BEFORE THE BENCH OF

(1) Smt. Sungita Sharma, MEMBER
(2) Shri Rajiv Jalota, MEMBER

GSTIN Number	27AAACT4033H1ZK
Legal Name of Appellant	Vertiv Energy Private Limited
Registered Address	Vertiv Energy Private Limited Plot No C-20, Road No 19, Wagle Industrial Estate, Thane (West) Maharashtra 400 604.
Details of appeal	Appeal No. MAH/GST-AAAR-22/2019-20 dated 11.11.2019 against Advance Ruling No. GST-ARA-17/2019-20/B-107 dated 04.10.2019
Jurisdictional Officer	Dy./Asstt. Commissioner, Division-VI, CGST, Thane Commissionerate

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. Vertiv Energy Private Limited (herein after referred to as the "Appellant") against the Advance Ruling No. GST-ARA-17/2019-20/B-107 dated 04.10.2019..

Brief Facts of the Case

1.1 The Appellant having its corporate head office at Mumbai is, *inter-alia*, engaged in the manufacture of various types of UPS systems, which serve as an alternate source of power for a specific period of time in the event of power failure. The Appellant also supplies installation commissioning and maintenance and other services to its customers.

1.2 A UPS is typically used to protect hardware such as computers, data centers, telecommunication equipment or other electrical equipment where an unexpected power disruption could cause injuries, fatalities, serious business disruption or data loss. UPS units range in size from units, designed to protect a single computer without a video monitor, to large units, powering entire data centers or buildings.

1.3 The appellant is manufacturing UPS and its components at its manufacturing unit located at Ambernath and Pune in the state of Maharashtra. Some of the UPS components like battery and cables are either manufactured by the applicant or purchased by the applicant from third party vendors. The applicant has, inter alia, obtained GST registration in the state of Maharashtra ("**Maharashtra GSTIN**") and New Delhi ("**Delhi GSTIN**").

Contract with DMRC for supply of UPS

1.4 The Appellant entered into a contract with **Delhi Metro Railway Corporation** ("**DMRC**") for supply, installation, testing, and commissioning of UPS systems (hereinafter referred to as "the said contract") on 20.1.2014. The said contract, though entered in the pre-GST regime, is an on-going contract and the appellant has been making supplies to DMRC in the GST regime as well.

1.5 The scope of work agreed with DMRC provides the detailed description of various goods and services to be supplied by the applicant. The relevant portion of the contract with DMRC is extracted as under:

> ***"3. SCOPE OF THE WORKS, SUPPLY AND SERVICES***
>
> ***3.1 General***
>
> *3.1.1 The scope of the works includes but not limited to supply, manufacture, inspection, packing, shipping, transportation, storage, delivery, handling, insurance, installation, interfacing, integration, testing & commissioning, maintenance support, spares, special tools, test equipment, training, documentation and providing DLP for the UPS system.*
>
> ***3.2 Scope of supply***
>
> *3.2.1 The Uninterruptible Power Supply (UPS) system shall include, but not be limited to the following: -*
>
> - *Online redundant UPS;*
> - *Battery bank;*
> - *Spare cell charger;*
> - *Isolation Transformer Cubicle o SCVS;*

- *Output isolation transformer;*
- *Equipment cabinets, racks & cubicles; o Distribution boxes;*
- *Cable trays/Trenches/Supports/Foundations;*
- *ATS (Automatic Transfer Switch);*
- *All software required for UPS system;*
- *All external cables (Zero Halogen FRLS), connectors;*
- *Accessories, earthings necessary for works;*
- *Spares for DLP of 3 years;*
- *Surge protection devices;*
- *Special tools and test equipment;*
- *Remote monitoring equipment and accessories including voltage free contacts for Alarms;*
- *Spares;*
- *Furniture for CS05 equipment*
- *Any other supply needed to provide a complete UPS system*

3.3 Scope of services

3.3.1 The services to Uninterruptible Power Supply (UPS) system shall include, but not be limited to the following:

- *Design, manufacture, supply, system assurance, installation, testing and commissioning of the UPS System;*
- *Presentations, reviews and audit support as specified in the Specification; Transportation, Handling and Storage of the material;*
- *Insurance Cover for the material supplied till taking over by Employer; User's Certificates and Test Reports as per specifications;*

- *Documentation; (Chapter 15)*
- *Provide all information, documents requested by Signaling, Telecommunication and AFC Contractors;*
- *Interface management as specified in the Specification;*
- *System operations and maintenance support services;*
- *Training for operations and maintenance staff;*
- *Preparation of Operation, Maintenance and Training Manuals;*
- *Decommissioning, removal and/ or disposal of Temporary Works;*
- *Design, manufacture, delivery and installation of foundations/ fixtures for equipment;*
- *Warranty period and defect liability support after commissioning;*
- *Providing necessary support and documents required including compliance for getting approval of the UPS system from Commissioner of Railway Safety;*
- *Maintenance support;*
- *All equipment necessary to allow the installation, testing and introduction of services on this line without disruption to Phase III services;*
- *Any other service needed to provide a complete UPS system*

1.6 Further, the Annexure to the Tender document released by DMRC clearly provides a detailed break-up of value of various goods and services to be supplied under the contract. The relevant portion of the said Annexure is extracted as under-

SN	Description	Quantity (Part-1)	Quantity (Part-2)	Unit	Unit rate (INR)	Price (INR

		JICA	Non JICA	JICA	Non JICA			
A. Supply								
1	120 KVA for Depot complete in online redundant configuration along with isolation transformer and ATS cubicle, Battery Sharing cubicle/Battery Circuit Breakers, SCVS.	2	0	2	2	Nos.	20,39,403.00	1,22,36,418.00
2	60 KVA UPS for Interlocking station complete in online redundant configuration along with isolation transformer and ATS cubicle, Battery Sharing cubicle/Battery	11	0	8	6	Nos.	14,42,079.00	3,60,51,975.00

	Circuit Breaker, SCVS.							
3	30KVA UPS for Secondary station complete in on line redundant configuration along with Isolation transformer and ATS cubicle Battery Sharing cubicle/Battery Circuit Breaker, SCVS	26	1	27	8	Nos.	10,50,539.00	6,51,33,418.00
4	Appropriate capacity (for interlocked stations and depots) VRLA maintenance free batteries (Having Two sets and another set of 6 cells)	13	0	10	8	Sets	24,18,000.00	7,49,58,000.00

5	Appropriate capacity (for secondary stations) VRLA maintenance free batteries (Having Two sets and another set of 6 cells)	26	1	27	8	Sets	12,09,000.00	7,49,58,000.00

C. Documentation, Installation, Testing & Commissioning

SN	Description	Quantity		Quantity		Unit	Unit rate	Prince
		JICA	Non JICA	JICA	Non JICA			
1	Documentation, Installation, Testing & Commissioning of complete system at interlocking stations/depot with earthing.	13	0	10	8	Per station/Depot	68,250.00	21,15,750.00
2	Documentation, Installation, Testing & Commissioning	26	1	27	8	Per station	68,250	42,31,500.00

	of complete system at secondary stations with earthing.							

D. Training

SN	Description	Quantity (JICA		Unit	Unit rate	Prince
		Part-1	Part-2			
1	Trainer's man-days	60	0	Man-days	8,000.00	4,80,000.00
					GRAND TOTAL	30,50,00,001.00

1.7 A copy of the contract entered with DMRC has been enclosed along with this appeal.

1.8 A perusal of the above tender document and contract makes it clear that the appellant is required to supply the UPS systems to DMRC. Further, the appellant is also required to undertake the erection, installation and commissioning of the UPS system at the sites designated by DMRC. Further, separate consideration for supply of goods and services have been provided.

1.9 Further, the UPS system are manufactured from the appellant's factory at Mumbai. Thus, the goods are supplied by the appellant from its Maharashtra GSTIN. However, the service portion of the contract i.e. erection, installation and

commissioning service are rendered by the New Delhi branch of the appellant, which is separately registered under GST law.

1.10 In view of the above, the appellant has been treating the supplies made to DMRC as under:

- supply of UPS from the state of Maharashtra as supply of goods
- Supply of Erection, installation, commissioning, testing etc., of UPS system services from New Delhi as supply of services.

1.11 Accordingly, the appellant has been raising separate invoices on DMRC for supply of goods and supply of services. Illustrative copies of the invoices raised by the applicant on DMRC for supply of goods and supply of services have been enclosed with the appeal paper book. Thus, in the pre-GST as well as post GST regime, the applicant has been treating the supplies made to DMRC as separate supply of goods and services.

1.12 The above fact is corroborated by the dispatch clearance certificates issued by DMRC which direct the applicant to supply the UPS system along with the accessories to the designated locations for installation/erection. Further, the Lorry receipts issued by the transporter for the transport of the goods also mentions the name of DMRC as the consignee of the goods. Illustrative copies of the lorry receipts issued by the transporters are enclosed with the appeal paper book.

1.13 Further, prior to the erection/installation of the UPS system, DMRC officials also inspect the UPS system and the accessories and give a go-ahead to the appellant for erection/installation of the UPS system. The appellant further submits that once the goods are received by DMRC at the designated locations, the said goods cannot be

removed and used elsewhere by the appellant. In other words, the UPS systems once dispatched to DMRC's site cannot be diverted and supplied by the appellant to any other customer.

1.14 The above factual position demonstrates that the title/property in the goods stands transferred to DMRC prior to the installation/erection of the UPS system.

1.15 In the pre-GST regime, the applicants were discharging Central Excise Duty and VAT/Sales tax on the clearance and sale of UPS system. Further, the service of erection, installation and commissioning of UPS system was treated by the appellant as 'works contract' service and thus the applicants were paying service tax accordingly.

Application for Advance Ruling:

2.1 In view of the above facts, the Appellant had filed an application seeking an advance ruling in Form GST–ARA–01 dated 17.05.2019 (hereinafter referred to as **"the application"**) on the following questions –

i. whether the contract entered into with DMRC for supply, erection, installation, commissioning and testing of UPS system qualifies as supply of works contract under Section 2(119) of the Central Goods and Services Tax Act, 2017 ("**CGST Act, 2017**").

ii. If yes, whether such supply made to DMRC would be taxable at the rate of 12% in terms of Sr. No. 3(v) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 as amended w.e.f. 25.01.2018.

Advance Ruling passed by Ld. AAR, Maharashtra

3.1 The Ld. AAR, has considered the application filed by the appellants and gave a ruling vide Order no. GST-ARA-17/2019-20/B-107 dated 4.10.2019 (hereinafter referred to as the "**Impugned Ruling**") wherein it has been held as under–

(i) The Ld. AAR has held that the supply of UPS system made by Appellant to DMRC does not qualify as works contract service and therefore the benefit of concessional rate of 12% in terms of Sr. No. 3(v) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 (as amended w.e.f. from 25.01.2018) would not be available to the appellant.

(ii) Further, it has been held that even though the supply of goods is made from Maharashtra GSTIN of Appellant and supply of installation services is made from their Delhi GSTIN of the Appellant and accordingly both the respective registered units have raised separate invoices on DMRC, it would be treated as one single contract between DMRC and the Mumbai GSTIN of Appellant.

(iii) It has been held that the goods and services are supplied by appellant in conjunction with each other, wherein the supply of goods (UPS) is the principal supply. Therefore, as per the AAR, the supply made by the appellants under the said contract qualifies as a composite supply in terms of sub-section (30) of Section 2 of the CGST Act, 2017 and hence Appellant would be liable to pay GST at the rate of 18% on entire contract, i.e. the rate applicable to supply of UPS.

3.2 The Appellant accepts the ruling given by the Ld. AAR with regards to the first question, i.e. whether the supply made under the contract would qualify as works contract or not.

3.3 However, the appellant does not agree with the finding given by the AAR in the impugned ruling, to the extent it states the supply made by the appellant amounts to a composite supply, wherein the principal supply is the supply of UPS, and thus subject to GST at the rate of 18%.

3.6 In view of the above, the appellant is filing the present appeal, *inter alia*, on the following grounds which are independent of and without prejudice to each other.

Grounds of Appeal

1. Section 100(1) of the CGST Act, 2017 provides that the concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under Section 98(4) of the CGST Act, 2017 may appeal to the Appellate Authority.

2. Further, in terms of Section 100(2) of the CGST Act, 2017, every appeal shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant.

3. In this regard, an advance ruling was passed by the Authority for Advance Ruling, Maharashtra on 04.10.2019. The order was communicated to the Appellant on 10.10.2019 vide e-mail.

4. The Appellant, being aggrieved by the impugned ruling dated 04.10.2019 is filing the present Appeal as per Section 100(1) of the CGST Act, 2017 within the time period specified in Section 100(2) of the CGST Act, 2017.

The ld. AAR in the impugned ruling has transcended its scope and jurisdiction by holding that the supply amounts to be a composite supply, which is beyond the questions posed in the application filed by the appellant.

5. The Appellant submits that the appellant had filed the application for seeking a ruling only in respect of the following questions:

- Whether the contract entered into with DMRC for supply, erection, installation, commissioning and testing of UPS system qualifies as a supply of 'works contract' under Section 2(119) of the CGST Act?
- If yes, whether such supply made to DMRC would be taxable at the rate of 12% in terms of Sr. no. 3(v) of Notification No. 11/2017 - C.T. (Rate), as amended w.e.f. 25.1.2018?

6. Therefore, the Appellant submit that the only issue for consideration for Ld. AAR was whether the contract entered into with DMRC for supply, erection, installation, commissioning and testing of UPS system would qualify as 'works contract' and accordingly would be subject to GST at the rate of 12%.

7. However, after answering the first issue to state that the supply made by the appellant would not qualify as works contract service, the Ld. AAR has proceeded to determine whether the said supply would amount to 'composite supply' in terms of Section 2(30) of the CGST Act. The relevant portion in the impugned ruling is as follows:

"...We find from their submissions and agreement that the contract is considering a clear demarcation of goods and services to be provided by the applicant. ***Now we have to decide whether the supplies are naturally bundled and in conjunction with each other as required by the definition of composite supply.....***

...

From the discussions made above we find that in the contract submitted by the applicant the major part of the contract is supply of goods i.e. UPS units, etc. These goods are delivered to the client by the applicant and such goods that are supplied are used by the applicant to provide services of installation, testing and commissioning of the situations. Without these goods the services cannot be supplied by the applicant and therefore, we find that the goods and services are supplied as a combination and in conjunction with each other in the course of business where the principal supply is a supply of goods. ***Thus, we find that there is a composite supply in the subject case."***

... ***emphasis supplied***

8. Thus, the Appellant submits that issue as to whether the supply made under the said contract would amount to a composite supply was never raised in the application. Thus, the Ld. AAR has travelled beyond the issue which was posed by the appellant in the application dated 17.5.2019, to that extend.

9. Therefore, it is submitted that the impugned ruling is liable to be set aside to such extent.

The Ld. AAR has erred in holding the supply made under the said contract as "composite supply" since the conditions prescribed in section 2(30) of the CGST Act, 2017 are not satisfied.

10. Under the contract entered with DMRC, the appellant is required to supply UPS system and also undertakes erection, installation, commissioning and testing etc., of the UPS system at the sites designated by DMRC. The said contract clearly specifies the various goods and services to be supplied to DMRC and also provides separate consideration to be paid by DMRC to the appellant for the supply of goods and for the supply of services. The appellant submits that the appellant is making two separate supplies to DMRC namely supply of UPS Systems (i.e. goods) and the supply of erection, installation and commissioning service.

11. The appellants submit that the Ld. AAR has rightly held that the supply of UPS and its erection and installation would not qualify as a 'works contract' service under Section 2(119) of the CGST Act.

12. The appellant submits that the goods i.e. UPS system are dispatched to DMRC from its Ambernath factory in Maharashtra. As and when the goods are removed, the appellant issues a tax invoice in the name of DMRC for such supply under Maharashtra GSTIN. The lorry receipt issued by the transporter also mentions DMRC as the consignee.

13. The appellant submit that the goods once removed from the factory and consigned to DMRC's location cannot be diverted by the appellant for supply to any other customer. Thus, at the time of removal of the goods from the factory, the goods are appropriated towards the contract entered into with DMRC. This

proves that the property in the goods stands transferred to DMRC once the said goods are dispatched by the appellant from the factory and the supply of goods is completed. Subsequently, the appellant submits that Delhi GSTIN provides service of erection, installation, commissioning, etc., of UPS system to DRMC at the location specified by DMRC.

14. In view of the above, the appellant is of the view that the supply of UPS system made from the state of Maharashtra would be leviable to GST at the rate of 18% as supply of goods and the supply of erection, installation and commissioning of UPS system made from Delhi GSTIN would be leviable to GST at the rate of 18% as supply of services separately.

15. The Ld. AAR vide the impugned ruling dated 4.10.2019 has agreed with the appellant's contention that the supply of UPS system to DMRC does not qualify as works contract service under Section 2(119) of the CGST Act, 2017. However, the Ld. AAR has held that the supply made by the appellant under the said contract qualifies as a 'composite supply' in terms of Section 2(30) of the CGST Act, 2017.

16. The appellant submits that the aforesaid finding given in the impugned ruling is incorrect. At this juncture, it is important to refer to the definition of the composite supply as provided under Section 2(30) of the CGST Act, 2017 which is extracted below for ready reference:

"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".

17. Further, Section 2(90) of the CGST Act, 2017 defines 'principal supply' as under:

2(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.

18. Thus, as per Section 2(30) read with Section 2(90) of the CGST Act, 2017, for any supply to qualify as "composite supply" the following conditions must be fulfilled:

(i) there should be supply of two or more taxable supplies of goods or services;

(ii) the supplies should be naturally bundled and supplied in conjunction with each other in the ordinary course of business;

(ii) only one out of the various supplies should be a 'principal supply'.

19. The Appellant submits that for a supply to be composite supply, there should be supply of two or more taxable goods or services which are naturally bundled and supplied ***in conjunction with each other.*** The Longman Dictionary of

Contemporary English defines conjunction to mean – "used with someone or something else".

20. In the present case, the supply of goods and services made by the appellant under the said contract entered with DMRC are independent in nature. Further, the contract also provides separate break-up of the consideration receivable for supply of UPS system and installation services. Further, the appellant also issues separate invoices for supply of goods and services. Therefore, the appellants submit that the supply made by the appellant is not ***'in conjunction with each other'*** as required by the definition of composite supply.

21. Further, the Appellant submits that appellant may supply the UPS system and erection and installation services either independently or in or along with each other. The customer always has the option to avail either of the supplies independently. The customer may buy UPS system from the appellant and opt to avail the erection, installation, commissioning, testing, etc. services from any other supplier. Similarly, the customer may avail erection and installation services from the appellant without purchasing the UPS system from the appellant.

22. Thus, the supply of UPS system and erection and installation services is not dependent on each other and both the aforesaid supplies are capable of being made independently. The appellant submit that activity of erection and installation of UPS is a significant portion of the contract and not merely ancillary to the supply of UPS system. Hence, in the present case the supply of UPS system

cannot be said to be a 'principal supply' to which the supply of erection and installation services is merely ancillary.

23. Therefore, the findings of the Ld. AAR that without supply of goods i.e. UPS system, the services of erection, installation and commissioning cannot be supplied by the appellant is incorrect.

24. The Appellant place reliance on the **Circular No. 47/21/2018-GST dated 08.06.2018** issued by the CBIC, which inter alia clarifies the GST implication on the supply of servicing of cars involving both supply of goods (spare parts) and services (labour), where the value of goods and services are shown separately. The relevant portion of the said Circular reads as under -

"2.1 The taxability of supply would have to be determined on a case to case basis looking at the facts and circumstances of each case.

2.2 Where a supply involves supply of both goods and services and the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately."

25. Thus, the aforesaid circular states that in case where a supply involves supply of goods and services and the value of each such supplies is shown separately, such supplied would be liable to GST separately as supply of goods and services. Thus, even in the present case, the supply of UPS system and erection and installation services supplied by appellant would be treated as separate individual supplies.

26. Thus, the appellant submits that the supply of goods and services under the said contract cannot be considered as composite supply in terms of Section 2(30) of the CGST Act, 2017.

27. Therefore, the finding of the Ld. AAR to such extent is not tenable and the impugned ruling is liable to be modified to that extend.

The supply of UPS System and erection and installation services are provided by two distinct persons viz. Maharashtra GTIN and Delhi GSTIN. Thus, the said supplies cannot be clubbed together to make them a 'composite supply'.

28. The Ld. AAR, in the impugned ruling has held that although the erection and installation services are supplied from Delhi GSTIN, the contract with DMRC is one single contract which is entered into by the Maharashtra GSTIN of the appellant. Thus, the supply would be considered as composite supply in terms of Section 2(30) of the CGST Act, 2017, subject to GST at the rate of 18% i.e. the rate applicable to the supply of UPS system (the principal supply).

29. The appellant submit that the aforesaid finding of the Ld. AAR is incorrect for the following reason.

30. Section 25(4) of the CGST Act, 2017, inter alia, states that a person who is required to obtain GST registration, in more than one State or Union territory shall, in respect of each such registration, would be treated as distinct persons

for the purposes of this GST Act. Thus, the GST law creates a deeming fiction whereby the different units of a same legal entity which are located in different states would be deemed to be distinct persons.

31. In the present case, the UPS system is supplied by the appellant from the Maharashtra GSTIN and the erection and installation services are supplied by the Delhi GSTIN. The Maharashtra GSTIN and the Delhi GSTIN of the appellant, although being a part of the same legal entity, are distinct persons under Section 25(4) for the purpose of GST.

32. At this point it is pertinent to refer to Section 2(71) of the CGST Act which defines the term "location of the supplier of services". Section 2(71) reads as under-

"(71) "location of the supplier of services" means, -

...

(c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provisions of the supply; and

..."

33. Thus, Section 2(71)(c) of the CGST Act states that in case where a supply is made from more than one establishment, the establishment which is most directly concerned or involved in making such supply would be treated as the location of the supplier of the service.

34. In the present case, the unit which is directly concerned with supplying the erection and installation service to DMRC is the Delhi GSTIN of the appellant. Thus, the location of supplier for such services would be the Delhi GSTIN. On the other hand, the goods are supplied to DMRC from the Ambernath Unit of the appellant in Maharashtra.

35. Section 2(30) of the CGST Act defines composite supply to mean a supply made by **a taxable person,** comprising of two or more supplies of goods or services, which are naturally bundled and supplied in conjunction with each other, wherein one of the supplies is a principal supply. Thus, in order to qualify as a 'composite supply, it is essential that all the supplies under a contract are made by a single registered person.

36. In the present case, the supply of UPS system and erection and installation services are made by two distinct persons i.e. Maharashtra GSTIN and Delhi GSTIN respectively. Therefore, the appellant submits that the supply made under the said contract to DMRC would not qualify as a 'composite supply' under Section 2(30).

37. The appellant submits that the Ld. AAR has failed to appreciate the aforesaid legal position and held the supply made by the appellant to be a composite supply merely because the said supply is made under a single contract.

38. The appellant submits that in the normal course of business transaction, it is natural for a buyer to enter into a single contract with the supplier for multiple

supplies, at an entity level. The appellant submit that the Maharashtra GSTIN and the Delhi GSTIN are treated as distinct persons only because of the deeming fiction created by Section 25(4) of the CGST Act for the purpose of GST, and otherwise constitute a part of the same legal entity. Therefore, DMRC could not have entered into separate contracts with the Maharashtra GSTIN and Delhi GSTIN.

39. The Appellant submits that the supply of UPS System (goods) and erection and installation services are two independent supplies agreed to be executed under one single contract, by two distinct persons under GST. Merely because there exists one contract for two different supplies, the supply made under such contract cannot partake the characteristics of 'composite supply' under Section 2(30) of the CGST Act.

40. Thus, the appellant submits that finding of the Ld. AAR that supply made by the appellant under the said contract qualifies as a composite supply is incorrect in law. Thus, the impugned ruling given by the Ld. AAR, to the extent it considers the supply of goods and services under the said contract as one composite supply, is liable to be set aside.

PRAYER

In view of the foregoing, it is respectfully prayed that the Appellate Authority for Advance Rulings of may be pleased to: –

(a) Set aside the impugned ruling dated 4.10.2019 to the extent it states that the supply made by appellant under the said contract qualifies as composite supply;

(b) Modify the impugned ruling to state that the supply of UPS System and erection and installation services supplied under the contract to DMRC are two independent supplies leviable to GST separately;

(c) Grant us a personal hearing; and

(d) Pass such other order or orders as may be deemed fit and proper in the facts and circumstances of the case.

Respondent's Submissions

41. The Respondent submitted para wise comments in respect of the grounds urged by the Appellant in the present appeal, which are as under:

Para A.1 and A.2: Facts are narrated and hence does not require any comments.

Para A.3 to A.5: It is basically argued by the appellant that after answering the main question that the supply made by the appellant could not qualify as 'works contract service' had incorrectly proceeded to determine that the said supply would amount to composite supply in term of Section 2(30) of the CGST Act, 2017, which was never raised in the application. Hence, Ld. AAR had travelled beyond the issue and impugned rulings required to be set aside.

The Ld. AAR had discussed in the impugned ruling, the facts of the case, the method of supply by the appellant, the requirements of the contract entered by the appellant with DMRC etc. After discussing all this, Ld. AAR had proceeded on the definition of 'works contract' as defined under Section 2(119) of the CGST Act, 2017, and the definition of the 'composite supply' as defined under Section

2(30) of the CGST Act, 2017 had come to the conclusion and ruled in negative to the question no. 1, i.e. whether the supply the supply would qualify as 'works contract'. Hence, the discussion is not in isolation.

Para B.1 to B.4: Facts are narrated and hence does not require any comments.

Para B.5 to B.14: The appellant has basically challenged the findings of the Ld. AAR in the impugned rulings. They had discussed the provision of section 2(30) of the CGST Act, 2017 i.e. definition of the 'composite supply', Section 2(90) of CGST Act, 2017 i.e. definition of the 'Principal Supply' and the combined reading of the both the definitions. It was argued that the supply of UPS system and erection and installation services can be done by the appellant independently or along with each other. Hence, the Ld. AAR had erred in holding that without the supply of goods i.e. UPS systems, the services of erection and installation commissioning cannot be supplied by the appellant. The Appellant had further relied on the Circular No. 47/21/2018-GST dated 08.06.2018 issued by CBIC, at Sr.No.2 on the question of 'supply of goods (spare parts) and supply of service (labour) in servicing of the car.

The issue before the Ld. AAR as sought by the appellant was whether the contract entered into with DMRC for the supply, erection, installation, commissioning and testing of UPS systems qualifies as supply of works contract under Section 2(119) of CGST Act, 2017. The appellant had enclosed the contract entered by them with the DMRC. The Ld. AAR was 'required to give his rulings only based on the said contract and not in general. The facts are not under dispute that the appellant had entered into a contract with the DMRC for supply of installation, testing and commissioning of uninterrupted power supply system

for signaling, telecommunication and automatic fare collection system. The contract itself reflects that it is a composite supply. The facts are again not under dispute that the supply by the appellant would not fall under the category of 'works contract' as the same specifically covers only immovable property.

The both Circular referred by the appellant in his appeal is not relevant in the present case, as the facts that has been discussed by the Ld. AAR in his rulings is specific in nature and not in general. The ruling has been given for the contract entered with the DMRC and not in general.

Para C.1 to C.11: The Appellant had submitted that the supply of UPS Systems and erection and installation services are provided by two distinct persons viz. Maharashtra GSTN and Delhi GSTN. Thus, the said supplies cannot be clubbed together to make a composite supply. They had further discussed about the provisions of Section 2(71) of the CGST Act, which defines the 'location of the supplier of service', more specifically about Sec. 2(71) (c) of the CGST Act, 2017 where a supply is made from more than one establishment, the location of the establishment most directly concerned with the provision of the supply will apply.

The submission made by the appellant is out of context. The contract agreement that is in question has been entered by the appellant having their registered office at Thane, Maharashtra and the branch office at Gurgaon, Haryana with DMRC, New Delhi. In both the cases, i.e. the supply of the goods UPS Systems and its installation, testing, commissioning of the same etc. is to be made or provided at New Delhi. The supply has not been made to two distinct persons. In fact, it has been made to DMRC, New Delhi and the basic issue is

about the determination of rate of tax. Section 8 of the CGST Act, 2017 is about the tax liability on the 'composite supply and mixed supplies'

The tax liability on composite and mixed supply shall be, determined in the following manner: -

(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 the that particular supply which attracts the highest rate of tax.

The term, principal supply, has been defined in Section 2(90) of CGST Act, 2017, which states as under: -

'(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; '

Based on the above definition, irrespective of the location of the supplier, the rate of tax in a composite supply has to be the same. Based on the contract in question, there can be no dispute that the supply is a composite supply. The definition of the composite supply does not restrict or imposes any conditions about the location of the supplier in respect of the composite supply.

42. The Respondent further contended that since the Appellant had raised two questions before the Advance Ruling Authority and the Advance Ruling Authority had answered the main Question 1 as to said supply of the goods i.e. UPS Systems and supply of services i.e. the erection, Commissioning, testing, installation of the UPS systems by the Appellant to DMRC in terms of the subject agreement would not constitute the 'works contract' services, then as per the law, the Appellant cannot go beyond the said two questions of the advance ruling

application filed by them and file appeal against the advance ruling order praying that the ruling pronounced by the Advance Ruling Authority, wherein the AAR has held that the supply of UPS systems and its erection, commissioning, testing and installation would be construed as composite supply in terms of section 2(30) of the CGST Act, 2017, be modified.

Personal Hearing

43. A personal Hearing in the matter was conducted on 05.02.2020, which was attended by Ms. Nupoor Agrawal, Advocate, on behalf of the Appellant, and Shri B.B. Rath, the Jurisdictional Officer in the instant matter, wherein they reiterated their respective written submissions, filed before us.

Discussions and Findings

44. We have gone through the facts of the case, documents placed on record, and the entire submissions including the oral depositions, made by the appellant as well as the jurisdictional officer in the instant appeal. We have also gone through the ruling pronounced by the Advance Ruling Authority, wherein the AAR has held that the supply of the UPS Systems and as well as the supply of the services like erection, commissioning, testing, installation etc. of the said UPS Systems by the Appellant to DMRC in terms of the subject agreement would be construed as 'Composite Supply' in accordance with the provision of section 2(30) of the CGST Act, 2017 read with section 2(90) of the CGST Act, 2017. In the instant appeal, the Appellant has not challenged the ruling pronounced in respect of the questions posed by the Appellant in their advance ruling application filed before the Advance Ruling Authority. The main question asked by the Appellant in their advance ruling application was whether the contract entered into with DMRC for

supply, erection, installation, commissioning and testing of UPS system qualifies as supply of works contract under Section 2(119) of the Central Goods and Services Tax Act, 2017. In response to the above- mentioned question, the AAR held that the said supply of the UPS systems and its erection, installation, commissioning, testing, etc. would not be construed as works contract service as interpreted by the Appellant. Subsequently, The AAR went on to hold that the said supply of UPS systems and its erection, installation, commissioning, testing, etc. would be rather considered as the 'Composite Supply' in terms of section 2(30) read with section 2(90) of the CGST Act, 2017. Now, the Appellant has preferred appeal over this very observation of the AAR, wherein they held that the impugned supply made by the Appellant to DMRC in terms of the subject agreement would be considered as Composite Supply in accordance with the provision of section 2(30) read with section 2(90) of the CGST Act, 2017.

45. Now, having regard to the above facts and circumstances, the only moot issue, before us, is as to whether the aforesaid said supply would be construed as Composite Supply or not. At the outset, we would like to first examine the meaning of 'Composite Supply' as provided under section 2(30) of the CGST Act, 2017, which is being reproduced herein under: -

(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".

Thus, for any combination of supplies to qualify as the 'composite supply', it has to satisfy the following conditions:

(i) It should be made by a taxable person;

(ii) It should be made to a recipient;

(iii) Supplies should be naturally bundled and supplied in conjunction with each other in the ordinary course of business;

(iv) One of the supplies should be the Principal supply.

46. Now, it has been argued by the Appellant that supply of the UPS system is made by the Maharashtra unit of the Appellant, while the supply of the services like erection, commissioning, installation, testing, etc. is undertaken by Delhi branch of the Appellant. In order to buttress this contention, they have furnished invoices raised by the Maharashtra unit of the Appellant for the supply of the UPS Systems and its accessories as well as the invoices raised by their Delhi Branch for rendering the services of erection, commissioning, installation, testing, etc. of the UPS systems. They further argued that since the Maharashtra unit and the Delhi unit are distinct persons in terms of section 25(4) of the CGST Act, 2017, the supplies under question would not be composite supply as the supply of goods and supply of services are not made by a single taxable person, rather in this case, there are two taxable persons, i.e. one Maharashtra unit and another Delhi unit, who are making two independent, distinct and separate supply, which cannot be thought of the supplies, which are being made in the conjunction with each other.

47. Here, we tend to agree with the Appellant's contention in as much as there exists two taxable persons i.e. one Maharashtra unit, undertaking the supply of UPS systems and other specified accessories and another Delhi unit, undertaking the task of the erection, commissioning, installation, testing, etc. of the UPS systems, which is manifest from the separate invoices raised by the Maharashtra and the Delhi unit of the Appellant for the supply of goods and supply of services respectively. The presence of two taxable persons in the present case would clearly preclude the impugned supplies from being in the nature of the Composite Supply as discussed above, wherein one of the essential conditions is that there should a single taxable person, who is undertaking all the supplies involved in particular transaction, which is clearly not the case here.

48. It is further argued by the Appellant the supplies under the present case are not being made in the conjunction with each other, as the supply of services i.e. erection, commissioning, installation, testing etc. are undertaken only after the supply of the goods, i.e. UPS systems and other accessories, have been effected to the recipient of the goods, i.e. DMRC after carrying out all the inspection procedures by the persons, authorized by the Recipient in this regard. It is also argued by the Appellant that services of erection, commissioning and installation of the UPS Systems by the Delhi unit begins only after the ownership/title of the said goods has already been transferred from the Appellant to the Recipient. Hence, the above said services cannot be said to be supplied in conjunction of the supply of the said goods, thereby, precluding the said supplies from being in the nature of "Composite Supply" as envisaged under section 2(30) of the CGST Act, 2017. Here also, we find the Appellant's argument cogent and compelling.

49. It is also opined here that out of the two supplies, i.e. supply of UPS Systems and supply of services like erection, commissioning, installation, testing, etc., it would not be proper to claim one of the supplies as the "Principal Supply" as envisaged under section 2(90) of the CGST Act, 2017, as both the supplies i.e. the supply of goods and the supply of services are equally important and indispensable, because in the absence of any of these two, the objective and purpose of the subject agreement cannot be achieved. Thus, even this key requirement of the 'Composite Supply' is not satisfied by the supplies under question. The AAR based its ruling on the sole premise that the supply of the said goods as well as the services have been agreed to be provided by the Appellant to the Recipient under the single contract, thereby concluding the supplies under question to be the composite supply without appreciating the fact that the said supply of goods and services are made by the two distinct taxable persons, i.e. Maharashtra (GSTIN)unit and the Delhi (GSTIN) unit of the Appellant. Here, it is stated that just because some supplies of goods or services or both have been included, or made part of, the one single agreement/contract, as per the convenience of the parties entering into the said agreement, does not make those supplies as composite supply. It is further opined that for any supplies to qualify as the composite supply, it has to satisfy the various essential conditions, which have been discussed herein above. In the present facts and circumstances of the case, it is observed that supplies under question do not satisfy those essential conditions stipulated for the Composite Supply under section 2(30) of the CGST Act, 2017.

50. Thus, in view of the above discussions, it is observed that the observation made by the Advance Ruling Authority, against which the Appellant has preferred the

present appeal, is not proper and legal, and hence the same warrants to be set aside. Thus, we pass the following order:

ORDER

We, hereby, modify the AAR ruling to the extent that the supplies under question would not be considered as "Composite Supply" in terms of section 2(30) read with section 2(90) of the CGST Act, 2017.

(SANJEEV KUMAR)
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 Respondent.

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

7. Office copy