

AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH**Goods and Service Tax****O/o THE COMMISSIONER, COMMERCIAL TAX,****MOTI BUNGALOW,****MAHATMA GANDHI MARG, INDORE (M.P.) - 452007****e-mail : aar@mptax.mp.gov.in Phone : 0731- 2437315 fax. no. : 0731-2536229****PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING**
U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017**Members Present**

1. Rajiv Agrawal
Additional Commissioner,
Office of the Commissioner,CGST and Central Excise, Indore

2. Manoj Kumar Choubey
Joint Commissioner,
Office of the Joint Commissioner of Commercial Tax, Indore Division-1

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| GSTIN Number. If any/User-id | 23AACCK1840M1ZN |
| Name and address of the applicant | M/s Kalyan Toll Infrastructure Ltd. Vidhya Deep, 15/3 Manoramaganj Indore-452001 |
| Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised | b) applicability of a notification issued under the provisions of the Act ; e) determination of the liability to pay tax on any goods or services or both; |
| Present on behalf of applicant | CA Sunil P Jain, Indore |
| Case Number | 04/2019 |
| Order dated | 25/09/2019 |
| Order Number | 16/2019 |

PROCEEDINGS

Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and MP Goods & Services Tax Act, 2017 (hereinafter also referred to CGST



Act and SGST Act respectively) by M/s. Kalyan Toll Infrastructure Ltd. (hereinafter referred to as the Applicant) , not registered but desirous of obtaining registration under the Goods & Services Tax.

2. The provisions of the CGST Act and MPGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MPGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

3. BRIEF FACTS OF THE CASE:

3.1 The Applicant is a company registered under The Companies Act, has taken work under e-tender process by MP Power Generating Company Ltd (MPPGCL) for ' Balance General Civil and Related Electrical And Mechanical Works Package For 2X660 MW Shree Singaji Thermal Power Project (SSTPP) Stage – II Near Village Dongalia, Distt.Khandwa, Madhya Pradesh ,India'.

4. QUESTIONS RAISED BEFORE THE AUTHORITY:-

The following questions have been posted before the Authority in the application:-

- a) Whether work constitutes composite contract or is it separate contract for each work under taken?
- b) What is the effective rate of tax in the given facts?

5. CONCERNED OFFICER'S VIEW POINT:

The Concerned Officer Submitted that the tender in question document is a consolidated contract thus chargeable to tax as composite supply classifiable under SAC 9954 and not eligible for concessional rate of GST @12% in terms of Sr.No.3(vi) of the Notification No.11/2017-CT(R) dtd.28.06.2017. And rate of tax will be applicable as per the nature of the work done.

6. RECORD OF PERSONAL HEARING:

6.1 Shree Sunil P Jain, CA of the applicant for personal hearing .He reiterated submissions already made in the application. The Applicant in support of his contention gives following argument -

6.2 M/s Kalyan Toll Infra Ltd (KTIL), is a company registered under The Companies Act, has taken work under e-tender process by MP Power Generating Company Ltd (MPPGCL) for ' Balance General Civil and Related Electrical And Mechanical Works Package For 2X660 MW Shree Singaji Thermal Power Project (SSTPP) Stage – II Near Village Dongalia, Distt. Khandwa, Madhya Pradesh ,India' , as per the scope of work mentioned hereunder.

6.3 Scope of work : All civil, structural and architectural work of O & M service building , O&M building for services circle, 6 weigh-bridge for existing silos in the plant area, Fitness centre cum Gym, water supply pipe lines etc. It further includes electrical work to O&M Building, O&M building for services circle & weighbridge control room. (Detailed list of works as per tender document)



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6.4 Tender is called for consolidated work. Though bid is filed with value of individual work undertaken, but it is a consolidated contract, invoicing will be done on consolidated basis as running bills.

6.5 MPPGCL has been established by the Madhya Pradesh government and 100% shareholding and control is being carried out by the MP State Government. Further, this company has been exclusively formed to carry out the work of power generation. Work involved in the contract is work as per object of MPPGCL and/or incidental to it.

6.6 Therefore, it is an entity covered under the purview of "Government Entity".

6.7 As per explanation to Notification No.11/2017 Central Tax (rate) dated 28.06.2017, the term government entity is explained as under:

6.8 "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 percent or more participation by way of equity or control, to carry out the function entrusted by the Central Government, State Government, Union Territory or a local authority".

7. DISCUSSIONS AND FINDINGS:

7.1 We have carefully considered the submissions made by the applicant in the application and during time of personal hearing.

7.2 We find that the question before us essentially pertains to classification of the service question and the rate of duty applicable on supply of such service, particularly the applicability of concessional rate of tax in terms of Notification No.11/2017-Central Tax (Rate) dtd.28.06.2017. We, therefore observe that the issue before us is squarely covered under Section 97(2)(a) and therefore we admit the application for consideration.

7.3. The applicant have been awarded a contract, through e-tender, by M P Power Generating Company Ltd. for Balance General Civil and related Electrical and Mechanical works package for Shri Singaji Thermal Power Project Distt Khandwa. We have perused the corresponding Tender document produced by the applicant. The tender document, though a consolidated work order, has categorical mentions of individual works to be carried out by the applicant with specific remunerations for each such work.

7.4. It has been argued by the applicant, through the written submission and also at the time of personal hearing, that the impugned supply is a composite supply which is being supplied to a Government entity viz. MP Power Generating Company Ltd., and accordingly the same would merit entitlement for concessional rate of GST @12% [CGST @6% + SGST @6%] in terms of Serial Number 3(vi) of Notification No.11/2017-Central Tax (Rate) dtd.28.06.2017 (as amended).



MP

7.5. We have given a careful consideration to the arguments adduced by the applicant and the counsel. We find that the relevant tender document is consolidated contract entrusted to the applicant, but it has specific details of all the work to be executed under such contract and moreover, the document mentions specific remunerations for each such work. Having said that, we also observe that there are a number of works entrusted to the bidder (the applicant), through this work order. Hence, we are unable to subscribe to the views of the applicant that the supply of services and goods encompassed in the subject work order/contract are naturally bundled. Mere fact that a number of tasks have been entrusted to the applicant through a single document would not make it entitled to be categorised as 'composite supply' particularly in terms of Section 2(30) of the CGST Act 2017.

7.6. As declared by the applicant at Sr.No.15 of the application, 'Scope of Work: All civil, structural and architectural work of O&M service building, O&M building for services circle, 6 weigh-bridges for existing silos in the plant area, Fitness Centre cum Gym, water supply pipe lines etc. It further includes electrical work to O&M Building, O&M Building for Service Circle and weighbridge control room.' It has been further mentioned in the application that the '..... tender is called for consolidated work. Though bid is filed with value of individual work undertaken, but it is a consolidated contract, invoicing will be done on consolidated basis as running bill.' We, however, do not agree with the contention of the applicant for the reasons that the items covered under the 'Scope of Work' are disjoint in character and cannot be termed as 'naturally bundled and supplied in conjunction with each other in the ordinary course of business' as defined under Section 2(3) *ibid*.

7.7. Now, coming to the legal status of M P Power Generating Company Ltd., we find that MPPGCL has been established by MP Government the State Government of Madhya Pradesh is having 100% shareholding and control over MPPGCL. The objective of the company is to carry out power generation in the state of Madhya Pradesh. That being the stated position, MPPGCL is entitled to be termed as 'Government Entity' in terms of explanation to Notification No.11/2017-CT(R), and also as per Notification no.31/2017-CT(R) dtd.13.10.2017. We also would like to mention here that the issue of MPPGCL being a Government entity has been dealt with at length in the Order passed by this authority in the matter of M/s.Shreeji Infrastructure India P.Ltd. wherein it has been observed as under:

5.3. We first deal with the question related to MPPGCL being a Government Entity. As per Notification No. 31/2017 - Central Tax (Rate), Dated - 13/10/2017 issued under CGST Act, 2017 and corresponding notification under MP GST Act, 2017. Government Entity is defined as under -

"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."



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5.4. We find in the Application itself that MPPGCL has been established by the Government of Madhya Pradesh and the Government of Madhya Pradesh has a 100% shareholding in the company. The State Government is also exercising full control over the activities of the said company. Needless to say that in the given circumstances M/s.MPPGCL qualifies to be called and termed as a 'Government Entity' for the purpose of GST law, as it fulfils the necessary and sufficient conditions laid down under notification supra.

It therefore leaves no doubt that MPPGCL is a Government Entity for the purpose of provisions of CGST Act 2017 and MPGST Act 2017.

7.7. We observe that the entry no.3(vi) to the Notification No.11/2017-CT(R) covers a wide spectrum of Construction Services as composite supply. To be more specific the entry covers:

(vi) Composite supply of works contract as defined in clause (119) of Section 2 of the Central Goods and Services 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 work meant predominantly for use other than for commerce, industry or any other business or profession;

(b) a structure meant predominantly for use as (i) and educational, (ii) a clinical or (iii) an art or cultural establishment; or

(c) a residential complex meant predominantly 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 Act 2017.

The above mentioned serial no. 3(vi) provides a concessional rate of GST @12% subject to condition provided under column (5) of the said table, 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

7.8. Now in the instant case we find that the applicant have been awarded a consolidated contract for carrying out different specified works at Shri Singaji Thermal Power Project, which includes erection, commissioning, installation etc. We also find it necessary to place on record that there are certain items mentioned in the subject contract including, but not limited to, 'Fitness Centre cum Gym', which definitely do not find place in the ambit of essential work entrusted by the State Government to MPPGCL. Needless to mention that such work shall not qualify for exemption as envisaged under Sr.No.3(vi) to the Notification no. 11/2017-CT(Rate), in as much as it does not fall within the scope of work entrusted by Government of Madhya Pradesh to MPPGCL.



10

7.9. We also find it necessary to place on record the Ruling given by this Authority in the matter of M/s.Shreeji Infrastructures P.Ltd. vide order dtd.18.10.2018 whereunder the issue of construction of residential quarters has been held to be out of purview of exemption provided under Notification No.11/2017-CT(Rate) dtd.28.06.2017.

7.10. In view of the discussions foregoing, we are inclined to hold that the work entrusted vide subject tender document/contract awarded to the Applicant by MPPGCL cannot be termed as composite supply and thus entire work under the said contract shall not be entitled to concessional rate in terms of Notification No.11/2017-CT(R) dtd.28.06.2017. However, we also hold that the supply of goods and/or services which squarely fall within the ambit of scope of work entrusted to MPPGCL by the Government of Madhya Pradesh shall be entitled for concessional rate under Sr.No.3(vi) to Notification No.11/2017-CT(R). Accordingly, each and every supply under the subject contract shall be treated separately for determining the rate of tax under the CGST Act 2017 read with the provisions of GST Tariff and respective exemption notifications.

RULING

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

8.1 The tender document in question is a not consolidated contract and each supply under the said contract shall be chargeable to tax individually, depending upon the individual classification of such supplies and rate of tax applicable at the time of supply.

8.2 This ruling is valid subject to the provisions under section 103(2) until and unless declared void under Section 104(1) of the GST Act.

RAJIV
RAJIV AGRAWAL
(MEMBER)

Copy to:- No.04/2019/A-A-R/R-28/31

1. Applicant
2. The Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
3. The Commissioner(SGST) Indore
4. The Commissioner, CGST & Central Excise, Indore
5. The Concerned Officer
6. The Jurisdictional Officer – State/Central

MANOJ
MANOJ KUMAR CHOUBEY
(MEMBER)

INDOR dt. 25/09/2019



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