
 सत्यमेव जयते	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/2018-19/42



J.P.Meena Additional Commissioner	:	Member (Central Tax)
Hemant Jain Joint Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/s TATA Projects Limited, 88, Competition Colony, Mahaveer Nagar IIIrd, Kota District-Kota, Rajasthan 324009
GSTIN of the applicant	:	08AAACT4119L1Z8
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	e. determination of the liability to pay tax on any goods or services or both;
Date of Personal Hearing	:	14.03.2019
Present for the applicant	:	Shri Rajesh Tripathi and Shri Rama Mohana Rao K (Authorised Representatives)
Date of Ruling	:	29.03.2019

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.

The issue raised by M/s TATA Projects Limited, , situated at 88, Competition Colony, Mahaveer Nagar IIIrd, Kota, District-Kota, Rajasthan 324009, (hereinafter the applicant) is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2) (e) given as under :

e. determination of the liability to pay tax on any goods or services or both;

Further, the applicant being a registered person (GSTIN is 08AAALM1891K1DY, 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:**

- a. Nuclear Fuel Complex had awarded contract to the applicant vide contract number T.N.No. C-NFC/1113/2015 dated 10/05/2017. The contract is *“Contract for Civil, Structural and PH works for plant and Non Plant Buildings (both RCC and Pre-Engineered Buildings) along with other allied structures for Prrr & ZFF Facilities at Nuclear Fuel Complex.”*
- b. The client for the above contract is Deputy Chief Engineer (CED, PD & EP), Nuclear Fuel Complex, Department of Atomic Energy, Government of India, Post- ECU, Hyderabad.
- c. The project is about Civil, Structural and PH works for plant and Non Plant Buildings (both RCC and Pre-Engineered Buildings) along with other allied structures for PFFF & ZFF Facilities at Nuclear Fuel Complex - Kota, Rawatbhatta, Rajasthan.



d. Scope of work under the contract is as below:-

S.No.	SOR Description	Work Description
1	ARCHITECTURAL WORKS	Plumbing, Flooring, Plastering, Painting, Doors & Windows, Roof Treatment, Rain Water Pipes, PEB Sheeting, Railing, Cladding, etc.
2	STRUCTURAL WORKS	Earth Work, Concrete works, Reinforcement Steel, Shuttering, Aggregate from Crusher, PEB, Brick Work, Random Rubble Masonry, Dismantling of Brick, RCC & Anti Termite Treatment, Blasting studies, etc.
3	GENERAL CIVIL	Earth work, Concreting, Fencing, Road Work, Paving, Plastering, Sewer Line, Manholes, Extinguisher, Plumbing, etc.
4	ELECTRICAL WORKS	PVC conduits
5	ITS	PVC conduits, Earthing, etc.

e. NFC will reimburse the taxes and duties as applicable on the contract value.

f. Applicant's interpretation:-

As per the Sl.no.3(vi)(a) of notification no. 11/2017 - Central Tax (Rate) dt.28th June 2017 amended with notification no.24/2017-Central Tax (Rate) dt 21.09.2017 and further amended with notification no. 31/2017-Central Tax (Rate) dt 13.10.2017, tax rate of 12% applicable in case of 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) Civil structure or any other original works meant predominantly for use other than for commerce, Industry or any other business or profession;

(b)

(c) ..

Accordingly, to fall under above said Sl. 3(vi) (a) of notification, Services provided under the Contract should meet the following conditions.

1. Nuclear Fuel Complex (herein after referred as NFC) shall qualify as Central Government or State Government or Union Territory or a Local Authority or a Governmental Authority or a Government Entity.
2. Supply involved in the Contract shall qualify as Composite supply of works Contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017.
3. Supply involved in the Contract shall fall under ambit of Civil Structure or any other Original Works.
4. Supply involved in the Contract is predominantly meant for use other than for commerce, Industry or any other business or profession.

In view of the above, we have analyzed each of the aforementioned conditions individually.

1. Whether NFC qualifies as Central Government, State Government, Union Territory, a Local Authority, A Governmental Authority or a Government Entity?

NFC is a central government company and is managed by Department of Atomic Energy. Department of Atomic

Energy is under the authority of Prime Minister's Office and Atomic Energy Commission.

2. Whether Supply involved in the Contract shall qualify as Composite supply of works Contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017?



As per Section 2 (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.

Works contract, being composite supply (involving both supply of goods and services) relating to immovable property would constitute a service and accordingly liable to tax as per the provisions of the Act.

Immovable property is not defined in GST Act. Section 3(26) of The General Clauses Act, 1987, defines, "Immovable Property" shall include land, benefits to arise out of the land, and things attached to earth, or predominantly fastened to anything attached to the earth.

Also, as per Section 2(6) of The Registration Act, 1908, immovable property includes land, buildings, hereditary allowances, rights to way, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to earth, but not standing timber, growing crops or grass.



In general terms, Immovable property cannot be transferred without causing extensive damage to the property. The damage relates to the nature of the property. In the present case, we are going to perform civil, structural and PH works for plant and Non plant buildings (both RCC and Pre engineered buildings) along with other allied structures for PHWR (Pressurized Heavy Water Reactors) Fuel Fabrication Facility and Zircolay Fabrication Facility at Nuclear Fuel complex - Kota.

All the civil works will give rise to immovable property, hence covered under the definition of Works Contract.

3. Whether Supply involved in the Contract fall under ambit of Civil Structure or any other Original Works?

As per Explanation to Section 2 (zs) of Notification 12/2017 - "*original works*" means- *all new constructions*;

2. **QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT**


- What is the GST rate applicable for this project?

3. **PERSONAL HEARING**

In the matter personal hearing was granted to the applicant on 14.03.2019 at Room no. 2.29 NCRB, Statue Circle, Jaipur. Shri Rajesh Tripathi and Shri Rama Mohana Rao K (Authorised Representatives) of applicant appeared for PH. During the PH, he reiterated the submissions already made in the application. He further requested that the case may be decided at the earliest.

4. **COMMENTS OF THE JURISDICTIONAL OFFICER**

The jurisdiction officer (Assistant Commissioner, SGST Works Contract and Leasing Tax, Kota) has submitted his comments which can be summarized as under:-

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- a. Nuclear Fuel Complex (NPCIL) is a government entity as it is undertaking of Government of India and managed by Department of Atomic Energy. So it is counted either as government or autonomous body.
 - b. In this contract, the applicant is a contractor of NPCIL. Both goods and services are involved in erection of plant and machinery therefore, it is works contract.
 - c. Electricity is main production when plan gets operationalised. NPCIL will make charge on supply of electricity as a commercial activity so rate of GST will be 18%.

5. FINDINGS, ANALYSIS & CONCLUSION:

- a. Nuclear Fuel Complex (hereinafter NFC) had awarded contract to the applicant vide contract number T.N.No. C-NFC/1113/2015 dated 10/05/2017.
- b. NFC is an industrial arm established under Department of Atomic Energy, Government of India; therefore supply under the contract is given to a Central Government by the applicant.
- c. The contract is for *“Contract for Civil, Structural and PH works for plant and Non Plant Buildings (both RCC and Pre-Engineered Buildings) along with other allied structures for Prrr & ZFF Facilities at Nuclear Fuel Complex.”*
- d. The supply is a mix of goods and services as mentioned by the applicant in submissions:-



S.No.	SOR Description	Work Description
1	ARCHITECTURAL WORKS	Plumbing, Flooring, Plastering, Painting, Doors & Windows, Roof Treatment, Rain Water Pipes, PEB Sheeting, Railing, Cladding, etc.
2	STRUCTURAL WORKS	Earth Work, Concrete works, Reinforcement Steel, Shuttering, Aggregate from Crusher, PEB, Brick Work, Random Rubble Masonry, Dismantling of Brick, RCC & Anti Termite Treatment, Blasting studies, etc.
3	GENERAL CIVIL	Earth work, Concreting, Fencing, Road Work, Paving, Plastering, Sewer Line, Manholes, Extinguisher, Plumbing, etc.
4	ELECTRICAL WORKS	PVC conduits
5	ITS	PVC conduits, Earthing, etc.

The supply of goods and services is a kind of Works Contract Service.

- e. The Works Contracts has been defined in Section 2(119) of the CGST Act, 2017 as *“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.”*

In view of the above facts we observe that the term works contract has been restricted to contract for building construction, fabrication etc of any immovable property only.

- f. As per Para 6 (a) of Schedule II to the CGST Act, 2017, works contracts as defined in section 2(119) of the CGST Act, 2017 shall be treated as a supply of services. Thus, there is a clear

demarcation of a works contract as a supply of service under GST.

- g. The rate of GST for Works Contract service supply to a Central Government has been prescribed in serial number 3 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 as amended from time to time. The relevant provision at Serial No. 3(vi) (a) of Notification No. 11/2017-CT (Rate) dated 28.06.2017 is reproduced below:-



Heading 9954 (Construction services)		CGST Rate %	SGST Rate %	IGST Rate %	Remarks
	[[vi) [Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, provided] 12 to the Central Government, State Government, Union Territory, [a local authority, a Governmental Authority or a Government Entity]13 by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance,	6	6	12	{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 it by the Central Government, State Government,



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;				Union territory or local authority, as the case may be}
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From the above mentioned facts of law, it is clear that the activity is a work contract supply undertaken for Central Government. The limitation under this notification is that activity/supply is meant predominantly for use other than commerce, industry or any other business or profession.

- Further, the definition of business under Section 2(17) of CGST Act includes—
 - (a) *any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;*
 - (b) *any activity or transaction in connection with or incidental or ancillary to sub-clause (a);*
 - (c) *any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;*
 - (d) *supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;*
 - (e) *provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;*
 - (f) *admission, for a consideration, of persons to any premises;*

- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) services provided by a race club by way of totalisator or a licence to book maker in such club ; and
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;



The activity thus may fall under the definition of business as NFC is engaged in manufacture and enrichment of fuel which will ultimately be used for production of electricity. The activity of manufacture of fuel from NFC is thus leading to ultimate production and distribution of electricity which is a commercial activity.

- h. The supply thus provided by the applicant to the NFC is a Works Contract Service (construction service) falling at Serial No. 3(xii) of Notification No. 11/2017-CT (Rate) dated 28.06.2017 as amended from time to time and will attract GST @ 18% (SGST 9% + CGST 9%).


The relevant portion of the above said notification is as under:-

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (percent)	Condition
3	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 GST rate applicable on the project undertaken by the applicant is 18% (SGST 9% + CGST 9%).


J.P.MEENA 29/3/19
Member
(Central Tax)



o/c


29/3/19
HEMANT JAIN
Member
(State Tax)

SPEED POST

M/s TATA Projects Limited,
88, Competition Colony,
Mahaveer Nagar IIIrd, Kota
District-Kota, Rajasthan 324009

F.No. AAR/TPL-Kota/2018-19/

Dated:

Copy to:-

1. Commissioner, SGST & Commercial Taxes, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005.
2. Commissioner, CGST and Central Excise Udaipur Commissionerate, 142-B, Sector-11, Hiran Magri, Udaipur 313002.
3. Deputy/Assistant Commissioner, Works Contract and Leasing Tax, State Tax Department, DCM Road, Chatrapura, District- Kota 324001