

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, 8th floor, H-Wing, Mazgaon, Mumbai - 400010.

(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)
(2) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id	27AADCN9254B1ZI USER ID : 271800000892ARH
Legal Name of Applicant	M/S NR Energy Solutions India Pvt Ltd
Registered Address/Address provided while obtaining user id	Plot No.89, Panvel Industrial Co-op. Estate Ltd., Opp. Garden Hotel, Panvel, Raigad - 410 206.
Details of application	GST-ARA, Application No. 83 Dated 04.10.2018
Concerned officer	Asstt. Commr, CGST &CX, Raigad Coomissionerate
Nature of activity(s) (proposed / present) in respect of which advance ruling sought	
A Category	Manufacturing & Suppliers
B Description (in brief)	Exporter, Manufacturer and Supplier of electrical control panels, power system, protection, automation, flexible AC transmission system, HVDC transmission etc,
Issue/s on which advance ruling required	(i) classification of goods and/or services or both
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

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

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by M/S NR Energy Solutions India Pvt Ltd, the applicant, seeking an advance ruling in respect of the following questions.

I. *Whether the transaction /contract referred in the present application to M/S APTRANSCO is in the nature of Works Contract Services and therefore liable to GST @ 18% under the HSN Code 995461 ?*

- II. *If the answer to above is in negative, whether the said transaction is Supply of Goods?
a) If yes, liable to GST at what rate of tax and under which HSN Code ?*

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST 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 provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

02. **FACTS AND CONTENTION - AS PER THE APPLICANT**

The submissions, as reproduced verbatim, could be seen thus-

"ANNEXURE "B": STATEMENT OF FACTS (Clause 15 of Form GST ARA-01]

1. M/S NR Energy Solutions Pvt Ltd (hereinafter referred to as "the Applicant") is engaged into the business as Manufacturer, Exporter & Supplier of Electrical Control Panels, Power System, protection, automation , flexible AC transmission system, HDVC transmission etc.
2. They have been awarded turnkey projects by M/s TRANSMISSION CORPORATION OF ANDHRA PRADESH LIMITED (hereinafter referred to as "M/s APTRANSCO") for supply, installation, testing and commissioning of Relay & Protection Panels with Substation Automation System (SAS) compatible to IEC 61850 protocol, at their various sites/locations enumerated as under:

SR N O.	PURCHASE ORDER NO [PO]	DATED	SITE/LOCATION	CONTRACT VALUE
1	236- PMM/2016/CE/CONS T/SE/P&MM/DE2/SAS/PM M22-e-17 2016/D.No.240/20 235	28th Oct., 2016	Visakhapatnam, Vijayawada & Kadapa Zones	Rs.8,82,93,950/-
2	235- PMM/2016/CE/CONS T/SE/P&MM/DE2/SAS/P MM22-2-14 2016/D.No.239/2016	28th Oct., 2016	Salur, Chigurukota, Rapur, Garbham, Chodavaram, Narayanapuram, Srikakulam town, Ponnuru & Yernagudem	Rs. 7,20,64,380/-
	Repeat Order 328- PMM/2017/CE/CONST/S E/P&MM/DE2/SAS/PMM 22-e-17- 2016/D.No.122/2017	26th May, 2017	Duvva Sub Station and other zones	Rs.3,57,01,707/-



The copies of all the 3 PO's are enclosed herewith at Annexure D, E & F respectively.

3. The brief scope of the work involves "Supply of Relay & Protection Panels and Substation Automation System (SAS), complete design, manufacture, packing, insurance, transport and delivery to sites, training, installation, testing and commissioning of protection panels with Substation Automation System compatible to IEC 61850 protocol, to control and operate the 220 KV, 132 KV & 33 KV feeders, Power Transformers and equipments". [Refer Clause 2 of above specified PO's]
4. As per Schedule-A of the above referred PO, separate prices are indicated for each of the activity for supply of various materials and the activity for installation, testing & commissioning etc. [Refer Clause 6 and Schedule A of above specified PO's]
5. The above prices are inclusive of all the taxes such as Excise Duty, Central Sales tax and Service Tax as applicable from time to time. [Refer Clause 6 and Schedule A of sabove specified PO's]
6. A control & relay panel are designed for controlling & monitoring of electrical equipments such as transformers, generators and circuit breakers.
7. Substation automation is the act of automatically controlling the substation via instrumentation and control devices. It refers to using data from Intelligent electronic devices (IED), control and automation capabilities within the substation, and control commands from remote users to control power-system devices. In other words,

Substation Automation (SA) is a system to enable an electric utility to remotely monitor, control and coordinate the distribution components installed in the substation.

8. The pictures of the Control & Relay Protection panels erected & installed in the SAS control room and SAS architecture drawing are enclosed herewith at Annexure G.
9. The process involves erection of panels in the control room. Thereafter, control cable and fibre optic cable are laid, to connect the substation with the panels. The installation of control panels also includes computers and printers for the purpose of automation process.
10. In the pre GST era, the applicants levied excise duty and central sales tax along with applicable cess on the value of various equipments supplied and levied service tax on installation, testing and commissioning charges recovered under the category of "Erection, Commissioning and Installation services". [Refer Clause 7 of above specified PO's]. The sample copies of sale invoices raised during pre-GST regime are enclosed herewith at Annexure H.
11. The above specified PO's were amended by M/s APTRANSCO, in order to commensurate the implications of GST in the contract price. The details of the revised / amended PO's and contract values is given as under:

SR NO.	REFERENCE OF LETTER FOR AMENDEMENT IN PO	ORIGINAL CONTRACT VALUE	REVISED CONTRACT VALUE
(i)	Lr.No. CE/Const./SE/P&MM/DE2/SAS/ 236-PMM/2016/D.No.252/2017 dated 25 th October,2017	Rs.8,82,93,950/ -	Rs.8,95,27,573/-
(ii)	Lr.No. CE/Const./SE/P&MM/DE2/SAS/235-P MM/2016/D.No.226/2017 dt 26.09.2017	Rs.7,20,64,380/ -	Rs.7,27,98,306/ -
(iii)	Lr.No. CE/Const./SE/P&MM/DE2/SAS/328- PMM/2016/D.No.238/2017 dated 6 th October,2017	Rs.3,57,01,707/ -	Rs.3,67,38,631/-

The copies of the above revised PO's/ amendment letter are enclosed herewith at Annexure I, J&K respectively

12. M/s APTRANSCO while revising the respective PO's for giving the effect of GST in the contract price, mentioned that the GST rate applicable on above contract shall be 18% under the HSN (SAC) code - 995461. [Refer revised schedule / annexure for process of each component of material and installation, testing etc]
13. The applicants charged and collected GST as described below in the initial period from M/s APTRANSCO :

NATURE OF SUPPLY	HSN CODE	RATE OF GST
Supply of materials / goods - as specified in Schedule A of the	8537 2000 - Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of	28%

agreement i.e. power transformers, relay panels etc	electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517	
Supply of services - as specified in Schedule A of the agreement i.e. installation, testing, commissioning etc	9954 61- Electrical installation services including Electrical wiring & fitting services, fire alarm installation services, burglar alarm system installation services.	18%

14. Vide letter no. CE/Constn/SE/P&MM/DE-II/PMM22-e-17/16/328-PMM/D.No.2018 dated 3rd January,2018& letter no. FA & CCA(Accounts)/SAO (Audit, S&TA) /AO(IA) / D.No.562/18 dated 7th February,2018, the applicants were intimated by principal M/s APTRANSCO that applicable rate of GST is not 28% in respect of supply of materials /goods under the above contracts. The correct rate would be 18% as the said turnkey projects essentially is a "works contract" as it involves erection and installation of goods into immovable property and the goods involved in the execution of the said Substation Automation System [SAS] gets transferred to M/s APTRANSCO. The copy of said letters is enclosed herewith at Annexure L
15. The applicant has issued credit notes for refund of GST charged @ 28% on supply of equipments / goods and thereafter issued revised invoice levying GST @ 18% under HSN code 995461. The sample copies of sale invoices, corresponding credit notes and revised invoices are enclosed herewith at Annexure M.
16. The applicant therefore is filing present application before Hon'ble Authority for Advance ruling.

ANNEXURE "C": STATEMENT CONTAINING THE APPLICANTS INTERPRETATION OF LAW AND/OR FACTS[Clause 16 of Form GST ARA-01]



THE CONTRACT BEING INSTALLATION, COMMISSIONING OF COMPLETE AUTOMATION SYSTEM WITH THE CONTROL & RELAY PANELS WITHIN A SUBSTATION, IT RESULTS INTO COMPOSITE SUPPLY IN NATURE OF "WORKS CONTRACT"

- 1.1) As per Section 7(1) of the CGST Act,2017 ("the Act"), the term "supply" includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.
- 1.2) The applicant submits that their contracts with M/s APTRANSCO is an turnkey project wherein they are under an obligation to
 - complete design, manufacture of equipments
 - packing, insurance, transport and delivery of equipments to various sites
 - installation, testing and commissioning of various equipment at Substation and thereafter render training.
- 1.3) Thus, the final outcome or deliverable is ready to operate Substation Automation System, which can control and operate the 220kv, 132kv & 33kv feeders & Power Transformers. It essentially emerges that applicant here are involved in supply of goods & services which are naturally bundled and are supplied in conjunction to each other. Infact,the applicant are providing end to end activity, which involves vide range of activities to be carried out for setting up Substation Automation system to control and operate the Power Transformers.

- 1.4) The term "works contract" is defined in section 2(119) of CGST Act, 2017 as under :
 "2(119)- 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;
- 1.5) In the instant case, the applicants are required to design and manufacture, erection of the control & relay protection panels & other equipments which are interconnected to make the substation automatically operated which is compatible to IEC 61850 protocol. Once the panels and other equipments are installed, the process of testing and commissioning takes place to check that entire system is fully operative to control the feeders and power transformers.
- 1.6) This automated system within the substation is operative locally as well as remotely, which is used to efficiently control and deliver power. Thus, it is developing & installation of automated substation system fully equipped with all the control devices which can be monitored and operated from remote area.
- 1.7) The whole system is tailor made and as per the specifications of individual customer, i.e. M/s APTRANSCO.
- 1.8) It may be noted that all the control devices, relay & protection panels and other equipments are installed in the substation. The same cannot be dismantled and removed after installation without substantially damaging the entire substation. As a result, it is more or less in the nature of permanent installation of equipments within the substation & becomes part of the substation.
- 1.9) The term "immovable property" is not defined under the CGST Act, 2017. As per Section 3(26) of the General Clauses Act, 1897, "immovable property" shall include land, benefits of arise of land and things attached to the earth or permanently fastened to anything attached to the earth.
- 1.10) As per Section 3 of Transfer of Property Act, 1882, "immovable property" does not include standing timber, growing crops or grass.
- 1.11) As per Section 2(6) of the Registration Act, 1908, "immovable property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass.
- 1.12) A substation basically is a part of an electrical generation, transmission, and distribution system. A substation is a place where high-voltage electricity from power plants is converted to lower-voltage electricity for homes or factories.
- 1.13) Substations are usually constructions which may be on the surface in fenced enclosures, underground, or located in special-purpose buildings. To put it in simple words, substation is itself a civil structure which is a place constructed on land and is immovable.
- 1.14) Therefore, installation of various devices, equipments and control & relay protection panels in a substation forms part of the substation and therefore inherits the characteristics of an "immovable property".
- 1.15) In view of above, the supply, installation, testing and commissioning activity of various equipments and control & relay panels carried out by applicant for electrical substations belonging to principal at various location, is a transaction of "works contract" and covered within definition of section 2(119) of the Act.
- 1.16) As per Section 7(1) (d) read with Entry No.6(a) of Schedule II, the activity of composite supply of works contract is treated as "Supply of Service".



- 1.17) The applicant draws your honours attention to various judicial pronouncements, wherein it is held that equipment and devices fastened to the earth, for its beneficial enjoyment will partake the character of "immovable property".
- 1.18) The Hon'ble Constitution Bench of the Apex Court in case of M/s Kone Elevators India Pvt Ltd Vs. State of Tamil Nadu and Others [(2014) TIOL 57SC CT CB] observed that

"A contract may involve both a contract of work and labour and a contract for sale. In composite contract, the distinction between contract for sale of goods and contract for work (or service) is virtually diminished for the purposes of Art. 366(29-A)(b). Now by legal fiction under Article 366(29-A)(b), it is permissible to make such contract divisible by separating the transfer of property in goods as goods or in some other form from the contract of work and labour. The dominant nature test has no application and the traditional decisions which have held that the substance of the contract must be seen have lost their significance where transactions are of the nature contemplated in Article 366(29-A).

The court relied on the Larger Bench decision of SC in case of Larsen and Toubro, the question arose whether taxing of sale of goods in an agreement for sale of flat which is to be constructed by the developer-promoter is permissible under the Constitution. The three- Judge Bench opined that though the ultimate transaction between the parties may be sale of the flat, yet it cannot be said that the characteristics of works contract are not involved in that transaction because the term "works contract" is nothing but a contract in which one of the parties is obliged to undertake or to execute the work and such an activity of construction bears all the characteristics and elements of works contract.

Coming back to the present case, it is perceivable that the three-Judge Bench has referred to the statutory provisions of the 1957 Act and thereafter referred to the decision in Hindustan Shipyard Ltd., and has further taken note of the customers' obligation to do the civil construction and the time schedule for delivery and thereafter proceeded to state about the major component facet and how the skill and labour employed for converting the main components into the end product was only incidental and arrived at the conclusion that it was a contract for sale. *The principal logic applied, i.e., the incidental facet of labour and service, according to us, is not correct. It may be noted here that in all the cases that have been brought before us, there is a composite contract for the purchase and installation of the lift. The price quoted is a composite one for both. As has been held by the High Court of Bombay in Otis Elevator (supra), various technical aspects go into the installation of the lift. There has to be a safety device. In certain States, it is controlled by the legislative enactment and the rules. In certain States, it is not, but the fact remains that a lift is installed on certain norms and parameters keeping in view numerous factors. The installation requires considerable skill and experience. The labour and service element is obvious. What has been taken note of in Kone Elevators (supra) is that the company had brochures for various types of lifts and one is required to place order, regard being had to the building, and also make certain preparatory work.* But it is not in dispute that the preparatory work has to be done taking into consideration as to how the lift is going to be attached to the building. *The nature of the contracts clearly exhibit that they are contracts for supply and installation of the lift where labour and service element is involved. Individually manufactured goods such as lift car, motors, ropes, rails, etc. are the components of the lift which are eventually installed at the site for the lift to operate in the building. In constitutional terms, it is transfer either in goods or some other form. In fact, after the goods are assembled and installed with skill and labour at the site, it becomes a permanent fixture of the building.* Involvement of the skill has been elaborately dealt with by the High Court of Bombay in Otis Elevator (supra) and the factual position is undisputable and irrespective of whether installation is regulated by statutory law or not, the result would be the same. We may hasten to add that this position is stated in respect of a composite contract which requires the contractor to install a lift in a building. *It is necessary to state here that if there are two contracts, namely, purchase of the components of the lift from a dealer, it would be a contract for sale and similarly, if separate contract is entered into for installation, that would be a contract for labour and service. But, a pregnant one, once there is a composite contract for supply*

and installation, it has to be treated as a works contract, for it is not a sale of goods/chattel simpliciter. It is not chattel sold as chattel or, for that matter, a chattel being attached to another chattel. Therefore, it would not be appropriate to term it as a contract for sale on the bedrock that the components are brought to the site, i.e., building, and prepared for delivery. The conclusion, as has been reached in Kone Elevators (supra), is based on the bedrock of incidental service for delivery. It would not be legally correct to make such a distinction in respect of lift, for the contract itself profoundly speaks of obligation to supply goods and materials as well as installation of the lift which obviously conveys performance of labour and service. Hence, the fundamental characteristics of works contract are satisfied. Thus analysed, we conclude and hold that the decision rendered in Kone Elevators does not correctly lay down the law and it is, accordingly, overruled".

The copy of said decision is enclosed herewith at Annexure N.

- 1.19) The Hon'ble Apex Court in case of M/s CCE Ahmedabad Vs. Solid & Correct Engineering Works [(2010) 252 ELT 481 SC] while analyzing that Setting up of Asphalt Drum Mix Plant using duty paid components amounts to manufacture or not observed that Machines intended to be fixed permanently to structures embedded in earth. Moveable character of machine becomes extinct once fixed, embedded or assimilated in permanent structure. Such machine not treatable moveable is not dutiable. The Hon'ble Apex Court has made following observations :

Para 17 : Section 3 of the Transfer of Property Act, 1882 does not spell out an exhaustive definition of the expression "immovable property". It simply provides that unless there is something repugnant in the subject or context 'immovable property' under the Transfer of Property Act, 1882 does not include standing timber, growing crops or grass. Section 3(26) of the General Clauses Act, 1897, similarly does not provide an exhaustive definition of the said expression. It reads :

"Section 3(26) : "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."

18. It is not the case of the respondents that plants in question are per se immovable property. What is argued is that they become immovable as they are permanently imbedded in earth in as much as they are fixed to a foundation imbedded in earth no matter only 11/2 feet deep. That argument needs to be tested on the touch stone of the provisions referred to above. Section 3(26) of the General Clauses Act includes within the definition of the term "immovable property" things attached to the earth or permanently fastened to anything attached to the earth. The term "attached to the earth" has not been defined in the General Clauses Act, 1897. Section 3 of the Transfer of Property Act, however, gives the following meaning to the expression "attached to the earth":

(a) rooted in the earth, as in the case of trees and shrubs;

(b) imbedded in the earth, as in the case of walls and buildings;

(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

20. It is nobody's case that the attachment of the plant to the foundation is meant for permanent beneficial enjoyment of either the foundation or the land in which the same is imbedded

21. In English law the general rule is that what is annexed to the freehold becomes part of the realty under the maxim "quid quid plantatur solo, solo cedit". This maxim, however, has no application in India. Even so, the question whether a chattel is imbedded in the earth so as to become immovable property is decided on the same principles as those which determine what constitutes an annexation to the land in English law. The English law has evolved the twin tests of degree or mode of annexation and the object of annexation. In Wake v. Holt (1883) 8 App Cas 195 Lord Blackburn speaking for the Court of Appeal observed :



"The degree and nature of annexation is an important element for consideration; for where a chattel is so annexed that it cannot be removed without great damage to the land, it affords a strong ground for thinking that it was intended to be annexed in perpetuity to the land."

The copy of said decision is enclosed herewith at Annexure O.

- 1.20) The Hon'ble Allahabad High Court in case of M/s Kranti Steel Pvt Ltd Vs. Chief Controlling Revenue Authority & Ors dismissed the writ petition vis a vis the applicability of rate of stamp duty on the plant and machineries installed within industrial unit purchased has held that the revenue authority is correct in holding that stamp duty was chargeable on entire sale consideration at the rates applicable to land and building, including the plant and machineries installed therein. The Hon'ble Apex Court observed that :

14. Whether plants and machinery set up in a factory premises, fastened to earth or things attached to earth, can be held to be a moveable or immovable property, came to be considered before this Court in Official Liquidator Vs. Sri Krishna Deo and Ors., AIR 1959 All 247. The Court appointed an Advocate Commissioner to inspect premises of company to ascertain whether machinery and plants were fixed and attached to earth or not. The report submitted shows that plants and machinery of company were either embedded in the earth or permanently fastened to things attached to earth. On behalf of State, argument was raised that most parts of machinery are fixed to their bases with bolts and nuts, and can be removed by removing the nuts. It thus cannot be said that such machineries are permanently fastened inasmuch as, the same can be moved away by removing the nuts and hence should be held "movable property". The argument was noticed and rejected, by following House of Lords decision in Reynolds Vs. Ashby & Son, 1904 ACJ 466, wherein Lord Lindley has observed:

"The purpose for which the machines were obtained and fixed seems to me unmistakable; it was to complete and use the building as a factory. It is true that the machines could be removed if necessary, but the concrete beds and bolts prepared for them negative any idea of treating them as movables when fixed as immovable chattels."

15. This decision in Official Liquidator Vs. Sri Krishna Deo (supra) has been affirmed and approved in Duncans Industries Ltd. Vs. State of U.P. and Ors., AIR 2000 SC 355. The Court held : "We are inclined to agree with the above finding of the High Court that the plant and machinery in the instant case are immovable properties. The question whether a machinery which is embedded in the earth is movable property or an immovable property, depends upon the facts and circumstances of each case. Primarily, the court will have to take into consideration the intention of the parties when it decided to embed the machinery whether such was intended to be temporary or permanent. A careful perusal of the agreement of sale and the conveyance deed along with the attendant circumstances and taking into consideration the nature of machineries involved clearly shows that the machineries which have been embedded in the earth to constitute a fertilizer plant in the instant case, are definitely embedded permanently with a view to utilise the same as a fertilizer plant. The description of the machines as seen in the Schedule attached to the deed of conveyance also shows without any doubt that they were set up permanently in the land in question with a view to operate a fertilizer plant and the same was not embedded to dismantle and remove the same for the purpose of sale as machinery at any point of time. The facts as could be found also show that the purpose for which these machines were embedded was to use the plant as a factory for the manufacture of fertiliser at various stages of its production. Hence, the contention that these machines should be treated as movables cannot be accepted. Nor can it be said that the plant and machinery could



have been transferred by delivery of possession on any date prior the date of conveyance of the title to the land."

18. In the present case it is not disputed that besides plants and machinery, entire land and building was sold and there was no provision/agreement that plants and machinery shall be severed or removed from earth. In fact, the industrial unit has been leased out for the purpose of running. Removal of plants and machinery would not have allowed the factory to run. There is no agreement between parties that plants and machinery shall be severed or removed from earth.

19. Even according to definition of 'goods' under Sale of Goods Act, in my view it cannot be included therein. One has to understand the concept of fastening of plants and machinery to earth or its fixing or attached to earth in a reasonable and practicable manner. Scientifically speaking, nothing can be treated immovable. In the context of plants and machinery, where it is permanently fastened or attached to earth, it has to be seen from the point of utility also. If it cannot be used without being attached to earth, it may be immovable property in the industries like one up for consideration in this matter. Unless, such fastening is there, the plant and machinery cannot be put to a rational use. They generally do not move or taken away unless a particular plant and machinery has become obsolete or when the factory is closed or otherwise circumstances so warrant and the owner decide to remove and sell it. Such contingency do not arise every day. They are very rare and occasional. Removal of plants and machinery from earth in a working unit is a decision which is not normally taken in ordinary circumstances, that too when entire land, building along with machinery is leased out for the purpose of running the same.

The copy of said decision is enclosed herewith at Annexure P.

The Hon'ble Bombay High Court in case of M/s Bharti Airtel Ltd Vs. Commissioner of Central Excise , Pune-III [(2014) 35 STR865 BOM] vis a vis availment of cenvat credit of duty paid on items such as towers/ prefabricated buildings with antenna, Base trans receiver station etc classifying it under rule 2(l) of CCR,2004 i.e. Capital goods held that said items are fastened and are fixed to the earth and after their erection become immovable and therefore cannot be goods. It was further observed that :

They are immovable structures, non-marketable and non excisable. They could not be capital goods also as they were neither components, spares and accessories of goods falling under any of Chapters or Headings of Central Excise Tariff as specified in sub- clause (i) of definition of capital goods in Rule 2(a)(A) of Cenvat Credit Rules, 2004. It was held that tower and parts thereof are not directly utilised for output service as the same has been basically a structural support for certain equipment. It was further observed that it may not be necessary if suitable alternate support is available. Such towers by no stretch of imagination can be considered parts of telecom equipment or as telecom equipment by themselves and it was thus held that tower and parts thereof do not qualify as capital goods

The copy of said decision is enclosed herewith at Annexure Q.

- 1.21) *The Hon'ble Supreme Court in case of M/s T.T.G. Industries Vs. CCE vis a vis the levy of excise duty on the contract for design, supply, supervision of erection and commissioning of four sets of Hydraulic Mudguns and Tap Hole Drilling Machines required for blast furnace of the Bhilai Steel Plant held that :*



*"The mudguns and the drilling machines erected at site by the appellant on a specially made concrete platform at a level of 25 feet above the ground on a base plate secured to the concrete platform, brought into existence not excisable goods but immovable property which could not be shifted without first dismantling it and then re-erecting it at another site. Having regard to the nature of structure erected for basing these machines, we are satisfied that the judicial member of the CEGAT was right in reaching the conclusion that what ultimately emerged as a result of processes undertaken and erections done cannot be described as "goods" within the meaning of the Excise Act and exigible to excise duty. We find considerable similarity of facts of the case in hand and the facts in *Mittal Engineering and Quality Steel Tubes* and the principles underlying those decisions must apply to the facts of the case in hand.*

*In *Quality Steel Tubes (P) Ltd. Vs. Collector of Central Excise, UP 1995 (75) ELT 17 (SC)*; his Court observed :*

"The basic test, therefore, of levying duty under the Act is two fold. One, that any article, must be a goods and second, that it should be marketable or capable of being brought to market. Goods which are attached to the earth and thus become immovable do not satisfy the test of being goods within the meaning of the Act nor it can be said to be capable of being brought to the market for being bought and sold. Therefore, both the tests, as explained by this Court, were not satisfied in the case of appellant as the tube mill or welding head having been erected and installed in the premises and embedded to earth they ceased to be goods within meaning of Section 3 of the Act

Thus, It cannot be disputed that such drilling machines and mudguns are not equipments which are usually shifted from one place to another, nor it is practicable to shift them frequently. Counsel for the appellant submitted before us that once they are erected and assembled they continue to operate from where they are positioned till such time as they are worn out or discarded. According to him they really become a component of the plant and machinery because without their aid a blast furnace cannot operate. It is not necessary for us to express any opinion as to whether the mudgun and the drilling machines are really a component of the plant and machinery of the steel plant, but we are satisfied that having regard to the manner in which these machines are erected and installed upon concrete structures, they do not answer the description of "goods" within the meaning of the term in the Excise Act"

The copy of said decision is enclosed herewith at Annexure R.

- 1.23) The Hon'ble Supreme Court in case of *M/s Ibx Gallagher Pvt Ltd Vs. CCE, Bangalore* held that erection of electric power fencing system by use of solar power is not leviable to excise duty and observed as under :

"The adjudicating authority was not justified in holding that fabrication of the plants in question out of duty paid bought out items amounts to manufacture of a new marketable commodity and therefore dutiable. Also Circular No.58/1/2002-CX dated 15th January, 2002 has been issued by the GOI, CBEC, indicating to clarify the question of excisability of plant and machinery assembled at site is referred. It laid down following guidelines to determine the excisability of plant and machinery assembled at site which is enumerated as under :

a) For goods manufactured at site to be dutiable they should have a new identity, character and use, distinct from the inputs/components that have gone into its production. Further, such resultant goods should be specified in the Central Excise Tariff as excisable goods besides being marketable i.e. they can be taken to the market and sold (even if they are not actually sold). The goods should not be immovable.

b) Where processing of inputs results in a new products with a distinct commercial name, identity and use (prior to such product being assimilated in a structure which would render them as a part of immovable property), excise duty would be chargeable on such goods immediately upon their change of identity and prior to their assimilation in the structure or other immovable property.

c) Where change of identity takes place in the course of construction or erection of a structure which is an immovable property, then there would be no manufacture of goods involved and no levy of excise duty.

d) Integrated plants/ machines, as a whole, may or may not be goods. For example, plants for transportation of material (such as handling plants) are actually a system or a net work of machines. The system comes into being upon assembly of its component. In such a situation there is no manufacture of goods as it is only a case of assembly of manufactured goods into a system. This cannot be compared to a fabrication where a group of machines themselves may be combined to constitute a new machine which has its own identity/marketability and is dutiable (e.g. a paper making machine assembled at site and fixed to the earth only for the purpose of ensuring vibration free movement)

e) If items assembled or erected at site and attached by foundation to earth cannot be dismantled without substantial damage to its components and thus cannot be reassembled, then the items would not be considered as moveable and will, therefore, not be excisable goods."

The copy of said decision is enclosed herewith at Annexure S.

II. APPLICANTS INTERPRETATION & CONCLUSION OF THE IMPUGNED TRANSACTION

2.1) Based on the above facts, analysis of legal provisions supported by various judicial pronouncements, the applicants hereby submit that the contract of design, manufacture, supply, installation, testing & commissioning of various equipments at electrical substation of principal i.e. M/s APTRANSCO, is transaction of supply of works contract and leviable to GST @ 18% under HSN Code 995461."

CONTENTION - AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-

It is submitted that, Issue on which advance ruling is required:

(2) In this connection, this is to inform you that the copy of application made before the Advance Ruling Authority by M/s. NR Energy Solutions Pvt. Ltd., was not received by this office. Therefore a copy of the same was obtained from the assessee on 06.12.2018 late evening under the acknowledgement.

(3) The applicant M/s. NR Energy Solutions Pvt Ltd., has stated In their additional submission dated 05.1.2018 to the Advance Ruling Authorities (point No.8) that no SCN was issued in respect of C. Excise and Service tax matter in past 5 years. Whereas as per range office record, one SCN dt.29.12.2014 amounting to Rs.1,59,179/- regarding wrong availment and utilisation of cervat credit, was issued to the assessee which was adjudicated and the duty amount was appropriated alongwith interest and assessee has also paid the applicable penalty.

(4) On going through the application received, it is observed that the question on which Advance Ruling is sought by the applicant is -

" whether the transaction/contract referred in the present application to M/s. APTRANSCO is in the nature of Works Contract Services and therefore liable to GST 18% under the HSN Code 995461 ?

If the answer to above is in negative, whether the said transaction is Supply of Goods?



a) If yes, liable to GST at what rate of tax and under which HSN Code ? "

(5) On perusal of the documents submitted by the applicant M/s N R Energy Pvt. Ltd, Mumbai It appears that they have been awarded three (3) turnkey project by M/s Transmission Corporation of Andhra Pradesh Ltd. having contracts details are as under-

Sr. No	Purchase Order (PO) No./Date	Site/ Locations	Revised Contract value
1	236-PMM/2016/CE/Const./SE/P&MM/DE2/SAS/PMM22-e-17-2016 dated 28.10.2016	Kandukur, chakrapeta, Machumarri, Kuppam, Guntur, Ramsamudram & Taticherala	Rs.8,95,27,573/-
2	235-PMM/2016/CE/Const./SE/P&MM/DE2/ SAS/235-PMM22-e-14-2016/ D.No.239/2016 dated 28.10.2016	Salur, Chigurukota, Rapur, Chodavaram, Garbham, Narayanapuram, Srikakulam town, Ponnuru & Yernagudem	Rs.7,27,98,306/-
3	328-PMM/2017/CE/Const./SE/P&MM/ DE2/SAS/PMM22-e-17-2016/D.No.122/ 2017 dated 26.05.2017	Duvva in West Godavari Distt.	Rs.3,67,38,631/-

(6) The said contracts consisting of supply of goods viz. supply of Relay & Protection Panels and Substation Automation System (SAS), power transformers etc. and also supply of services viz. training, installation, testing, commissioning etc. Thus the project involved both supply of goods and services.

(7) As per the definition as referred in sub-section (30) of Section 2 of CGST Act, 2017 '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'.

(8) Therefore, it appears that the transaction involved in the said projects is covered under the composite supply and not under the works contract as claimed by the applicant.

(9) On going through the contract value of the above projects, it is observed that the value of the goods supplied for completion of the projects comprising of more than 97.5% of the project value and the rest 2.5% cost is towards supply of services. Thus the supply of goods for completion of project is covered under principal supply having HSN code 85372000 attracting 28% of GST.

Sr. No.	Purchase Order (PO) No./Date	Revised Contract value (Rs.)	Value of Goods (Rs.)	Value of service (Rs.)
1	236-PMM/2016/CE/Const./SE/P&MM/DE2/SAS/PMM22-e-17-2016 dated 28.10.2016	4,58,24,810/-	4,45,94,310/-	12,30,500/-
		4,37,02,763/-	4,27,82,363/-	9,20,400/-
		Tota 1	8,95,27,573/-	8,73,76,673/-
2	235-PMM/2016/CE/Const./SE/P&MM/DE2/SAS/235-PMM22-e-14-2016/D.No.239/2016 dated 28.10.2016	4,67,81,760/-	4,54,01,760/-	13,80,000/-
		2,60,16,546/-	2,53,08,546/-	7,08,000/-
		Tota 1	7,27,98,306/-	7,07,10,306/-

3	328- PMM/2017/CE/Const./SE/ P&MM/DE2/SAS/PMM22-e- 17-2016/D.No.122/ 2017 dated 26.05.2017		1,67,12,033/-	1,63,69,833/-	3,42,200/-
			1,46,93,218/-	1,42,21,218/-	4,72,000/-
			53,33,380/-	53,33,380/-	0/-
		Total	3,67,38,631/-	3,59,24,431/-	8,14,200/-

(10) It is to submit that more specific classification will prevail over general classification. The HSN Code 9954 of Chapter Heading 99 deals with construction service which is charged to IGST @18%. The service has to be predominantly a construction service. The present case does not involve foundation of steel structure /RCC Structure or any other activity involving substantial work done at site. Further the removal of electrical panel doesn't involve total dismantling with loss or damage. (Refer Advance Ruling decision- in the case of Precision Automation and Robotics India Ltd. - 2018 (17) G.S.T.L. 90 (A.A.R.-GST). The necessary elements described in the ruling are absent in the present case.

(11) In view of above, the answer to the questions on which Advance Ruling is sought by the applicant is :-

Q : whether the transaction/contract referred in the present application to M/s APTRANSCO is in the nature of Works Contract Services and therefore liable to GST 18% under the HSN Code 995461 ?

A: The answer is in negative.

Q : If the answer to above is in negative, whether the said transaction is Supply of Goods?

a) If yes, liable to GST at what rate of tax and under which HSN Code ? "

A : The answer is that the said transaction is covered under the composite supply attracting 28% GST under HSN Code 85372000.

This issue with the approval of the Commissioner, CGST & CX, Raigad.

04. HEARING

The Preliminary hearing in the matter was held on 27.11.2018, Sh. Rajiv Luthia, C.A. appeared and requested for admission of application as per contentions made in their application. Jurisdictional Officer was not present.

The application was admitted and called for final hearing on 12.12.2018, Sh. Rajiv Luthia, C.A., appeared and argued as per submissions. The Jurisdictional Officer Sh. D.A. Bhusari, Asstt. Commissioner CGST & CX, Raigad Commissionerate and Sh. Virendra Kothari, Supdt., appeared and made written submissions.

05. OBSERVATIONS

5.1 We have gone through the facts of the case, documents on record and submissions made by both, the applicant and the jurisdictional officer.

5.2 The questions raised by the applicant is with respect to turnkey projects awarded to them by M/s TRANSMISSION CORPORATION OF ANDHRA PRADESH LIMITED (hereinafter referred to as "M/s APTRANSCO") for supply, installation, testing and commissioning of Relay & Protection Panels with Substation Automation System (SAS) at various sites/locations. The applicant has further submitted that the scope of the work involves complete design, manufacture, packing, insurance, transport and delivery to sites, training, installation, testing

operate the 220 KV, 132 KV & 33 KV feeders, Power Transformers and equipments". They have also submitted that in the PO that they have entered into with their client separate prices are indicated for each of the activity for supply of various materials and the activity for installation, testing & commissioning etc. The applicant has also explained what a control panel and substation automation is, in their case and also the processes involved in the subject case. Prior to the introduction of GST, the applicants levied excise duty and central sales tax along with applicable cess on the value of various equipments supplied and levied service tax on installation, testing and commissioning charges recovered under the category of "Erection, Commissioning and Installation services".

5.3 On the other hand the jurisdictional office has submitted that the said contracts are consisting of supply of goods viz. supply of Relay & Protection Panels and Substation Automation System (SAS), power transformers etc. and also supply of services viz. training, installation, testing, commissioning etc. Thus the project involved both supply of goods and services and on the basis of the submissions made by the applicant and the terms and conditions of the 3 POs, it appears that the transaction involved in the said projects is covered under the composite supply and not under the works contract as claimed by the applicant. Further it has also been submitted that the value of the goods supplied for completion of the projects comprising of more than 97.5% of the project value and the rest 2.5% cost is towards supply of services. Therefore the jurisdictional office is of the opinion that the subject case is a composite supply with supply of goods being the major component and therefore covered under principal supply having HSN code 85372000 attracting 28% of GST.

On going through the submissions of both, the applicant and the jurisdictional office, we find that the basic issue before us is whether in the subject case there is supply of Works Contract or Composite Supply. We shall therefore discuss all the provisions relating to Works Contract and Composite Supply. GST Schedule II clearly mentions that the following are supply of services:-

- a. 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,
- b. works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract

Hence Works contract will be treated as service and tax would be charged accordingly. As per Section 2(119) of the CGST Act, 2017, unless the context otherwise requires, the term "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"

5.5 Thus what we need to find out is whether the applicant in the subject case is dealing in any immovable property which is transferred in the execution of the contract. The applicant has submitted that their contracts with M/s APTRANSCO is an turnkey project wherein they are under an obligation to

(a) complete design, manufacture of equipments, (b) packing, insurance, transport and delivery of equipments to various sites and (c) installation, testing and commissioning of various equipment at Substation and thereafter render training. Thus, they have submitted that, the final outcome or deliverable is ready to operate Substation Automation System, which can control and operate the 220kv, 132kv & 33kv feeders & Power Transformers. Their contention is that all the control devices, relay & protection panels and other equipments are installed in the substation and cannot be dismantled and removed after installation, without substantially damaging the entire substation. As a result, it is more or less in the nature of permanent installation of equipments within the substation & becomes part of the substation. According to them substation is itself a civil structure which is a place constructed on land and is immovable and installation of various devices, equipments and control & relay protection panels in a substation forms part of the substation and therefore inherits the characteristics of an "immovable property" and therefore their transaction is a transaction of "works contract" and covered within definition of section 2(119) of the Act.

5.6 In PO No. 235 dated 28.10.2016, submitted by the applicant, the contract value is Rs. 7,20,64,380/- and para 6 of the said schedule deals with prices and it is seen from 6.1 and 6.2 that the contract pricing is different for Equipment of Materials for 'works. For items listed in Sr. No. 1 to 16 of the Schedule A to this PO, the prices are inclusive of all taxes and duties, etc and prices for items 17 and 18 of the Schedule included services tax. Thus the PO also has clearly bifurcated the contract into a supply of goods and supply of services. Further clause no. 11 of the PO deals with TERMS OF PAYMENTS. The PO envisages separate payment for supply of works and for supply of materials/equipments. There appears to be a clear bifurcation in the PO with respect to supply of goods and supply of services.

5.7 Similarly is the case with PO No. 236 dated 28.10.2016. The contract value is Rs. 8,82,93,950/- and para 6 of the said schedule deals with prices and it is seen from 6.1 and 6.2 that the contract pricing is separate for Equipment of Materials and for 'works. For items listed in Sr. No. 1 to 21 of the Schedule A to this PO, the prices are inclusive of all taxes and duties, etc and prices for items 22 and 23 of the Schedule included services tax. Further clause no. 11 of the PO deals with TERMS OF PAYMENTS. The PO envisages separate payment for supply of works

and for supply of materials/equipments. There appears to be a clear bifurcation in the PO with respect to supply of goods and supply of services.

5.8 Finally in PO No. 328 dated 26.05.2017, submitted by the applicant, the contract value is Rs. 3,57,01,707/- and para 4 (GENERAL CONDITIONS) mentions that "all the terms and conditions stipulated in the specification No. PMM22-3-017/2016 are binding (i.e PO No. 236 mentioned above)". For items listed in Sr. No. 1 to 17 of the Schedule A to this PO, the prices are inclusive of all taxes and duties, etc and prices for items 18 of the Schedule included services tax. Here too, the PO envisages separate payment for supply of works and for supply of materials/equipments and there appears to be a clear bifurcation in the PO with respect to supply of goods and supply of services.

5.9 Thus we find from all the three POs that the contracts are considering a clear demarcation of goods and services to be provided by the applicant but such supplies are naturally bundled and in conjunction with each other. Hence we now refer to the definition of 'Composite Supply' as mentioned in sub-section (30) of Section 2 of CGST Act, 2017 and which is as under:-

'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'

5.10 From the discussions made above we find that in all the three POs submitted by the applicant the major part of the contract is supply of goods. These goods are sold to the client by the applicant and they receive separate payment for such goods sold. Further we find that the goods that are supplied are used by the applicant to provide services installation, testing and commissioning of the substations. Without these goods the services cannot be supplied by the applicant and therefore we find that the goods and services are supplied as a combination and in conjunction and in the course of their business where the principal supply is supply of goods. Thus we find that there is a composite supply in the subject case since in the subject case there is no 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 the contract. The Financial Advisor & Chief Controller of Accounts, APTRANSCO, their client in point no. iii of his letter dated 07.02.2018, has opined that "It is essentially emerges that the supply involves both supply of goods and services, which are naturally bundled together and are supplied in conjunction with each other. Such a supply is treated as a composite supply....."



5.11 Now that we have found that there is no works contract involved in the subject case and the supply is nothing but a composite supply with supply of goods being the principal supply, we come to the second question raised by the applicant which is, whether their transaction would be treated a "supply of goods" if their transaction is not considered a works contract and if yes, what would be the HSN code and rate of tax.

5.12 The principal supply as mentioned above in this case is a supply of goods and therefore the GST will have to be paid on the goods at the appropriate rate after classification under the appropriate heading. The applicant has submitted that a 'Substation Automation', is a system which is used by an electric utility to remotely monitor, control and coordinate the distribution components installed in the substation. An electrical substation is the part of a power system in which the voltage is transformed from high to low or low to high, for transmission, distribution, transformation and switching. We find that the final deliverable is nothing but ready to operate Substation Automation System, which can control and operate the 220kv, 132kv & 33kv feeders & Power Transformers and are required for the substation to function. The applicant have themselves accepted that they were collecting GST on these goods classifying the same under Chapter Sub Heading No. 85372000. However they have submitted that as against the said sub heading they have been collecting GST @ 28%. We find from the GST Tariff that goods falling under the said sub heading are taxable @ 18%. We also find from their submissions and as accepted by them that the goods supplied by them are in the form of Boards, Panels, etc equipped with 2 or more apparatus of heading 8535 or 8536 like fuses, switches, etc, for electric control and distribution of electricity. Hence the principal supply in their composite supply being goods as described under heading 8537, the applicant is liable to pay GST on the whole contract @ 18%.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows :

ORDER

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

NO.GST-ARA- 83/2018-19/B- 03

Mumbai, dt. 08/01/2019

For reasons as discussed in the body of the order, the questions are answered thus -

Question :- I. Whether the transaction / contract referred in the present application to M/S APTRANSCO is in the nature of Works Contract Services and therefore liable to GST @ 18% under the HSN Code 995461 ?

Answer :- Answered in the negative.

Question :- II. If the answer to above is in negative, whether the said transaction is Supply of Goods?

a) If yes, liable to GST at what rate of tax and under which HSN Code ?

Answer :- The said transaction is a composite supply where the principal supply majorly is a supply of goods

a) On the basis of submissions made by the applicant we find that the entire transaction is taxable @18 GST under Heading 8537 of the GST Tariff.




— sd —
B. TIMOTHY
(MEMBER)

— sd —
B. V. BORHADE
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Jurisdictional Commissioner of Central Tax.
5. Joint commissioner of State Tax , Mahavikas for Website.

CERTIFIED TRUE COPY


MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai - 400021.