

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICE TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560009**

Advance Ruling No. KAR ADRG 73/ 2019

Dated: 23-09-2019

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 URC Construction (P) Ltd., 1st Floor, Plot No.810, 1st Cross, 7th Main HAL 2 nd Stage, Indira Nagar, Bangalore - 560008
2.	GSTIN or User ID	29AAACU2425Q1ZW
3.	Date of filing of Form GST ARA-01	05.11.2018
4.	Represented by	Sri. Harish Jain, Chartered Accountant
5.	Jurisdictional Authority - Centre	The Commissioner of Central Tax, EAST, BMTc Building, Airport Road, Domlur, Bangalore 560071
6.	Jurisdictional Authority - State	LGSTO 045 - Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of 1.Rs.5,000-00 under CGST Act vide CIN SBIN18112900008934 dated 02.11.2018 2.Rs.5,000-00 under KGST Act vide CIN SBIN18102900096892 dated 12.10.2018

ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICE TAX ACT, 2017 AND UNDER 98(4) OF THE KARNATAKA GOODS AND SERVICES TAX ACT, 2017

1. M/s URC Construction (P) Limited, (called as the 'applicant' hereinafter), having GSTIN number 29AAACU2425Q1ZW, has filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of the CGST Rules, 2017 and under Section 97 of the KGST Act, 2017 read with Rule 104 of the 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 incorporated under the Companies Act, 1956 and is registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following question:

What is the applicable rate of tax for the provision of construction service rendered to NCBS?

3. The applicant furnishes some facts relevant to the stated activity:
- a. The applicant states that he has entered into a works contract agreement with National Centre for Biological Sciences for the purpose of execution of works contract for construction of building for laboratories and associated facilities at NCBS Campus in Bangalore.
 - b. The National Centre for Biological Sciences (hereinafter referred to as "NCBS") began as a separate centre of Tata Institute of Fundamental Research (hereinafter referred to as TIFR) which receives grants from the Department of Atomic Energy, Government of India. The applicant states that the idea that TIFR should start a Centre for Biological Research following a suggestion by the then Director of Indian Institute of Science, Bangalore and that joint TIFR-IISc Centre could be located on the IISc Campus. In 1984, the Planning Commission of Government of India agreed to fund a centre for fundamental research in biological sciences at Bangalore and the centre was to function as "an autonomous body under the aegis of TIFR and conduct fundamental research and teaching in areas of biology at the frontiers of knowledge". It was to be grown around a group of outstanding individuals and not according to a "rigidly preconceived plan". Its program was to be broad-based, dealing with all levels of biology: cell biology, development of animals and plants, brain research, behaviour, ecology and theoretical biology.
 - c. The applicant has stated that the administration and management of the Institute vests in a Council which comprises of
 - i. three members appointed by the Government of India,
 - ii. one member appointed by the Government of Maharashtra,
 - iii. two members appointed by the trustees of the Sir Dorabji Tata Trust,
 - iv. the Director of the Institute (ex-officio member), and
 - v. one co-opted member appointed by the council.

- d. The applicant states that in this transaction, two parties are involved viz., the contractor and the contractee and both parties have different opinions regarding the issue in question. The applicant, who is the contractor, is of the opinion that under the GST Act composite supply of works contract services are taxable at 12% or at 18%. The general GST rate is 18% and in some specified cases the lower rate of 12% would be applicable. The applicant states that he is of the opinion that the nature of the construction services provided by him to the contractee is not covered under Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017 and hence the residual rate of 18% would be applicable.
- e. However, the contractee, i.e. NCBS, is of the opinion that since it is a fully funded aided institute administratively controlled by the Department of Atomic Energy (DAE), Government of India and the activities of NCBS are related to the educational research , 12% rate is applicable as per the entry no. (vi) of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 as amended by Notification No.24/2017 – Central Tax (Rate) dated 21.09.2017 which reads as under:
“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;*
(b) *a structure meant predominantly for use as –*
(i) *an educational,*
(ii) *a clinical, or*
(iii) *an art or cultural establishment; or*
(c) *a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.”*
- f. Hence the applicant is desirous of knowing the exact rate of tax applicable on the said transaction and hence the application.

4. Shri Hanish Jain, Chartered Accountant and duly authorised representative of the applicant appeared and made submissions reiterating the issue involved. The main issue involved is whether the rate of tax applicable to the contract is 12% or 18%.



5. FINDINGS & DISCUSSION:

5.1 The issue involved is examined.

5.2 The applicant is providing works contract service to National Centre for Biological Science (NCBS), and there is no dispute whatsoever that it is a works contract service as per the clause (119) of Section 2 of the Central Goods and Services Tax Act, 2017.

5.3 Coming to the issue about the nature of the organisation covering NCBS, it is seen that the NCBS has obtained registration under the GST Act as a Trust with GSTIN 29AAATT3951F1ZC and the Council managing this organisation has three members appointed by the Government of India, one member appointed by the Government of Maharashtra, two members appointed by the Trustees of Sir Dorabji Tata Trust, the Director of the Institute (NCBS) is an ex-officio member and one co-opted member appointed by the Council. Hence four members are from the Government.

5.4 The issue is whether the NCBS is covered under any one of the categories "*Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity*". It is clear at the outset itself that it is not Central Government or State Government or Union Territory or a local authority or a Governmental Authority. The only question that needs to be examined is whether NCBS is a Government Entity or not?

5.5 The argument of the applicant that the NCBS is covered under the Governmental Authority cannot be accepted in light of the definition of Governmental Authority in Clause (ix) of paragraph 4 of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 (as amended by Notification No.31/2017 – Central Tax (Rate) dated 13.10.2017) which reads as under:

"(ix) "Governmental Authority" means an authority or a board or any other body, -

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with 90 per cent. or more participation by way of equity or control, to carry out any function entrusted to a Municipality under Article 243W of the Constitution or to a Panchayat under Article 243G of the Constitution."

5.6 The only question that needs to be examined is whether NCBS is a Government Entity or not? Clause (x) of paragraph 4 of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 (as amended by Notification

No.31/2017 – Central Tax (Rate) dated 13.10.2017) defines Government Entity as under:

*“(x) “Government Entity” means an authority or a board or any other body including a society, trust, corporation,
i) set up by an Act of Parliament or State Legislature; or
ii) established by any Government,
with 90 per cent. or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.”*

5.7 The applicant have themselves stated that the NCBS began as a separate centre of TIFR in 1992, first in the Molecular Biology Unit at TIFR in Bombay, and then at the IISc Campus in Bangalore where its laboratories are established. The Government of India has agreed to fund the institute and the institute was to function as an “autonomous unit under the aegis of TIFR . . .”. Hence it is clear that NCBS is neither set up by an Act of Parliament or State Legislature nor is established by any Government. Further the council which administers this institute has only four members appointed by the Government and hence the government does not have more than 90% control over it. One more important point to note is that this institute is not established to carry out a function entrusted by the Government. Hence, for all these reasons, NCBS is not covered under the definition of a “Government Entity” as per the clause (x) of paragraph 4 of Notification No.11/2017- Central Tax (Rate) dated 28.06.2017.

5.8 Further, clause (vi) has a proviso which reads as under:

“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”

Even here, to be covered under this clause, the services must be procured by NCBS in relation to a work entrusted to it by the Government, which is not the case.

5.9 In view of the above, the service supplied by the applicant is not covered under clause (vi) of Serial No.3 of Notification No.11/2017- Central Tax (Rate) dated 28.06.2017 as amended from time to time and hence is not taxable at 6% CGST and 6% KGST. And it is taxable at 9% CGST and 9% KGST under the residual item no. (xii) of Serial No.3 of Notification No.11/2017- Central Tax (Rate) dated 28.06.2017 as amended from time to

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

RULING


The works contract service provided by the applicant to NCBS, for the reasons stated above, is liable to tax at:

- (a) 9% CGST as it is covered under item no. (xii) of Serial No.3 of Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017 as amended from time to time under the CGST Act and
- (b) 9% KGST as it is covered under item no. (xii) of Serial No.3 of Notification 11/2017 No. FD 48 CSL 2017 dated 29.06.2017 as amended from time to time under the KGST Act




23.09.2019

(Harish Dharnia)
Member


(Dr. Ravi Prasad.M.P.)
Member

Place: Bengaluru,
Date: 23-09-2019

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. The Pr. Commissioner of Central Tax, Bangalore-East, Domlur BMT Building, Bengaluru.
4. The Asst. Commissioner, LGSTO-045, Bengaluru.
5. Office Folder.

