

**THE AUTHORITY ON ADVANCE RULINGS  
IN KARNATAKA  
GOODS AND SERVICE TAX  
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD  
GANDHINAGAR, BENGALURU - 560 009  
Advance Ruling No. KAR ADRG 120/ 2019  
Dated: 30<sup>th</sup> September, 2019**

Present:

1. Sri. Harish Dharnia,  
Addl. 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 Solarys Non-Conventional Energy Private Limited., Survey No.126, Balakkundi Village, Hunagand Taluk, Bagalkote, Bagalkot, Karnataka - 587 101. <b>Correspondence Address :</b> C-11, Sector 65, Noida - 201 307.
2.	GSTIN or User ID	29AACCG8150E1ZN
3.	Date of filing of Form GST ARA-01	04.12.2017
4.	Represented by	Sri. Prashant Agarwal, Partner M/s Pricewaterhouse Coopers Pvt. Ltd., Building No.10, 17 <sup>th</sup> Floor, Tower C, DLF Cyber City, Gurgaon - 122 002.
5.	Jurisdictional Authority - Centre	Commissioner of Central Tax, Belagavi
6.	Jurisdictional Authority - State	LOSTO 420 Bagalkot, Belgavi
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- CIN number IBKL17112900297246 dated 23.11.2017.

**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 KARNATAKA GOODS AND SERVICES TAX ACT, 2017**

1. M/s Solarys Non-Conventional Energy Private Ltd., (hereinafter referred to as the 'Applicant' or 'Solarys'), Survey No.126, Balakkundi Village, Hunagand Taluk, Bagalkote, Bagalkot, Karnataka - 587 101, having GSTIN number 29AACCG8150E1ZN, have filed an application, on



04.12.2017, for Advance Ruling under Section 97 of CGST Act, 2017, KGST Act, 2017 & IGST Act, 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01. They also enclosed copy of challan for Rs.5,000/- bearing CIN number IBKL17112900297246 dated 23.11.2017.

2. In their application Solarys has described themselves as engaged in the operation of renewable energy power plant projects, which typically include operation of solar power plants set up across India for generation and distribution of electricity generated. It's further claimed that they are emerging as a leading builder of renewable energy projects. Furthermore Solarys is said to be established under Independent Power Producer (IPP) category for setting up and sale of power produced from their plant to third party. Exhibit II, para 4, of the application further provides that Solarys enters into contracts with Project Developing Companies (or EPC contractors) for various activities. All these facts enumerated by Solarys at various places in their application indicate that Solarys owns solar power plants. However during the hearing Solarys had submitted two draft agreements where they are shown as the EPC contractors or the supplier instead of being shown as owners as claimed in the application. Therefore while the application describes Solarys as the recipient of supply in terms of their solar plant being set up by EPC contractors, the agreements submitted by them describe them as the suppliers engaged the design and setting up of solar power plants owned by a separate entity. Since the agreements hold the various elements of the nature of supply, the Authority is proceeding in the matter considering the applicant as a supplier in terms of the agreements submitted by them.

3. In Exhibit -II, para 4, of the application Solarys states that as part of setting up of solar power plants they enter into contracts with various Project Developing Companies ('EPC Contractors') for various activities i.e. (a) for offshore/onshore supply of works & services and Importation of goods, (b) separately for supply of goods & for supply of services. Sub-contractors may also be appointed for civil works by the EPC contractors.

4. The applicant claims that the following two scenarios arise in this context:

- i. **All Goods may be supplied by the EPC Contractor** : In this case, entire contract is executed by the EPC contractor and all goods required are supplied by the contractor (including PV modules)
- ii. **Certain goods supplied by the EPC contractor** : In this case, modules may be procured directly by Project Developer and balance goods

would be supplied by EPC contractor (i.e. the Project Developer procures / imports PV modules on its own and only awards contract for balance goods)

5. In view of the above, the applicant has sought advance ruling in respect of the following questions:

a) Whether in case of separate contracts for supply of goods and services for a solar power plant, there would be separate taxability of goods as 'Solar Power Generating System' at 5% and services at 18%.

b) Whether parts supplied on standalone basis (when supplied with PV modules) would also be eligible to concessional rate of 5% as parts of solar power generation system.

c) Whether benefit of concessional rate of 5% of solar power generation system and parts thereof would also be available to sub-contractors.

4. The applicant furnishes, in exhibit II to the application, some facts relevant to the stated activity:

a. The applicant intends to set up a solar power plant which involves various steps such as (i) Soil & Topo Survey, (ii) Plant coordinate fixing, Boundary fencing and plant layout, (iii) T/L survey, Piling, Building Construction, (iv) Structure erection, inverter erection, equipment foundation, (v) Charging transmission, DC System erection, module mounting, (vi) D C Cabling and (vii) Commissioning of solar power plant.

b. The applicant enters into contracts with various Project Development Companies ('EPC Contractor') for various activities, as part of setting up of solar power plant. The key features of such contracts are (i) the contracts typically include offshore supply, onshore supply and supply of works and services. Goods may be imported or procured locally under such contract, (ii) Separate contracts are awarded by the Applicant for supply of goods & services and (iii) sub-contractors may also be appointed for civil works by the EPC contractor.

c. The major goods procured, as part of contract for goods, for setting up of the plant include solar PV modules, Inverters & Inverter Transformer, Tracker Components, Module Monitoring Structure, Switchyard Supply, Transmission line supply, AC/DC Cables, Chain Link Fencing, Battery Charger, Power Transformer, LD Switchgear & complete switchyard, Inverter Transformers and auxiliary transformers, Battery & Battery Charger,



SCADA system, Module cleaning system, Illumination & ventilation system, Earthing system, Site enabling facilities and Mandatory spares.

d. The various services provided, as part of services contract, include (i) Construction of complete building including control rooms & inverter rooms, roads & drainage system, boundary walls / fencing, borewells, (ii) All civil and foundation works for switchyard, solar plant & all other equipment, (iii) Site enabling facilities, (iv) Leveling & grading and (v) Erection, Commissioning and testing for solar modules, mounting structures, power transformers, inverters, SCADA, complete switchyard, inverter transformers, connectors, earthing lines etc.,

The applicant also provided a diagrammatic illustration of the solar power system.

4. The applicant, in Exhibit III to the application, has furnished their understanding of rate of tax / exigibility in respect of the impugned transaction, on the basis of the following grounds:

4.1. Legal provisions and applicability

**4.1.1 Rate of solar power generating system**

Under GST regime, various rates have been prescribed for goods and services. Per, Notification No. 1/2017 — Integrated tax (Rate) dated 28 Jun 2017, solar power generating systems and parts for their manufacture are taxable at 5%. The relevant entry reads as follows:

Chapter Heading	Description
84 or 85 or 94	Following renewable energy devices and parts for their
	a) Bio-gas plant
	b) Solar power based devices
	c) <b>Solar power generating system</b>
	d) Wind mills and wind operated electricity generator
	e) Waste to energy plants/devices
	f) Solar lantern/solar lamp
	g) Ocean waves/tidal waves energy devices/plants
	h) <b>Photo voltaic cells, whether or not assembled in modules or made up into panels</b>

Per the above, concessional rate of 5% has been provided to the

following (when covered under heading 84, 85 or 94):

- PV modules
- Solar power generating system — This term has not been defined
- Parts for manufacture of solar power generating system and PV modules — There is no restriction provided on what would qualify as parts and in such case all goods which qualify as 'parts' of solar power generating system should be eligible for concessional rate of tax

4.1.2 Rate of Services : Under GST, service has been defined as *anything other than goods* and the general rate for service is 18%

#### 4.1.3 Concept of composite supply

Section 2(30) of CGST Act defines composite supply to mean '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*'.

Section 2(90) defines principal supply as the *supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary*'.

On a plain reading of the definition of Composite Supply, it emerges that the following conditions must be satisfied for a supply to qualify as a 'composite supply'

- The supplies being made must be taxable supplies
- The supplies should be naturally bundled and supplied in conjunction with each other in the ordinary course of business.
- There must be a principal supply.

#### 4.1.4 Their understanding in present context:

Per the above legal provisions, the applicant understands that in present case, since there are separate contracts for supply of goods and services, the taxability should be as under:

- Contract for goods wherein solar PV modules are also supplied – Entire contract should qualify as supply of solar power generating system



and should be taxable at 5%

- Contract for goods wherein solar PV modules are not supplied – In such case, the goods which qualify as parts of solar power generating system and are covered under heading 84,85 or 94 should be eligible to concessional rate of 5%
- Contract for Services – Entire contract would be service contract taxable at 18%

#### 4.2. Meaning of term 'Solar Power generating system' and applicability when all goods [including PV modules] are supplied

4.2.1 The term 'solar power generating system' has not been defined under GST. Solar power generating systems generally are the systems which absorb sunlight and convert it into electricity which can be put to further use.

4.2.2 Solar power system has been defined under Solar Power – Grid connected Ground Mounted and solar Rooftop and metering Regulation 2014 issued by State of Goa. Solar power system as per the regulation means '*a grid-connected solar generating station including the evacuation system up to the Grid inter-connection point*'.

4.2.3 Typically the term system has a wide ambit. As per the Oxford Dictionary, the definition of the term 'system is '*a complex whole, a set of things working together as a mechanism or interconnecting network*'. Similarly, the system is defined in Chambers 20th Century Dictionary as "*anything formed of parts placed together or adjusted into a regular and connected whole*". Hence, system typically includes various components/ parts which are manufactured/ assembled together for performing a function. In the present case, the term system should include all goods provided under the contract which help in end to end generation as well as transmission of electricity.

4.2.4 Further, under erstwhile law also, solar power generating systems have not been defined. However, under erstwhile excise law, various exemptions were extended to non-conventional energy devices which included solar power generating systems - List 8 of Notification no. 12/2012-Central Excise, dated 17 March 2012.

4.2.5 Since 'Solar Power Generating System' has not been defined in the

present law, in order to understand the ambit of the said system, judicial pronouncement under the Excise Law can be examined.

4.2.6 Reference is made to the judgment of Delhi Tribunal in the case of Rajasthan Electronics & Instruments Ltd. vs. Commr. Of C. Ex., Jaipur wherein it was held that '7. The adjudicating authority admitted the fact that Solar Photovoltaic Module is a Solar Power Generating System. We find that other parts are only panel housing consisting of controllers and switches. Hence the whole system is a Solar Power Generating System and is entitled for the benefit of notification. Therefore, the denial of benefit of notification by the adjudicating authority is not sustainable. The impugned order is set aside and the appeals are allowed'.

4.2.7 Further, in the case of Bangalore Tribunal in the case of B.H.E.L. vs. Commissioner of Central Excise, Hyderabad it was held that "In the present case, the appellants have claimed exemption in respect of "inverter charger card" as solar power generating system. The appellants actually manufactured SPV lantern. The above lantern required electricity for its working. It is possible to convert solar energy to electricity with the help of inverter charger manufactured by the appellants. The Dy. General Manager has certified that the inverter merger constitutes solar power generating system as it performs the function of generating the required high frequency AC power from Sunlight with, the help of SPV module and supplying it to the compact fluorescent lamp of a solar lantern. In view of the above, expert opinion, we hold that the impugned item can be considered as solar power generating system and is entitled for the benefit of the exemption Notification. Therefore, we allow the appeal with consequential relief"

4.2.8 In M/s Phenix Construction Technology Vs. Commissioner of Central Excise & Service Tax, Ahmedabad-II [2017-TIOL-3281-CESTAT-AHM] the question under consideration was whether the structures and parts of structures cleared for initial setting up of solar power plant are eligible for the benefit of Notification of 15/2010-CE. The point of dispute in the said case law was that whether the aforesaid goods would qualify as components of the solar power plant. Hon'ble CESTAT has decided that the items required for initial setting up of the plant would qualify as component; hence the benefit of exemption would extend to such items also as solar power generating system.

4.2.9 In Jindal Strips Ltd., Vs Collector of Customs, Bombay [2002-TIOL-347-CESTAT-DEL-LB] CESTAT has observed that component means a constituent part or element. It was also observed that 'component' means



one of the parts or sub-assemblies or assemblies, of which a manufactured product is made up and into which it may be resolved and includes an accessory (or attachment).

4.2.10 Basis the aforesaid judgments, it can be deduced that the components of the solar power plant which are essential for setting up of the power plants would also be eligible for the benefits provided to the solar power plant.

4.2.11 Further, where a contract is awarded as a whole for supply of solar power generation system consisting of various components (as highlighted above), the entire contract should qualify as a solar power generating system. This is also supported by the concept of 'composite supply' in which case the taxability is as per the principal supply.

4.2.12 Composite Supply has been defined as '*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;*'

4.2.13 Further, Principal Supply has been defined in Section 2(90) of the CGST Act as '*principal supply means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary*'. Thus, principal supply refers to the supply which is the predominant element in a composite supply.

4.2.14 In terms of Section 8 of the CGST Act, it has been clarified that a composite supply comprising two or more supplies, one of which is a principal supply will be treated as supply of such principal supply.

4.2.15 Based on the above, a conclusion can be drawn that where a contract consists of supply of various goods all of which are intended for setting up a solar power plant, the entire contract should be treated as a composite supply for which the principal supply is providing a solar power generating system and hence, entire supply contract (which would include PV modules as well as all other goods) should be taxable at 5% as 'Solar Power Generation System'.



It is further submitted that Ministry of New and Renewable Energy ('MNRE') in various instances has also approved entire BOQ consisting of various parts e.g. cables, module mounting structures, spares etc., as essential to solar power generating system and hence the concessions applicable have been extended to such parts. Drawing a corollary, concessional rate of 5% should be applicable on all the goods approved under BOQ by MNRE as well.

#### 5. Taxability of parts of solar power generating system:

5.1 In certain cases, not all parts of solar power generating system are supplied by EPC contractors (as some parts may be procured separately). For example, PV modules may be procured by the Project Developer directly and balance contract is awarded to EPC contractor for supply of remaining goods.

In such case, even though the entire contract may not qualify as solar power generating system, the parts supplied should be eligible to concessional rate of 5% as the entry covers "Renewable energy devices and parts for their manufacture"

5.2 A part is essential section, which, when combined with other sections, make up a 'whole system / product'. In the case of equipment, various parts would combine to make up the whole equipment, which has a specific function.

5.3 Compared to a 'part', an accessory is essentially a piece which enhances the functionality of equipment and adds to the function of the equipment. However, even without the accessory the equipment can function on its own.

5.4 In the present case, it is not the case that all other goods / equipment are ancillary and the same are required essentially for functioning of the solar power plant and hence, should form part of the solar power generating system.

5.5 Per the above, our understanding is that supply of other parts (apart from solar power generating system) should also constitute as supply of '*parts of solar power generating system*' which should attract concessional rate of 5% (provided they fall within Chapter 84,95 or 94). Hence, benefit should be available even if standalone parts are supplied (and not supplied together with PV modules) as long as the same



qualifies as part of solar power generating system falling under heading 84.85 or 94.

5.6 Reference is also made to the erstwhile excise law, wherein various judgments have been pronounced in case of wind operated electricity generators where it has been held that specific goods supplied for such generators would also be eligible for the exemptions extended to the generators as 'wind operated electricity generator'.

- In Gemini Instratech Pvt. Ltd., Vs Commissioner of Central Excise, Nashik [2014 (300) ELT 446 (Tri.-Mum)] the issue involved was whether doors specifically designed to be used with tower on which wind operated electricity generators are installed be eligible for benefit of notification which provides exemption from payment of excise duty to wind operated electricity generators and its components and parts thereof. It was held that such doors would also be eligible for the exemption. This was also ratified by the Supreme Court [2015 (315)ELTA82 (SC)]
- In Elecon Engineering Co. Ltd., Vs Commissioner of Customs [1998 (103)ELT 395 (Tri)] the issue involved in the case was whether power cables, earthing cables, wind farmer computer will be eligible for benefit of exemption under Notification 64/94-Cus. The Tribunal held that power cables and control cables together form part of inside cabling of wind turbine controller, since, control cables are eligible for exemption, the benefit of exemption has to be extended to power cables also.
- In Pushpam Forging Vs CCE, Raigad [2006(193)ELT 334 (Tri.-Mum)], the Tribunal held that flanges are parts of windmill tower which is in turn a part of Wind Operated Electricity Generators (WOEG). Once tower is accepted and held to be a part of WOEG, flanges of the tower will be a part of the whole Wind Operated Electricity Generator.
- In CCE Vs Megatech Control Pvt. Ltd., [2002 (145) ELT 379 (Tri.-Chennai)], the Tribunal held that control panels are part of wind operated Electricity Generators and are meant specifically for wind mill and will be eligible for benefit.
- Vide Circular No.1005/15/2015-CX dated 20.10.2015, the CBEC had clarified that tower, nacelle, rotor, wind turbine controller, nacelle controller and control tables will be treated as parts / components of wind operated electricity generators and will be eligible for exemption.

In regard to the above, though there has not been any judgment with

respect of components of solar power plants, on similar lines of the precedents discussed above for wind power, the components of solar power generating system should also be covered under concessional rates of taxes under GST.

5.7 The applicant further states that generation of power by way of solar energy is one of the key promoters for the Government's aspiration of 'Make in India'. The Government has set target of 175 GW of renewable power by 2022 which includes 100 GW of solar power. Per 'Make in India' website set up by the Government of India, India's annual solar installations would grow four times by 2027. If the goods supplied under the contract for construction of solar power plants is taxed at separate rates applicable on the individual goods, it would lead to higher tax burden on the developer of the solar power plants. Please note that since electricity has been exempted from GST, GST payable on the input side would burden the developer and hence, would prove detrimental to the growth of solar power generating plants in the country. Accordingly, concessional rate of 5% should also be available to parts of solar power generating system supplied on standalone basis.

5.8 Basis the understanding, it can be deduced that the components which are essential for setting up of the solar power plant together will qualify as parts of solar power generating system (falling under Chapter 84,85 or 94) and hence, should be eligible for concessional rate of 5%.

6. Whether benefit would also be available to sub-contractor:

6.1 In a typical contract structure, the EPC contractor engages various sub-contractors (manufacturers/supplies/sub-contractors) who further supply the goods to EPC contractor. (and EPC contractor supplies to the SPV)

6.2 Notification No.01/2017-Integrated Tax (Rate), which provides concessional rate on solar power generating system, does not specify the persons who would be eligible for concessional rate of 5% i.e. Developer, EPC contractor or manufacturer/supplier/sub-contractor.

6.3 Since the concessional rate of 5% is provided to renewable energy products and parts thereof, the same should be applicable to all suppliers providing such products as long as it can be established (through certification or otherwise) that these are to be used in solar power generating system. This would also be in line with practice under erstwhile excise law wherein benefit was extended to sub-contractors also



through MNRE certification.

7. Taxability of Contract for services:

7.1 A separate contract is awarded to the EPC contractor for provision of services which consists of the following:

- Construction of complete building including control rooms and inverter rooms, roads and drainage system, boundary walls / fencing, bore wells
  
- All civil and foundation works for switchyard, solar plant and all other equipment
  
- Site enabling facilities
  
- Leveling and grading
  
- Erection, Commissioning and testing for solar modules, mounting structures, power transformers, inverters, SCADA, complete switchyard, inverter transformers, connectors, earthing lines etc.

7.2 The applicant further submits that such a contract is a separate contract for services itself and hence, has to be taxed on independent basis. In our understanding, the same should be analysed independent of the contract for goods.

7.3 Since such contract is standalone contract for services including works, the same should qualify as works contract service. Works contract has been defined 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"*.

7.4 Works contract has been deemed to be a service under GST and is taxable at 18% typically. In the present case, the above contract on a standalone basis should qualify as works contract service, liable to GST at 18%.

8. Conclusion : The applicant concludes as follows:

8.1 Where there are two separate contracts – one for supply of goods to be used in solar power plant and one for services, both would be taxed separately.

8.2 Contract for goods should qualify as 'solar power generating system' taxable at 5% and contract for services should qualify as works contract services taxable at 18%. For the contract of goods (where PV modules are also provided as part of the contract), the same should qualify as composite supply and all goods supplied should get covered as part of principal supply of 'solar power generating system' and taxable at 5% GST.

8.3 Even where contract of goods do not include all products (such as where PV modules are not supplied and are procured by developer on its own) and only balance products are supplied, the goods should qualify as 'parts of solar power generating system' and should be eligible for concessional rate of 5% GST as long as the same are covered under heading 84, 85 or 94.

8.4 Concessional rate of 5% for supply of solar power generating system or its parts should also be available to sub-contractors.

**PERSONAL HEARING: / PROCEEDINGS HELD ON 09.02.2018.**

9. The Applicant submitted Specific Power of Attorney appointing M/s Price Waterhouse Coopers Private Limited, represented by Shri Prashanth Agarwal, as their authorized legal representative, who attended the proceedings held before the Authority on Advance Ruling in Karnataka, Bengaluru on 09.01.2018 and stated / pleaded that the applicant enters into two different contracts i.e. for supply of goods/material and for supply of services; the developer may procure main parts of the solar power generating system (PV modules) on their own which attract 5% and remaining parts may be supplied by contractor which also should attract 5%; in case the contractor supplies all the material / goods including PV modules, the rate should be 5% and requested for adjournment for submission of the copies of model contracts.

10. The authorized representative of the applicant appeared again and hearing proceedings were held on 09.02.2018.

11. The representative furnished the copies of model contracts along with the chartered engineer's certificate and pleaded that both the contracts are independent and there was no connection between the two



contracts; no maintenance contract had been entered; GST @ 18% was being paid on the services contract; on supply of goods GST was being paid @5% for all parts as per entry 234 of Notification No.01/2017 - Integrated Tax (Rate).

### FINDINGS & DISCUSSION:

12. We have gone through the application filed by M/s Solarys Non-Conventional Energy Private Ltd., (the Applicant), the issues/transaction(s) involved on which advance ruling is sought by the applicant, relevant facts of the transaction(s) involved, the statement containing the applicant's understanding of rate of tax in respect of the transaction(s), the submissions of the applicant through authorized representative during the hearing proceedings and the copies of draft agreements.

13. The Applicant has sought Advance Ruling on the following questions:

a) Whether in case of separate contracts for supply of goods and services for a solar power plant, there would be separate taxability of goods as 'Solar Power Generating System' at 5% and services at 18%.

b) Whether parts supplied on standalone basis (when supplied with PV modules) would also be eligible to concessional rate of 5% as parts of solar power generation system.

c) Whether benefit of concessional rate of 5% of solar power generation system and parts thereof would also be available to sub-contractors.

14. Question No. 1 is "Whether in case of separate contracts for supply of goods and services for a solar power plant, there would be separate taxability of goods as 'Solar Power Generating System' at 5% and services at 18%."

15. Solar power generating system is considered as goods and the same appears in the entry in Serial No. 234 of Schedule I of Notification No.1/2017 - Central Tax (Rate) dated 28.06.2017 and reads as under;

Sl.No.	Chapter/ Heading/ Sub- Heading/ Tariff item	Description of Goods
234	84 or 85	Following renewable energy devices & parts for their manufacture - (a) Bio-gas plant (b) Solar power based devices

		(c) Solar power generating system (d) Wind mills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants / devices (f) Solar lantern / solar lamp (g) Ocean waves/tidal waves energy devices/ plants
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This entry provides that a solar power generating system is taxable at the rate of 5%.

15.1 Further vide Notification No. 27/2018 – Central Tax (Rate) dated 31.12.2018, an amendment was carried out and Serial No. 38 was inserted in Notification No.11/2017 -Central Tax (Rate) dated 28.06.2017 in respect of services related to setting up of solar power plants. The entry at Serial no. 38 is as follows:

Sl.No.	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
38	9954 or 9983 or 9987	Service by way of construction or engineering or installation or other technical services, provided in relation of setting up of following, - (a) Bio-gas plant (b) Solar power based devices (c) Solar power generating system (d) Wind mills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants / devices (f) Ocean waves/tidal waves energy devices/ plants  <i>Explanation:-</i> This entry shall be read in conjunction with serial number 234 of Schedule I of the notification No. 1/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 673(E) dated 28th June, 2017.	9	-

The explanation to the entry provides that the changes have to be read in conjunction with serial number 234 of Schedule I of Notification No. 1/2017- Central Tax (Rate). Entry 38 is effective from 01.01.2019.

15.2 A conjoint reading of the two aforementioned Notifications requires that after 01.01.2019 the supply is taxable on the values worked out separately for goods and services under both entry no. 38 of Notification No.11/2019 – Central Tax (Rate) dated 28.06.2017 (as amended by Notification No.27/2018-Central Tax (rate) dated 31.12.2018) and Entry No.234 of Schedule I of Notification No.1/2017 – Central Tax (Rate) dated 28.06.2017 as amended by Notification No.24/2018 – Central Tax (Rate) dated 31.12.2018, and the values must be as per the explanation provided therein.



15.3 As the application was made prior to 01.01.2019 and the model contracts are also in respect of the prior period the relevant provisions are examined to answer the question raised by the applicant.

16. The applicant envisages two scenarios. In the first scenario all the goods may be supplied by the EPC Contractor and the entire contract is executed by the EPC contractor and all goods required are supplied by the contractor (including PV modules). In this case the applicant desires to know whether in case of separate contracts for supply of goods and services for a solar power plant, there would be separate taxability of goods as 'Solar Power Generating System' at 5% and services at 18%.

16.1 The essential features of the contract contemplated above are that the EPC contractor is singularly assigned the task of the entire setting up of the solar power plant. The various activities the EPC contractor is obligated to perform broadly range from designing the power plant, preparing the drawings/map, preparing the estimate, sourcing the various goods required, carrying out the construction of civil structures involved, testing the equipments and finally commissioning the power project. The applicant desires to vivisection this entire setting up of the plant into two contracts, wherein one deals with the supply of the required goods like PV Modules, electrical transformers, switches, wires, material required for construction etc and the other dealing only with the aspect of providing services.

16.2 The contract with the EPC contractor is primarily for the setting up of the power plant as a whole. The various warranties and guarantees are intricately associated with both the goods and the services involved in the setting up of the power plant. The essential relationship between the owner of the solar power plant and that of the EPC contractor is a singular relationship, that of starting from scratch and bringing into existence a fully operational solar power plant with the attending guarantees and warranties related to its proper functioning, be it in relation to goods or the services performed. Artificial vivisection of the goods and services aspects of the singular contract would run contrary to the spirit of the contract. The supply of goods and the related services are so intricately connected that the same cannot be bifurcated by reasonable means. The execution of this contract involves the transfer of property in goods.

16.3 In the light of these facts we examine the definition of 'works contract' as provided in Section 2(119) of the CGST Act, 2017. It 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 contract is for



the engineering, procurement and commissioning of the solar power generating system and what is transferred is the entire power generating system including the civil works involved in the project. The project has a very high element of permanence. Civil structures are created and various equipments are installed on those structures. A project of this magnitude is not envisaged to be one which shall keep shifting its location. It is essentially of the nature of an immovable property. The individual components may be capable of being shifted but in its entirety the project is certainly of the nature of an immovable property. The project after completion at the time of transfer is thus an immovable property, more so as there are no separate considerations for the individual components of the project. Further, the maintenance and other related services are also part of the contract and involve the maintenance of the project as a whole. It is thus the considered view of the Authority that the EPC contract is a works contract and has to be taxed accordingly. The artificial vivisection of the contract into two smaller contracts, one dealing with goods and the other with services, will not alter the true nature of the contract. The performance of the EPC contractor in relation to the supply of goods and supply of services related to the installation and commissioning of the goods are so intricately woven that they cannot be evaluated in isolation from each other. This indivisible nature of the total supply imparts the entire contract the nature of a works contract.

16.4 The answer to the first question is that for the period up to 31.12.2018 the EPC contract is required to be considered as a works contract and has to be taxed accordingly. The artificial vivisection into two contracts, as envisaged, shall not rob the contract of its essential nature of a works contract.

17. The second question is whether parts supplied on standalone basis (when supplied with PV modules) would also be eligible to concessional rate of 5% as parts of solar power generation system.

17.1 In respect of goods we find that Notification No.1/2017 – Central Tax (Rate) dated 28.06.2017 provides for the tax rate of various goods. Serial No. 234 of Schedule I of Notification No.1/2017 – Central Tax (Rate) dated 28.06.2017 is relevant to the issue and reads as under:

Sl.No.	Chapter/ Heading/ Sub- Heading/ Tariff item	Description of Goods
234	84 or 85	Following renewable energy devices & parts for their manufacture - (a) Bio-gas plant (b) Solar power based devices



		(c) Solar power generating system (d) Wind mills, Wind Operated Electricity Generator (W.O.E.G.) (e) Waste to energy plants / devices (f) Solar lantern / solar lamp (g) Ocean waves/tidal waves energy devices/ plants
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The Notification provides that items covered under Chapters 84 or 85 which constitute renewable energy devices and parts required for their manufacture are covered under the aforesaid entry no. 234 and are liable to be taxed at 5%. This essentially implies that those parts are liable to 5% tax only if they go into the manufacture of the Solar power generating system.

18. The third question is whether benefit of concessional rate of 5% of solar power generation system and parts thereof would also be available to sub-contractors. Entry No. 234 in Schedule I to Notification No.1/2017 - Central Tax (Rate) dated 28.06.2017 does not differentiate between supplies by the contractor or the sub-contractor. It provides that as long as the goods falling under Chapter 84 or 85 are the listed renewable energy devices and parts for their manufacture the rate of tax applicable shall be 5%. It further means that the contract with the sub-contractor has to be for the supply of the solar power generating system.

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

#### **RULING**

1. The contract of the applicant is covered under works contract under section 2(119) of the CGST Act and by item (ii) of entry no. 3 of the Notification No.11/2019 - Central Tax (Rate) dated 28.06.2017 upto 31.12.2018. From 01.01.2019, the same is taxable on the values worked out separately for goods and services under both entry no. 38 of Notification No.11/2019 - Central Tax (Rate) dated 28.06.2017 (as amended by Notification No.27/2018-Central Tax (rate) dated 31.12.2018) and Entry No.234 of Schedule I of Notification No.1/2017 - Central Tax (Rate) dated 28.06.2017 as amended by Notification No.24/2018 - Central Tax (Rate) dated 31.12.2018, and the values must be as per the explanation provided therein.
2. The answer to the second question is that parts supplied on

standalone basis (when supplied with PV modules) would be eligible to concessional rate of 5% as parts of solar power generation system.

3. The answer to the third question is that the benefit of concessional rate of 5% of solar power generation system and parts thereof would be available to sub-contractors if the sub-contract is only for supply of goods. If the entire EPC contract is sub-contracted then the rate of tax applicable shall be the same as that applicable to the contractor and as ruled above in response to question number 1.



  
30.09.2019  
**(Harish Dharnia)**  
**Member**  
Karnataka Advance Ruling Authority

Place: Bengaluru - 560 009  
Date: 30.09.2019

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

To,  
The Applicant  
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, Belagavi
4. The Asst. Commissioner, LGSTO-420, Bagalkot
5. Office Folder