

**KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING  
6<sup>TH</sup> FLOOR, VANIJYA THERIGE KARYALAYA, KALIDASA ROAD,  
GANDHINAGAR, BANGALORE – 560009**

**(Constituted under section 99 of the Karnataka Goods and Services Tax Act, 2017 vide  
Government of Karnataka Order No FD 47 CSL 2017, Bangalore, Dated:25-04-2018 )**

**BEFORE THE BENCH OF**

**SHRI. D.P.NAGENDRA KUMAR, MEMBER**

**SHRI. M.S.SRIKAR, MEMBER**

**ORDER NO.KAR/AAAR-04/2020-21**

**DATE: 27.09.2020**

Sl. No	Name and address of the appellant	M/s Karnataka State Electronics Development Corporation Limited,  2nd Floor, TTMC A Block, BMTC Complex, K H Road, Shanthinagar, Bengaluru – 560 027
1	GSTIN or User ID	29AABCK6661P1ZT
2	Advance Ruling Order against which appeal is filed	KAR/ADRG 07/2020 Dated: 10 <sup>th</sup> March 2020
3	Date of filing appeal	29-06-2020
4	Represented by	Shri. Rishabh Singhvi, Authorised representative
5	Jurisdictional Authority- Centre	The Commissioner of Central Tax, Bangalore South Commissionerate.
6	Jurisdictional Authority- State	LGSTO 40, Bangalore
7	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Challan CPIN No 20062900272305 dated 26-06-2020 for Rs 20,000/-

**PROCEEDINGS**

**(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)**

1. At the outset we would like to make it clear that the provisions of CGST, Act 2017 and SGST, Act 2017 are in *parimateria* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly





made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act 2017 and Karnataka Goods and Service Tax Act 2017 (herein after referred to as CGST Act, 2017 and SGST Act, 2017) by M/s Karnataka State Electronics Development Corporation Limited, 2nd Floor, TTMC A Block, BMTC Complex, K H Road, Shanthinagar, Bengaluru – 560 027(herein after referred to as Appellant) against the advance Ruling No. KAR/ADRG 07/2020 dated: 10<sup>th</sup> March 2020.

**Brief Facts of the case:**

1. The Appellant, a Karnataka State Government Entity, is engaged into providing street lighting services, under the Energy Performance Contract (ESCO contract) to the Thane Municipal Corporation (TMC), Thane for a period of 7 years. The ESCO contract is on shared saving model and is to reduce the overall consumption of electricity in street lighting. The Appellant has to operate and maintain 12,000 street lighting fixtures & respective feeder panels i.e. installation of LED fixtures, smart electric panels for automation, metering & comprehensive maintenance. The role of the Appellant is as under:

- a) Removal of the existing street lights and handing over the same to TMC.
- b) Installation of LED street lights on existing street light poles
- c) Installation of new smart feeder electrical panels compatible with LED fixtures at its own cost.
- d) Operation and maintenance of the said LED street lights during the tenure of the contract.

2. In view of the above, the Appellant approached the Authority for Advance Ruling (AAR) seeking a ruling on the following questions:

- i. *Whether the street lighting activity under the Energy Performance Contract dated 05.12.2016 is to be considered as Supply of goods or a Supply of Services under the CGST / KGST Act 2017? Accordingly, whether the transaction can be sub-classified as a 'Pure Supply of Service' or 'Pure Supply of goods' or 'Composite Supply of goods and services being a works contract'?*
- ii. *What is the rate of tax applicable on this transaction? Whether the applicant is entitled to the benefit of exemption under entry 3 or 3A of Notification No.*





12/2017-Central Tax (Rate) dated 28.06.2017, as amended? If not, what is the applicable rate of tax?

- iii. *If the transaction is treated as supply of services, what is the time of supply of such services? Whether KEONICS is liable to tax only once the energy saved is certified by the energy auditor? Whether amount credited in joint ESCROW account can be termed as 'receipt' especially because the said amount is not under control of KEONICS until the conditions are met?*
- iv. *Without prejudice to above submissions, if the transaction is treated as a supply of goods, what is the time of supply of such supply? Whether KEONICS would be liable to tax only at the time when the possession and ownership in goods are vested to TMC at the end of tenure? What would be the value of the aforesaid taxable supply given the fact that it is based on energy savings which can be computed only when the energy auditor certifies the workings submitted by KEONICS ?*

3. The AAR vide its order dated 10<sup>th</sup> March 2020 gave the following ruling:

- i. *The street lighting activity under the Energy Performance Contract dated 05.12.2016 amounts to composite supply where the principal supply is that of supply of goods.*
- ii. *The rate of tax applicable on this transaction is 12% (CGST-6% 86 SGST-6%), in terms of Si. No. 226 of Schedule II to the Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, as amended. Further, the applicant is not entitled to the benefit of exemption under entry 3 or 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended, as the impugned supply is not that of pure services.*
- iii. *The instant transaction amounts to a composite supply, with supply of goods being principal supply and hence the impugned question is redundant.*
- iv. *The time of supply is the date of invoice and the consideration is equal to the value of the invoice, the GST rate being 12%.*

4. Aggrieved by the said ruling, the appellant has filed this appeal on the following grounds.

- The activity of the Appellant as per the contract is dependent on the quality and duration of lighting and not on the installation of the streetlight fittings. Therefore, the supply is a supply of service and not supply of goods as held by the AAR.

- The Appellant is eligible for the exemption in terms of Entry 3 or 3A of Notf No 12/2017 CT (R) dt 28.06.2017.





- The time of supply will not be at the time of raising the invoice as held by the AAR but it will be at the time of termination of the contract as the title in goods is vested to the client only at that time.

### **PERSONAL HEARING**

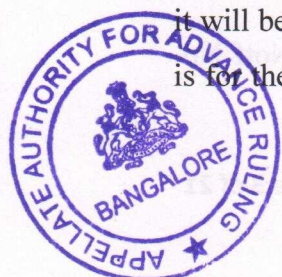
5. The appellant was called for a virtual hearing on 25th Sept 2020 but they sought an adjournment. Accordingly, the Appellants were called for another virtual hearing on 26th September 2020.

5.1. The hearing on 26<sup>th</sup> September 2020 was conducted on the Webex platform following the guidelines issued by the CBIC vide Instruction F.No 390/Misc/3/2019-JC dated 21<sup>st</sup> August 2020. The Appellant was represented by Shri. Rishabh Singhvi as authorised representative.

5.2. The authorised representative explained in detail the facts of the case and the business model of the Appellant with respect to the contract for street lighting awarded by Thane Municipal Corporation. He stressed on the fact that the predominant supply in their case is a supply of pure service; that the Appellant is not in the business of supplying street lights but rather the Appellant is in the business of ensuring that there is street lighting in the municipal area. Further, the performance of the Appellant is based on the amount of energy saved and not on the kind of LED lights installed and for this reason, the activity is one of a service and not a supply of goods. Accordingly, they were eligible for the exemption given for pure services rendered to the municipal authority.

5.3. He submitted that even if their activity is considered as a composite supply, even then the material cost component is less than 25% of the total project cost and therefore they are eligible for the benefit of exemption under entry 3A of the Notf No 12/2017 CT (R) dt 28-06-2017.

5.4. At this juncture, the Members posed a question as to how the value of the goods component to the contract value is going to be calculated? Whether it will be apportioned to the contract period or whether it will be with reference to a particular time frame i.e whether it will be annualised or is it actualised for a billing cycle? In response, he submitted that 25% is for the total value of the composite supply (although there is a periodic billing cycle); that





it is impossible to meet this 25% criteria with every month's billing; that this would defeat the purpose of the entry itself. He drew attention to the advance rulings given in the case of M/s YashaswiniEntp and Kailash Chander wherein the authorities had given the benefit of 25% of material cost to the entire contract value and extended the benefit of entry 3A of the Nottf. He however, sought permission to give detailed submissions on this aspect.

5.5. As regards the time of supply, the authorised representative submitted that, assuming, but not admitting that it is a supply of goods as held by the AAR, then the time of supply has been held as the time when the invoice is raised. However, the Authority has failed to address the issue as to when the invoice should be raised when there is a continuous supply. He submitted that in their case, the supply happens only at the end of the contract period and anything received before that has to be in the form an advance receipt.

5.6. In view of the above submissions he pleaded that the appeal be allowed. The Authorised representative also craved leave to file written additional submissions in the matter.

5.7. In the additional written submissions, the Appellant submitted that the ESCO contract is a contract for supply of pure services to the Contractee and hence assessable as a supply of services entitling it to the Exemption under 12/2017-CT; that the essence of the contract is 'energy savings' and not supply of street lights; that ownership and possession of street lights continue to be with the Contractor for the entire contract period in its own account and vests only at the expiry of contract period; that material component is not at all supplied to the Contractee but retained with the contractor for the entire contract period; that Contractee does not have the right to even use the materials during the contract period; that there is no 'sale', 'license' or right to use' the materials under the contract period to the Contractee; that though there is installation of the light fittings, the installation is on self/ own account of the contractor and not for the transfer of the ownership to the Contractee. The function of the Municipality under Article 243W (i.e. Street Lighting) has been completely assigned to the Appellant. The function itself entails street lighting and hence such activity should be perceived as a service being a function of the Municipality now being conducted by the Appellant on the basis of the contract awarded by the Municipality. This is evident from the contractual clauses which state that all functions even those involving switching on/off of street lights, which were hitherto the responsibility of the Municipality, need to be handled by the Appellant.





5.8. The Appellant submitted that the dominant intention of the contract is divided into three phases. Phase 1 – Identification of the street lighting coverage. Phase 2 – Installation of the street lighting. Phase 3 – Operation and Maintenance of the street lighting. No compensation is eligible to the Contractor for Phase 1 and Phase 2. The compensation is fixed based on the lighting services i.e. duration of lighting, energy savings and quality of illumination. This is only received as part of Phase 3 where the contractor is operating the street lighting within the specified duration with specific illumination. Performance of the supplier of the activity is purely based on energy savings. The Contractee would provide the baseline energy consumption before implementation of the contract and the energy savings would be computed taking into consideration the baseline energy savings. There is a clause in the contract which states that in case any pole or street light is removed, the contractor would not be entitled to Energy Savings for the pole which is removed. There is a specific clause defining the Lux Levels and its measurements placing the responsibility on the Contractor to ensure that the minimum Lux Levels are maintained depending on the type and nature of the streets where the lighting fixtures are being placed. No extra payment would be made for repair, replacement and installation of any faulty lights, wires, cables, etc during the tenure of the project. Contractor would not be entitled to any revenue if there are no energy savings despite installation of the street lights. In case of deficiency in promised energy savings, the contractor would be penalized. There is no assured fee to the contractor even after installation of the street lights. Operation, maintenance and replacement of the street lights for the entire contract period is the responsibility of the contractor. The contractor would be having access to the entire lighting infrastructure and would be operating the control room of street lighting including switching on switching off of the street lights. They submitted that 'Pure services' should not be mean no material at all, it would also include cases where there is no independent price being charged for the goods. Pure services CANNOT be performed in vacuum without use of any materials. There would always involve usage of materials Pure services should be understood from the perspective of whether there is a value being assigned/charged for goods. For eg. A Doctor's service would also be a pure service even if the paper prescription (goods) is handed over to the patient, thermometer is used, ventilator is used, etc . They relied on the Supreme Court's observation in UOI v. BSNL to buttress their stand that the supply in their case is one of Pure services. They also submitted that a leasing of the goods/ right to use goods would also be a 'pure service' since there is no separate charge for the goods activity. Similarly, in the present facts, since there is no separate price being charged for the vesting of the goods on the contract (which is itself a contingent event),





it would be considered as a pure service. As a contradistinction, a composite supply represents two or more supplies which are bundled together (sec 2(31)). In the present agreement, the supply of goods is not at all identifiable supply. Goods are being supplied until the end of the contract period. Hence the fact that this is not a composite supply itself is conclusive that this is a pure service.

5.9. The Appellant further relies on ruling of Kochi Metro Rail Limited 2020 (8) TMI 681 where the facts were similar as it involved operation and maintenance of Metro Project. The contract was awarded for water transport systems and the AAR held that Kochi Metro Rail is rendering pure-services and entitled to exemption under the very same exemption entry. The Appellant also relies on the ruling of VFS Global Services Pvt Ltd 2019- TIOL-315-AAR-GST where the work was awarded for setting up, operation and maintenance of Citizen Facilitation Centre (CFC). The AAR held that this is pure service despite use of materials, consumables, etc as the activity was chargeable on per transaction basis. The AAR ultimately held that this is entitled to exemption in the very same exemption entry.

5.10. The Appellant also contended that assuming without admitting that the contract is a composite supply, the contract falls within exemption Entry-3A of Notification 12/2017-CT. The Appellant contends that not more than 25% of the value of the composite supply of goods/ services is supply of goods; that this project requires a onetime installation and operation and maintenance which would continue for 7 years; that with a projected revenue of approx. 22 crores, the appellant has subcontracted a major portion of the installation, operation / maintenance activity. The appellant clearly expects that the material component would be significantly lesser than 25% mark. They submitted that the subject contract is a single indivisible contract for street lighting for a period 7 years. The said contract would probably be covered as a continuous supply of services. In terms of section 31(5), the payment obligations on a monthly basis would be the time within which the invoices would be raised. It is submitted that the 25% calculation should be viewed from the contract revenue as whole and not with reference to the individual monthly payment obligations which trigger the requirement of raising an invoice in terms of section 31(5). Each invoice cannot be termed as an independent supply rather it merely represents a stage of collection of payment in terms of section 31(5) under a long duration contract. It is also submitted that a Composite supply u/s 2(30) implies a bundle of two or more supplies. If one views all the possible contracts which fall within this exemption entry (such as Roads and bridges, water supply for domestic, industrial and commercial purposes, public amenities including street lighting,





parking lots, bus stops and public convenience, etc.) these are all long duration contracts and the 25% criteria can be fulfilled only by a contract as a whole. Any attempt to interpret the entry as requiring the tax payer to satisfy the condition of 25% would make the exemption entry nugatory. The law should not be interpreted to result in impossible situations. The Appellant also relied on the ruling of Yashwani Enterprises KAR ADG 51/2019 wherein the applicant was drilling borewells and engaging in supply of water to the prescribed citizens. Being a Govt function which was outsourced, the AAR held that this is also entitled to exemption under the Notification 12/2017-CT and granted the exemption under this entry-3A. No additional conditions were placed on the applicant in similar circumstances. The Appellant also relied on the AAR ruling in Kailash Chandra case 2018 (19) G.S.T.L. 537 where under the ESCO model, it was held by the AAR it amounts to composite supply of services and if the material component is below 25%, the exemption under the Notification 12/2017-CT would be available. Again, in this ruling, no additional conditions were placed on the applicant and the only condition viewed was the satisfaction of the 25% threshold.

5.11. As regards the 25% condition contained in the exemption entry, the Appellant submitted that the exemption entry requires one to view the component of material which is being charged towards the value of supply of goods in the bundled supply. In the agreement on hand, the goods are being vested at free of cost on the expiry of the contract period in which case it establishes that the appellant is not being paid for the supply of the materials component of this indivisible contract. This clearly makes the value of supply of material below the 25% threshold and the exemption entry stands satisfied. They further submitted that the Ld AAR erred in holding that the consideration is being received for the supply of LED lights ignoring the specific formular which clearly depicts that the consideration is being received for the energy savings and nothing else; that the Ld AAR erred in concluding that a value can be attributed to the supply of goods in such contracts without providing any legal provision under which such attribution can take place; that in the absence of a legal provision for attribution of a value in composite supply, the Ld AAR has incorrectly concluded that monthly consideration under the contract includes amounts attributable towards value of supply of goods; that the Ld AAR erred in concluding that the time of supply of such activity would be at the time of raising the invoice despite acknowledging that the title in goods is vested only on termination of the contract; that the Ld AAR erred in not applying its very own ruling in Yashwani Enterprises KAR ADG 51/2019 where the benefit of exemption was granted under 3A without any quantification or alteration of the 25%





criteria. They also argued that the Ld AAR erred in deeming a supply in terms of section 12(2) when the supply of goods (if any) under the contract takes place only when the contract expires and is not renewed in the future.

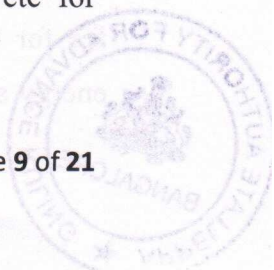
5.12. In view of the above submissions, the Appellant prayed that the ruling of the lower Authority may be set aside and that supply in their case be held as a supply of pure services which is exempt by virtue of entry 3 of exemption Notification No 12/2017 CT(R).

### **DISCUSSIONS AND FINDINGS**

6. We have gone through the records of the case and considered the submissions made by the Appellant in their grounds of appeal as well as the detailed submissions made at the time of personal hearing.

7. The primary issue to be decided is whether the activity undertaken by the Appellant for the Thane Municipal Corporation amounts to a supply of goods or a supply or service or is it a composite supply involving both goods and service? Thane Municipal Corporation has entered into an Energy Performance Contract with the Appellant who is a qualified energy service provider. We have perused the Energy Performance Contract (ESCO) dated 5<sup>th</sup> December 2016 awarded to the Appellant by the Thane Municipal Corporation (TMC) whereby the Appellant as a contractor is responsible for implementation of energy conservation measures for 12000 street lighting fixtures located in the city of Thane. The scope of the services provided by the Appellant involves removal of the existing street lights and handing over the same to TMC; installation of LED street lights on the existing street light poles; installation of new smart feeder electrical panels compatible with LED fixtures at its own cost and operation and maintenance of the said LED street lights during the tenure of the contract which is 7 years. The Appellant will perform the activity in terms of the ESCO in three phases as follows:

- Phase I – Preparatory work for installation of Smart Feeder Panels and LED light fixtures. In this phase, the Appellant is required to undertake the numbering of poles and feeder panels and prepare the Asset register. Identification of replacement of existing electric meters, ples, earthing, conductors, underground cables, etc for





existing feeder panels. Liaison with DISCOM to replace defective meters, reduce/increase contract demand and stream line electricity bills.

- Phase II – Implementation of energy efficient lighting fixtures, brackets and junction box, underground cables and flexible cables. In this phase the Appellant is required to submit the implementation plan and LED street light design and smart feeder panel design to TMC for approval. After the approval, they are required to start replacement of light fixtures, brackets, underground cables, wires, junction boxes, earthing, etc. The smart feeder panels will be implemented, and the central control room will be established. After the LED installation work is completed, feeder panel-wise street lighting system will be handed over to ESCO for maintenance. Completion certificate of ESCO project on all roads under the project will be issued.
- Phase III – Operation and maintenance upto the end of the contract period.

8. The ownership of the assets under this contract is as follows:

- TMC shall be the owner of the land and the existing lighting infrastructure facilities (excluding smart feeder panel and LED light fixtures installed by the Appellant)
- The Appellant shall hand over to TMC street lighting fixtures/fittings and any other equipment that has been replaced with proper documentation for TMC's verification. The replaced equipment shall be free of lien
- The Appellant shall remain the owner of the equipment and systems installed by them during the term of the contract.
- The Appellant shall undertake all the procurement of equipment and services necessary for the project.
- At the expiry of the term of the contract, all rights and titles to, and interests in, all improvements and software and hardware installed in control room along with equipment constructed or systems installed are vested in TMC. The Appellant shall surrender possession of the said equipment and systems to TMC in good repair and condition. There shall be no cost involved in the transfer of the equipment, materials and systems.

9. As a consideration for the energy savings achieved, TMS shall pay the Appellant a fee for the energy savings which is computed on a monthly basis as 90% of the actual energy saved in a given month (kWh) \* tariff fixed for making payment to the Appellant.

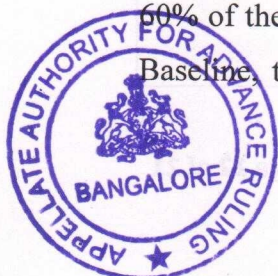




The tariff is fixed at Rs 5.8/kWh at the start of the contract and there will be a 4% increase on the tariff every year for the entire contract period. 10% of the energy saved will be retained by TMC as their share in the savings. If the monthly energy savings are less than 60% of the Energy baseline, then the Appellant has to pay a penalty. The Appellant shall issue monthly invoices for each switching point along with calculations of the actual energy savings achieved. The invoice is issued for the same billing period as that followed by DISCOM.

10. An ESCROW Account shall be created within 6 months from the commencement of the contract and TMC shall deposit in the ESCROW account an amount equal to what it used to pay for 3 months of electricity bills before commencement of the project. Thereafter, each month until the end of the contract, TMC shall deposit an amount equal what it used to pay for one month of electricity bills before the commencement of the Project. On receipt of the monthly invoice raised by the Appellant, TMC will make payments to the bidders within 15 days of receipt of the invoice.

11. A reading of the above terms of the ESCO contract evidences that it is basically an energy performance contract i.e an Operation and Maintenance contract wherein the main objective of the contractor (Appellant) is to implement energy conservation measures in the 12000 street lighting fixtures located in Thane Municipal Corporation. As part of implementing the energy conservation measures, the Appellant is required to install LED street lights and smart feeder panels on the existing street lighting infrastructure. If any existing infrastructure is not compatible for the installation of LED lights, then the Appellant is required to undertake the necessary modifications and alterations. During the contract period, the Appellant is required to operate and maintain the street lighting system and ensure that there is a reduction in the energy consumption. The performance of the Appellant is measured in terms of the quantum of energy saved which is the difference between the energy consumption before the LED lights were fitted (Energy Baseline) and the actual energy consumed after the energy conservation measures were implemented. In consideration for the performance of this activity, TMC will pay the Appellant a fee called the Energy Saving Fee which is determined based on a formula. The payment of fee to the Appellant will be made only if there is an energy saving which is equal to or greater than 60% of the Energy Baseline. In the event the energy saving is less than 60% of the Energy Baseline, the Appellant will have to pay a penalty. From the aforesaid, we find that the





activity performed by the Appellant in respect of the ESCO contract is a service-oriented activity. Although for the purpose of rendering this service, the Appellant uses goods like LED light fixtures, smart feeder panels which are procured by them, it is not for the goods that the payment is made to them. The Appellant is paid for the quantum of the energy saved which can come about only by the use of the LED lights. The Appellant remains the owner of the LED lights and other equipment installed by them during the tenure of the contract. However, at the time of the termination of the contract the Appellant is required to transfer all rights and titles to the equipment and systems to TMS. In other words, the LED lights and smart feeder panels are the business assets of the Appellant during the duration of the contract and the total business assets of the Appellant are transferred to TMC without consideration only at the time of termination of the contract period. In terms of para 4(a) of Schedule II to the CGST Act, 2017, *transfer of business assets where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person.* Hence in this case, a supply of goods does take place as part of the contractual terms although it is not during the course of the contract. The supply of goods takes place when the contract comes to an end and therefore forms part and parcel of the contract. In view of the above, we hold that the supply under the ESCO contract is a composite supply involving both a supply of service as well as a supply of goods. The principal supply however is a supply of service as it is the operation, management and maintenance of the street lighting system which is the essence of the ESCO contract. The LED lights and other equipment like smart feeder panels are goods used for the rendering of the service. Therefore, we disagree with the lower Authority's ruling that the principal supply is a supply of goods.

12. We now come to the question of the rate of tax applicable on the supply of service by the Appellant. It is the claim of the Appellant that they are rendering pure service to TMC and hence are eligible for the benefit of exemption under entry no 3 to exemption Notification No 12/2017 CT (R) dt 28-06-2017. The relevant entry of the said Notification is reproduced below:

Sl.No	Chapter, Section, Heading, Group or Service Code	Description of goods	Rate (Percent)	Condition
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	(Tariff)			
3	Chapter 99	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.	NIL	NIL

For the applicability of the above-mentioned entry, the following requirements need to be fulfilled:

- The supply must be a case of supply of pure service. The contract should not include any supply of goods either by way of works contract or composite supply.
- Supply must be made either to Central Govt or State Govt or Union Territory or a Local Authority or a Governmental Authority.
- The service so supplied must be in relation to any function entrusted to a Panchayat under Article 243G or entrusted to a Municipality under Article 243W.

In this case, there is no doubt on the fact that the supply is made to a local authority (Thane Municipal Corporation) and the service supplied i.e the operation and maintenance of street lighting is in relation to a function entrusted to the Municipality under Article 243W of the Constitution. However, the ESCO contract involves the supply of goods albeit at the time of termination of the contract. Therefore, the first condition of it being a pure service is not fulfilled. A pure service must necessarily not involve a supply of goods. The Appellant has relied on the Kerala Authority for Advance Ruling decision in the case of Kochi Metro Rail Ltd to drive home the point that they are rendering pure services. At the outset we hold that an advance ruling given by the Authority under the GST Act is binding only on the applicant and the concerned officer and the jurisdictional officer in respect of the applicant. Nonetheless, in the Kochi Metro Rail case, we find that there is no mention of supply of goods by the applicant. The Authority therein had, based on the documents placed before them, held that, the service of executing and operating the integrated water transport project by the applicant is a pure service rendered to the Govt of Kerala. In this case, we have already observed that there is a supply of goods involved. Hence, the ruling in the Kochi





Metro Rail case does not help this Appellant. We therefore hold that the Appellant is not eligible for the benefit of exemption as a pure service under entry No 3 of Notification No 12/2017 CT (R).

13. The Appellant has made an alternate plea that they are also eligible for the benefit of exemption under entry No 3A to the exemption Notf No 12/2017 CT (R). The relevant entry of the said Notf was inserted vide amendment Notf No 02/2018 CT (R) dated 25<sup>th</sup> Jan 2018. The said entry is reproduced below:

Sl.No	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of goods	Rate (Percent)	Condition
3A	Chapter 99	Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.	NIL	NIL

Here again, to be eligible for the above entry, there are three requirements to be fulfilled viz.

- The supply must be a composite supply of goods and services and the value of the goods supplied should not exceed 25% of the value of the entire composite supply.
- The composite supply must be made either to Central Govt or State Govt or Union Territory or a Local Authority or a Governmental Authority or a Government Entity.
- The composite supply must be in relation to any function entrusted to a Panchayat under Article 243G or entrusted to a Municipality under Article 243W.

As regards the conditions at (b) and (c) above, we have already agreed that the Appellant fulfils the same. However, with respect to the first condition, we find that the Appellant has





not been able to establish that the value of the goods component supplied as per the ESCO contract will be less than 25% of the value of the entire contract. The Appellant has relied on the Karnataka Authority for Advance Ruling decision in the case of Yashaswani Enterprises and the Rajasthan AAR ruling in the case of Kailash Chandra to justify their claim for exemption under entry 3A of the exemption Notification. During the personal hearing, the Counsel for the Appellant submitted that the value of the goods involved is less than 25% by taking the total value of the composite supply (although there is a periodic billing cycle). We are not convinced with this submission. The terms of the ESCO contract and the submissions made by the Appellant do not establish beyond doubt that the value of the supply of goods in this contract will always be less than 25% of the total cost of the supply under the contract. In the ruling given by the Authority for Advance Ruling, in the case of Yashaswani Enterprises, we find that the activity was a composite supply of drilling of bore wells for irrigation purposes which included digging of bore well/open well, installation of pump, motor and accessories and followed by energization. It is mentioned that the unit cost is Rs 3 lakhs which includes a subsidy of Rs 2.5 lakhs and loan of Rs 0.50 lakhs. The subsidy includes the energization cost of Rs 0.50 lakhs. On this basis it has been concluded that the value of the goods involved in the composite supply of an energized bore well is less than 25% of the total value of the composite supply. In this case, no such substantiation has been provided for us to arrive at a similar conclusion. In the case of Kailash Chandra, we find that the Authority has extended the benefit of exemption under entry 3A with a condition that if in the duration of the contract, the applicant crosses the benchmark of 25% value of goods then the rate of tax will shift from Nil to 12%. This prompted us to ask the Appellant during the personal hearing, to clarify how, in their case, they can substantiate that at any given point of time during the period of the contract, the value of the goods component will be less than 25%. In response, the Appellant submitted that 25% is for the total value of the composite supply (although there is a periodic billing cycle); that it is impossible to meet this 25% criteria with every month's billing; that this would defeat the purpose of the entry itself. We are not convinced with this explanation. The entry 3A of the exemption Notification is unambiguous in laying down the condition that the value of the supply of goods should not exceed 25% of the total value of the supply. The burden of proving the eligibility to the exemption is on the Appellant to show that his case comes within the parameters of the exemption notification. We rely on the decision of the Constitution Bench of the Supreme Court in the case of Commissioner of Customs (Import) Mumbai vs Dilip Kumar & Co & Ors in this regard. We find that this onus has not been





adequately discharged by the Appellant. Therefore, we hold that the Appellants are not eligible for the benefit of exemption under entry 3A of the Notf No 12/2017 CT (R) as amended by Notf No 02/2018 CT (R).

14. Having held that the Appellant is not eligible for exemption either under entry 3 or 3A of the Notf No 12/2017 CT (R), we now examine the question as to the applicable rate of tax in respect of the supply of service to TMC. For this we first have to determine the classification of the service. As mentioned earlier, the scope of the work under the ESCO contract is undertaken in three phases. Phase I involves the preparatory work for installation of Smart Feeder Panels and LED light fixtures. Phase II involves the implementation of energy efficient lighting fixtures, brackets and junction box, underground cables and flexible cables. In Phase III the operation and maintenance of the street lighting system will be monitored upto the end of the contract period. As observed earlier, there is a significant usage of goods and materials for the provision of the service as per the contract. So, let us examine whether the impugned composite supply is a “works contract” as defined under Section 2(119) of the CGST Act. The said definition is reproduced below:

*“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.”*

The two significant aspects of works contract under GST are that:

- the meaning has been restricted to any work undertaken for an “Immovable Property” and;
- there should be a transfer of property in goods during the execution of the contract.

15. The term “immovable property” however, is not defined under GST and hence reliance is to be placed on other laws. According to section 3(26) of the General Clauses Act 1897, “immovable property shall include land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth. In this case, can the LED Street lights and other fixtures be considered as immovable property for the subject activity to be considered as a Works Contract under the GST laws. The electric poles are attached to the earth, however the LEDs and fixtures which are installed can be removed without damaging the poles. It is the responsibility of the Appellant as per the contract to





replace the LED lights and other fixtures if they do not function at any time. Just because the LED lights and the fixtures are fitted on to the electric poles which are attached to the earth, they do not become immovable property. An analogy can be made to the fixing of lights and ceiling fans to civil structures. While the civil structures are undoubtedly immovable property, the lights and ceiling fans do not assume the character of immovable property just by the act of affixing them to an immovable property. Further, we also find that there is no transfer in property of goods during the execution of the ESCO contract. Therefore, the impugned contract does not qualify to be classifiable as a “works contract”.

16. In the Explanatory Notes to the scheme of classification of services, which is a guiding tool for classification of services, service code 999112 is extracted below:

***999112 - Public administrative services related to the provision of educational, health care, cultural and other social services, excluding social security service.***

*This service code includes:*

- i. *public administrative services related to different educational institutions*
- ii. *public administrative services related to the management, operation, inspection and support of all types of schools and other educational institutions*
- iii. *public information services concerning the educational system in general, provided by government departments or special programme units*
- iv. *public administrative services related to all kinds of health and social services*
- v. *public administrative services related to the management, operation, inspection and support of general and specialized medical or dental hospitals and clinics, as well as nursing and convalescent homes*
- vi. *public administrative services related to the administration, management, operation and support involving public health matters, such as blood bank operation, disease detection and prevention, management of drug quality programmes, birth control services, etc. These services are frequently provided by special teams or individual health professionals not connected with a hospital, clinic or practitioner.*
- vii. ***public administrative services related to housing and overall community development, water supply, sanitation and street lighting***





- viii. *public administrative services related to the development, monitoring and evaluation of housing and housing standards (other than construction standards)*
- ix. *public administrative services related to rent control and eligibility standards for state-subsidized housing*
- x. *public administrative services related to housing for the general public or for people with special needs*
- xi. *dissemination of public information about housing*
- xii. *services provided by government offices, bureaux, departments and programme units involved in developing and administering regulations concerning water supply*
- xiii. *public administrative services related to refuse collection and disposal, sewage system operation and street cleaning*
- xiv. *public administrative services related to pollution standards, including the dissemination of information regarding pollution*
- xv. *public administrative services related to cultural facility support and individual artists and organizations engaged in promoting cultural activities*
- xvi. *public administrative services related to national, regional or local festivities and the maintenance and running of religious institutions (Emphasis supplied)*

17. As can be seen from the above extract of the explanatory notes, the service of street lighting is classifiable under Heading 999112. This heading is chargeable to tax at the rate of 9% CGST and 9% SGST which is specified under entry Sl.No 29 of Notification No 11/2017 CT (R) dated 28-06-2017. The said entry in the rate Notification is reproduced below:

Sl.No	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of goods	Rate (Percent)	Condition
29	Heading 9991	Public administration and other services provided to the community as a whole; compulsory social security services.	9	-





18. We now address the question regarding the time of supply. Since we have held that the supply in this case is a composite supply involving the supply of both goods and services with the supply of service being the predominant supply, the provisions of Section 13 of the CGST Act relating to time of supply of services will apply. The said Section is reproduced here below:

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

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

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

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

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

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

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

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

In this case, it is seen from the contract that the Appellant shall raise monthly invoices against the energy savings achieved during the month along with the energy savings calculation. These invoices should be for the same billing period as that followed by DISCOM and should be submitted within eight days of receipt of the electricity bills from DISCOM. TMC will release the payment to the Appellant only after the energy savings report is submitted to TMC along with the invoice and the third-party auditor has verified and approved the same.





This payment will be made to the ESCROW account. Therefore, the time of supply in this case will, in terms of Section 13 of the CGST Act, be the earliest of the following dates:

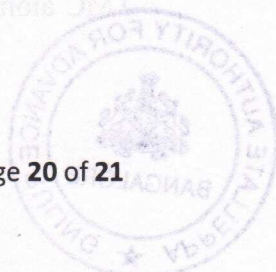
- a) Date of issue of the invoice to TMC along with the energy savings report; or
- b) Date on which the payment is entered in the books of account of the supplier; or
- c) Date on which the payment is credited to his bank account.

19. In view of the above discussion, we pass the following order

### ORDER

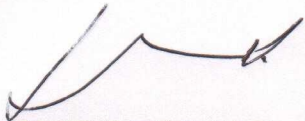
We set aside the advance ruling No KAR ADRG 07/2020 dated 10-03-2020. We answer the questions raised in the original application as follows:

- i. The street lighting activity under the Energy Performance Contract dated 05-12-2016 is considered as a composite supply of goods and services with the supply of service being the predominant supply. The service is classified under Heading 999112.
- ii. The rate of tax applicable on the above supply is 9% CGST and 9% SGST as per entry Sl.No 29 of Notification No 11/2017 CT (R) dated 28-06-2017. The Appellant is not eligible for the benefit of exemption under entry 3 or 3A of exemption Notification No 12/2017 CT (R) dated 28-06-2017.
- iii. The time of supply of services is the earliest of the following dates:
  - a) Date of issue of the invoice to TMC along with the Energy savings report; or
  - b) Date on which the payment is entered in the books of account of the supplier; or
  - c) Date on which the payment is credited to his bank account.
- iv. The time of supply of goods is not relevant as the transaction is held to be a supply of service.





The appeal filed by M/s Karnataka State Electronics Development Corporation Limited, 2nd Floor, TTMC A Block, BMTC Complex, K H Road, Shanthinagar, Bengaluru – 560 027 is disposed off on the above terms.



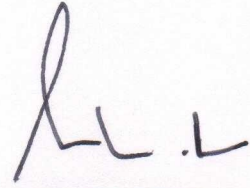
**(D.P.NAGENDRAKUMAR)**

Member

Karnataka Appellate Authority  
for Advance Ruling

**Member**

To, **Appellate Authority for Advance Ruling**



**( M.S. SRIKAR)**

Member

Karnataka Appellate Authority  
for Advance Ruling

**Member**

**Appellate Authority for Advance Ruling**

The Appellant

Copy to

1. The Member (Central), Advance Ruling Authority, Karnataka.
2. The Member (State), Advance Ruling Authority, Karnataka
3. The Commissioner of Central Tax, Bangalore South Commissionerate
4. The Assistant Commissioner, LGSTO-40, Bangalore
5. Office folder

