

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, 1st floor, B-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		27AAACG7651C1ZT
Legal Name of Applicant		AJWANI INFRASTRUCTURE PRIVATE LIMITED
Registered Address/ Address provided while obtaining user id		301, SUPREME SQUARE, D. P. ROAD, AUNDH PUNE, Maharashtra, 411007
Corresponding Address		218, Swastik Chambers, CST Road, Chembur, Mumbai, Maharashtra, 400071
Details of application		GST-ARA, Application No. 138 Dated 23.03.2019
Concerned officer		Dy. Commissioner of S.T(E-623), LTU-II, Mumbai
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Service Provision , Works Contract
B	Description (in brief)	Ajwani Infrastructure Pvt. Ltd. is one of the leaders in the infrastructure sector of civil and construction industry in India and undertakes diverse projects of construction for roads, highways and toll ways.
Issue/s on which advance ruling required		(i) classification of goods and/or services or both (ii) applicability of a notification issued under the provisions of the Act (v) determination of the liability to pay tax on any goods 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. AJWANI INFRASTRUCTURE PRIVATE LIMITED, the applicant, seeking an advance ruling in respect of the following questions.

1. GST Rate on the work of "Development of Infrastructure facility for Passenger Water Transport Terminal" at Nerul, Navi Mumbai awarded to M/s. Ajwani Karawal (JV).
2. Will the activity fall under chapter heading 9954 (construction service) with serial no. 3(iv)(a) or 3(vi)(a) of the Notification No. 11/2017-Central Tax (Rate)?

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 any 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, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

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

“Ajwani Infrastructure Pvt. Ltd. has entered into Joint Venture with Kargwal Construction Pvt. Ltd. and formed Joint Venture in the name of 'Ajwani-Kargwal Joint Venture' for a water transport project at Navi Mumbai.

1. The CIDCO of Maharashtra Limited has awarded the construction contract of "Development of Infrastructure facility for Passenger Water Transport Terminal at Nerul, Navi Mumbai (C.A.No.01/CIDCO/SE (Vashi)/EE(Vashi-1)/2015-16) vide Work Order No. CIDCO/EE (VASHI 1)/2016/473 dtd 28.11.2016 (the "Project") to 'Ajwani-Kargwal Joint Venture', wherein Ajwani Infrastructure Pvt. Ltd. is the Lead Member of Ajwani-Kargwal Joint Venture.

2. As per Work Order and inputs received from CIDCO of Maharashtra Limited, the purpose of Water Transport Terminal is for serving people to facilitate water transport. This is an infrastructure project & involves no commercial selling of property. The operation & maintenance of this facility shall be done by Maharashtra Maritime Board (MMB) separately which is outside the scope this contract agreement.

Further as per the CIDCO of Maharashtra Ltd, this facility is developed for public utility & providing a mode of water transport, hence cannot be considered as a commercial activity.

3. During discussions with CIDCO officials the following points are highlighted:

a. Govt. of Maharashtra, vide Resolution no. IWT/0215/CR31/Port-I dt. 30th June 2015 appointed MMB as nodal agency for implementation of water transport infrastructure facilities on the coast of Mumbai i.e. at Mumbai (Ferry Wharf), Mandwa (Raigad District) and Nerul (Navi Mumbai). Thus, as per the Govt of Maharashtra initiative, development of water transport terminal facility at Navi Mumbai is entrusted to CIDCO Ltd.

b. Main objective of developing infrastructure is to promote inland water transport service around Mumbai.

c. The Water transport facility involves construction of water transport terminal and operation & maintenance of water transport services. The Construction of water transport terminal is responsibility of CIDCO of Maharashtra Limited. However, the operation and maintenance of this facility is responsibility of Maharashtra Maritime Board (MMB). Thus CIDCO has awarded this construction contract to Ajwani-Kargwal Joint Venture and scope of work is specifically defined for construction only.



Ajwani Infrastructure Pvt Ltd Service Profile:

Established in 1986, Ajwani Infrastructure Pvt. Ltd. is one of the leaders in the infrastructure sector of civil and construction industry in India. We provide high quality and timely infrastructure services, using state-of-the-art machinery and latest technology.

As one of the most trusted and reliable infrastructure development organizations in Maharashtra, we have successfully executed several specialized projects in Pune & Mumbai. We are proud of our completed projects namely Aundh Ravet Road project the prime route connecting Pune & Pimpri-Chinchwad & Palm Beach Road; the queen's necklace drive of Navi Mumbai.

Ajwani Infrastructure undertakes diverse projects of construction for roads, highways and toll ways. We employ state-of-the-art plant and machinery for timely execution of projects adhering to international standards of quality.

Brief description of activity for which advance ruling is sought:

The advance ruling is sought for the applicability of:

1. GST Rate on the work of "Development of Infrastructure facility for Passenger Water Transport Terminal" at Nerul, Navi Mumbai awarded to M/s. Ajwani Karawal (JV).
2. Will the activity fall under chapter heading 9954 (construction service) with serial no. 3(iv)(a) or 3(vi)(a) of the Notification No. 11/2017-Central Tax (Rate)?

Relevant Provision of GST Law:

As per Notification No.24/2017- Central Tax (Rate) dated 21st September, 2017, amending the Notification No. 11/2017- Central (Rate) dated 28th June, 2017, serial number 3, for item (vi) in column (3), the following was substituted:

"Composite Supply of works contract as defined in clause (119) of Section 2 of the Central Goods and Services Tax Act, 2017 provided to the Central Government, State Government, Union Territory, (a local authority, a Governmental Authority or a Government Entity] by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of (a) A civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;"

(GST will be applicable at 12% (CGST 6% + SGST 6%) w. e. f. 21st September, 2017)

- As per Notification No. 31/2017-Central Tax (Rate) dated 13th October, 2017:

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

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

(ii) established by any Government, with 90per cent. or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243

W of the Constitution or to a Panchayat under article 243 G of the Constitution.

"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."

CIDCO of Maharashtra Limited has been covered under the definition of term "Government Entity as per Notification No. 31/2017-Central Tax Rate) dated 13th October 2017, as per the Maharashtra Authority of Advance Ruling No. GST-ARA-51/2018-19/B dated 3rd October 2018 in the case of Leena Power Tech Engineers Pvt. Ltd.

➤ As per Notification No. 11/2017-Central Tax (Rate) dated 28th June, 2017:

"works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, - (a) a road, bridge, tunnel, or terminal for road transportation for use by general public,....."

(GST will be applicable at 12% (CGST 6% + SGST 6%) w. e. f. 01st July, 2017)

Analysis:

After perusing above provisions & on the basis of inputs, records & discussion with CIDCO officials, we are of the view that:

1. CIDCO is a non-commercial entity and thus the original works constructed by the Applicant is meant predominantly for use other than commerce, Industry, Business or profession so as to qualify for 12% GST rate as per Notification No. 24/2017 - Central Tax (Rate) dated 21st September, 2017 read with Notification No. 31/2017 - Central Tax (Rate) dated 13th October, 2017.

2. The term original works has not been defined in GST Act, that as per the definition under the erstwhile Finance Act, 1994, i) All new constructions, ii) All types of additions and alterations to abandoned or damaged structures on land that are required to make them workable; iii) Erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise.

As per para 1.3.1 of CPWD Manual, 2014, "original works" means (i) all new constructions, (ii) all types of additions, alterations &/ or special repairs to newly acquired assets, abandoned or **damaged assets that are required** to make them workable, (iii) major replacements or remodelling of a portion of an existing structure or installation or other works, which results in a genuine increase in the life and value of the property.

Taking into consideration the nature of works contracts allotted to the applicant, it is found that the works to be undertaken by them can be considered as "original work".

3. Development of infrastructure facility of water transport terminal for passenger water transport service at Nerul, Navi Mumbai is predominantly to facilitate inland water transport for general public & the same is a civil structure and a infrastructural project. Water transport terminal is meant for public purpose/ public utility which is going to be useful to the members of public at large.
4. Development of Infrastructure facility for Passenger Water Transport Terminal" at Nerul, Navi Mumbai will fall under works contract service to government entity and **the said work will attract GST @ 12% CGST 6% + SGST 6%) w.e.f. 21st September, 2017.**
5. Further, as per Advance Ruling NO. GST-ARA-51/2018-19/B-124, Dated 3rd October, 2018, MAHARASHTRA AUTHORITY FOR ADVANCE RULING in case of "LEENA POWER TECH ENGINEERS PVT LTD", it was observed and held that, "CIDCO is a government entity and thus the original works constructed by the Applicant is meant predominantly for use other than commerce, Industry, Business or profession so as to qualify for 12% GST rate as per Notification No. 24/2017 - Central Tax Rate) dated 21st September, 2017 read with Notification No. 31 2017 - Central Tax (Rate) dated 13th October, 2017." The full ruling is attached herewith with the application for reference.

03.

CONTENTION – AS PER THE CONCERNED OFFICER

No written submissions have been made by the jurisdictional office.

04.

HEARING

Preliminary hearing in the matter was held on 16.04.2019. Ms. Monu Verma, C.A. Sh. Pranav Mehta, C.A. and Sh. Prakash Mehta, Advocate appeared & requested for admission of their application. At outset, it was brought to their notice that contract is not awarded to applicant but to JV wherein applicant is one of the member. They are asked to submit written contention w.r.t maintainability within 8 days. Jurisdictional Officer was not present.

Application was admitted & called for final hearing on 02.08.2019. Ms. Monu Verma, C.A. Sh. Pranav Mehta, C.A., Sh. Romil Bhat and Sh. Raj Kapoor appeared & made oral and written submissions. Jurisdictional Officer Sh. Manchare, C.M. , Dy. Commr. of S.T.(E-603) LTU, Pune appeared.

06. OBSERVATIONS

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

We find, from the submissions made by the applicant, that CIDCO has awarded construction contract of "Development of Infrastructure facility for Passenger Water Transport Terminal at Nerul, Navi Mumbai 'Ajwani-Kargwal Joint Venture'.

We also find that 'Ajwani-Kargwal Joint Venture' has been formed between Ajwani Infrastructure Pvt. Ltd. (the applicant in this case) and Kargwal Construction Pvt. Ltd. Even though the said Joint Venture has been formed to construct the above mentioned facility/project in Navi Mumbai, the subject application has been preferred by one of the parties to the Joint Venture namely, Ajwani Infrastructure Pvt. Ltd.

This authority is governed by the provisions of Chapter XVII of CGST ACT and the relevant Sections 95 to 98, 102, 103, 104 and 105. As per section 95, the term 'advance ruling' means a decision provided by this authority to the applicant on matters or questions specified in subsection 2 of Section 97, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. Thus it is seen that only an applicant who satisfies the condition mentioned in Section 95 can apply for Advance Ruling. For the sake of better understanding Section 95 is reproduced as below:

Section 95:

In this Chapter, unless the context otherwise requires,—

(a) *"advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;*

(b) *"Appellate Authority" means the Appellate Authority for Advance Ruling referred to in section 99;*

(c) *"applicant" means any person registered or desirous of obtaining registration under this Act;*

(d) *"application" means an application made to the Authority under sub-section (1) of section 97;*

(e) *"Authority" means the Authority for Advance Ruling referred to in section 96.*

From the submissions made by the applicant we find that it is the Joint Venture Company and not the applicant which has been awarded the contract and therefore **supply of goods or services or both being undertaken or proposed to be undertaken will be by the Joint Venture Company, and not the applicant.** Thus the person who can make such application is the Joint Venture Company since as per existing laws of the land, a Joint Venture Company, which is formed by 2 or more entities have a separate existence than that of the said entities.

We also find that CIDCO has awarded the construction contract of the project of "Development of Infrastructure facility for Passenger Water Transport Terminal at Nerul, Navi

Mumbai to 'Ajwani-Kargwal Joint Venture', and not to the applicant. Thus the applicant is not a person competent to apply for ruling as provided under Section 95 of the GST Act.

05. 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- 138/2018-19/B- 89 Mumbai, dt. 20/08/2019

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

The Application in GST ARA form No. 01 of Ajwani Infrastructure Pvt. Ltd, vide reference ARA No. 138 dated 23.03.201 is rejected as being not maintainable.



— sd —
B. TIMOTHY
(MEMBER)

— sd —
B. V. BORHADE
(MEMBER)

CERTIFIED TRUE COPY

Copy to:-

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


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.