

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 Commissioner of Commercial Tax, Indore Division-1

GSTIN Number. If any/User-id	23AADCM7397N1ZU
Name and address of the applicant	Madhya Pradesh Paschim Kshetra Vidyut Vitaran Company Limited
Date of Application	04.05.18
Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	b) applicability of a notice issued under the provisions of this Act. And e) determination of the liability to pay tax on any goods or services or both;
Date of Personal hearing	06.07.18
Present on behalf of applicant	Shree Abhay singi ,C.A. and Shree Anirudh Tiwari, Accounts Officer
Case Number	13/2018
Order dated	27/8/18
Order Number	11/2018

PROCEEDINGS

(Under section 98 of Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services 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 MPSTG Act respectively) by M/S Madhya Pradesh Paschim Kshetra Vidyut Vitaran Company Limited (hereinafter also referred to as applicant), registered under the Goods & Services Tax.
2. The provisions of the CGST Act and MPSTG 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 MPSTG 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. M/S Madhya Pradesh Paschim Kshetra Vidyut Vitaran Company Limited (hereinafter referred to as the Applicant) is engaged in power distribution and registered with GSTN with GSTIN 23AADCM7397N1ZU.
 - 3.2. The Applicant for the above purpose also carries supply and erection work.



3.3. The Applicant cites Applicability of clause(vi)(a) of Sr. No. 3 of table of Notification No. 11/2017-Central Tax(Rate) dated the 28th June, 2017 for applicability of rate of tax on the works contract undertaken by it.

4. **QUESTION RAISED BEFORE THE AUTHORITY –**

The applicant wishes to know whether clause(vi)(a) of Sr. No. 3 of table of Notification No. 11/2017-Central Tax(Rate) dated the 28th June, 2017 is applicable on the works contract undertaken by it. And determination of liability to pay Tax.

5. **DEPARTMENT'S VIEW POINT-** The concerned officer submitted that the nature of works contract undertaken by the applicant doesn't come under the category for which the notified rate of tax is 12%(6% CGST and 6% SGST) but it will attract 18%(9% CGST and 9% SGST).

6. **RECORD OF PERSONAL HEARING -**

Shree Abhay singi ,C.A. and Shree Anirudh Tiwari, Accounts Officer Appeared for personal hearing on 06.07.18 and they reiterated the submission already made in the application and attached additional submission which goes as follow -

6.1. The Company Madhya Pradesh Paschim Kshetra Company Ltd. (MPPKVVCL) is wholly owned subsidiary of M.P. Power Management Co. Ltd.

6.2 The holding Company M.P. Power Management Co. Ltd. is wholly owned by the Government of Madhya Pradesh.

6.3 Thus, the Government of Madhya Pradesh is having full control over MPPKVVCL and covers under the definition of Government Entity.

6.4 Further, the Government of Madhya Pradesh has entrusted the Company to carry out function of distribution of Electricity in the area of Indore and Ujjain Commissionerate vide order no. 5555/RS/4/13/2001, Bhopal, Dated – 01/07/2002

6.5 The Government of India, vide notification no. 11/2017 – Central Tax (Rate), Dated – 28th June 2017 notify the rate of GST applicable on supply of services. Under this notification for heading 9954 the applicable rate of GST is 9%.

6.6 The said notification has been amended time to time and till date 5 notifications is issued by the Government of India to amend for this purpose. The said amendment Notification is as follows –

- 1) Notification No. – 20/2017 – Central Tax (Rate), Dated – 22/08/2017.
- 2) Notification No. – 24/2017 – Central Tax (Rate), Dated – 21/09/2017.
- 3) Notification No. – 31/2017 – Central Tax (Rate), Dated – 13/10/2017.
- 4) Notification No. – 46/2017 – Central Tax (Rate), Dated – 14/11/2017.



5) Notification No. – 01/2018 – Central Tax (Rate), Dated – 25/01/2018.

6.7 Vide notification no. 24/2017 - Central Tax (Rate), Dated – 21/09/2017,

Government of India by inserting entry no. (vi) notified concessional GST rate of 6% for the construction services provided to Central Government, State Government, Union Territory, a local authority or a governmental authority 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.

6.8 Further, vide Notification No. 31/2017 - Central Tax (Rate), Dated –

13/10/2017, Government of India substitute the word “Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity” in place of “Central Government, State Government, Union Territory, a local authority or a Governmental Authority”

Also, vide said notification the definition of Government entity is provided, which is reproduced 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 90per 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.”.

6.9 In view of above, it is submitted that the provisions referred above issued under the Notification No. 24/2017 – Central Tax (Rate), Dated – 21/09/2017 and

Notification No. – 31/2017 – Central Tax (Rate), Dated – 13/10/2017 is applicable on the Company.

7. DISCUSSIONS AND FINDINGS:



7.1. First of all we must look in the contention that the Applicant is a government entity or not. As per Notification No. 31/2017 - Central Tax (Rate), Dated – 13/10/2017 issued under CGST Act, 2017 and corresponding notification under MPGST 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 90per 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.”

7.2. The Company Madhya Pradesh Paschim Kshetra Company Ltd. (MPPKVCL) is wholly owned subsidiary of M.P. Power Management Co. Ltd., carried out function of distribution of Electricity in the area of Indore and Ujjain Commissionerate as entrusted by the Government of Madhya Pradesh vide order no. 5555/RS/4/13/2001, Bhopal, Dated – 01/07/2002. Further, the holding Company M.P. Power Management Co. Ltd. is wholly owned by the Government of Madhya Pradesh.

7.3. The applicant had submitted the copy of Audited Annual Accounts of M/s M.P. Power Management Co. Ltd. for F.Y. 2015-16, during the proceedings. It is evident from the schedule of Equity Share Capital of the Annual Statement that 100% share capital of M/s M.P. Power Management Co. Ltd. is hold by Secretary (Energy), GOMP, Bhopal.

7.5. Thus, based on the above facts, it is concluded that the Government of Madhya Pradesh is having full control over the applicant M/s M.P. Paschim Kshetra Vidyut Vitran Co. Ltd. and the applicant is covered under the definition of Government Entity.

7.6. Now it is important to discuss the nature of work undertaken by the applicant. The Applicant is entrusted for various ambitious projects of Central and State

Government relating to strengthening of power distribution network and Rural Electrification for public welfare such as Deendayal Upadhyay Gram Jyoti Yojna for Rural Electrification (DDUGJY), Integrated Power Development Scheme (IPDS), Saubhagya Yojna, ADB funded project, Scheme for Strengthening of Transmission and Distribution systems (SSTD) projects, feeder separation project (FSP) etc., the work has been carried out with the help of Contractor and work include both supply of material and erection of the same.



7.7. The projects are undertaken for construction of electricity distribution lines, sub-stations and other infrastructure which are meant predominately for sell of electricity in urban and/or rural area.

7.8. As per the Memorandum of Association of the Company, Main objects to be pursued by the Company on its incorporation is to carry **on the business** of purchasing, selling, importing, exporting, selling, trading of electrical energy, including formulation of tariff, billing and collection thereof; to execute Power Purchase Agreements with the Bulk supplies, generating companies, Central and State generating stations, regional Electricity Board/neighboring States/utilities and other entities; to execute agreements for sale of power to other distribution companies and other persons and to coordinate, aid and advise on the activities of other companies and concerns, including subsidiaries, associates and affiliates, engaged in generation, transmission, distribution, supply and wheeling of electrical energy.

7.9. Thus, the projects under DDUGY, IPDS, ADB, SSTD, Saubhagya Yojna, FSP and all other schemes of governments are carried out for business purpose and the benefit of Concessional Rate of 12% (6% under Central tax and 6% State tax) as per notification under is not available to the applicant on works pertaining to construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration, which are carried out in respect of projects under DDUGY, IPDS, ADB, SSTD, Saubhagya Yojna, FSP and all other schemes of governments as the same is undertaken for the business purpose.

Further, as per Section 2 of CGST Act '2017 and MPGST Act, 2017 defines "**works contract**" as a contract for **building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;**

The composite supply of works contract as defined at Section 2 of CGST Act '2017 and MPGST Act, 2017 is treated as supply of service in terms of serial no.6, Schedule II of CGST Act '2017 and MPGST Act, 2017.



In the instant case, the applicant had awarded work to the successful bidder for Supply of Materials and Erection respectively. Therefore, the contract entered by the applicant is squarely falls under the works contract and falls under entry no. (ii) of S. No. 3 of the table of notification no. 11/2017 – Central Tax (Rate), Dated – 28th June 2017 as amended from time to time and corresponding notifications under and MPGST Act, 2017, the applicable rate of tax is 18% (9% under Central tax and 9% State tax).

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 Applicant is not entitled for the benefit of concessional rate of GST @12% (6% under Central tax and 6% State tax) for the said projects in terms of Notification No.24/2017-Central Tax (Rate) dated 21.09.2017 read with Notification No.31/2017-Central Tax (Rate) dated 13.10.2017.

8.2 The applicable rate of tax is 18% (9% under Central tax and 9% State tax).

8.3 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 AGRAWAL
(MEMBER)


MANOJ KUMAR CHOUBEY
(MEMBER)

Copy to:- No. 13/2018/A.A.R/R-28/38

INDORE dt. 27/08/2018

1. Applicant
2. The Commissioner(SGST)
3. The Commissionerate(CGST),
4. The Concerned Officer
5. The Jurisdictional Officer – State/Central

सत्यप्रतिलिपि
