IT products and services in relation thereof.

3. The Applicant has sought advance ruling in respect of the following questions:-

(a) Whether the proposed activity of setting-up of the data centre facilities as explained proposed to be undertaken by the Applicant would qualify as 'works contract' as per Section 2(119) of the Central Goods and Service Tax Act, 2017 and Section 2 (119) of the Karnataka Goods and Service Tax Act, 2017?

(b) What is the rate of GST applicable on the proposed activities?

4. The applicant furnishes some facts relevant to the stated activity:

4.1 The Applicant is inter alia engaged in sale of IT products and services in relation thereof. The Applicant proposes to undertake projects for setting-up of data center facilities for its clients including government agencies/ bodies. Draft agreement along with scope of work ("hereinafter referred to as SOW") proposed to be executed by the Applicant for one such project has been submitted by the applicant.

4.2 A brief write up on the activities proposed to be undertaken by the Applicant in setting up of data centre is explained in detailed manner in the table below:

Activities undertaken under various stages as per the draft SOW entered with the clients	Nature of the activity explained
<p>1. Civil, interior and exterior architectural and finishing works namely:</p> <ul style="list-style-type: none"> <li>a. False flooring,</li> <li>b. False ceiling,</li> <li>c. Painting,</li> <li>d. Gypsum partition</li> <li>e. Light weight walls and partitions</li> <li>f. Carpets or flooring</li> </ul> <p>2. Mechanical works namely:</p> <ul style="list-style-type: none"> <li>a. Piping for chilled water,</li> <li>b. Supports for chilled water piping,</li> </ul>	<ul style="list-style-type: none"> <li>• The Applicant proposes to undertake and oversee end-to-end activities in relation to design and implementation of data center facilities.</li> <li>• The proposed activities include preparing the blueprints of the data centre facility based on customer needs, designing the centre based on approval and undertaking all the activities required to have a fully functional data centre facility.</li> <li>• This stage also includes obtaining various statutory approvals.</li> </ul>



<ul style="list-style-type: none"> <li>c. Chillers and chiller platforms</li> <li>d. Valves</li> <li>e. Grills, tiles,</li> <li>f. Air ducts, exhaust fans,</li> </ul> <p>3. Electrical works namely:</p> <ul style="list-style-type: none"> <li>a. UPS with batteries,</li> <li>b. DG with diesel tanks and exhaust,</li> <li>c. Electrical panels,</li> <li>d. Lighting,</li> <li>e. Distribution boards,</li> <li>f. Electrical earth,</li> <li>g. Cables and bus duct,</li> </ul> <p>4. Building management products namely:</p> <ul style="list-style-type: none"> <li>a. CCTV for surveillance,</li> <li>b. Access control,</li> <li>c. Fire detection Centre,</li> <li>d. Fire suppression system,</li> <li>e. Water leakage detection system.</li> </ul> <p>5. Obtaining statutory approvals like occupancy certificate electrical system approval, pollution and fire department clearance, lift license, CCOE approvals and any other approvals applicable to make data center operational.</p>	
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The applicant further states that while awarding contract for undertaking the proposed activity of setting up of data centre there can be scenarios where the customer would award the entire contract for setting up of the data centres to be undertaken by the Applicant or would require the Applicant to only undertake a portion of the entire contract, i.e. to undertake civil, mechanical, electrical works on a standalone basis or as a combination of the same.

5. The applicant has submitted detailed grounds in Annexure 3 of their application giving their interpretation of law in respect of the questions put forth for advance ruling.

5.1 The applicant has discussed the meaning and scope of works contract in the service tax regime and also cited several judicial pronouncements to that effect. It is put forth that the Hon'ble Supreme Court has analysed the nature and





scope of the term of 'works contract' and it was held that works contract is basically a composite supply of both services and goods relating to immovable property. In this regard the applicant places reliance on decision in the case of *State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.* and the Apex Court in the case of *Gannon Daunkerley & Co. & Ors. Vs. State Of Rajasthan & Ors.*

5.2 The applicant then states that under the GST regime Section 2(119) of the CGST Act, 2017 defines the term 'works contract' as under:

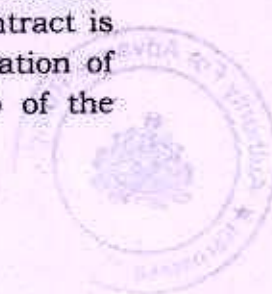
*"Works Contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;"*

5.3 The Applicant submits that from the above definition, it is clear that to determine whether an activity falls under the definition of works contract, the following factors needs to be satisfied namely:

- a. The contract is for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning ;
- b. That there is a transfer of property in goods; and
- c. The activities are carried out in relation to an immovable property.

5.4 The applicant then discusses the nature of the various proposed activities to be undertaken as per the agreement and SOW and compares them with the three factors stated above. The applicant discusses the meaning of each of the terms construction, erection, installation, fitting out, modification, or commissioning and their applicability as per their SoW. We have examined the tabular presentation made in the application. The applicant, thus, submits that the proposed activities as per their SoW are covered in the first leg of the definition of works contract meaning thereby that the activities proposed are 'for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning'.

5.5 The applicant once again stresses that the applicant may be awarded the entire contract for setting up of the data centre or they may only undertake a portion of the entire contract i.e. undertake civil, mechanical, electrical works on a standalone basis or as a combination of the same. In this regard, in view of their analysis the applicant is of the view that in spite of the fact that the contract is awarded for undertaking the entire activity or only a portion or combination of various activities, the activities proposed will fall under the first limb of the definition of works contract.





5.6 Further, the Applicant submits that in order to better appreciate the nature and scope of the term 'works contract', it is relevant to understand the interpretation given by the judiciary under the erstwhile service tax regime. 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'.

5.7 The applicant first places reliance on the decision in the case of in the case of Kone Elevator India Pvt. Ltd. V. State Of Tamil Nadu. In this case, the Appellants were involved in the supply of elevators, escalator etc along with its mechanical erection, electrical wiring, testing and installation of the same. Further, they were also contractually bound in the maintenance and operations of the elevators supplied to the clients. The question to be determined before the Hon'ble Apex Court was whether the same involved "sale of goods" or "Works Contract services". The Hon'ble Apex Court has provided a detailed analysis of the term 'Works Contract' and it was held that the term 'Works contract' as per Article 366(29A)(b) of the Constitution of India, 1949 encompasses a wide range and varieties of a contract. The applicant has given a detailed tabular presentation of the issue before the Apex Court, the analysis therein and the same elements being present in their case under consideration. We have taken note of the presentation made in Para A.15. In the view of the above discussed Supreme Court Judgment, the Applicant submits that the term "works contract" is wider enough to include all the elements proposed to be undertaken by the Applicant.

5.8 The applicant further places reliance of the decision in the case of Ram Singh & Sons Engineering Works V. Commissioner of Sales Tax where the Apex Court held that the activity of designing fabrication, supply and erection of overhead travelling cranes are to be treated as works contract services. They further cite the case of Otis Elevator Company (India) Limited wherein it was held that the contracts for erection and installation of elevators and escalators were indivisible works contracts and do not constitute contracts for sale of goods. The relevant portions of the judgements as quoted have been examined.

5.9 On the basis of all these citations the applicant submits that the activities proposed to be undertaken fall under the first limb of the definition of works contract.

5.10 The Applicant submits that the activities of construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning proposed to be carried out are in relation to an immovable property. In order to ascertain the definition of an





immovable property the applicant places reliance on Section 2 (36) of the General Clauses Act, 1987 which defines the term of 'immovable property' as below:

*"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."*

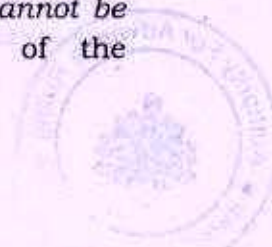
The applicant further places reliance on Section 3 of Transfer of Property Act, 1882 which defines 'immovable property' as the same does not include standing timber, growing crops or grass.

5.11 The applicant also refers to and draws inference in respect of the scope of the term immovable property from recent Advance Ruling decision given in the case of Precision Automation and Robotics India Limited and draws comparisons between their SoW and the activities discussed in the said Ruling.

5.12 The Applicant further submits that under the erstwhile service tax regime also, the judiciary had analysed the term 'immovable property'. In this regard, reliance is placed on the decision in the case of *Triveni Engineering & Industries Ltd. & Anr. Vs. Commissioner of Central Excise & Anr.* where the Hon'ble Supreme Court has held that installation or erection of turbo alternator on platform constructed on land, and not a common base, would be immovable property. Similarly reliance is also placed on the decision in the case of *Quality Steel Tubes (P) Ltd. v. Collector of Central Excise, U.P.*, where the question involved was whether tube mill and welding heads erected and installed by the Appellant for manufacture of tubes and pipes was excisable. The Hon'ble Apex Court relied on the landmark judgements in the case of *Union of India & Another v Delhi Cloth and General Mills Co. Ltd*, and *Indian Cable Co. Ltd. V Collector of Central Excise, Calcutta*, and held that plant and machinery embedded to earth, structures, erections and installations are to be considered as immovable property.

5.13 In view of the above, the Applicant submits that activities proposed to be undertaken in setting up the data centre qualify as immovable property as the same is imbedded in earth as provided under the definition of 'attached to the earth'. This is substantiated by the following reasons namely:

1. That the fixtures proposed to be set up are immovable property;
2. That they are attached to earth;
3. That such fixations to the foundation is only meant to give stability;
4. *That the setting up is to be permanent at a given place and cannot be removed.* The same resulting being the integral part of the land/premises.





5.14 The Applicant further submits that for both supply of goods and services involved in the proposed activity of setting up the data centre, a consolidated fee is agreed upon as consideration.

5.15 The applicant further states that the scope of the activity of works contract cannot be restricted in relation to immovable property alone, the same can be extended to activities in relation to plant and machinery. In this regard, the Applicant places reliance on Section 17 (5) (c) of the CGST Act which restricts credit on works contract service when it is supplied for construction of an immovable property other than plant or machinery. It is submitted that as per the language used in Section 17 (5) (c), it can be inferred that if works contract service is utilised towards the plant and machinery, credit is eligible on the same. In view of this, it is submitted that scope of the activity of works contract cannot be restricted to an activity undertaken only in relation to immovable property, the scope can be extended to the services rendered in relation to plant and machinery also.

6. In respect of the rate of tax applicable on the activity of works contract the Applicant submits that Notification 11/ 2017 – Central Tax (Rate) dated June 28, 2017 notified the rates of GST applicable on intra state supply of goods and services. It is further submitted that as per Sl.No.3 of the Notification, composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017 is liable to GST @ 18%.

#### PERSONAL HEARING

7. Shri Harish Bindumadhavan, Advocate, appeared for hearing on behalf of the applicant and presented a booklet comprising of the copies of the case laws cited in their application. He also took the Authority through the contents of the application and their arguments.

8. The documents submitted and the matter, as presented during the hearing, has been taken into account while examining the questions raised by the applicant. The applicant has given a detailed account of the proposed activity and has envisaged two scenarios. In the first situation the entire proposed activity is assigned to the applicant. In the second situation the applicant may be assigned certain part of the activity, like civil works, electrical works etc. The applicant has extensively explained and concluded that in both the situations the supply made by them qualifies to be treated as works contract. We proceed to examine the applicants arguments.





9. Section 2(119) of the CGST Act, 2017 defines the term 'works contract' as below:

*"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;*

9.1 The aforementioned definition of Works Contract requires that the contract or the supply shall be in relation to the various activities of building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning. Further the definition provides that these activities are required to be in relation to an immovable property.

9.2 The various activities undertaken by the applicant in relation to setting up of data centres are recapitulated as follows:

A. Civil, interior and exterior architectural and finishing works namely:

- a. False flooring,
- b. False ceiling,
- c. Painting,
- d. Gypsum partition
- e. Light weight walls and partitions,
- f. Carpets or flooring

B. Mechanical works namely:

- a. Piping for chilled water,
- b. Supports for chilled water piping,
- c. Chillers and chiller platforms
- d. Valves
- e. Grills, tiles,
- f. Air ducts, exhaust fans,

C. Electrical works namely:

- a. UPS with batteries,
- b. DG with diesel tanks and exhaust,
- c. Electrical panels,
- d. Lighting,
- e. Distribution boards,
- f. Electrical earth,
- g. Cables and bus duct,





D. Building management products namely:

- a. CCTV for surveillance,
- b. Access control,
- c. Fire detection Centre,
- d. Fire suppression system,
- e. Water leakage detection system

E. Obtaining statutory approvals like occupancy certificate, electrical system approval, pollution and fire department clearance, lift license, CCOE approvals and any other approvals applicable to make data center operational.

9.3 The activities outlined above indicate that the applicant works either on a cold shell and converts the building into a fully operational centre or carries out the said activities after extensive renovation of an existing facility. In either of the situations the applicant undertakes extensive activities which involves not only employing labour force to carry out the tasks, i.e. supply of service element, but also results in transfer of goods to the recipients. The contract is indivisible and the applicant is required to hand over a fully equipped and functional data centre. This requires the applicant to supply both goods as well as services. This aspect is beyond doubt. The next issue is whether these activities are in relation to an immovable property.

9.4 The applicant and their representative have delved into the definition of an immovable property on the basis of various judgements of various Courts. We have considered the arguments put forth by the applicant.

9.5 The applicant, when they enter into a contract for the setting up of the data centres, is given the building which is required to be converted into a fully functional data centre. The applicant carries out the refurbishment of the entire building by carrying out the various civil, electrical and mechanical works on the civil structure. All these works, especially the Civil works have a sense of permanence and cannot be dismantled and taken 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 has been completed, then the building acquires a new look and an identity in terms of its functionality. In other words once the contracted activities are carried out on the building then it acquires the identity of the desired data centres. Thus the contracted activities and the supply of the required material are in relation to an immovable property.

9.6 On the basis of the aforesaid facts its evident that the applicant has entered into a contract for carrying out the various listed activities leading to erection,





fitting out, renovation and commissioning of data centres. The contract also involves transfer of property in goods. It is therefore opined that the proposed activities of the applicant are covered under the definition of Works Contract.

9.7 The applicant further states that the scope of the activity of works contract cannot be restricted in relation to immovable property alone, the same can be extended to activities in relation to plant and machinery. In this regard the applicant takes recourse to Section 17 (5)(c) of the CGST Act which restricts credit on works contract service when it is supplied for construction of an immovable property other than plant or machinery. They further state that as per the language used in Section 17 (5) (c), it can be inferred that if works contract service is utilised towards the plant and machinery, credit is eligible on the same. In view of this, the applicant contends that scope of the activity of works contract cannot be restricted to an activity undertaken only in relation to immovable property and the scope can be extended to the services rendered in relation to plant and machinery also.

9.8 We do not agree to the contention of the applicant in this regard. Firstly the term 'Works Contract' is clearly defined in Section 2(119) of the CGST Act, 2017. The definition is self explanatory and leaves no doubt that it is in relation to an immovable property only. Secondly, in Section 17(5) of the said Act, the term 'plant and machinery' is also defined. Here the machinery, apparatus and equipment is secured to the earth by way of a foundation or structural support. This foundation or the structural support is meant to impart stability to the machine while working. It, however, does not impart the machine/equipment the same degree of permanence that a building acquires when built on its foundation. Here the equipment is fitted on the foundation and the same can be removed and relocated without damaging it. The same does not hold true for a building or an immovable property. Therefore the inference drawn from the provisions of Section 17(5) are erroneous and we do not concur with the applicant on the same.

10. In the second question the applicant seeks to know the rate of tax applicable on the activities proposed to be undertaken by them. As already concluded in Para 9.6 above, the activities proposed to be carried out by the applicant qualify to be treated as works contract the rate of tax applicable would be accordingly applied. Notification 11/ 2017 – Central Tax (Rate) dated June 28, 2017 provides the rates of GST applicable on intra state supply of goods and services. Sl.No.3 of the Notification provides that a composite supply of works contract, as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017, is liable to GST @ 18%. Therefore, as the proposed activity falls under the category of the works contract it is liable to tax @18%.





11. In view of the foregoing, we rule as follows

**RULING**


1. In respect of the first question it is Ruled that the proposed activity of setting-up of the data centre facilities as explained would qualify as 'works contract' as per Section 2(119) of the Central Goods and Service Tax Act, 2017 and Section 2 (119) of the Karnataka Goods and Service Tax Act, 2017
2. The rate of tax applicable is 9% CGST and 9% SGST as per Entry No. 3(ii) of Notification 11/ 2017 – Central Tax (Rate) dated June 28, 2017.



  
30.09.2019  
**(Harish Dharmia)**  
**MEMBER**  
Karnataka Advance Ruling Authority  
**Member (Centre)**  
Bengaluru - 560 009

Place Bengaluru,  
Date: 30.09.2019

To,  
The Applicant

  
**(Dr. Ravi Prasad.M.P.)**  
**Member (State)**  
Karnataka Advance Ruling Authority  
Bengaluru - 560 009

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. Commissioner of Central Tax, Bangalore-South
4. The Asst. Commissioner, LGSTO-040, Bengaluru
5. Office Folder