



**TELANGANA STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Goods and Services Tax)**

1st Floor, Commercial Taxes Complex, M.J. Road, Nampally, Hyderabad 500 001

A.R.Reference–No. AAAR/01/2018

Dated: 04 September, 2018

ORDER-IN-APPEAL NO. AAAR/02/ 2018 (A.R.)

*(Passed by Telangana State Appellate Authority for Advance Ruling under Section 101
(1) of the Telangana Goods and Services Tax Act, 2017)*

Preamble

1. In terms of Section 102 of the Telangana Goods & Services Tax Act, 2017 ("the Act", in short), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the applicant or the appellant has been given an opportunity of being heard.
2. Under Section 103 (1) of the Act, this advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only
 - (a) On the applicant who had sought it in respect of any matter referred to in sub-Section (2) of Section 97 for advance ruling;
 - (b) On the concerned officer or the jurisdictional officer in respect of the applicant.
3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.
4. Under Section 104 (1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-Section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

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1. The **subject reference** has been made by the **Telangana State Authority for Advance Ruling (Goods & Service Tax)** ("TSAAR" or "Authority" or "lower authority", in short) to this Appellate Authority in terms of Section 98(5) of the Telangana Goods and Services Tax Act, 2017 (hereinafter referred to as "TGST Act, 2017" or "the Act", in short) with regard to an application for Advance Ruling filed by **M/s. R. Vidyasagar Rao Constructions, Plot No.98 & 99, Lumbini Layout, near Euro School, Gachibowli, Hyderabad – 36** having **GSTIN No. 36AAGFR6627L1ZQ¹** – hereinafter referred to as "M/s.RVRC" or "the applicant".

¹ Last three digits incorrectly mentioned as '12Q' in application filed by M/s. RVRC as well as the Reference order passed by the Authority.

2.1. Vide the said application, M/s. RVRC had sought an advance Ruling under Chapter XVII of the Act, on the following question :

“The combination of services of excavation of sand including loading with machinery at reach, Formation of Ramps and Maintenance of Roads, Transportation charges for the tractors/tippers² of sand from reach to stockyard and Loading cost at sand from stockyard to lorries, whether is “Works Contract” or “Composite Supply” and what is the rate of tax on the consideration received therefor ?”.

2.2. After due consideration of the matter, including by hearing the applicant & their Advocate on 03.04.2018, the Authority passed the order vide **A.R.Com/9/2018 dated 06.06.2018** making a reference to this Appellate Authority, as follows:

“Since there is no uniform opinion arrived by the Members representing Central Tax and State Tax and they have expressed two different views on classification of services and applicable rate of tax on the services rendered by the applicant, the application filed by M/s. R. Vidyasagar Rao Constructions, Plot No. 98 & 99, Lumbini Layout, near Euro School, Gachibowli, Hyderabad – 36 (GSTIN No. 36AAGFR6627L12Q) is being referred to the Appellate Authority for Advance Ruling for the state of Telangana in terms of Section 98 (5) of the CGST Act, 2017 for hearing and decision on the question on which the advance ruling is sought”.

Brief Facts of the case:

3.1. M/s. RVRC is a registered partnership firm dealing in mining business. They had entered into Agreement (Ref.No. Contract Agreement No.08-TSMDC/Damerakunta-III/Annaram. Sand/Legal/2017) dated 18th March, 2017 (“**Agreement**” / “**Contract**” in short) with **M/s.Telangana State Mineral Development Corporation, Hyderabad** (“**TSMDC**” or “service recipient” in short), pursuant to TSMDC’s acceptance of the tender submitted by M/s.RVRC in response to TSMDC’s Tender / Short E-procurement Tender No.TSMDC / SAND / EXC / Damerakunta-III / Annaram / 2016 dated 29-12-2016 (“**Tender**” / “**Tender document**”). M/s. RVRC had quoted the rate of Rs.74.36/- per CBM in response to the said tender and emerged as the L1 bidder. The description of scope of work as per the said Agreement/ Tender, reads as follows:

“Excavation of Sand 1560000 CBM of Block No. III, Damerakunta-III over an extent of 52.0 Ha at Submergence areas of Anaram Barrage, Kaleshwaram Project and transport the same quantity of sand to nearby Stockyard (Contractor has to identify Stock yard within 1 km from the Submergence area) and again loading of sand into the Lorries at Stockyard.”

3.2. With regard to the above Agreement and work involved therein, M/s.RVRC filed an application for Advance Ruling, inter-alia, furnishing “Statement of Relevant facts having a bearing on the question raised”, “Statement containing the applicant’s interpretation of law and/or facts as the case may be, in respect of the questions

² The vehicles are mentioned as ‘tractors/tippers’ herein, whereas in their submissions/pleadings, applicant mentioned the same as ‘trucks/lorries’.

raised" and the "Question on which the Advance ruling is required"- which is as reproduced earlier. Vide the application (i.e., Statement containing applicant's interpretation), M/s. RVRC claimed that:

(i) the above activity/services rendered would fit into the ambit of 'Works contract' as defined under sub-Section (119) of Section 2 of the GST Acts further read with Sl.No. 6(a) of Schedule II to the GST Acts; and that the same would be eligible for the benefit of CGST 2.5% + SGST 2.5% = total 5% rate of tax in terms of Notification No. 31/2017-Central Tax (Rate) dated 31-10-2017 (and G.O. Ms. No. 253, Revenue (CT-II) Department dated 23-11-2017);

or

(ii) Alternatively, the activity amounts to 'composite services' in which the transportation part is predominant and therefore also the rate would be 5% GST (2.5% CGST + 2.5% SGST), as per the entry 'transportation of goods'³.

3.3. After examining the issue and analysing the terms of the Agreement / Tender documents and the scope of work involved vis-à-vis statutory provisions and Notification-entries, the two Members constituting the Advance Ruling Authority viz., Member representing Central Tax and the Member representing State Tax (hereinafter referred as "**Central Member**" and "**State Member**", **respectively** for ease of reference) had given their opinions, in sum and substance, as follows:

3.3.1. Summary of opinion expressed by the Central Member:-

- (i) Held that the applicant's claim that the activity rendered falls under "Works contract" is not tenable and hence, the question of application of tax rate of 5% (CGST+SGST) applicable to 'works contract' as per the Notification entries cited, does not arise.
- (ii) By referring to the meaning of 'vessel' in Major Port Trusts Act, 1963 [Section 2(z)] and that of 'conveyance' vide Section 2 (34) of the CGST Act, 2017 and analysing the same vis-à-vis facts of the case, held that in the case on hand, the vehicles used for transportation of sand is by road and therefore the same are not covered under 'vessel' as specified at entry (ii) under Column (3) against Tariff Heading 9965 (Goods transport services) in Notification No.11/2017-Central Tax (Rate) dated 28-6-2017.
- (iii) The services supplied by the applicant is a 'composite supply' as defined in clause (30) of Section 2 of the CGST Act. Out of the three components of the services involved viz., (1) excavation of sand, (2) transportation of the excavated sand from the submergence area to the identified stockyard and (3) loading of the sand into lorries at the stockyard; which are naturally bundled, the principal supply is that of 'excavation of sand'; the services of

³ As mentioned in the application. It is only in the written submissions filed before Advance Ruling Authority and again before the Appellate authority that they have mentioned 'transport of goods in a vessel' and hence that the same was covered by the entry at Sl.No.9, sub-category (ii) under Column (3) in the Notification No. 11/2017-Central Tax (Rate) dated 28-6-2017 with the applicable rate of tax as 2.5% CGST (and consequently SGST also @2.5%), subject to the corresponding condition mentioned under Col.(5).

transportation and loading are ancillary to the said service of 'excavation of sand'. Hence, that the services rendered by the applicant are classifiable as "Excavating and Earthmoving Services" under Heading 995433 of GST Tariff and rate of tax applicable is 9% CGST + 9% SGST.

3.3.2. Summary of Opinion expressed by the State Member:-

- (i) Though a part of the contract i.e, construction of ramps/roads and their maintenance falls under works contract; the subject contract is a composite contract but not exclusively 'works contract' as defined under Section 2 (119) of the Act and as per Sl.No. 6 (a) of Schedule II to the Act;
- (ii) The contract being a composite supply with the individual elements therein being integrally connected to each other, the same is bundle of services as per these types of contracts; the intention behind the same is to shift the sand from one place to another as distinguishable from 'excavation' simplicitor. As such and also taking into account the value / rate involved in respect of the transportation-component, the principal supply is 'transportation of goods'.
- (iii) The meaning of 'vessel' as ascertainable from the proviso (against the entry No.(ii) under Column (3) at Sl.No. 9 of Notification No.11/2017- Central Tax (Rate) dated 28-6-2017⁴) includes any containers used for carrying goods from one place to other; as such, the services rendered by the applicant are classifiable as "Goods Transporting by vessel" and GST tariff and rate of tax applicable is 2.5% CGST + 2.5% SGST subject to the condition that the applicant is not entitled to ITC (input tax credit) to the extent mentioned in the proviso in Column (5) of [v] entry as mentioned above as per the GO Ms. No. 110 Revenue (CT-II) Department dated 29-6-2017.

3.4. Thus, no uniform opinion was arrived at by Members of the lower Authority on the question framed for Advance Ruling. Accordingly, they referred the matter to this Appellate Authority in terms of Section 98 (5) of the Act by framing the reference, as reproduced in **para 2.2** of this Order.

4. Section 98 (5) of the Act stipulates that: "*Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question*". Sub-section (1) of Section 101 of the Act specifies that : "*The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to*".

⁴ Under the scheme of GST-taxation, for every Central Tax (Rate) Notification issued, a corresponding Notification is issued by State under respective State GST Act. As such, for ease of reference and appreciation of the discussion, the references hereinafter are made by citing the relevant Central Tax Rate Notification(s)/entries therein; which would also constitute a reference to the corresponding Notification issued under TGST Act, 2017.

5. In view of the above, M/s. RVRC were called upon to attend a personal hearing before this Appellate Authority.

Personal hearing:

6.1. Dr. T. Ramesh Babu, Advocate, representing the applicant, appeared for the hearing on 31-08-2018 and filed written submissions, which are reproduced below:

"....

- a. *As the Hon'ble members of the authority for Advance Ruling could not have uniform opinion and referred the matters to the Hon'ble Appellate Authority, the matters may please be decided as per law by the Hon'ble Appellate Authority.*
- b. *Since the applicant was called on for personal hearing and also provided with a copy of the order 2nd cited, the applicant craves leave from the Hon'ble Appellate Authority to point out the facts being misconceived/inconsistent and erroneous observations consisted in the opinion rendered by the Hon'ble Central Member of the Authority for Advance Ruling apart from the submissions of the understanding about the whole issue by the applicant.*
- c. *The facts in the contract that the applicant entered into with Telangana State Mineral Development Corporation Ltd (TSMDC) may please be ascertained from the Short Tender Document dated 29-12-2016 and also from the Agreement dated 18-03-2018.*
- d. *The above documents makes it clear that the following supplies are involved in the activity being rendered by the applicant:*
 - i) *Formation of internal ramps and roads and their maintenance i.e. from the outer place of the river to the places where the sand is stagnated in order that the applicant first reaches to the later place by its vehicles viz. bulk containers.*
 - ii) *Culling out the Sand from the places where it is stagnated, loading into the above containers.*
 - iii) *Transporting the above loaded Sand to the places chosen by the TSMDC, unloading there for stacking.*
 - iv) *Reloading the same into third parties Vehicles i.e. bulk containers*
 - v) *Before the iv) above supply is rendered, the applicant has to form outer roads i.e. roads from the place where the Sand is stacked to the place of the Village/Panchayat public road in order that the third parties vehicles ply over such road.*

Understanding of the applicant:

Applicant submits formation of ramps and internal roads and external roads referred to above with the men and material or the applicant forms into immovable property by theory of accretion and would be the permanent property of the TSMDC and the State Government of Telangana/Local authority as the case may be. Thus, the activity of the applicant is in combination of so many supplies of goods and services and hence the applicant views that the contract is one for a composite supply of 'Works contract' as defined under Sec.2(l 19) of the GST Acts, 2017 and it is being done to Governmental Authority in view of Notification No.31/2017 dt.13.10.2017 issued in G.O.Ms.No.253 Revenue (CT-II) Dept dated 23.11.2017 the rate of tax is to be 2.5% CGST AND 2.5% SGST.

The alternative urge of the applicant and its understanding is the object of the contract being to replace the sand from one place to another which could be done

by moving it from its place of source to the Stockyard, which could only be done by the mode of transportation of it from such place to such place as the case may be the principal supply is 'Transportation of Goods' and other activities are incidental to such supply. In this event the applicant made a search to accommodate itself in the notified rates of tax, as after exhausting the same only by all possible means it can satisfy himself that this supply would fall under residual entry of tax. When done so, the applicant opines his activity can be and be subjected to tax under Sl.No.9 / Heading No.9965 i.e. Goods Transport Service-(ii) Transport of goods in a vessel. Vide Notification No.11/2017 Central tax (rate) dated 28-06-2017. To form this view, the applicant obliges 'Vessel' includes any container and need not necessarily be an article which floats on water i.e. a container which could able to consist in any other goods in it and capable of being road adopted is also a vessel. To have this view the applicant relies on the fact that the word 'vessel' is not defined under the GST Acts in the event of which the general meaning of 'vessel' is to be adopted, its meaning can't be borrowed from other Statues since Statue Books of GST Acts do not mandate so as was done so in respect of so many words in the GST Acts. The applicant could also notice in the conditions prescribed in the Notification NO. 11 dated 28-06-2016 that in order to have the concessional rate of tax therein the condition is that it shall not take Input Tax Credit charged on the goods used in supplying the services. Such restriction from having ITC has exclusion to the goods i.e. for ships, vessel including bulk carriers and tankers. Therefore, 'vessel' includes bulk carriers and tankers. The words 'other than ships' also carries much significance to give a meaning that 'Vessel' includes goods other than ships.

Submissions of the applicant on the opinion rendered by Hon'ble Central Member:

1. The observation made by the Hon'ble Central Member that the contract consist three parts only [(I), (II) & (III) i.e. excavation of sand, transportation of the excavated sand from the submergence area to the identified stock yard and loading of sand into the lorries at the stock yard] is misconstrued. In fact, the tender document Dt. 29-12-2016 reads at its page 8 makes it clear that Rs.7.50 out of rupees upset price of Rs.100 is assigned for formation of rams and roads. These rams and roads are two kinds as already mentioned above. **The activity of formation and maintenance of rams, internal and external roads are therefore one among the constituents parts of the contract.**
2. As the applicant is came out as successful bidder the upset price of Rs.100 stood at Rs.74.36 in the agreement Dt. 18-03-2017 hence Rs.74.36 consists 30% for loading charges 7.5% for formation of rams and roads 32.50% for transportation charges from reach to stock yard and 30% for loading cost of sand from stock yard to lorries.
3. Therefore the contract consist the following supplies.
 - I. Formation of rams and internal roads and their maintenance
 - II. Lifting the sand loading to the vehicles (Bulk containers)
 - III. Transportation of the above sand to the identified stock yards
 - IV. Loading the sand to third party vehicles (Bulk containers)
 - V. Formation of external roads and their maintenance from the stock yard to the nearest by available public road
4. Therefore the view expressed by the Hon'ble Central Member that laying of roads/rams is out of the scope of contract is erroneous. The Hon'ble member himself appreciates it is the sole responsibility of the applicant to lay/form required road from stock yard to nearby connectivity road for plying of

lorries/vehicles and any incidental expenditure incurred and involved thereon for laying and maintenance of roads shall be borne by the contractor. This expenditure is necessarily to be met by the contractor from out of the 7.5% of the Rs.74.36 and hence these supplies are constituent part of the contract.

5. *The view point of the Hon'ble Central Member that the main work in the contract involved is excavation, transport and again loading to other lorries and the laying of the ramps, roads etc. is incidental is not correct. The main object in the contract is to shift the sand from one place to another by way of transportation of it, the applicant submits.*
6. *The view expressed by both the members that the contract of the applicant is composite supply falling under Sec.2 (30) of the CGST Act, is not being objected by the applicant as the applicant also made a submission that it is as such before the Authority for Advance ruling.*
7. *The Hon'ble Central Member pleased to hold that it is not a 'works contract' and since the contract is to held to be a 'composite supply' the principal supply is 'excavation of sand'. To hold as such, the reason assigned by the central member is without excavation of sand the transportation and loading of sand not arises.*
8. *The object behind the contract is in fact to take out the sand from the place at it exists to another place since the existence of sand is hinders the free flow of water in the Kaleswaram Project when it comes into existence therefore the sand from the existing place is to be transported to other place. Pre and post consequential actions are attached to such supply in which immovable property of ramps, roads do also come into existence.*
9. *The Hon'ble Central Member taken a view that the contract is not works contract duly assigning reason that laying of roads from stock yard to nearby connectivity roads for plying of lorries is incidental to transport the sand from excavated from the submerged areas to nearby stock yard is incidental to transport of sand excavated. Thus, the Hon'ble Central Member pleased to identify principal supply is 'excavation of sand' and it has ancillary supplies other than formation of ramps and roads, there is one more supply i.e. transportation which he holds ancillary to the 'excavation of Sand' and such ancillary supply of 'transportation' in turn carries an ancillary supply viz. 'formation of ramps and roads'. Thus, the view point of the Hon'ble Central Member amounting to identification of more than one principal supply in a single composite contract, which is not possible as per law.*
10. *The Hon'ble Central Member thus deals with only about formation of internal roads, ignored the formation and maintenance of external roads besides on one count the central member opined such roads and rams and maintenance not at all integrated to the contract and on other count such formation of roads and rams are incidental to transport of sand to excavated and in that angle the opinion rendered by the central member requires to be examined by the Hon'ble Appellate Authority and the Hon'ble Appellate authority maybe pleased to decide the issue in accordance to the facts of the case and law.*
11. *On the count of the contract being pleaded to fell under serial No.9/heading No.9965 (ii) i.e. transport of goods in vessel, the Hon'ble Central Member opined that the meaning of vessel is ship/large boat used for transportation of goods by sea/in land waters and for that matter Reliance laid on the definition of vessel under clause (z) of Sec. 2 of Major Port Trusts Act, 1963 in conjunction with Sec. (34) of CGST Act, 2017 i.e. 'Conveyance' includes a vessel, an aircraft and a*

vehicle and opines further that Sl No.9/ heading No.9965 (ii) i.e. transport of goods in vessel mainly refers to the mode of transport and the word vessel cannot be considered as container as argued by the applicant.

12. On the above aspect also the opinion rendered by the central is self-contrary i.e. on one count, by placing reliance on the definition of 'Vessel' under Major Port Trust Act, 1963 (dehorse the applicability of such a definition under the provisions of the GST Acts, for the reasons which are mentioned in the foregoing paragraphs) the Central Member while stating vessel is exclusively ship/large boat used for the transportation of goods by sea/in land waters and on the other count gives contrary opinion that the enumeration in the notification is not qua the goods and it is qua 'mode of transportation'. This may kindly be looked into.
13. When the word 'Vessel' is not defined under the Act, it's meaning is to be considered in general and meaning of it can't be borrowed unless mandated under the Act to be done so. In the following words GST Act mandates meaning of certain words from the other Acts.
 - a. "actionable claim" shall have the same meaning as assigned to it in section 3 of the transfer of Property Act, 1882 (4 of 1882);
 - b. "associated enterprises" shall have the same meaning as assigned to it in section 92A of the Income-tax Act, (43 of 1961);
 - c. 'Board' means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);
 - d. "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949);
 - e. "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980);
 - f. "motor vehicle" shall have the same meaning as assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);
 - g. "securities" shall have the meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956).

Submissions on the Opinion rendered by the Hon'ble State Member:

- a. The view taken by the Hon'ble Member about contract not being amounting to a 'works contract' may be examined as per the law.
- b. The applicant accepts the opinion of the Hon'ble Member about the contract being fallen under Sl.No.9/Heading No.9965 (ii) of Notification No.1/2017 dated 28-06- 2017 and hence liable to GST at the rates of 2.5% CGST and 2.5% SGST.

Ultimately the applicant submits that in respect of Indirect Taxation, resorting to residual entry taxing shall be ultimate resort i.e. after exhausting all the possible modes to accommodate the taxable event in the lesser rate of enumerated entries".

6.2. During the hearing before the Appellate Authority, the Advocate explained his case with reference to the above written submissions and the points which came up during the course of discussions and pleadings were recorded, are reproduced below:.

“...
”

1. He agrees that the composite/ aggregate price of Rs.74.36 as per page 3 of the agreement dated 18th March, 2017 does not have any breakup stated therein. However, he draws attention to page 8 of the tender document dated 29-12-2016 as per which the upset price mentioned by the TSMDC was

Rs.100 per cbm and breakup of which was also given in terms of various activities. It is his claim that the agreement figure of Rs.74.36 (which is against the upset price of Rs.100) should be deemed to be having the same breakup for various activities as the ratio in the tender document. However, on query from the Bench he admits that this is not mentioned explicitly anywhere in the agreement.

2. It is his contention that on a combined reading of the tender document and the agreement, it is clear that the quoted rate of Rs.74.36 is towards the performance of all the activities mentioned on the said page 8 of the tender document, and therefore the activity being performed by them should be taken to be a composite supply in terms of the GST Law.
3. He therefore conceded that they are no longer pressing the claim for considering the activity as Works contract, and therefore the submission made at Sl. No. (a) at the end of his written submissions filed today may be taken to be deleted.
4. He next explained that on going through the nature of the various component activities as mentioned on page 8 of the tender document, and as explained in their written submission, it is their claim that the component activity of transportation should be considered to be the principal supply and therefore it is their claim that in terms of the relevant provisions of GST Law, the entire composite supply deserves to be treated as principal supply, namely transportation of goods.
5. He therefore claims the benefit of Central Tax (Rate) Notification No.11/2017 (para 27 of the lower authority order refers) and claims that there are five sub-entries in this notification column No.3 and he does not fall in the entries at (i), (iii) and (iv). It is his contention that he falls in the entry (ii) and therefore does not fall in the residual entry at (v).
6. Entry at (ii) reads as "transport of goods in a vessel." While explaining his case he referred to the fact that in the lower authority's reference / ruling, the Central Member has held his vehicles to be not vessel whereas the State Member has held it to be a vessel. A video in this regard was shown to us which is already on record before the lower authority, from which the vehicle in use is seen to be a normal truck / lorry, although a bigger one. With reference to para 6 of the lower authority's order wherein definition of Section 2 (34) of the CGST Act has been reproduced as per which "conveyance includes a vessel, an aircraft and a vehicle", the Bench requested him to clarify as to which of these three categories (namely a vessel or an aircraft or a vehicle) would his case fall in, the learned advocate mentioned that they would fall under 'a vehicle'.
7. However he said that since the word 'vessel' itself is not defined in the GST Law therefore it is his case that the General Clauses Act should be referred to. He referred to the definition of the term 'vessel' as given under Section 3 - sub-Section 63 of the General Clauses Act, 1897, as per which 'vessel' shall include any ship or boat or any other description of vessel used in navigation and therefore contended that since the definition under the said Act is only an inclusive definition, therefore the term 'vessel' is not required to be restricted to something that floats; the same meaning is given in the Law Lexicon also. He referred to Page No.1955 from the Law Lexicon compiled by Sri P. Ramanatha Aiyar, 2nd Edition, Re-print 2010 and submitted a

photocopy of the said pages 1955 & 1956. The Bench also referred the page No.1951 and 1952 of the same Law Lexicon as produced by the learned advocate wherein the term 'vehicle' is defined and took a copy of that.

8. He next referred to para 33 and 34 of the finding by the State Member in the lower authority and contended that he supports that finding in support of his claim that the conveyances being used by them are vessels for the purpose of the present dispute. And therefore they are entitled for the concessional rate of 2.5% under the said Sl. No.(ii) of the said notification.

He has nothing further to add".

DISCUSSION, FINDINGS & DETERMINATION OF THE REFERENCE:

7. We have carefully considered the material on record, the reference order passed by the lower Authority and the applicant's written and oral submissions as also the statutory provisions, Notification-entries etc., which are relevant to the issue on hand.

8.1.1. At the outset, we observe that Section 98 (5) of the Act requires the Members of the Advance Ruling Authority to state the point/points of difference and make a reference to the Appellate Authority for a hearing and decision on such question. Whereas vide the subject reference, the Authority citing lack of uniform opinion on the issues, referred the "application filed by the applicant" to this Appellate Authority "for hearing and decision on the question on which the advance ruling was sought". The point(s) on which the Members have differed, though are reflected within the reference-order. We further observe that Section 101 (1) of the Act mandates this Appellate Authority to 'pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to'. We also take note that various provisions under Chapter XVII of the Act dealing with "Advance Ruling" i.e. sub-Section (4) of Section 101, Section 103 (1) or Section 104 (1), inter-alia, refer to 'advance ruling pronounced by Appellate Authority', which envisages pronouncement of the Advance Ruling by this Appellate Authority after addressing the points of difference/reference in such situations.

8.1.2. The applicant vide the initial application and also in their submissions before the lower Authority, had claimed that their services fall under the ambit of 'works contract', as defined under Section 2(119) of the Act. As seen, both the Members of the lower Authority have held the said claim to be untenable; albeit based on different reasoning. However, as detailed above, during the personal hearing before us, the applicant's Advocate conceded the above claim as not pressed. **In view of the said position, we are not required to go into the question of whether or not the impugned activities amount to a "works contract".**

8.1.3. We also find that both Members of the lower Authority have arrived at a uniform finding that the services rendered by applicant under the Agreement with TSMDC, being naturally bundled, fall within the definition of 'composite supply' as defined under Section 2(30) of the Act. Therefore, since there is no difference between the views of the two members of the Advance Ruling Authority on this issue, nor is there any appeal from the Department, **hence we are not required to examine the question of**

correctness (or otherwise) of the classification of the impugned activities as a "composite supply".

8.1.4. However, the two Members have **differed** in their opinions on the **following points:**

- (i) The Central Member held that in the aforesaid 'composite supply' provided by applicant, the 'principal supply' is 'excavation of sand' and hence, the same is classifiable as "Excavating and Earthmoving services" under Heading 995433 of GST Tariff and rate of tax applicable is 9% CGST + 9% SGST.
- (ii) The Central Member further held that the entry 'Transport of goods in a vessel' [appearing at sub-category (ii) under Column (3) against entry Sl.No.9 in the Table given under Notification No.11/2017-Central Tax (Rate) dated 28-6-2017] is not applicable to the instant case, as the vehicles used for transportation of sand are by road and not covered under 'vessel' which as per definition of 'vessel' in Section 2(z) of the Major Port Trusts Act, 1963 includes only transport conveyances by water like ships, barges, boats, tankers etc.

As against the above,

- (iii) The State Member held that the principal supply (in the composite supply) is 'transportation of sand' and the services rendered by the applicant are classifiable as 'Goods transporting by vessel' and the rate of tax applicable is 2.5% CGST + 2.5 % SGST subject to condition of non-entitlement to ITC (input tax credit) to the extent mentioned in the relevant Notification.
- (iv) The State Member also held that the meaning of 'vessel' for the purpose of the Notification-entry (read with the proviso in Column (5) against the said entry) would stand as 'container which contains other goods which carries goods from one place to other' and hence concluded that the applicant's case is covered by the entry 'Transport of goods in a vessel'.

8.2. Keeping in view the above aspects, we now proceed to address the issue(s) involved in the matter, by considering the following **as the questions falling for determination by us :**

- (i) **Whether, in the services provided by the applicant under the Agreement with TSMDC [which has been held as a "composite supply" by both the Members], the 'principal supply' is that of 'excavation of sand' as held by the Central Member or 'transportation of goods i.e., sand' as held by the State Member ?**
- (ii) **What is the classification of the "principal supply" determined under (i) above (which would thereby be the classification of the "composite supply") ?**
- (iii) **If the principal supply is determined to be "transport of goods", then whether the vehicles used by applicant for transport of sand i.e, lorries / trucks (or**

tractors / tippers, as mentioned in the application) are to be considered as covered by the term 'vessel' appearing in the Notification-entry as held by the State Member or as not covered by the said term as held by the Central Member ?

- (iv) What is the applicable rate of tax on the consideration received by the applicant for the impugned services consequent to determination of (ii) and (iii) above ?

9.1. For the purpose of determination of the above questions, first the statutory provisions relevant for the issues on hand, merit to be referred. The Act defines 'composite supply' and 'principal supply', as under:

“2. Definitions. — In this Act, unless the context otherwise requires, — ..

(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;

Illustration.— Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

(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;”

Section 8 of the Act reads as under:

“8. Tax liability on composite and mixed supplies. — 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) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax”.

9.2. Notification No. 11/2017-Central Tax (Rate) dated 28-6-2017 issued under Section 9 of the Act provides for the levy of GST on intra-State supply of services. The Notification prescribes the rates of the tax applicable to various services and also provides for a Scheme of Classification of services, as given in Annexure to the Notification. The relevant entries in the Notification are reproduced and referred at the appropriate places in the further course of our discussions.

10.1. Coming to the services involved in the case, the scope of work as described in the Agreement / Tender has already been mentioned earlier. However, the specific

clause in the Contract Agreement dated 18th March, 2017 which describes the work merits a reference and hence, reproduced as under:

" 3. Conditions of contract:

i)Scope of the Work: The Contractor shall excavate sand 15,60,000 CBM from Block III, of Damerakunta-III, over an extent of 52 Ha. at Submergence areas of Annaram Barrage, Kaleswaram Project and transport the same quantity of sand to nearby Stockyard (Contractor has to identify Stock yard within 1 km from the Submergence area) and again loading of sand into the Lorries at Stockyard. The contractor shall extract the sand within the assigned Geo-coordinates as specified in the tender documents. The Contractor shall not encroach upon in adjacent areas other than assigned areas without permission of TSMDC."

10.2. We find it also appropriate to reproduce the following further / other terms in the said Agreement as also the Tender document viz., Short Tender/ E-procurement Tender dated 29-12-2016:

(i) In page 4 of the Agreement, clause 2 reads as follows:

"2. The following documents issued for the above work shall be deemed to form part and parcel of this agreement and the same may be read and construed as part of this agreement viz., (a) Conditions of contract, (b) Contractor's bid, (c) Priced Bill of quantities, (d) Letter of intent or work order, (e) Agreement. All terms & conditions, al clauses of tender document and all other conditions as mentioned in the above documents have been agreed to by the parties and the same are binding on both the parties".

However, the applicant had submitted copies of only the Agreement dated 18-3-2017, Tender / Short E-procurement tender notice dated 29-12-2016 and the Letter of intent dated 27-1-2017 issued by TSMDC for the purpose of the subject proceedings.

(ii) The Short Tender / E-procurement tender dated 29-12-2016 issued by TSMDC contains following clauses:

'Estimated Quantity: The tenderer shall excavate 1560000 CBM of sand within a period of 18 months.

Upset Price: The Corporation upset price is Rs.100/- per CBM (Rs.30/- for loading charges for machinery at reach, Rs.7.50/- for formation of Ramps and maintenance of Roads, Rs.32.50/- for transportation charges for the tractors / tippers of sand from reach to stockyard and Rs.30/- for loading cost of sand from Stockyard to lorries)....".

[Reference to the same upset price as above, is also available in page 8 of the same Tender document dated 29-12-2016, which has been referred in the hearing before us].

(iii) As seen, the scope of work described in either the preamble to the Agreement or the specific Clause 3(i) therein or as given in the Tender documents does not mention the element/activity of 'formation of ramps / maintenance of roads' which however appears in the breakup given for the Upset price. However, in

the Agreement, under Clause (3) captioned 'Conditions of contract', sub-clause (ix) (appearing on the 8th page) reads as under:

"ix) Laying of Roads:

It is the sole responsibility of the Contractor to lay / form required road from stockyard to nearby connectivity road for plying of Lorries / vehicles, any incidental expenditure incurred and involved thereon for laying & maintenance of roads shall be borne by the Contractor".

From the above, it appears that there can be no dispute that the impugned include the element of formation/maintenance of roads apart from those of excavation, loading, transport etc., mentioned in the "Scope of Work".

- (iv) Clause 3(vii) of the Agreement, inter-alia, specifies Contractor's possession and deployment of a minimum (numbers) of equipment viz., 8 No.s Excavators, 2 No.s Mobile Water Tankers and 32 No.s Tractors / Tippers.
- (v) Clauses 3 (viii), (x) of the Agreement stipulate respectively, that Contractor shall **(a)** obtain necessary licenses, permits etc., as required under Telangana State Sand Mining Rules, 2015; and **(b)** identify the Stockyard within 1 km from Submergence area; for which TSMDC shall obtain Mineral Dealer License (MDL) and pay lease rental amount thereof not exceeding Rs.50,000/- per acre per annum.

10.3. For the aforesaid services, the Contract Agreement dated 18th March, 2017 mentions the consideration as Rs.74.36/- per CBM (cubic metre) of sand excavated. As can be seen, this is a single rate which has been agreed upon by the parties for the combined performance of the various activities / different elements of work involved. It is an admitted position by the applicant/Advocate that there is no item-wise break-up for the said rate of Rs.74.36/- in terms of the different activities involved (personal hearing record reproduced earlier refers); though the Tender notice mentions Upset Price of Rs.100/- with a breakup indicated, as reproduced above. Further, Clause 3(iii) of the Agreement captioned "Payments", inter-alia, lays down as follows:

"The amount payable to the Sand Raising Contractor shall be as per rates quoted by him / them and shall be finalised by TSMDC, based on transit pass (in CBM), which shall be issued at Stockyard on Sand despatches made by TSMDC,."

11. Keeping in view the above detailed aspects, we proceed to determine the questions before us, as stated earlier.

12.1. Whether, in the services provided by the applicant under the Agreement with TSMDC [which has been held as a "composite supply" by both the Members], the 'principal supply' is that of 'excavation of sand' as held by the Central Member or 'transportation of goods i.e., sand' as held by the State Member ?

12.2. As per the statutory definition, 'principal supply' in a composite supply would be that which constitutes predominant element and to which other supplies forming part of composite supply are ancillary. The words/phrase 'predominant element' are neither defined in the Act nor any parameters such as quantum, value etc., specified

for determining the same. As per common understanding as also dictionary meanings⁵, 'predominant' denotes "something which is more important or noticeable than others in a set of people or things"; "which is present as the strongest or main element". In respect of goods, discerning the predominant element can be based on tangible, quantifiable, measurable factors such as by weight, composition, functionality etc. Whereas in respect of services which are intangible - determination of predominant element from among those in a composite supply would have to take into account inter-alia, the nature of activities, quantum of work/labour etc., involved, values assigned for the different elements and more importantly the intention of the parties as per the Terms of the contract / agreements work orders etc.

12.3. In the instant case, we observe the following salient factors & features:

- (i) The Contractee – TSMDC is a Corporate entity created by the State Government of Telangana with the objectives of development of mineral resources including Exploration, exploitation and beneficiation⁶. Sand, undisputedly, being a mineral resource the same belongs to the State of Telangana; TSMDC is the State-instrumentality which is entrusted with the objectives as above.
- (ii) The Agreement and the earlier Tender floated by TSMDC, **in essence**, aims for removal of sand located in the specified area (Submergence Area / Reach) and shifting the same to another area, termed as Stockyard @ approx.. 1 km distance from the Submergence area.
- (iii) The said shifting and removal is to be done using Excavators and loading on to tippers/tractors or lorries/trucks as the case may be, which transport the sand by the ramps / roads to the said Stockyard.
- (iv) At the Stockyard (for which TSMDC has to obtain Mineral Dealer License and also pay lease rentals), the sand is again loaded into lorries –which is for further onward despatch as per the Contractee-TSMDC's requirements.
- (v) The Agreement also requires the Contractor i.e, applicant M/s.RVRC to lay/form and maintain the necessary roads / ramps etc. in the course of and for the purpose of the above work.
- (vi) The consideration agreed upon between the parties for the above work in entirety, is a single composite / aggregate rate of Rs.74.36/- per CBM of sand (transported / sold from Stockyard) for the entire work; the Agreement does not identify, specify or record an item-wise / activity-wise breakup / component of the said price. However, while floating the tender, the Contractee has indicated breakup of the Upset Price of Rs.100/- per CBM in terms of the different elements of the work involved, as detailed earlier.

12.4. On analysing the above, we find it to be evident that the basic intent and purpose of the Tender / Contract-Agreement and the concomitant description of the scope of the work therein is to move / shift the mineral sand from one place to another,

⁵ <https://dictionary.cambridge.org>; <https://en.oxforddictionaries.com>

⁶ As per website of TSMDC @ tsmdc.telangana.gov.in

by means of transport by roads/ramps; for enabling the further despatch by TSMDC. The said activity i.e., transport of sand from one place to another therefore constitutes the predominant element in the instant case; the other activities of excavation (or extraction as also mentioned in Agreement), loading, unloading and reloading as also formation / maintenance of ramps/roads, are the incidental or ancillary activities, preceding, coinciding or following the said main activity of 'transportation from one place to another'. The breakup of the Upset Price as per the TSMDC's Tender documents, referred at para 10.2 (ii) above, also shows that the activity of transportation and the loading activities which are directly related to the transport, is the predominant portion in impugned services; incidentally there is no separate /specific mention of any value/rate for only 'excavation' activity in the said Upset price.

12.5. In the lower Authority's reference, the Central Member's reasoning was that 'without excavation of sand, transportation and loading of sand to the lorries doesn't arise' and hence excavation constitutes predominant element / principal supply and the others are ancillary. This reasoning does not appeal to us on a comprehensive, holistic analysis and consideration of the facts involved herein, as detailed above. As mentioned earlier, the said view at best would only reflect that activity of excavation was the first among the various inter-linked ones, but not necessarily the predominant element in the services involved in question.

12.6. The State Member's view (expressed in para 22 of the subject reference order) that 'the intention behind the contract is to shift the goods viz., sand from one place to other distinguishable from excavation simplicitor' is in a nut-shell, the correct conclusion arrived, with which we are in agreement with in view of the findings mentioned above.

13. In view of the above, we hold that the principal supply involved in this case is 'transportation of goods' as held by the State Member and not 'excavation of sand' as held by the Central Member.

14.1. The second question for determination is **What is the classification of the "principal supply" determined under (i) above which would thereby be the classification of the "composite supply" as held by the lower Authority ?**

14.2. As determined above, the 'principal supply' in the instant case is that of transportation of goods i.e., sand. It is an un-disputed fact and also explicitly recorded in the Agreement and tender documents that the said transport is by road only. The Scheme of Classification of services is laid down in the Annexure to the Notification No. 11/2017-Central Tax (Rate) dated 28-6-2017 which contains the entries pertaining to Land transport services. The relevant extracts from the said Notification are as follows:

" Rate of GST on intra-State supply of specific services with Service Code Tariff (SAC):

In exercise of the powers conferred by sub-section (1) of section 9, sub-section (1) of section 11, sub-section (5) of section 15 and sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby notifies that the central tax, on the intra-State supply of services of description as specified in column (3) of the Table below, falling under Chapter, Section or Heading of scheme of classification of services as specified in column (2), shall be levied at the rate as specified in the corresponding entry in column (4), subject to the conditions as specified in the corresponding entry in column (5) of the said Table :-

Explanation.- For the purposes of this notification, -

.... (ii) Reference to "Chapter", "Section" or "Heading", wherever they occur, unless the context otherwise requires, shall mean respectively as "Chapter, "Section" and "Heading" in the annexed scheme of classification of services (Annexure)."

"ANNEXURE : SCHEME OF CLASSIFICATION OF SERVICES

S. No.	Chapter, Section, Heading or Group	Service Code (Tariff)	Service Description
107	Heading 9965		Goods Transport Services
108	Group 99651		Land transport services of Goods
109		996511	Road transport services of Goods including letters, parcels, live animals, household and office furniture, containers and the like by refrigerator vehicles, trucks, trailers, man or animal drawn vehicles or any other vehicles
110		996512	Railway transport services of Goods including letters, parcels, live animals, household and office furniture, intermodal containers, bulk cargo and the like
111		996513	Transport services of petroleum and natural gas, water, sewerage and other goods via pipeline
112		996519	Other land transport services of goods nowhere else classified

14.3. From the above, it can be seen that the broad category of Goods Transport services are classified with a 4-digit Code as Heading 9965. Under the said classification, 'Land Transport services' is a sub-classification with 5-digit Code i.e., Group 99651. The said sub-classification is further divided into four categories of services, each with a six-digit Service Code (Tariff). The said four categories pertain to different forms / modes of transport i.e. road transport, rail transport, transport via pipeline and the residual entry covering such Land transport services other than those specified in the earlier three Service Codes.

14.4. The impugned services, being road transport services of goods evidently fall under **Service Code (Tariff) 996511** which covers the **specific description as "Road Transport of Goods... by trucks / other vehicles"**. The other two specific Service Codes 996512 and 996513 pertain to Railway Transport and transport via pipeline, which are not applicable to the applicant's case. In as much as by specific description of 'road transport by trucks/ other vehicles' the impugned services are covered by the Service Code 996511, the application of residuary entry i.e. Service Code 996519 does not arise.

14.5. On the aforesaid basis, we therefore hold that the classification of the services rendered by the applicant which have been held to be "composite supply" and in which the principal supply is found to be 'transport of goods by road' are correctly classifiable under the **Service Code (Tariff) 996511** under the Scheme of Classification of services laid down in Annexure to Notification No. 11/2017- Central Tax (Rate) dated 28-6-2017.

15.1. In view of the above determination of the classification of impugned services as "transport of goods", the next question for determination is " **whether the vehicles used by applicant for transport of sand i.e, lorries / trucks (or tractors / tippers, as mentioned in the application) are to be considered as covered by the term 'vessel' appearing in the Notification-entry as held by the State Member or as not covered by the term as held by the Central Member ?**

15.2. The above question arises in the context of the entry appearing in the Notification No.11/2017-Central Tax (Rate) dated 28-6-2017. The relevant extracts read as follows:

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
9	Heading 9965 (Goods transport services)	(i) Transport of goods by rail [other than services specified at item no. (iv)].	2.5	Provided that credit of input tax charged in respect of goods in supplying the service is not utilised for paying central tax or integrated tax on the supply of the service
		(ii) Transport of goods in a vessel.	2.5	Provided that credit of input tax charged on goods (other than on ships, vessels including bulk carriers and tankers) used in supplying the service has not been taken [Please refer to Explanation no. (iv)]
		(iii) Services of goods transport agency (GTA) in relation to transportation of goods (including used household goods for personal use). Explanation, - "goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.	2.5	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to Explanation no. (iv)]
		(iv) Transport of goods in containers by rail by any person other than Indian Railways.	6	-
		(v) Goods transport services other than (i), (ii), (iii) and (iv) above.	9	-

15.3. The applicant's claim is that their activities, as a composite supply with principal supply of 'transportation of goods/sand', would be covered by the category "Transport of goods in a vessel" (appearing at sub-category (ii) under Column (3) in the entry at Sl.No.9 in the Table to the said Notification – **hereinafter referred as 'impugned entry'**). The differing views expressed by Members of lower authority as also the applicant's claims / contentions in this regard, including during personal hearing before us, have already been reproduced above and hence, not reiterated here; but duly taken into consideration.

15.4. The relevant textual references / definitions / meanings of the word 'vessel' and inferences drawn therefrom by the two Members of the lower Authority as also the applicant, are summarised as follows:

- (i) Uniformly, the Members as well as applicant averred to the fact that 'vessel' is not defined in the Act.
- (ii) The Central Member referred to the definition of 'conveyance' vide Section 2 (34) of the Act and that of 'vessel' as per Section 2 (z) of the Major Port Trusts Act, 1963, (MPT Act, 1963 in short), which read as follows:

Section 2 (34) of the Act:

"(34) "conveyance" includes a vessel, an aircraft and a vehicle" .

Section 2 (z) of the MPT Act, 1963 :

"(z) "vessel" includes anything made for the conveyance, mainly by water, of human beings or of goods and a caisson".

The Central Member opined that 'vessel' in the impugned entry denotes those for transport of goods by sea / inland waters and the said term cannot be considered as 'container' as claimed by applicant.

- (iii) The State Member referred to the proviso under Column (5) against the impugned entry, which reads as follows:

"Provided that credit of input tax charged on goods (other than on ships, vessels including bulk carriers and tankers) used in supplying the service has not been taken".

Accordingly, inferred that the term 'vessel' has been used in the proviso as including bulk carriers and tankers as also any goods used for transportation of other goods. Hence, the meaning of vessel for the entry would mean any container which contains other goods for movement from one place to other.

- (iv) The applicant referred to definition of 'vessel' vide Section 3 (63) of the General Clauses Act, 1897 as also meaning thereof as per Law Lexicon⁷, which read as follows:

Section 3 (63) of the General Clauses Act, 1897

"(63) "vessel" shall include any ship or boat or any other description of vessel used in navigation;

Meanings as per Law Lexicon:

"Vessel" includes boats, rafts, timber and other floating bodies. [Pun. Act VIII of 1873 (North Indian Canal and Drain) S.3, Cl.(3)]; includes every ship, boat and other vessel used in navigation, whether propelled by navigation or otherwise. (Explosives Act (IV of 1884), S.4];

⁷ Compiled by Sri P. Ramanatha Aiyar, 2nd Edition, Re-print 2010.

includes anything made for the conveyance by water of human beings or of property. [Bur. Act IX of 1872 S.3)....

"Vessel" shall include any ship, barge, boat, raft or craft, or any other thing whatever, designed or used for the transport upon water of passengers or goods [Ben. Act III of 1890 (Port Calcutta), S.3 Cl.(9)].

It is the applicant's contention that the aforesaid definition / meanings are inclusive and hence, the term 'vessel' is not required to be restricted to something that floats; the Central Member's reference to definition in MPT Act, 1963 is not supported by the GST-law provisions and hence not correct. They support the finding of State Member in this regard.

15.5. With regard to the above, we find as follows:

- (i) The word 'vessel' is not defined in the Notification nor in the Act (nor also in the allied Acts to which reference is made by sub-Section (120)⁸ of the Act).
- (ii) However, the word 'vessel' finds a mention in the Act in the definition of 'conveyance' cited earlier. The said definition shows that 'vessel', apart from 'an aircraft' and 'a vehicle' are included therein as three separate types of conveyances. In other words, in the very same statutory definition of 'conveyance', the words 'vessel' and 'vehicle' have been separately mentioned.

It is a settled principle of legal interpretation that when two expressions are used in a statute they have to be assigned two different meanings and both cannot be construed as having the same meaning. The said principle is enunciated / reflected in a catena of decisions. To cite a few, Hon'ble Supreme Court in Commissioner of Trade Tax, UP vs S.S. Ayodhya Distillery⁹, Collector of C.Ex vs Himalayan Coop Milk Product Union Ltd¹⁰ and Hon'ble High Court of Andhra Pradesh in Madhucon Projects Ltd vs Cus., Ex & ST Sett.Comm., Chennai ¹¹. The relevant extract from the Hon'ble AP High Court's judgment (in turn referring to various earlier decisions of Hon'ble Supreme Court on the principle), is reproduced below:

"IX. Two different expressions in a statute must be construed to carry different meanings :

49. As Parliament has used two different expressions in the Explanation to two distinct provisions, this Court cannot presume the effect of both the Explanations to be the same. When two different expressions are used by the same statute, one has to construe these different expressions as

⁸ Section 2 (120) of the Act reads as : "words and expressions used and not defined in this Act but defined in the Integrated Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax [Compensation to States] Act shall have the same meaning as assigned to them in those Acts;"

⁹ 2009 (233) ELT.146 (SC)

¹⁰ 2000 (122) ELT.327 (SC) – wherein Hon'ble SC approved Tribunal's view following Hon'ble High Court of Bombay's decision in Devidayal Electronics & Wires Ltd. w.r.t. meaning of two expressions)

¹¹ 2016 (44)STR.321 (AP)

carrying different meanings. [*Kailash Nath Agarwal v. Pradeshiya Industrial & Investment Corpn. of U.P. Ltd. - (2003) 4 SCC 305*]. Different use of expressions in two provisions of a statute is for a purpose for, otherwise, the same expression would have been used. [*B.R. Enterprises v. State of U.P. - (1999) 9 SCC 700 = AIR 1999 SC 1867*]. It would be difficult to maintain that, when two expressions of different import are used in a statute in two consecutive provisions, they are used in the same sense, and the conclusion must follow that the two expressions have different connotations. [*Member, Board of Revenue v. Arthur Paul Benthall - AIR 1956 SC 35 = (1955) 2 SCR 842*]. When the Legislature has taken care of using different phrases in different sections, normally different meaning is required to be assigned to the language used by the Legislature, and there is a presumption that they are not used in the same sense. [*Arthur Paul Benthall - AIR 1956 SC 35 = (1955) 2 SCR 842; Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala - (2001) 5 SCC 175 = AIR 2001 SC 1832*]. When the situation has been differently expressed the Legislature must be taken to have intended to express a different intention. [*CIT v. East West Imports and Exports (P) Ltd. - (1989) 1 SCC 760*] “.

- (iii) More significantly, we find that in the very same Notification No. 11/2017-Central Tax (Rate) dated 28-6-2017 containing the impugned entry, the Annexure containing Scheme of Classification of services depicts the Goods Transport Services as follows:

ANNEXURE : SCHEME OF CLASSIFICATION OF SERVICES

S. No.	Chapter, Section, Heading or Group	Service Code (Tariff)	Service Description
(1)	(2)	(3)	(4)
107	Heading 9965		Goods Transport Services
108	Group 99651		Land transport services of Goods
109		996511	Road transport services of Goods including letters, parcels, live animals, household and office furniture, containers and the like by refrigerator vehicles, trucks, trailers, man or animal drawn vehicles or any other vehicles
110		996512	Railway transport services of Goods including letters, parcels, live animals, household and office furniture, intermodal containers, bulk cargo and the like
111		996513	Transport services of petroleum and natural gas, water, sewerage and other goods via pipeline
112		996519	Other land transport services of goods nowhere else classified
113	Group 99652		Water transport services of goods
114		996521	Coastal and transoceanic (overseas) water transport services of goods by refrigerator vessels, tankers, bulk

			<u>cargo vessels</u> , container ships and the like
115		996522	Inland water transport services of goods by <u>refrigerator vessels</u> , tankers and <u>other vessels</u>
.....			
121		996601	Rental services of <u>road vehicles</u> including buses, coaches, cars, <u>trucks</u> and <u>other motor vehicles</u> , with or without operator
122		996602	Rental services of <u>water vessels</u> including <u>passenger vessels</u> , <u>freight vessels</u> and the like with or without operator
123		996603	Rental services of aircraft including passenger aircrafts, freight aircrafts and the like with or without operator
124		996609	Rental services of other transport vehicles nowhere else classified with or without operator
144	Group 99675		<u>Supporting services for water transport (coastal, transoceanic and inland waterways)</u>
145		996751	Port and waterway operation services (excluding cargo handling) such as operation services of ports, docks, light houses, light ships and the like
146		996752	Pilotage and berthing services
147		996753	<u>Vessel</u> salvage and refloating services

(Above are the only entries in the Notification including Annexure wherein the word 'vessel' is used (highlighted above), apart from the impugned entry. The words 'vehicles', 'road vehicles' or 'trucks' are also highlighted for reference).

(iv) From the above, it is seen that the Notification delineating the Scheme of classification of services (apart from prescribing the rates of tax) contains and shows the following distinct aspects:

- (1) The word 'vessel' has been used specifically in respect of the category/categories of services pertaining to 'Water transport services of goods' only;
- (2) The word 'vessel' has not been used in the context of Land transport services nor the services such as 'rental' services related to Land transport;
- (3) In the entries pertaining to Land Transport service, the word 'vehicles' with a specific inclusive mention of 'trucks' has only been used.

In other words, apart from the definition in the main Act, the Notification also uses the word 'vessel' in the specific context of and with a specific connotation vis-à-vis 'Transport by water' only and none else. In other words, the Notification has employed an unambiguous and distinct usage of the word "vessel" in relation to "water transport services only", while using the words "vehicles / trucks" in relation to Land transport services. Hence, the ratio of the principle laid down in the above-cited case laws squarely applies in this context to arrive at the conclusion that the word 'vessel' as used in the Notification would not cover the trucks or lorries or tractors/tippers used by the applicant in the impugned services.

15.6. The applicant's contention in this regard is that the definition / meaning of 'vessel' as per General Clauses Act and Law Lexicon as also that of 'conveyance' in the Act is an inclusive definition and hence as also by considering a general meaning, the word 'vessel' in the impugned entry would also cover their vehicles –trucks/lorries. We find no merit in the above contentions on various counts, as detailed below:

- (i) Firstly, as detailed above, the Notification uses the word 'vessel' specifically and distinctly only in relation to 'water transport'. Hence, there is no scope for treating 'vessel' as covering means of land transport also, merely because of usage of 'includes' in the cited definition / meanings.
- (ii) The mention of the word 'includes' in a statutory definition does not envisage that the definition can be expanded beyond any limit to cover all or any items which have no relation whatsoever to the defined word in the given context.
- (iii) The reference to external aids of interpretation such as General Clauses Act or Law Lexicon is not at all necessitated, rather obviated in view of the clear and unambiguous meaning for the word 'vessel' as evident within the Act / Notification. It is also a settled legal principle of interpretation that recourse to external aids for ascertaining meanings of words used in statute arises only in situations of doubt or ambiguity, which is not the case here.
- (iv) The applicant's endeavour to refer to General Clauses Act also stands negated by their own argument vis-à-vis Central Member's reference to the definition of 'vessel' in MPTA, 1963 i.e. such a reference is not mandated by the GST Act. And in any case, the definition in the General Clause Act or the meaning in the Law Lexicon also show that the term 'vessel' has been defined / explained with reference to water transport only.
- (v) Furthermore, in the same Law Lexicon relied upon by the applicant and extracts thereof referred by this Authority during the personal hearing, the word "vehicle" is separately mentioned with the meaning given as "Carriage, conveyance or "includes bicycles, tricycles, automotor cars and wheeled conveyances used or capable of being used on public street" which relates to road transport. On the other hand, the meanings given to "vessel" in the Law Lexicon, as reproduced earlier, are seen to be invariably with a specific reference to water transport only. It is pertinent to also mention that one of the meanings given in the Lexicon against 'vehicle' reads as "Vehicle could be read to include a boat" (as per a cited case law w.r.t. West Bengal Zilla Parishads Act, 1935). Whereas, in respect of the word "vessel", there is no meaning or citation given to show the converse i.e. that a vessel would include any vehicle / truck / lorry etc.
- (vi) Further, it would be pertinent to mention that during the hearing, the applicant's advocate, in response to our query vis-à-vis the definition of 'conveyance' in the Act, had fairly stated that among the three categories viz., a vessel or an aircraft or a vehicle in the definition, they would fall under 'a vehicle'.

15.7. The State Member's opinion that 'vessel' used in the impugned entry would cover all / any types of containers containing other goods – basing on a deductive inference from the words appearing in the proviso to the said entry, is thus found to be incorrect. The proviso only specifies a 'condition' for fulfilment in respect of the particular service 'transport of goods in a vessel'. The wording used in such a 'condition' can by no means be interpreted in a manner negating and distorting the meaning assigned in the Act/Notification to the word 'vessel' as detailed earlier. The reference in the proviso to 'goods' or the exclusion clause 'ships, vessels including bulk carriers and tankers' also has to be construed harmoniously vis-à-vis the scope of the service-description wherein the word 'vessel' appears and which as detailed above, is denoted to be that pertaining to water transport only.

15.8. The Central Member's opinion that 'vessel' would not cover the trucks/lorries in this case is therefore found to be correct in view of what has been discussed above; though the analysis and reasoning given for the same is seen to be rather cryptic and not comprehensive and further the reference to external aid of another Act i.e. MPTA being not at all warranted, in view of our above discussions.

16. In view of the above, we therefore hold that the vehicles used by applicant for transport of sand i.e. lorries / trucks (or tractors / tippers, as mentioned in the application) are not covered by the term 'vessel' appearing in the Notification-entry as held by the Central Member; the contrary opinion expressed by the State Member is found to be not legally correct.

17.1. The last question for our determination is "**What is the applicable rate of tax on the consideration received by the applicant for the impugned services consequent to determination of earlier two questions (ii) and (iii) ?**"

17.2. Vide entry Sl.No. 9 in the Table to Notification No.11/2017-Central Tax (Rate) dated 28-6-2017 – reproduced at para 15.2 above – the rates of tax applicable to **Goods Transport services (Heading 9965)** have been given under the following categories/service-description [Columns (3) and (4) of the Table refer]:

Description of Service	Rate (per cent)
(3)	(4)
(i) Transport of goods by rail [other than services specified at (iv)]	2.5
(ii) Transport of goods by vessel	2.5
(iii) Services of goods transport agency (GTA) in relation to transportation of goods (including used household goods for personal use).	2.5
(iv) Transport of goods in containers by rail by any person Other than Indian Railways	6
(v) Goods transport services other than (i), (ii), (iii) and (iv) above	9

17.3. Out of the above, item No.s (i), (iii) and (iv) are not applicable to the impugned services, since these are not for transport by rail, nor services of a GTA nor that of transport in containers by rail; respectively. Item No.(ii) which pertains to transport by 'vessel' is not applicable in view of our discussion and findings in the preceding paragraphs. Hence, the applicable entry in respect of the Impugned services would be the entry item Sl.No. (v) above viz., "Goods transport services other than (i), (ii), (iii) and (iv) above" for which the applicable rate of tax is prescribed as 9% CGST (and correspondingly 9 % SGST). Hence, the applicable rate of tax on the impugned services is 9 % CGST + 9 % SGST (aggregating to 18%).

18. In view of the aforesaid discussion and findings, we pronounce the Advance Ruling in respect of the question framed by the applicant in the instant proceedings, as follows:

Sl. No.	Question framed for Advance ruling	Ruling by this Appellate Authority
A)	The combination of services of excavation of sand including loading with machinery at reach, Formation of Ramps and Maintenance of Roads, Transportation charges for the tractors/tippers of sand from reach to stockyard and Loading cost at sand from stockyard to lorries, whether is "Works Contract" or "Composite Supply" and what is the rate of tax on the consideration received therefor ?	In the said services held by lower Authority as 'composite supply', the principal supply is 'Transport of goods by road' and hence, these are classifiable under Service Code 996511 of the Scheme of Classification of Services vide Annexure to Notification No.11/2017-Central Tax (Rate) dated 28.06.2017. In terms of Section 8 of the Act, the rate of tax on the said services is 9% CGST as specified under Column (4) against the item No.(v) under Column (3) against Sl. No. 9 in the Table of the said Notification plus 9 % SGST as per the corresponding State Tax (Rate) Notification; aggregating to 18 %.

19. Accordingly, we pass the following

ORDER

The Reference Order No. **A.R.Com/9/2018 dated 06.06.2018** passed by the Telangana State Authority for Advance Ruling in re: applicant M/s. R. Vidyasagar Rao Constructions, Hyderabad is decided as follows :-

- (i) The opinion expressed by the State Member in so far as holding that the 'Transport of goods' is the principal supply in the impugned services, is confirmed.
- (ii) The classification of the impugned services is under Service Code (Tariff) 996511 – Road Transport of goods..., as per Annexure to the Notification No.11/2017- Central Tax (Rate) dated 28.06.2017.

- (iii) The opinion expressed by the Central Member in so far as holding that the term 'vessel' (appearing in item (ii) under Column (3) against entry at Sl.No.9 of the above Notification), is not applicable to the applicant's case, is confirmed.
- (iv) The Advance Ruling on the question framed by the applicant is pronounced as specified **in para 18 above.**

The subject reference is disposed of accordingly.


(V. Anil Kumar)
Commissioner of State Tax,
Telangana State


(Bankey Behari Agrawal)
Chief Commissioner of
Central Tax & Customs,
Hyderabad Zone

To:

M/s. R. Vidyasagar Rao Constructions, Plot No.98 & 99, Lumbini Layout, near Euro School, Gachibowli, Hyderabad – 36, Telangana.

Copy to:

1. The Telangana State Authority for Advance Ruling, CT Complex, MJ Road, Nampally, Hyderabad- 500 001.
2. Chief Commissioner of Central Tax & Customs, Hyderabad Zone – for sending it to the concerned / jurisdictional officer of central tax.
3. Commissioner of State Tax, Telangana State – for sending it to the concerned / jurisdictional officer of state tax.
