

**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 43/ 2019

Dated : 17th 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 Maxwell Electrical Engineers No 4, 9 th Main, Near Venkateswara Temple, Vasanthnagar, Bengaluru - 560052
2.	GSTIN or User ID	29AARFM1680P1ZC
3.	Date of filing of Form GST ARA-01	10-07-2018
4.	Represented by	Sri Ganesh.S, DAR
5.	Jurisdictional Authority - Centre	Office of the Commissioner of Central Tax, North-West Commissionerate.
6.	Jurisdictional Authority - State	LGSTO-080 Bengaluru (Jurisdictional Office)
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs. 5,000/- each under KGST Act and CGST Act vide CIN SBIN 18072900057270 dated 09-07-2018.

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 Maxwell Electrical Engineers, No 4, 9th Main, Near Venkateswara Temple, Vasanthnagar, Bengaluru-560052, having GSTIN number 29AARFM1680P1ZC, has filed an application for Advance Ruling under Section 97 of CGST Act, 2017, KGST Act, 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01 discharging the fee of Rs.5,000-00 each under the CGST Act and the KGST Act.



2. The Applicant is a Proprietorship concern and is registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following question:

1. *Whether the rate of tax specified in entry Sl No 3 (vi) (a) of notification 11/2017-CGST (Rate) as amended till date is applicable for the aforesaid service as a main contractor or the rate of tax specified in Entry Sl. No. 3 (ix) of 11/2017 –Central Tax (Rate) as amended till date is applicable as a subcontractor*
2. *If the rate of tax specified in Entry Sl No 3 (vi) (a) or Sl No. 3(ix) is not applicable, could you please elaborate on the reasons for non applicability and which is the entry of the notification to determined the applicable rate?*
3. *If the aforesaid notification itself is not applicable, then under which service the activity has to be taxed and at what rate?*

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

- a. The applicant is engaged in works contract such as design, erection, testing, commissioning, including pre-commissioning activities in relation to or incidental to installation of transformer of various capacity and providing electrical infrastructures by extending 11 KV high transmission lines and Low transmission lines.
- b. The applicant undertook turnkey projects for supply, erection, testing, commissioning of transmission of 11 KV HT/LT lines and also engaged in erection of 25 KVA transformers for Chamundeshwari Electrical Supply Company Limited (CESC) / Bengaluru Electrical Supply Company Limited (BESCOM) and Ganga Kalyana scheme.
- c. The applicant's argument is that the said works are mainly awarded to the applicant as a principal contractor by State Government entities such as Chamundeshwari Electrical Supply Company Limited or Bengaluru Electrical Supply Company Limited and Ganga kalyana scheme.
- d. Further stated that the supply of Services by the applicant were as per entry no 3 (vi) (a) notification 11/2017-Central Tax (Rate) dated 28-06-2017 followed by the amended notification no 24 /2017 –Central Tax (Rate) dated 21-09-2017 to the 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

Based on the aforesaid notifications the rate of tax shall be at 6 percent under the CGST Act and 6 percent under the KGST Act, hence the applicant has charged the tax component and collected and discharged the same.

- e. Subsequently, the Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017 was amended by the following notifications:
- i. Notification No. 20/2017-Central Tax (Rate), dated 22nd August, 2017
 - ii Notification No. 24/2017-Central Tax (Rate), dated 21st September, 2017
 - ii. Notification No. 31/2017-Central Tax (Rate), dated 13th October, 2017
 - iii. Notification No. 1/2018-Central Tax (Rate), dated 25th January, 2018

PERSONAL HEARING: / PROCEEDINGS HELD ON 28-06-2018

6. Sri Ganesh S, Advocate, appeared on behalf of the applicant before the Authority for Advance Ruling and was heard.

6.1 The DAR argued that the applicant undertook turnkey projects for supply, erection, testing, commissioning of transmission lines of 11 KV HT/LT lines and also erection of 25 KVA transformer for government entities such as Chamundeshwari Electrical Supply Company Limited or Bengaluru Electrical Supply Company Limited and government sponsored planning schemes such as Ganga Kalyana and water supply installations.

6.2 He further referred to advance ruling orders passed by Authority for Advance Ruling, Rajasthan vide ruling number RAJ/AAR/2018-19/01 dated 27-04-2018. This Ruling is in relation to service provided by M/s TPL to Jaipur Development Authority. The Ruling adjudged that JDA is a government entity. The contract works was related to correction and strengthening of the channel for better performance and also for the construction of sewage treatment plant. Therefore it attracts CGST tax rate 6 percent and SGST tax rate 6 percent each, based on the entry no 3 (vi) (a) of Notification No. 11/2017-Central Tax (Rate) dated 28-06-2017 as

amended by the Notification No. 24 /2017 –Central Tax (Rate) dated 21-09-2017.

7. FINDINGS & DISCUSSION:

7.1 We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made by the duly authorized representative during the personal hearing. We have also considered the issues involved on which advance ruling is sought by the applicant and relevant facts.

7.2 At the outset, we would like to state that the provisions of both the CGST Act and the KGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the KGST Act.

7.3 The applicant has been awarded contract works by the Government Entities such as Chamundeshwari Electrical Supply Company Limited, Bengaluru Electrical Supply Company Limited and government sponsored scheme of Ganga Kalyana and water supply installations through turnkey projects for supply, erection, testing, commissioning of transmission of 11 KV HT/LT lines and also erection of 25 KVA transformer.

7.4 A civil structure means a series of connected, interrelated elements that together form a system which can resist a series of external load effects applied to it, which includes its own self weight, and provide adequate rigidity. For example railways, roads, buildings, warehouses, bridges, pipelines, sewers, dams, canals etc.. The applicant is providing supply of service through composite works contracts such as design, erection, testing, commissioning, including pre-commissioning activities in relation to or incidental to installation of transformer of various capacity and providing through electrical infrastructures by extending 11 KV high transmission lines and Low transmission lines. In view of the foregoing nature of supply the provisions of Notification No.11/2017-CGST dated 28-06-2017 are examined as under.

7.5 Entry at serial number 3 of the Notification No.11/2017-CGST dated 28-06-2017, as amended from time to time, reads as under (as on 31.12.2018):

Sl.No.	Chapter,	Description of Services	Rate (per	Condition
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	Section, or Heading		cent.)	
3	Heading 9954 (Construction Services)	(i) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	9	-
		(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017	9	-
		[(iii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, - (a) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958); (b) canal, dam or other irrigation works; (c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.	6	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be
		[(iv) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,- (a) a road, bridge, tunnel, or terminal for road transportation for use by general public; (b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana; (c) a civil structure or any other original works pertaining to the "In-situ redevelopment of existing slums using land as a resource, under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);	6	

		<p>(d) a civil structure or any other original works pertaining to the "Beneficiary led individual house construction / enhancement" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;</p> <p>(da) a civil structure or any other original works pertaining to the "Economically Weaker Section (EWS) houses" constructed under the Affordable Housing in partnership by State or Union territory or local authority or urban development authority under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);</p> <p>(db) a civil structure or any other original works pertaining to the "houses constructed or acquired under the Credit Linked Subsidy Scheme for Economically Weaker Section (EWS)/ Lower Income Group (LIG)/ Middle Income Group-1 (MIG-1)/ Middle Income Group-2 (MIG-2)" under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);</p> <p>(e) a pollution control or effluent treatment plant, except located as a part of a factory; or</p> <p>(f) a structure meant for funeral, burial or cremation of deceased</p> <p>(g) a building owned by an entity registered under section 12AA of the Income Tax Act, 1961 (43 of 1961), which is used for carrying out the activities of providing, centralised cooking or distribution, for mid-day meals under the mid-day meal scheme sponsored by the Central Government, State Government, Union territory or local authorities.</p>		
		<p>(v) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to,-</p> <p>(a) railways, including monorail and metro;</p> <p>(b) a single residential unit otherwise than as a part of a residential complex;</p> <p>(c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;</p> <p>(d) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under- (1)</p>	6	

	<p>the "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana; (2) any housing scheme of a State Government;</p> <p>(da) low-cost houses up to a carpet area of 60 square metres per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March, 2017;</p> <p>(e) post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes; or (f) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.</p>		
	<p>(vi) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, provided to the Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of—</p> <p>(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;</p> <p>(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or</p> <p>(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.</p> <p>"Explanation. - For the purposes of this item, the term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities."</p>	6	<p>Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be</p>
	<p>(vii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, involving predominantly earth work (that is, constituting more than 75 per cent. of the value of the works contract) provided to the Central Government, State Government, Union territory, local authority, a Governmental Authority or a Government Entity</p>	2.5	<p>Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government,</p>



			State Government, Union territory or local authority, as the case may be
		(viii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 and associated services, in respect of offshore works contract relating to oil and gas exploration and production (E&P) in the offshore area beyond 12 nautical miles from the nearest point of the appropriate base line.	6
		(ix) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (iii) or item (vi) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.	6 Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be
		(x) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (vii) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.	2.5 Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as

				the case may be.
		(xi) Services by way of house-keeping, such as plumbing, carpentering, etc. where the person supplying such service through electronic commerce operator is not liable for registration under sub-section (1) of section 22 of the Central Goods and Services Tax Act, 2017.	2.5	Provided that credit of input tax charged on goods and services has not been taken [Please refer to Explanation no. (iv)]
		(xii) Construction services other than (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x) and (xi) above and serial number 38 below	9	

7.6 Notification No.11/2017-CGST dated 28-06-2017 was again amended vide Notification No. 03/2019-Central Tax (Rate) dated 29th March, 2019. Item number (ii) has been omitted with effect from 29.03.2019.

7.7 The submissions made by the applicant in respect of agreement between government entities are verified. It is pertinent to note that the applicant is principal contractor and providing supply of service to government entities as composite works contracts per provision of 2(119) such as design, erection, testing, commissioning, including pre-commissioning activities in relation to or incidental to installation of transformer of various capacity and providing through electrical infrastructures by extending 11 KV high transmission lines and Low transmission lines.

7.8 The applicant states that their services are covered under Serial no 3 item (vi) (a) of Notification No.11/2017 - Central Tax (Rate) dated 28-06-2017. The said item number reads as follows-

Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, provided to the Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity 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;

7.9 In order to qualify for the composite supply to be covered under aforementioned item number the following conditions shall be satisfied:

(a) the supply must be made to Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity

(b) the civil structure or the original work should be meant predominantly for use other than for commerce, industry, or any other business or profession.

7.10 The applicant has enclosed a copy of the contract agreement with Chamundeshwari Electricity Supply Corporation Ltd. The Memorandum of Association of Chamundeshwari Electricity Supply Corporation Ltd has also been submitted by the applicant. This Memorandum shows that the Governor of Karnataka, through the Additional Chief Secretary holds more than 90% of the equity in the Corporation.

(a) Therefore Chamundeshwari Electricity Supply Corporation Ltd qualifies to be considered as a Government Entity as defined in Explanation (x) to Notification No.11/2017 - Central Tax (Rate) dated 28-06-2017. Therefore the first condition as enumerated at Para 7.9(a) is satisfied.

(b) The second condition is that the work should be predominantly for use other than for commerce, industry, or any other business or profession. In this context we once again examine the Memorandum of Association of Chamundeshwari Electricity Supply Corporation Ltd, the recipient of the supply made by the applicant. The main objects outlined in the Memorandum read as follows:

1. To carry on the business of distribution and supply of electricity in the State of Karnataka and to acquire
2. To carry on the business of purchasing, selling, importing, exporting, wheeling, trading of power including finalization of tariff, billing and collection thereof and to enter into any agreements for carrying on such business.
3. To study, investigate, collect information and data, review, operations etc.
4. To do anything which any person engaged in the business of supplying electricity is authorized or required to do under or by virtue of any licence issued to it authorizing such person to supply electricity.
5. Certain incidental Objects of the Company include the aim of acquiring by purchase, lease, exchange, hire or otherwise or to construct factories, works, offices etc, to acquire, possess and undertake the whole or any part of business , assets, property, goodwill, rights and liabilities of any person, firm, society, association or company.

All these objects clearly point to the fact that the recipient of supply is actively engaged in commerce, business and trading of Electricity. On this count the composite works carried out by the applicant for the said Corporation are predominantly meant for trade and commerce. Therefore the applicant does not fulfill the conditions as prescribed in item no. (vi)(a) of Serial number 3 of Notification No.11/2017 - Central Tax (Rate) dated 28-06-2017.

7.11 The applicant is therefore not eligible for the concessional rate of 6% CGST and 6% KGST under item no. (vi)(a) of Serial number 3 of Notification No.11/2017 - Central Tax (Rate) dated 28-06-2017.

7.12 The composite supply of works contract provided by the applicant is taxable at the rate of 9% CGST and 9% KGST under item no. (ii) of serial no. 3 till 28.03.2019 and thereafter at the same rate under item no. (xii) of serial number 3 of the amended Notification No.11/2017 - Central Tax (Rate) dated 28-06-2017.

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

RULING

1. The rate of tax applicable to the composite supply of works contract as defined in clause (119) of Section 2 of the Central Goods and Services Tax Act undertaken by the applicant is to be charged at 9% under the CGST Act and 9% under the KGST Act under item no. (ii) of Sl. No. 3 till 28.03.2019 and thereafter at the same rate under item no. (xii) of Sl. No. 3 of Notification No.11/2017 - Central Tax (Rate) dated 28-06-2017.
2. The amendments to the Notification No.11/2017 - Central Tax (Rate) dated 28.06.2017 has no effect on the taxability of the transactions of the applicant as the transactions of the applicant are covered under item no. (ii) of Serial No. 3 of the Notification No.11/2017 - Central Tax (Rate) dated 28.06.2017 till 28.03.2019 and under item no. (xii) of Serial No. 3 of the Notification No.11/2017 - Central Tax (Rate) dated 28.06.2017 from 29.03.2019 onwards and as the transactions are not

covered under item no. (vi) of the of Serial No. 3 of the said Notification.


17/09/2019
(Harish Dharnia)
Member


(Dr. Ravi Prasad M.P.)
Member



Place : Bengaluru,

Date : 17-09-2019

To,

The Applicant

Copy to :

The Principal Chief Commissioner of Central Tax, Bangalore Zone,
Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

Commissioner of Central Tax, North-West Commissionerate.

The Asst. Commissioner, LGSTO-080 Bengaluru

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