
 <p>सत्यमेव जयते</p>	RAJASTHAN AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX NCR BUILDING, STATUE CIRCLE, C-SCHEME JAIPUR – 302005 (RAJASTHAN)	
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ADVANCE RULING NO.RAJ/AAR/2018-19/17

Nitin Wapa Joint Commissioner	Member(Central Tax)
Sudhir Sharma Joint Commissioner	Member(State Tax)
Name and address of the applicant	M/s Nagaur Mukangarh Highways Pvt. Ltd., 80A, Shahi Complex, Hiran Magri, Sector 11, Udaipur, Rajasthan 313002
GSTIN of the applicant	08AAFCN4743H1ZC
Clause(s) of Section 97(2) of CGST / SGST Act, 2017, under which the question(s) raised	(d) admissibility of input tax credit of tax paid or deemed to have been paid;
Date of Personal Hearing	10.08.2018
Present for the applicant	Ms Khushboo Kundalia and Mr. Madhav Kalani Authorized Representative
Date of Ruling	15.09.2018

Note: Under Section 100 of the CGST/SGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/SGST Act 2017, within a period of 30 days from the date of service of this order.

The Issue raised by M/s Nagaur Mukangarh Highways Pvt. Ltd. (hereinafter referred as the applicant also) is fit to pronounce advance ruling as it falls under ambit of the Section 97(2) (a), it is given as under:

(d) Admissibility of input tax credit of tax paid or deemed to have been paid:

Further, the applicant being a registered person, GSTIN is 08AAFCN4743H1ZC, as per the declaration given by him in Form ARA-01, the issue raised by the applicant is neither pending for proceedings nor proceedings were passed by any authority. Based on the above observations, the application is **admitted** to pronounce advance ruling.

I. **SUBMISSION OF THE APPLICANT:**

(a) The Applicant also having Goods and Service Tax (GST) Registration Number 08AAFCN4743H1ZC has been engaged as a 'Concessionaire' wherein the Public Works Department (PWD), Government of Rajasthan has granted concession to construct, operate and maintain the project during the Construction Period which shall commence from the appointed date and will end on Commercial Operation Date (COD) and operate and maintain it for further period of 10 years from the COD.

(b) The applicant is a company incorporated as a Special Purpose Vehicle (SPV) and registered under the provisions of Companies Act, 2013 for the purpose of undertaking two-lining/intermediate laning of the sections of State highway (hereinafter referred to as Project) on design, build, operate /maintain and transfer (hereinafter referred to as 'DBOT') basis under a contract (hereinafter referred to as 'Project') with Public Works Department (PWD), Government of Rajasthan (hereinafter referred to as 'Authority').

2. **Scope of the Contract:**

Under the Contract, the applicant has been engaged as a "Concessionaire" wherein the Authority has granted concession to Construct, Operate and Maintain the Project during:-

a. The construction period shall commence from the appointed date and will end on the COD.



- b. A period of 10 years from the (hereinafter referred to as 'DBOT').
- c. The applicant shall receive 50% of the project cost (i.e. cost of construction) which shall be paid to the applicant in five equal installments during the construction period on the basis of achievement of milestones i.e. achieving specified percentage of physical progress.
- d. The applicant shall receive the balance 50% of the project cost in bi-annual installments over the O & M period along with the interest (hereinafter referred to as 'Annuity Payments'). The first installment shall be due and payable from the 180th day of COD.
- e. The applicant shall also receive bi-annual payments towards O & M expenses calculated at a specified percentage of the project cost during the O & M period (hereinafter referred to as 'O & M Payments')

3. **The applicant's contention is that:-**

3.1 The applicant is of the view that it is eligible to avail full input tax credit (hereinafter referred as 'ITC') of taxes paid on procurement of goods and services during the Construction period.

3.2 The applicant is of the view that it is eligible to claim ITC of taxes paid on procurement of goods and services during the O & M period, after reversal of input tax credit as per Section 17(2) of the CGST Act read with Rule 42 of the CGST rules.

4. **Personal Hearing (PH)**

In the matter, personal hearing was given to the applicant, Ms Khushboo Kundalia and Mr. Madhav Kalani appeared as representative of the applicant for personal hearing on 10.08.2018 and submitted documents and notifications related to projects. They reiterated the submissions already made in the Advance Ruling Application and requested that the case may be decided at earliest.

5. **Issues to be decided :**

The applicant has sought advance ruling as to whether they are eligible to:

- (a) Claim full ITC pertaining to procurement of goods and services for construction of the project during the Construction Period, as the entire revenue received during the said period is subject to GST; and
- (b) Claim ITCs pertaining to procurement of goods and services during the O & M period after reversal of ITC as per Section 17(2) of the Central Goods and Services Tax Act, 2017 read with Rule 42 of the Central Goods and Services Tax Rule, 2017 as Annuity Payment received during the said period is exempt whereas O & M payments received are subject to GST.



6. **Comments of Jurisdictional Officer:-**

The Jurisdictional Deputy Commissioner of Works & Leasing Tax , Udaipur vide his letter 6.09.2018 submitted that the services provided by the applicant is classifiable under SAC 9954 i.e. composite supply provided to Central Government or any other local body for construction of civil structure. The Services by way of access to a road or a bridge on payment of annuity (SAC 9967) has been exempted under Notification 12/2017-CT(Rate) dated 28.06.2017 by inserting entry No.23A vide notification No. 32/2017-CT(Rate) dated 13.10.2017. The Jurisdiction Officer is of the view that:

- (i) The construction of Roads and Bridges classifiable under SAC 9954 are liable to tax hence they are eligible to avail input tax credit on all goods and services used in the said construction.
- (ii) The applicant's contention that they are is not liable to pay tax for payment of annuity to access a road or a bridge (SAC 9967) vide entry No. 23A of Notification No. 12/2017- CT(Rate) dated 28.06.2017 as amended vide Notification No. 32/2017-CT(Rate) dated 13.10.2017
- (iii) The contention of the applicant is tenable because the services provided by the applicant are taxable under SAC 9954 and annuity received by them after completion of work.
- (iv) The Entry No. 23A inserted vide Notification No. 32/2017 ibid in Notification No. 12/2017-CT(Rate) dated 28.06.2017 is not applicable to the applicant.
- (v) Entry No. 23 and 23A of Notification No. 12/2017 ibid exempts to Toll Fee which was being paid on the spot to access road or bridges or paid as annuity.
- (vi) The annuity received by the applicant is liable to tax and cannot be included in entry No. 23A.

7. Findings:

- 7.1 We have gone through the content of advance ruling application made by the applicant, submission made at the time of personal hearing, and comments of officer concerned and find that the applicant **M/s Nagaur Mukangarh Highways Pvt. Ltd** is providing 'work contract service' as defined under section 2(119) of the CGST Act, 2017 to Public Work Department of Rajasthan for construction of Road. As per concession agreement dated 3.03.2017 between the Government of Rajasthan through PWD and the applicant, under which total length 397 KM road in the state of Rajasthan is to be augmented on design, build, operate and transfer (DBOT) basis which shall be financed by the Applicant who shall recover its investment and cost through Annuity Payments and O&M payment to be made as per terms and condition set forth.
- 7.2 The applicant have sought the advance ruling as to (a) whether they are entitled to claim full Input Tax Credit on goods and services used for construction of the project during the construction period and (b) whether they are entitle to Claim ITCs pertaining to procurement of goods and services during the O & M period after reversal of ITC as per Section 17(2) of the Central Goods and Services Tax Act, 2017 read with Rule 42 of the Central Goods and Services Tax Rule, 2017 as Annuity Payment received during the said period is exempt whereas O & M payments received are subject to GST.
- 7.3 Before deciding the issue, it would be appropriate to appreciate the legal provision in this regard. It is a fact that the applicant is providing the services of construction of roads and bridges on design, build, operate and transfer (DBOT) basis which is a composite supply as defined under clause 30 of section 2 of the CGST Act, 2017 which reads as under :
- "composite (30) 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;*

7.4 Further, these supplies are in relation to construction of immovable property like roads and bridges and it can be termed as 'Work Contract' in terms of Section 2(119) of CGST Act, 2017 which is as under:

"(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;"

7.5 The applicant has been awarded work contract vide agreement dated 3.3.2017 on Private Public Partnership (PPP) basis in which the applicant have to invest 50% of cost of the project. The project is to be completed within 2 years. The applicant shall receive 50% of the project cost (i.e. cost of construction) during the construction period on the basis of achievement of milestones i.e. achieving specified percentage of physical progress. Thus, public share of 50% will be paid to the applicant during completion of the project. The applicant's share of 50% will be paid in 5 equal biannual installments along with interest starting from 180 days of COD. Thus the applicant is liable to pay applicable GST on the full value of the project during the construction period of 2 years.

7.6 Section 13 of CGST Act, 2017 specifies time and value of supply of services which is as under:-

13. Time of supply of services —

(1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of services shall be the earliest of the following dates, namely :—

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply :

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

Explanation. — For the purposes of clauses (a) and (b) —

(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;

(ii) "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

In view of the above the applicant is liable to pay tax at the time of issue of invoices or receipt of the payment whichever is earlier

7.7 The applicant is also awarded the work of Operation & Maintenance of the said project for the period of 10 years. During this period, the applicant will also receive 50% of the project cost, as annuity, alongwith interest. The applicant contended that the said annuity is exempted under entry No. 23A of the Notification No. 12/2017-CT(Rate) dated 28.06.2017. The contention of the applicant is not tenable as entry No. 23A ibid pertains to SAC 9967 which is for support services of transport services whereas the services provided by the applicant is classifiable under SAC 9954 which is liable to tax at the applicable rate of GST. In the given circumstances the applicant has to pay GST on full value of cost of project during the period of construction. The annuity received by the applicant is already GST paid during the construction period for which they are also paid interest by the Government.

7.8 Now we come to the main question of the applicant as to whether they are entitled to claim Input Tax Credit in the above facts and circumstances. The eligibility & condition has been specified under form Section 16 to 21 in Chapter V of CGST Act, 2017. As per Section 16(1) of the CGST Act, 2017 "Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section

49. be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person"

7.9 Section 17 of the CGST Act, 2017 is related to apportionment of credit and blocked credit. Section 17 reads as under:

17. Apportionment of credit and blocked credits:

(1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

(4) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to fifty per cent. of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse.

Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year.

Provided further that the restriction of fifty per cent shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.

(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

(a) motor vehicles and other conveyances except when they are used—

- (i) for making the following taxable supplies, namely:—
- (A) further supply of such vehicles or conveyances; or
 - (B) transportation of passengers; or
 - (C) imparting training on driving, flying, navigating such vehicles or conveyances;
- (ii) for transportation of goods;
- (b) the following supply of goods or services or both—
- (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;
 - (ii) membership of a club, health and fitness centre;
 - (iii) rent-a-cab, life insurance and health insurance except where—
 - (A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or
 - (B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and
 - (iv) travel benefits extended to employees on vacation such as leave or home travel concession;
- (c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;
- (d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.
- Explanation.—For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;**
- (e) goods or services or both on which tax has been paid under section 10;
 - (f) goods or services or both received by a non-resident taxable person except on goods imported by him;
 - (g) goods or services or both used for personal consumption;
 - (h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and
 - (i) any tax paid in accordance with the provisions of sections 74, 129

and 130.

(6) *The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.*

Explanation.—For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

(i) land, building or any other civil structures;

(ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises.

7.10 The applicant is providing 'work contract service' for construction of road and the issue is to be clarified whether they are restricted to claim Input Tax Credit in terms of clause (c) or (d) of sub-section 5 of section 17 *ibid*. In the given circumstances we find that the above restriction is not applicable the applicant is a supplier of **works contract services for construction of an immovable property** and goods and services received by them for construction of immovable property are not owned and capitalised by them, hence restriction contained under clause (c) & (d) *ibid* is not applicable for the applicant.

7.11 In the given facts and circumstances, we agree with the contention of the applicant for the first question that they are entitled to claim full ITC during the construction period. The applicant is paying applicable GST on full value of the project and they are not supplying any exempted goods and services during the construction period of 2 years, therefore they are entitled to claim full ITC paid on all eligible goods and services.

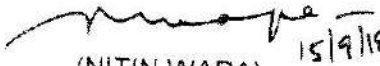
7.12 We do not agree with the contention of the applicant in respect of second question that they are entitled to claim ITC on procurement of goods and services after reversing the ITC under Section 17(2) of the CGST Act 2017 read with Rule 42 of the Central Goods and Services Tax Rule, 2017 as Annuity Payment received during the O & M period is exempted and payment received for O&M is subject to GST. As discussed herein above the annuity received by them for the construction of road and bridges is classifiable under SAC 9954 and liable to tax at the applicable rate of GST. The applicant has not specified whether they are supplying any other exempted goods and services during the operation and maintenance period. If they are not supplying any exempted goods and services during the O & M period, the provision of section 17(2) of the CGST Act, 2017 are not applicable upon the applicant. The annuity received by the applicant is

a payment of the remaining 50% of cost of the project in biannual equal instalments on which the applicant would be paying GST during the construction period. As the annuity so received by the applicant is taxable, there is no need to take apportioned credit under section 17(2) of the CGST Act, 2017

8. In view of the foregoing findings, we pronounce advance ruling as under:-

RULING

1. The applicant is rendering taxable services during the construction of roads which is liable to tax; hence they are entitled to claim full ITC under the provisions of section 16(1) of the CGST Act, 2017.
2. The Applicant is entitled to claim ITC on supplies of goods and services or both procured for use in outward supply of O & M service purpose, as they are paying GST on 100 percent of the amount received on account of O & M of the Project.


(NITIN WAPA)
Member
Central Tax


(SUDHIR SHARMA)
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SPEED-POST

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F.No. IV(4)16/AAR/RAJ/2018-19/80-84

Dated. 11-10-2018

Copy to:-

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2. The Commissioner of SGST & Commercial Taxes Rajasthan & Member, Appellate Authority for Advance Ruling, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme, Jaipur-302005.
3. Asstt. Commissioner, Work Contract & Leasing Tax, Udaipur, Commercial Taxes Dept, Divisional Kar- Bhawan, Udaipur.
4. Dy/Asstt. Commissioner, CGST Division -A, (Range-1), 142-B, Hiran Magri, Sector-11, Udaipur 313001

Superintendent

