



**RAJASTHAN AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX**

**KAR BHAWAN, AMBEDKAR CIRCLE, NEAR
RAJASTHAN HIGH COURT
JAIPUR – 302005 (RAJASTHAN)**



ADVANCE RULING NO. RAJ/AAR/2019-20/20

J.P.Meena Additional Commissioner	:	Member (Central Tax)
Hemant Jain Joint Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/s Ashok Kumar Choudhary, 21/175, MLA Quarters, Kaveri Path, Mansarovar, Jaipur Rajasthan 302020
GSTIN of the applicant	:	08ADDPC0346F1Z5
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	a. Classification of goods and / or Services or both; e. Determination of the liability to pay tax on any goods or services or both ;
Date of Personal Hearing	:	08.08.2019 & 23.08.2019
Present for the applicant	:	Shri Mudit Jain, C.A. (Authorised Representative)
Date of Ruling	:	03.09.2019

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.



- *At the outset, we would like to make it clear that the provisions of both the CGST Act and the RGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the RGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / RGST Act would be mentioned as being under the "GST Act".*
- The issue raised by *M/s Ashok Kumar Choudhary, 21/175, MLA Quarters, Kaveri Path, Mansarovar, Jaipur Rajasthan 302020* (hereinafter the applicant) is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2) (a) & (e) given as under:
 - a. Classification of goods and / or Services or both;
 - e. determination of the liability to pay tax on any goods or services or both;
- Further, the applicant being a registered person (GSTIN is 08ADDPC0346F1Z5 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 applicant is admitted to pronounce advance ruling.

1. SUBMISSION AND INTERPRETATION OF THE APPLICANT:

- The applicant is a proprietorship concern engaged in providing works contract services. That the applicant was registered under the erstwhile tax regime and was discharging service tax on works contract services only and has undertaken work for government and private entities. That the applicant is registered under the GST Regime as per the provisions of the GST laws.



- That currently the applicant has been awarded a sub-contract for earthwork in relation to construction of access controlled Nagpur-Mumbai Super Communication Expressway (Maharashtra Samruddhi Mahamarg).
- That in relation to such contract Nagpur Mumbai Super Communication Expressway which is a special purpose vehicle (SPV) formed by MSRDC for the purpose of construction of Mumbai Super Communication Expressway i.e. an express road in the state of Maharashtra. Further Sadbhav Engineering Limited (SEL) was awarded the contract for such construction as principal contractor.
- That SEL awarded the sub-contract for the work of Earth Works including Roadway-Clearing and Grubbing, Excavation in Soil, Hard Rock, Embankment and Subgrade etc within chainage Km 234+000 to Km 239+000 to M/s Potaliya Enterprises.
- That further, M/s Potaliya Enterprises sub-let the above work to the applicant on same terms and conditions as given in the LOI of Sadbhav Engineering Limited to M/s Potaliya Enterprises.
- Thus the applicant is carrying out the work of Earthworks in highway from Km 234+000 to km 239+000 in total compliance of requirement of Nagpur Mumbai Super Communication Expressway, terms and conditions as well work specification contained in the Contract Agreement between Nagpur Mumbai Super Communication Expressway and M/s SEL (principal contractor).



- In view of the above activities, a question is arising as to whether the said transaction shall be treated as supply of service as composite supply of works contract as defined under clause 2(119) of the CGST Act 2017 supplied by way of supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a road under entry number 3(iv) of the Notification No 11/2017-CT (Rate) dated 28.06.2017 and is taxable at the rate of 12%

2. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT:

What shall be rate of GST on activity of sub-contract for earthwork in relation to construction of access controlled Nagpur-Mumbai Super Communication Expressway (Maharashtra Samruddhi Mahamarg)?

3. PERSONAL HEARING(PH)

In the matter personal hearing was granted to the applicant on 08.08.2019 at Room no. 2.29 NCRB, Statue Circle, Jaipur. No one appeared on the PH. Another PH on 23.08.2019 was granted to the applicant on request vide e-mail dated 14.08.2019. On behalf of the applicant Shri Mudit Jain, C.A. (Authorized Representative) appeared for PH. He reiterated the submissions already made in the original application and requested for early disposal of the application.

4. COMMENTS OF THE JURISDICTIONAL OFFICER

The jurisdiction officer (Assistant Commissioner, State Tax, Works Contract & Leasing Tax, Zone-III, Jaipur) has submitted his comments vide letter dated 22.07.2019 and stated that,



One of the major works involved is the road construction. It involves the removal of topsoil, along with any vegetation, before scraping and grading the area to the finished “formation level”. The soil is known as the “subgrade”. Most earthworks are formed by cut and fill and the type of fill material must be considered, not only in terms of its physical properties, but on the conditions in which it is to be, and the methods of compaction. In this case it is the composite supply of services.

5. FINDINGS, ANALYSIS & CONCLUSION:

- The applicant has been awarded a sub-contract for the work of Earth Works by M/s Potaliya Enterprises as determined from Letter Ref. PE/2018-19/91 dated 29.11.2018 from M/s Potaliya Enterprises to the applicant (hereinafter the agreement).
- The scope of work as defined under the agreement includes “*Excavation in soil, hard rock excavation, embankment, sub-grade, shoulder, median fill etc.*”

Earthwork involves the removal of topsoil, along with any vegetation, before scraping and grading the area to the finished ‘formation level’. This is usually done using a tractor shovel, grader or bulldozer. Below the formation level, the soil is known as the ‘subgrade’. Most earthworks are formed by cut-and-fill, and the type of ‘fill’ material must be considered, not only in terms of its physical properties, but on the conditions in which it is to be used, and the methods of compaction.

Thus the activity to be carried out by the applicant is restricted to Earth Work only as discussed above.

Further some of the clauses in the agreement highlight independent nature of work to be carried out by the applicant viz.

8. *The sub contractor shall deploy all resources required for the works including machinery and manpower and SEL & PE shall have no liability in this regard. A B Enterprises shall be responsible and liable for its deployed resources including all requisite insurance for the same and shall keep SEL indemnified in this regard, including third party claims.*

9. *The sub contractor shall be responsible for all type of maintenance and operation of the deployed machineries.*

10. *A B Enterprises shall be responsible and liable to adhere to all prevalent laws and regulations applicable and imposed by the central government and state government, Municipal Corporation and any other authority as shall be related to the works.*

Thus, in view of the above clauses of the agreement and nature of work, we are of the opinion that the supply made by the applicant is a supply of construction service for Earth Work and related work and is of independent nature, and cannot be categorised as construction of road as classified under Entry number 3(iv) of the Notification No 11/2017-CT (Rate) dated 28.6.2017 (as amended).

- Whether, the activity carried out by the applicant falls under purview of Mixed Supply, Composite Supply or Work Contract services can be ascertained/examined below:-
 - According to Section 8 of GST Act, 2017, the tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(b)

➤ Further, as per Section 2(30) composite supply is defined as

(30) “composite 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;

➤ Further principal supply is defined under Section 2(90) as

(90) “principal supply” means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;

➤ The term works contract has been defined under Section 2(119) as

(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;





We find that the activity carried out by the applicant does not involve supply of goods whatsoever in any manner and it's supply of services for Earth Work and other related works. Thus the said activity does not fall under either Composite Supply or Mixed Supply.

Further, as there is no involvement of transfer of property in goods in the above said activity; it cannot be classified under Works Contract Services also.


- The activity carried out by the applicant is a supply of Site Preparation Service wherein he will do Excavation in soil, hard rock excavation, embankment, sub-grading, shoulder formation, median fill etc. All these works do not involve any supply of goods and will be carried out via soil modification, alteration only, thus it is a pure service without involvement of goods.

The given activity is thus a Construction Service of Site Preparation falling under heading "*Site formation and clearance services including preparation services to make sites ready for subsequent construction work, test drilling and boring and core extraction, digging of trenches*".

The above said construction service is classifiable under SAC 995432 of Annexure to Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 (as amended) and attracts GST @ 18% (SGST 9% + CGST 9%).

The relevant portion of above said Notification No. and its Annexure is reproduced below:-

Annexure: Scheme of Classification of Services



Sl No.	Chapter, Section Heading or Group	Service Code (Tariff)	Service Description
3	Heading 9954		Construction services
22	Group 99543		Site preparation services
23		995431	Demolition services
24		995432	Site formation and clearance services including preparation services to make sites ready for subsequent construction work, test drilling and boring and core extraction, digging of trenches
25		995433	Excavating and earthmoving services
26		995434	Water well drilling services and septic system installation services
27		995435	Other site preparation services nowhere else classified
28		995439	Services involving repair, alterations, additions, replacements, maintenance of the constructions covered above


Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017

Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
3	Heading 9954 (Construction services)	[(xii) Construction services other than (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x) and (xi) above.	9	-


6. In view of the foregoing, we rule as follows:-

RULING

The rate of GST on the work of earthwork will be 18% (CGST 9% + SGST 9%).


J.P.MEENA
Member
(Central Tax)

o/c


HEMANT JAIN
Member
(State Tax)



SPEED POST

M/s Ashok Kumar Choudhary,
21/175, MLA Quarters,
Kaveri Path, Mansarovar,
Jaipur Rajasthan 302020

F. No. AAR/AshokKChoudhary/2019-20/145-48 Dated: 05.09.2019

Copy to:-

1. Commissioner, State Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005.
2. Commissioner, Central Tax, Jaipur Commissionerate, NCRB, Statue Circle, Jaipur, Rajasthan 302005.
3. Assistant Commissioner, State Tax, Kar Bhawan, Works Contract & Leasing Tax, Zone-III, Jhalana Institutional Area, Jhalana Doongri, Jaipur, Rajasthan 302004.