

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

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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

GSTIN Number. If any/User-id	23AADCM4472A1ZZ
Name and address of the applicant	M/s. Madhya Pradesh Power generating Company Limited Block No. 9 Shaikti Bhawan, Floor no. II, Rampur, Jabalpur, Madhya Pradesh 452008
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 this Act;
Present on behalf of applicant	Shree Neeraj Agrawal, CA
Case Number	10/2019
Order dated	26/07/2019
Order Number	12/2019

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. Madhya Pradesh Power generating Company Limited (hereinafter referred to as the Applicant) , registered under the Goods & Services Tax.



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2. The provisions of the CGST Act and MP GST 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 MP GST 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 company M P Power Generating Co, Ltd is 100% Madhya Pradesh State Government Hold Company.

3.2. Deputy Secretary, Energy Department, Government of Madhya Pradesh, vide its Letter No. 192/01/2011/13 dated 07.01.2011 entrusted the liability to construct 2 X 660 MV Shree Singaji Thermal Power Project Stage –II Khandwa on MP Power Generating Co. Ltd.

3.3 It was also mentioned that an SPV (Special Purpose Vehicle) to be constituted for the same, which was constituted in the form of Company Shree Singaji Power Project Limited on 12.10.2017.

3.4. The total cost of the project was estimated at Rs. 6500 Crore which was revised to Rs. 7738 Crore. This cost includes cost of Colony Building.

3.5. Company has awarded contract to M/s Shreeji Infrastructure India Pvt Ltd towards construction of residential quarters at 2x660 MW Shree Singaji Thermal Power Project Stage –II Khandwa

3.6. Contract was awarded to Shreeji Infrastructure India Pvt Ltd under old law including all taxes. The same was renewed under the new law excluding tax. This says that whatever tax is payable same will be provided by MPPGCL.

3.7. This Advance Ruling is sort with respect to the Rate applicable on the contract given to Shreeji Infrastructure India Pvt Ltd in the light of notification No. 11/2017 amended vide notification no. 20/2017, 24/2017 and 31/2017.

3.8. M P Power Generating Co. Ltd was constituted with the object to generate electricity in the state of Madhya Pradesh. For generation of Power, Power Plant are to be established at various locations. As the locations are remote no plant can be set up or start functioning without having residential quarter available at Plant site. Hence, construction of residential quarter is part and parcel of the project of establishment of Power Plant.

4. QUESTIONS RAISED BEFORE THE AUTHORITY:-

4.1 Rate of GST on contract for construction of building and structure for colony at village Siveria at 2x660 MW Shree Singaji Thermal Power Project Stage –II Khandwa. As per Notification No. 11/2017 as amended by Notification No. 24/2017 further amended vide Notification No. 31/2017.

4.2 Rate of GST on construction contract of residential quarters at various power houses of MPPGCL as per Notification No. 11/2017 as amended by Notification No. 24/2017 further amended vide Notification No. 31/2017.

5. CONCERNED OFFICER'S VIEW POINT:

The Concerned Officer Submitted that the work contract awarded to Shreeji Infrastructure P.Ltd. for construction of 599 residential quarters at Shree Singaji Thermal Power Project Stage-II, shall attract GST @18% under SAC 9954.

6. RECORD OF PERSONAL HEARING:

6.1 Shree Neeraj Agrawal, CA, authorized by the applicant, appeared for personal hearing and reiterated the submissions already made in the application. He reiterated the facts submitted along with the application. The Applicant states that –



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6.2 Company has awarded contract to M/s Shreeji Infrastructure India Pvt Ltd towards construction of residential quarters at at 2x660 MW Shree Singaji Thermal Power Project Stage –II Khandwa.

6.3 Company is a Government entity as per the definition provided in Notification No. 31/2017 dated 13.10.2017.

6.4 Construction of residential quarters is covered by Notification No. 11/2017 read with Notification No. 24/2017 under SAC Code 9954 under serial No. 3 (vi)(c).

6.5 Work of establishment of at 2x660 MW Shree Singaji Thermal Power Project Stage –II Khandwa including residential quarters was entrusted to M P Power Generating Co. Ltd. by Government of Madhya Pradesh vide order dated 07.01.2011 of Deputy Secretary M. P Government, Energy Ministry.

6.6 GST rate on construction of residential quarters should be 6%+6% as per Notification No. 11/2017 as amended vide Notification No. 24/2017.

6.7 M P Power Generating Co. Ltd was constituted with the object to generate electricity. For generation of Power, Power Plant are to be established at various locations. As the locations are remote no plant can be set up or start functioning without having residential quarter available at Plant site. construction of residential quarter is part of the project of establishment of Power Plant.

6.8. Notification No. 11/2017 dated 28.06.2017 under SAC Code 9954 under serial No. 3 covers construction Services in three points (i to iii) and prescribes rate of tax at 9%

6.9. The said Notification was amended by notification No. 20/2017 dated 22.08.2017 was further amended vide Notification No. 24/2017 dated 21.09.2017 was further amended vide Notification No. 31/2017 dated 13.10.2017

6.10. As per amendment "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."

6.11. Company is a 100% State Government owned undertaking hence a Government entity as defined in Notification No. 11/2017 dated 28.06.2017 amended vide Notification No. 31/2017 dated 13.10.2017.

6.12. Company awarded contract to M/s Shreeji Infrastructure India Pvt Ltd on trunk basis at Village Siveria which include 599 staff quarters for plant personal, all internal connection road and drain at 2x660 MW Shree Singaji Thermal Power Project Stage – II Khandwa

6.13 Shreeji Infrastructure India Pvt Ltd has obtained an advance ruling on this issue vide order No. 15/2018 dated 18.10.2018, but this fact was not brought to the notice of the Authority that this work is being entrusted to company by Government of Madhya Pradesh, hence we are filing a fresh advance ruling application.

6.14. M P Power Generating Co. Ltd was constituted with the object to generate electricity in the state of Madhya Pradesh. For generation of Power, Power Plant are to be established at various locations. As the locations are remote no plant can be set up or start functioning without having residential quarter available at Plant site. Hence, construction of residential quarter is part and parcel of the project of establishment of Power Plant.

7. Discussions and Findings:



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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 and corresponding notification issued under MPGST Act. We, therefore observe that the issue before us is squarely covered under Section 97(2)(a) of the Act and therefore we admit the application for consideration.

7.3. Before we proceed to discuss the merits of the application, it is pertinent to mention here that the issue raised in the present application has been duly decided by this Authority in the matter of Application filed by M/s.Shreeji Infrastructure India Private Limited vide order number 15/2018 dtd.18.10.2018. The applicant in the present application are the service receivers while M/s.Shreeji Infrastructure P.Ltd. are the service providers. This authority vide order dtd.18.10.2018 had ruled that *"The works contract service of construction of 599 residential quarters allotted to the applicant (Shreeji Infrastructure P.Ltd.) by MPPGCL will merit classification under SAC 9954 and would attract GST @18% (9%CGST + 9%SGST)"*.

7.4. In the present application the applicant viz. MPPGCL have sought a fresh ruling on the same contract awarded to M/s.Shreeji Infrastructure P.Ltd., arguing that the said order is not applicable as the information before the Authority was insufficient and inconclusive to arrive at the ruling. The applicant have specifically mentioned Para 8 of the said order wherein it has been mentioned that *"Though we do not have details of the work entrusted by the State Government to MPPGCL, on the basis of facts brought on record through the present application we safely conclude that the essential sole work entrusted to MPPGCL by the Government of Madhya Pradesh is of electricity (power) generation."* The applicant has solely made this narration a ground for seeking fresh ruling on the same contract.

7.5. We have given a careful consideration to the arguments adduced by the applicant and the counsel at the time of personal hearing. The applicant have argued that the Government of Madhya Pradesh incorporated MPPGCL with an object to construct, operate, and maintain electricity system as defined in Section 2(25) of Electricity Act 2003 (Power Projects). It has been argued by the applicant that *'... the work of power project includes the entrusting all work related to that project including the work of construction of residential colonies as they are in relation to the power project which is entrusted by the Government.'* 7.6. Having duly considered the arguments put forth by the Applicant, we are not inclined to subscribe to the contentions of the Applicant. The fact still remains that the sole work entrusted by the Government of Madhya Pradesh to the Applicant viz. MPPGCL is of Generation of Electricity (Power) in the State of Madhya Pradesh. Construction of residential quarters, though within the precincts of Power Plant' cannot by any stretch of argument and imagination be termed as the work entrusted to applicant.

7.7. The applicant has further argued that the entry no.3(vi) of Notification No.11/2017-CT(R) dtd.28.06.2017 provides a concessional rate of GST @12% with the conditions mentioned in Column 5 of the table as under:



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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 is by the Central Government, State Government, Union Territory or local authority, as the case may be.

7.8. Now, the applicant have tried to argue that they have been entrusted the work of construction of residential quarters also by the State Government. However, nothing has been placed before us to substantiate such claim. And in absence of any specific mention of construction of residential quarters having been entrusted to the applicant by the Government of Madhya Pradesh, we do not find any reason to deviate from our stand taken in order no.15/2018 dtd.18.10.2018.

7.9. In yet another question placed before us the applicant has sought ruling on rate of GST applicable on construction contracts of residential quarters at various power stations of the Applicant. However, we find that it is a very generic question which cannot be decided without looking into specific contracts being awarded. We thus refrain ourselves from giving any categorical ruling on the second question posed before us.

7.10. In view of the discussions foregoing, we find that in as much as the tender document covered in the application is concerned, the GST will be applicable @18% under SAC 9954, in as much as it refers to construction of residential quarters, which was awarded to M/s.Shreeji Infrastructure P.Ltd., as already ruled vide our order no.15/2018 dtd.18.10.2018.

8. 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 work contract awarded to Shreeji Infrastructure P.Ltd. for construction of 599 residential quarters at Shree Singaji Thermal Power Project Stage-II shall attract GST @18% (9% CGST +9% SGST) under SAC 9954.
- 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.

GA

RAJIV AGRAWAL
(MEMBER)

Copy to:- 10/2019/A.A.R/R-28/25

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

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MANOJ KUMAR CHOUBEY
(MEMBER)

INDORE dt. 26/09/2019

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