

THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX
(Constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)
ORDER NO. MAH/AAAR/SS-RJ/21/2019-20 **Date- 20.01.2020**

BEFORE THE BENCH OF

(1) Smt. Sungita Sharma, MEMBER

(2) Shri. Rajiv Jalota, MEMBER

GSTIN Number	27AAEAS1739F1ZI
Legal Name of Appellant	M/s. Soma Mohite Joint Venture.
Registered Address	3, Siddhivinayak Society, Soma Heights Karve Road, Kothrud, Pune-411033.
Details of appeal	Appeal No. MAH/GST-AAAR-/21/2019-20 dated.22.10.2019 against Advance Ruling No. GST- ARA-08/2019-20/B-100 dated 23.08.2019.
Jurisdictional Officer	State Tax Officer (C-308) Pune.

PROCEEDINGS

(Under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the MGST Act.

The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by **M/s. Soma Mohite Joint Venture.** (herein after referred to as the "Appellant") against the Advance Ruling No. GST-ARA-08/2019-20/B-100 dated 24.09.2019.



BRIEF FACTS OF THE CASE

1. Appellants herein, M/s. Soma Mohite Joint Venture (Joint Venture between Soma Enterprises and DM Corporation Pvt. Ltd.) are registered under Goods and Services Tax Act, 2017 having GST registration No. 27AAEAD1739FIZI and are having their Office at 3, Siddhivinayak Society, Soma Heights, Karve Road, Kothrud, Pune - 41 1 033.
2. Appellants are engaged in business of Construction of Infrastructure projects. On 27th December 2008, a Joint Venture was formed between Soma Enterprises and DM Corporation Pvt. Ltd. (formerly known as Mohite & Mohite Engineers & Contractors Pvt. Ltd.) to undertake construction of tunnel and its allied works for Nira-Bhima Link No. 5 of Indapur Taluka, Pune under Krishna Bhima Stabilisation Project awarded by Godavari Marathwada Irrigation Development Corporation, Aurangabad.
3. On 26th April 2019, Appellants filed an online Application for Advance Ruling before the Authority for Advance Ruling of Maharashtra (hereinafter referred to as "AAR") seeking Advance Ruling in respect of following Question:
 - I. *Whether the said contract is covered under SI No - 3A, Chapter No 99 as per Notification No. 2/2018 Central Tax (rate) dated 25th January 2018, w.e.f. 25th January 2018?*
 - II. *Whether the said contract is covered under the term "Earth Work" and the covered under SI No - Chapter No. 9954 as per Notification No. 31/2017 Central Tax (Rate) dated 13th October 2017?*
 - III. *If Appellants are covered under SI No. 3 Chapter No. 995 as per Notification No. 31/2017-Central Tax (Rate) dated 13th October 2017 w.e.f. 13th October 2017, then what is the meaning of "Earth Work"?*



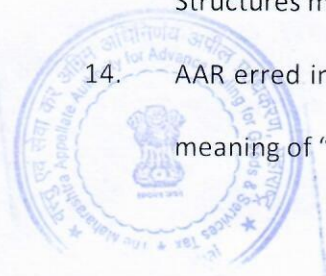
4. On 23rd May 2019, preliminary hearing in the matter was held before the AAR which was attended by the Appellants and the GST Department was represented by the Assistant Commissioner of ST, Pune. AAR was pleased to admit the Application. On 3rd August 2019, final hearing was held before the AAR which was attended by the Appellants and the Jurisdictional Officer wherein, the Appellants filed the Written Submissions.
5. On 23rd August 2019, ignoring the submissions, written as well as oral, made by the Appellants, AAR passed an Order No. GST-ARA-08/2019-20/B-100 (hereinafter referred to as the "impugned Order") and rejected the Application filed by the Appellants seeking Advance Ruling.
6. Being aggrieved and dissatisfied by the aforementioned impugned Order dated 23rd August 2019, the Appellants are filing the instant Appeal before this Hon'ble Appellate Authority on the grounds mentioned here under which are to be taken independently and without prejudice to one another.

GROUND OF APPEAL

7. The AAR erred on both laws as well on facts while passing the impugned Order.
8. AAR hopelessly erred in answering / deciding Question No. 1, in negative, without recording any of the submissions of the Appellants and without giving any findings whatsoever in support of its Decision. It is settled law that any Decision of an Authority without assigning any reasons and / or finding is in gross violation of Principles of Natural justice and is nonest, nullity and is without or in excess of Jurisdiction.
9. AAR ought to have appreciated that Appellants would be squarely covered under S. No. 3A of Notification no. 12/2017-CT (Rate) dated 28th June 2017, as amended by Notification No. 2/2018-CT (Rate) dated 25th January 2018, in as much as contract

awarded to the Appellants is in the nature of a 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 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.

10. AAR ought to have appreciated that Godavari Marathwada Irrigation Development Corporation falls within the meaning of the term Governmental Authority or a Government Entity in the light of Definition 2(zb) of the Notification No. 12/2017-CT (Rate) read with Explanation to Section 2(16) of the IGST Act. Appellant crave leave to refer to and rely upon further evidence in support of this submission when produced.
11. AAR ought to have appreciated that Sr. No. 3 of Eleventh Schedule of Article 243G of the Constitution which covers "Minor Irrigation, water management and watershed development" and Sr. No. 5 of Twelfth Schedule of Article 243W of the Constitution which covers "Water supply for domestic, industrial and commercial purposes" would cover the activities carried out by the Appellants herein.
12. AAR ought to have extended the benefit of Entry 3A in view of its finding that "Godavari Irrigation Development Corporation is entrusted with work of and irrigation Management of Major, Medium and Minor projects in Godavari River Basin".
13. AAR misdirected itself in concluding that the term "Earth Work" means (only) Structures made from Earth especially an embankment or construction made of Earth.
14. AAR erred in arriving at the above conclusion despite acknowledging specifically the meaning of "Earth Work" in Merriam Dictionary as "2: **the operations connected with**



excavation and embankments of earth" as per the findings recorded by AAR, in earlier paragraph.

15. The conclusion by AAR is again in gross disregard to a finding entered by it earlier while referring to meaning of earthwork as per Webster Dictionary that "2. **Earthwork (noun) - the operations connected with excavations and embankments of Earth in preparing foundations of buildings in constructing canals, railroads etc.**"
16. AAR ought to have appreciated that the Collins Dictionary defines Earth Work as "excavation of earth as in engineering construction; a fortification made of earth. The Wikipedia defines Earth Work as "Earth work are engineering works through the processing of parts of earth surface involving quantities of soil or unformed rocks.
17. It may be pertinent to note that in existence of identical facts and context, AAR, Jharkhand in (In Re: P. K. Agarwala (2019 (20) GSTL 605 (AAR))) has held excavation work to be Earthwork within the scope of S. No. 3 of Notification No. 39/2017-Integrated Tax (Rate) dated 13th October 2017 and hence eligible to 5% GST Rate.
18. AAR ought to have appreciated that the term "earthwork" has to be understood and applied in the way it is understood by the persons involved in the trade or as is understood in the common parlance.

Prayer

19. The Appellant therefore prays that;
 - I. Questions raised in the Application before the AAR be decided in Appellants favour,



- II. Order dated 23th August 2019 be quashed and set aside,
- III. Further and such other reliefs as the nature and circumstances may require be granted:
- IV. Appeal be allowed.

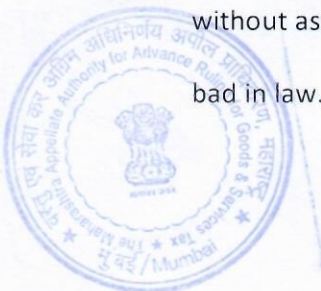
APPELLANT'S SUBMISSION dated 09.12.2019

20. Application was filed by the present Appellants, before the Advance Ruling Authority (Hereinafter referred to as "the AAR"), seeking an Advance Ruling in respect of following Questions:

- I. Whether the said contract is covered under SI NO-3A, Chapter No 99 as per Notification No. 2/2018-Central Tax (rate) dated 25th January 2018, w.e.f. 25th January 2018?
- II. Whether the said contract is covered under the term "Earth Work" and therefore covered under SI No — Chapter No. 9954 as per Notification No. 31/2017Central Tax (Rate) dated 13th October 2017?
- III. If Appellants are covered under SI No. 3 Chapter No. 995 as per Notification No. 31/2017-Central Tax (Rate) dated 13th October 2017 w.e.f. 13th October 2017, then what is the meaning of "Earth Work"?

BENEFIT OF EXEMPTION UNDER NOTIFICATION NO. 12/2017-CT (Rate)

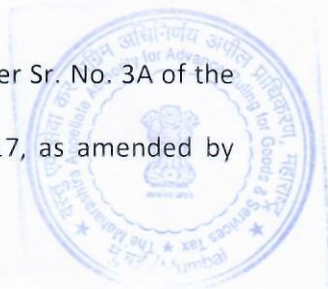
21. The AAR has noted Question No. 1, and as also answered the same in the negative without assigning any reason whatsoever and therefore the Order to that extent is bad in law.



22. It is an admitted position that:

- A. Contract / Transaction under consideration is Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017;
- B. Services are provided to the Central Government, State Government, Union territory, local authority, a Governmental Authority or a Government Entity;
- C. Excavation Work constitutes approximately 92.66% of the value of Works Contract.
- D. Godavari Marathwada Irrigation Development Corporation is entrusted with planning, designing of projects, maintenance of completed project, construction of projects and irrigation management of the Major, Medium and Minor Projects in Godavari river basin.
- E. Sr. No. 3 of Eleventh Schedule of Article 243G of the Constitution which covers "Minor Irrigation, water management and watershed development" and Sr. No. 5 of Twelfth Schedule of Article 243W of the Constitution which covers "Water supply for domestic, industrial and commercial purposes" would cover the activities carried out by the Appellants.

23. In view of the above admitted position, benefit of exemption under Sr. No. 3A of the Notification No. 12/2017-Central Tax (Rate) dated 28th June 2017, as amended by



Notification No. 2/2018-Central Tax (Rate) dated 25th January 2018, w.e.f. 25th January 2018 must be extended to the Appellants.

24. It may please be appreciated that the issue of eligibility to exemption under Serial No. 3A of the Notification No. 2/2018-Central Tax (rate) has been decided in assessee's favour in identical set of facts IN RE : Arihant Dredging Developers Pvt. Ltd. (2019 (25) GSTL 582 (AARGST)).

BENEFIT OF EXEMPTION UNDER NOTIFICATION NO. 11/2017-CT (Rate)

25. The AAR has answered Question No. 2 in the negative and thereby denying the benefit of concessional rate of GST under Entry No. 3(vii) of the Table to Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017 as amended by Notification No. 31/2017-Central Tax (Rate). (Copy enclosed). The relevant Entry reads as follow:



(3)	(4)	(5)
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“(vii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, involving predominantly earth work (that is, constituting more than 75 per cent. of the value of the works contract) provided to the Central Government, State Government, Union territory, local authority, a Governmental Authority or a Government Entity.”	2.5	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be
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26. In the impugned Order it is an admitted position that:

- a. Contract / Transaction under consideration is Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017;
- b. Services are provided to the Central Government, State Government, Union territory, local authority, a Governmental Authority or a Government Entity;
- c. Excavation Work constitutes approximately 92.66% of the value of Works Contract

27. The only issue that requires to be decided is whether Excavation will qualify as “Earthwork”? The expression, “Earthwork”, having not been defined in the CGST Act, Rules and Notifications, the AAR, in the impugned Order, made a reference to

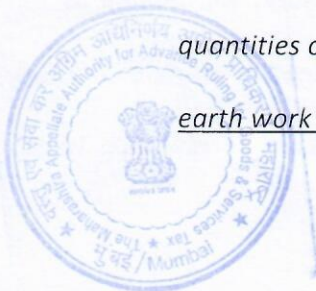


dictionary meaning of the said expression. The AAR conveniently ignored meaning of the expression "Earthwork" as per Merriam Dictionary that "operations connected with excavations" and also ignored meaning as per Webster Dictionary that "operations connected with excavations", despite having noted the same in the impugned Order.

28. It is therefore established beyond doubt that expression "Earthwork" implies "Excavation". Consequently, Appellants are entitled for benefit of concessional rate of GST under Entry No. 3(vii) of the Table to Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017 as amended by Notification No. 31/2017-Central Tax (Rate).
29. Identical issue was decided IN RE : P. K. Agarwala (2019 (20) GSTL 605 (AAR-GST)) by holding that the assessee is entitled for benefit of concessional rate of tax under Notification No. 39/2017-Integrated Tax (Rate) dated 13th October 2017 as follow:

"12. Now the question which remains is whether the benefit of the Notification No. 39/2017 will be available in the present case? For this the nature of work needs to be examined.

12.1 The term "Earth Work" has not been defined under any GST provisions. The Webster Dictionary defines Earth Work as "an embankment or construction made of earth specially one used as a field fortification. The Collins Dictionary defines Earth Work as "excavation of earth as in engineering construction; a fortification made of earth. The Wikipedia defines Earth Work as "Earth work are engineering works through the processing of parts of earth surface involving quantities of soil or unformed rocks. After going through different definitions of earth work we find that Bulk earthworks include the removal, moving or adding



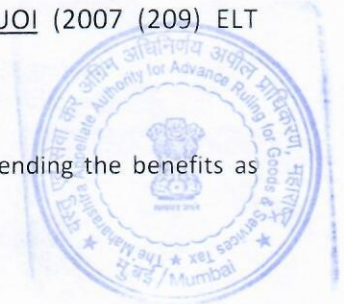
of large quantities of soil or rock from a particular area to another. They are done in order to make an area of suitable height and level for a specific purpose.

12.2 It is evident that the work order is for supply of services with material. It is also seen from the work order that the first four part of the work order is related with clearing of earth, excavation, supplying and laying of earth and impervious clay. The major part of the contract involves earth work i.e., more than 75% of the work involves earth work, we hold the same.

12.3 Since the major part of the work order, i.e., about 96% is 'Earth Work', we find that the said work order qualifies for the benefit of Serial No. 3 of Notification No. 39/2017, dated 13-10-2017 issued under the GST Act, being composite supply of works contract as defined in clause (119) of Section 2 of the CGST Act, 2017, involving predominantly earth work i.e. constituting more than 75% of the value of work in contract provided to Central Government, State Government, Union territory, local authority, a Government authority or a Government Entity. GST will be applicable at the rate of 5%."

(Emphasis Supplied)

30. It is lastly submitted that it is a settled law that if an assessee is entitled to benefit under two different Notifications or under two different Heads, he can claim more benefit and it is the duty of the authorities to grant such benefits if the applicant is otherwise entitled to such benefit. (Share Medical Care V. UOI (2007 (209) ELT 321(SC))).
31. It is therefore submitted that the instant Appeal be allowed by extending the benefits as claimed by the Appellants.



Personal Hearing

32. A personal Hearing in the matter was conducted on **09.12.2019**, wherein Shri, Makarand P. S. Joshi, Advocate, representatives of the Appellant, reiterated their written submissions. The jurisdictional officer Shri, R.P.Bodke, State Tax Officer (C-308) Pune attended the P.H.

Discussions and findings

33. We have gone through the facts of the case. We have also gone through the submissions made by the appellant and the order of the Advance ruling authority.
34. The appellant M/s. Soma Mohite Joint Venture , is engaged in the business of construction of Infrastructure project. The said JV was formed on 27 December, 2008 to undertake work of" construction of tunnel and its allied works from RD 0 to 24500 meter of Nira Bhima Link no.5 of Tq. Indapur, Dist. Pune under Krishna Bhima Stabilization project. The Godavari Marathwada Irrigation Development Corporation, Aurangabad allotted above mentioned work to the applicant. It is submitted that the Work Order consists of Earth Work such as Excavation for Tunnel, Removing of Excavated Stuff, Providing Steel Support, Rock Bolting, Reinforcement, Fixing of Chain Link, Cement Concreting etc. wherein Earth Work is more than 75% of total work, and that since the work i.e. earth work constitute more than 75% of the total work in term of value, they are covered by entry no.3 of Notification 11/2017 dated 28.06.2017 as amended by Notification no. 31/2017 – Central Tax (Rate) dated 13.10.2017 and effective from the said date where GST is payable @ 5%(CGST 2.5% and SGST 2.5%).
35. The entry dealt with by the AAR is as follows:-

SI No.	Chapter, Section or Heading	Description of Service	Rate. (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
1	Chapter 99	All Services		
2	Section 5	Construction Services		
3	Heading 9954 (Construction services)	[[(vii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, involving predominantly earth work (that is, constituting more than 75 per cent, of the value of the works contract)	9	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by

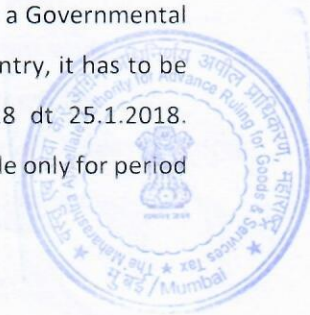


		provided to the Central Government, State Government, Union territory, local authority, a Governmental Authority or a Government Entity	the Central Government, State Government, Union territory or local authority, as the case may be]—
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36. It is seen that the appellant has also argued that their services are covered under Sr no 3A of Notification 12/2017 Central tax (rate) dt 28.6.2017 which is reproduced below:-

(1)	(2)	(3)	(4)	(5)
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

37. The AAR has not dealt with the above submission of the appellant regarding coverage under Sr no 3A of the Notification 12/2017 dt 28.6.2017 and have only discussed the submission of the appellant concerning Sr no 3(vii) of Notification 11/2017 dated 28.06.2017 as amended by Notification no. 31/2017 – Central Tax (Rate) dated 13.10.2017. Here we must say that being an authority formed under the CGST Act and specially empowered to give rulings on questions put forth by applicants, the AAR should take due care that all the submissions of the applicant are dealt with properly and with reasons. However, in the present case we find that the AAR has bypassed the initial contention raised by the appellant and have dealt with only the contention regarding the coverage under “earthwork”. As the AAR has failed to deal with the question, we proceed to decide the coverage of the transaction under entry 3A of Notification 12/2017. Services provided in this entry have to be made to certain entities and it has to be seen whether the Godavari Marathwada Irrigation Development Corporation” is covered by the category of “Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity.” Before examining the applicability of the entry, it has to be kept in mind that this entry 3A was inserted through Notification 2/2018 dt 25.1.2018. Therefore, even if we conclude that the entry is applicable, it would be applicable only for period after 25.1.2018 as the insertion is not retrospective.



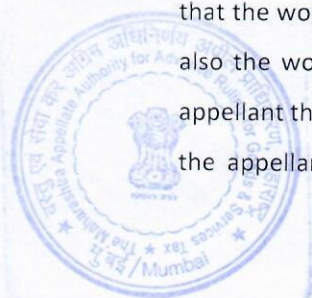
38. The appellant have argued that the Godavari Marathwada Irrigation Development Corporation is a 'Government Entity'. The term "Government Entity" is defined in the Notification No. 31/2017- Central Tax (Rate) dated 13 October 2017. The relevant portion of the definition is reproduced below:

"Government Entity" means an authority or a board or any other body including a society, trust, corporation,

i) set up by an Act of Parliament or State Legislature; or

ii) established by any Government, with 90 percent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority".

39. It is seen that the Godavari Marathwada Irrigation Development Corporation is a "Government entity" as it is set up by an Act of the State Legislature – namely the Maharashtra Godawari Marathwada Irrigation Development Corporation Act, 1998. The purpose of setting up the Corporation as is evident from a reading of the Act is to make "special provisions for promotion and development of irrigation projects, command area development and schemes for development of hydro electric energy to harness the water of the Godawari river pertaining to the State of Maharashtra and other allied and incidental activities including flood control in the Godawari river valley". Irrigation comes under Sr no 3 of Eleventh Schedule of Article 243G of the Constitution which covers 'Minor Irrigation, water management and watershed development' and Sr no 5 of Twelfth Schedule of Article 243W of the Constitution which covers 'Water supply for domestic, industrial and commercial purpose. It has therefore to be seen whether it is a 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, only in which case it can be said that the condition laid down in the later part of the entry is fulfilled. The Eleventh schedule of Article 243W covers minor irrigation /water management/watershed development and the work allotted. Now we will see whether the first part of the entry is fulfilled i.e "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. The wording of the entry show that it is for "composite supply of goods and services' and it is seen from the Schedule B that the work involves both services and goods as along with the excavation for tunnel there is also the works of fabricating/erecting steel supports/lighting etc. It is also submitted by the appellant that the earthwork constitutes more than 92% of the works and therefore apparently, the appellant satisfies both the conditions – the work is a composite work and the goods



component is less than 92% of the works. As for fulfilling the condition regarding whether the function is that which is entrusted to Panchayat under 243G, we find that as per the Central Water Commission guidelines, a **Major Project** is a project having CCA (Culturable Command Area) more than 10,000 hectares and the present project= Nira Bhima tunnel is a basic component of the Krishna Marathwada project whose CCA is 33945 hectares. Therefore, the present project being a part of a Major Project and not a Minor project does not fulfill the condition of being the type of work entrusted to a Panchayat.

40. We will now deal with the other contention of the appellant which concerns whether the work to be done by the appellant is covered by the description -'Composite supply of works contract as defined in clause 119 of section 2 of the CGST Act involving predominantly earthwork (that is, constituting more than 75 per cent of the value of the works contract) provided to the Central Government, State Government, Union territory, local authority, a Governmental authority or a Governmental Entity. We have already decided in the preceding paragraphs as to how the Godavari Marathwada Irrigation Development Corporation is a "Government entity". The condition in Column no (5) that the "services must be procured by the entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority", is also fulfilled as the tunnel work undertaken is very much in relation to the purpose for which the Corporation is set up. The AAR have held that the work is not "Earthwork" by referring to the various definitions of "Earthwork" and concluding that Earthwork only means making an embankment and construction of Earth and as the present work is for construction of tunnel, it is not covered by the term. The expression "earthwork" has not been defined in the GST Act, Rules and the notifications. In the absence of the definition we may refer to Dictionary meanings as below:

Definition of earthwork

As per – Merriam Dictionary

1: an embankment or other construction made of earth especially : one used as a field fortification

2: the operations connected with excavations and embankments of earth

3: a work of art consisting of a portion of land modified by an artist

Wikipedia, the free encyclopedia

As per Civil engineering use [edit]

Typical earthworks include road construction, railway beds, causeways, dams, levees, canals, and berms. Other common earthworks are land grading to reconfigure the topography of a site, or to stabilize slopes.

Military use [edit]

In military engineering, earthworks are, more specifically, types of fortifications constructed from soil. Although soil is not very strong, it is cheap enough that huge quantities can be used, generating formidable structures. Examples of older earthwork fortifications include moats, sod walls, motte-and-bailey castles, and hill forts. Modern examples include trenches and berms.

As per English Cambridge dictionary

noun – a raised area of earth made, especially in the past, for defence against enemy attack
Other meanings as per

Princeton's WordNet:

1. earthwork (noun) an earthen rampart

Wiktionary:

1. earthwork (Noun)

Any structure made from earth: especially an embankment or rampart used as a fortification

Webster Dictionary:

1. earthwork (noun)

any construction, whether a temporary breastwork or permanent fortification, for attack or defence, the material of which is chiefly earth

2. Earthwork (noun)

the operation connected with excavations and embankments of earth in preparing foundations of buildings, in constructing canals, railroads, etc

3. Earthwork (noun)

an embankment or construction made of earth

As per the **Guide to the Training of Supervisors - Trainees' Manual/Part 1 (ILO, 1981, 269)**

Earthwork involves the loosening, removal and handling of earth quantities in the construction process. Earthworks are carried out to provide a level terrace or "bench", with an even, longitudinal slope, on which the drainage and camber can be built.

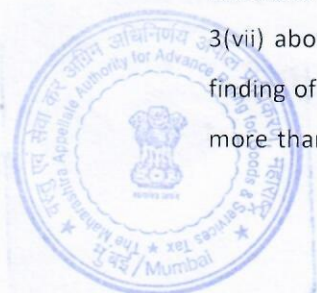
41. **As per the above definitions, it is clear that Earthwork includes both excavation and fortification.** As per Schedule B of the tender which lays down the specifications of the work, the total contract is for Rs 4,38,36,37,599 in which the work is itemized into 12 parts. Out of the 12 items, Item 1 to item 3 exclusively deal with the following; -

Item no 1 and 2. "Excavation of approaches, transition of tunnel in all kinds of soft/dry strata in wet and dry condition and depositing the excavated stuff in spoil bank as and where directed including all leads and lifts, dressing the bed and sides to the required slopes and grade etc.

Item no 3-Underground excavation in dry /wet conditions for tunnel including dewatering, drilling blasting, mucking the excavated stuff including dressing to the required slopes and grade."

42. It is evident that as per the work order, the work deals with excavation of earth and depositing it on the sides. **As per the above definitions, it is clear that Earthwork includes excavation and as per the contract the Earthwork constitutes more than 92.66% of the contract by value.** Thus apparently all the conditions of the entry are fulfilled.

43. Now we will deal with the observation of the AAR that the service provided by the appellant does not qualify for the entry as the present work is the construction of tunnel and its allied work and therefore said work cannot be considered as earthwork as contemplated by entry no. 3(vii) above. On a careful reading of the entry, we find ourselves in disagreement with the finding of the AAR. The entry says that the Composite supply should have earthwork forming more than 75% of the contract by value. Thus it very much clear from the wording that the



Contract may be for something else- be it construction of building, tunnel, canal, road and in these contracts if the earthwork constitutes more than 75% then it qualifies for the above entry. If the intention of the Legislature had been to cover only pure contract of earthworks in it then a qualifying condition of more than 75% by value wouldn't have been provided. We therefore find the reasoning of the AAR untenable.

44. We therefore hold that the Services provided by the appellant in the impugned matter qualifies for inclusion under entry 3(vii) of the Notification 12/2017 dt 28.6.2017.(as amended by Notification 31/2017 – dt 13.10.2017)

ORDER

45. For reasons as discussed in the body of the order, we modify the order of the AAR and the questions are answered thus –

Question: – 1. Whether the said Contract is covered under SI No -3A , Chapter No 99 as per Notification No 2/2018 -Central Tax (Rate) dated 25/01/2018, w.e.f. 25/01/2018 ?

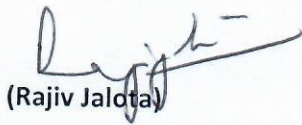
Answer:- Answered in the negative.

Question: – 2. Whether the said contract is covered under the term “Earth Work” and therefore covered under SI No 3 - Chapter No. 9954 as per **Notification NO. 31/2017 -Central Tax (Rate) dated 13/10/2017?**

Answer :- Answered in the positive.

Question: -3. If we are covered under SL No. 3 chapter No. 9954 as per **Notification No.31/2017 – Central Tax (Rate) dated 13/10/2017**, w.e.f. 13/10/2017 then what is the meaning of “Earthwork”?

Answer :- In view of answers to question no1, this question is already answered.


(Rajiv Jalota)

Member




(Sungita Sharma)

Member

Copy to- 1. The Appellant

2. The AAR, Maharashtra

3. The Pr. Chief Commissioner, CGST and C.Ex., Mumbai

4. The Commissioner of State Tax, Maharashtra

5. The Jurisdictional Officer

7. The Web Manager, WWW.GSTCOUNCIL.GOV.IN

8. Office copy.