

THE MADHYA PRADESH APPELLATE AUTHORITY FOR ADVANCE RULING

**OFFICE OF THE COMMISSIONER, COMMERCIAL TAX, MOTI BUNGLOW,
MAHATMA GANDHI MARG, INDORE (M.P.) - 452007**

BEFORE THE BENCH OF

- (1) Shri NAVNEET GOEL, MEMBER
(2) Shri RAGHWENDRA KUMAR SINGH, MEMBER

ORDER NO. MP/AAAR/03/2021

DATE...26.07.21

Name and address of the appellant	M/S MADHYA PRADESH POWER GENERATING COMPANY LIMITED Block No.9, Shakti Bhawan, Floor No.II Rampur Jabalpur Madhya Pradesh 482002
GSTIN or User ID	23AADCM4472A1ZZ
Order of AAR under Appeal before AAAR	21/2020 dated 18.12.2020

PROCEEDINGS

**(Under section 101 of the Central Goods and Services Tax Act, 2017 and the
Madhya Pradesh Goods and Services Tax Act, 2017)**

1. At the outset, we would like to make it clear that the provisions of both the CGST Act and the MPGST Act are mirror image of each other except for certain specific provisions. Therefore, unless a specific mention is made to such dissimilar provisions, a reference to the CGST Act would mean a reference to the similar provisions under the MPGST Act and vice-versa. At places we may refer it as GST Act.

2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017 [hereinafter also referred to as "the CGST Act and MPGST Act"] by M/s MADHYA PRADESH POWER GENERATING COMPANY LIMITED (MPPGCL) (hereinafter also referred to as the "appellant") against the order of Authority for Advance Ruling No. 21/2020 dated 18.12.2020

3. STATEMENTS OF FACT

- i). M/s MADHYA PRADESH POWER GENERATING COMPANY LIMITED (MPPGCL) is a wholly owned company of M.P. Government mainly engaged in the

generation of electricity in the state of Madhya Pradesh. It is a successor entity of erstwhile Madhya Pradesh State Electricity Board (MPSEB).

ii). MPPGCL has awarded various civil contracts related to construction, O&M works and other ancillary contracts. These works are in relation to work entrusted to MPPGCL from government of MP i.e. Generation of Electricity.

iii). The Authority for Advance Ruling- Madhya Pradesh in its Order No. 16/2019 dated 25-09-2019 in case of M/s Kalyan Toll Infrastructure Limited has ruled that the tender document in question was not a consolidated contract and each supply under the said contract shall be chargeable to tax individually, depending upon the individual classification of such supplies and rate of tax applicable at the time of supply.

iv). MPPGCL filed a separate advance ruling to know the correct rate of tax on all the work that are in relation to the work entrusted to MPPGCL, in line with the advance ruling given in case mentioned above.

v). An application was filed by the appellant before Authority of Advance Ruling, where in the Authority ordered ruling against MPPGCL.

vi) The Authority for Advance Ruling- Madhya Pradesh in its Order No. 21/2020 ruled that the aforesaid ruling in the matter of M/s Kalyan Toll Infrastructure Limited is not applicable to MPPGCL on account of the provisions of Section 103 of the GST Act. Further regarding classification of supply in entry No.6 of Schedule II to the GST Act, the authority held that it could not ascertain the nature of supplies due to insufficient information. For other contracts of similar nature where in only list of contracts was attached, the authority held that the advance ruling cannot be given in absence of copies of the contracts.

vi). The authority held that the advance ruling is applicable only on the appellant who obtains advance ruling. The same advance ruling cannot be applied to the other person although he is second party to the same transaction.

vii). Aggrieved by the order passed by Authority of Advance Ruling, Madhya Pradesh dated 18.12.2020, this appeal is preferred.

4. QUESTIONS RAISED BEFORE AUTHORITY FOR ADVANCE RULING (AAR)

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CTO (AAR)

The original advance ruling was sought for the following questions:

- i). Whether all such contracts towards construction, O&M and other ancillary contracts which are in relation to work entrusted to MPPGCL by the State Government are to be taxed as composite supply as per Schedule II of CGST Act 2017 or as individual supply as ordered in case of M/s Kalyan Toll Infrastructure Ltd by Honorable Authority of Advance Ruling?
- ii). GST Rate applicable on Construction contracts awarded by MPPGCL which are in relation to work entrusted to MPPGCL by the State Government as per Notification No.11/2017CT(R) as amended?
- iii). GST Rate applicable on O&M and other ancillary contracts awarded by MPPGCL which are in relation to work entrusted to MPPGCL by the State Government as per Notification no.11/2017CT(R) as amended?

5. RULING PRONOUNCED BY AUTHORITY FOR ADVANCE RULING (AAR)

- i). In respect of first question, regarding classification of supply in Entry No.6 of Schedule II to the GST Act we are unable to answer the question on account of insufficient information provided by the applicant. Further in respect of first question, regarding applicability of the advance ruling in the matter of Kalyan Toll Infrastructure Ltd we have to state that the advance ruling in the matter of Kalyan Toll Infrastructure Ltd is not applicable to the applicant on account of the provisions of Section 103 of the GST Act.
- ii). In respect of the second and third question regarding the rate of GST on supplies made under different contracts, in the absence of the copies of the contracts we are unable to give our ruling.
- iii). The ruling is valid subject to the provisions under section 103(2) until and unless declared void under section 104(1) of the GST Act.

6. QUESTIONS RAISED BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR)

The following questions, which are the very same as posed before AAR, have been posed before the Appellate Authority: -

- i). Whether all such contracts towards construction, O&M and other ancillary contracts which are in relation to work entrusted to MPPGCL by the State Government are to be

taxed as composite supply as per Schedule II of CGST Act 2017 or as individual supply as ordered in case of M/s Kalyan Toll Infrastructure Ltd by Honorable Authority of Advance Ruling?

ii). GST Rate applicable on Construction contracts awarded by MPPGCL which are in relation to work entrusted to MPPGCL by the state government as per notification no.11/2017CT(R) as amended?.

iii). GST Rate applicable on O&M and other ancillary contracts awarded by MPPGCL which are in relation to work entrusted to MPPGCL by the State Government as per Notification no.11/2017CT(R) as amended?.

7. GROUNDS OF APPEAL

Aggrieved by the rejection of the application for advance ruling, the appellant has filed this appeal dated 27-02-2021 under Section 100 of the CGST Act, 2017 and MPGST Act, 2017, on the following grounds:-

i). Appellant submits that the authority of advance ruling was not justified in rejecting the application on the ground that it is not possible to ascertain the integral nature of the contract to ascertain the coverage.

ii). Appellant submits that the Authority of Advance ruling never required the other contracts, wherein in the application it has been stated that all contracts are similar in nature.

iii). Appellant submits that the authority of Advance ruling incorrectly rejected the application stating that the application is against the spirit of the provisions of Advance Ruling.

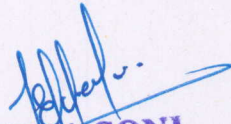
iv). Appellant submits that the authority of advance ruling did not appreciate the efforts made by the appellant to derive the correct rate of tax, which is one of the reasons for which advance ruling can be sought.

v). Appellant submits that the authority of advance ruling wrongly concluded that advance ruling in case of M/s Kalyan Toll Infrastructure Limited does not apply to the appellant as the appellant is other party to the said contract.

vi). Appellant submits that the order passed by the authority of advance ruling is arbitrary and is not in accordance with the provisions of the act.

8. PERSONAL HEARING

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C.T.O. (HO)

The appellant was given an opportunity of personal hearing on 20.07.2021 through virtual mode. The appellant was heard through Shri Neeraj Agarwal, Chartered Accountant. After hearing the appellant has expressed his satisfaction through a letter and asked for decision.

9. DISCUSSION AND FINDINGS

We have carefully gone through the submissions made by the appellant in his application as well as the submission made at the time of personal hearing, Advance Ruling Order dated 18.12.2020 passed by the Madhya Pradesh Advance Ruling Authority and documents placed before us.

- i) In respect of the first question raised before us, we find that the appellant has applied for determination of applicable GST rates for about 68 different contracts in a single advance ruling application. As per sub section (1) of section 97 of GST Act- *"An applicant desirous of obtaining an advance ruling under this chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought"*. We find that the appellant has furnished some copy of Tender acceptance letter/work order which are only partial documents and not complete contract/work order. We find that the appellant has furnished copy of Tender acceptance letter No.03-01/SSTPP/Stage-I/258/2669 dated 28-11-19 issued to M/s Mithun Anchera, Indore, however only first page is furnished thus the said letter/Work Order is incomplete. We find that the appellant has furnished copy of Tender acceptance letter No.03-01/SSTPP-II/80/1783 dated 24-08-18 issued to M/s Kalyan Toll Infrastructure Ltd., Indore, however only first two pages are furnished thus the said letter/Work Order is incomplete. We find that the appellant has furnished copy of Tender acceptance letter No.03-01/SSTPP-II/83/2115 dated 11-10-2019 issued to M/s S.K. Totla Infra Construction Pvt. Ltd., Neemuch, however only first two pages are furnished thus the said letter/Work Order is incomplete. We find that the appellant has furnished copy of Tender acceptance letter No.03-01/SSTPP/Stage-II/79-Vol.II/1731 dated 20-08-2018 and No.03-01/SSTPP/Stage-II/79-Vol.II/2080 dated 20-09-2018 issued to M/s Shreeji Infrastructure India Pvt. Ltd., Jabalpur, however only first page is furnished thus both letters/Work Orders are incomplete. We find that the appellant has furnished copies of 5 LOAs (Letter of acceptance) dated 04-09-2014 issued to M/s Larsen & Toubro Limited, Vadodara, however these LOAs pertain to period prior to period of GST. Every contract is different in nature of work. In absence of complete contracts/work orders, it is not feasible for

us to decide the nature of supply and GST rates for large number of contracts/work orders in a single application.

ii) At the time of personal hearing, the authorized representative on behalf of the appellant has cited the decision of AAR in case of M/s Kalyan Toll Infrastructure Ltd. Without going into the merits of the issue it would be sufficient to point out that the AAR in the case of M/s Kalyan Toll Infrastructure Ltd has opined that each supply under the said contract shall be chargeable to tax individually, depending upon the individual classification of such supplies and rate of tax applicable at the time of supply as per conditions/provisions of the notifications. Further, the Ruling given in case of M/s Kalyan Toll Infrastructure Ltd by Authority of Advance Ruling cannot be treated as precedent for this case. According to sub section (1) of section 103 of CGST/MPGST Act, 2017 applicability of advance ruling is limited to the applicant and the concerned or the jurisdictional officer.

iii) In respect of the second and third questions, the appellant has contended that GST rate of 12% should be applicable to them in accordance with Entry No.(vi)(a) of Sr. No.3 of Notification No.11/2017-Central tax (Rate) as amended.

Here we will look into relevant Entry No.(vi)(a) of Sr. No.3 of Notification No.11/2017-Central tax (Rate) as amended which is reproduced below:

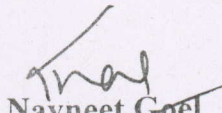
<p>(vi) Composite supply of works contract as defined in clause (119) of section 2 the Central Goods and Services Tax Act, 2017 provided to the Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of</p> <p>(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;</p>	<p>6</p>	<p>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.</p>
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<p>(b) a structure meant predominantly for use as an (i) educational, (ii) a clinical, or (iii) an art or cultural establishment; or</p> <p>(c) a residential complex predominantly meant for self -use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.</p>		
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- iv) We find that in order to qualify for the concessional rate of tax @6% CGST + 6% SGST, under Entry No.(vi)(a) of Sr. No.3 of Notification No.11/2017-Central tax (Rate) as amended, the main conditions to be fulfilled are that the contract involves composite supply as defined in Section 2(30) of CGST Act, 2017, the contract involves works contract as defined under section 2(119) of CGST Act, 2017 and such services are supplied to a Government Entity. In absence of complete contracts/work orders, it is not feasible for us to decide the nature of supply and GST rates for large number of contracts.


ORDER

In light of above we do not intend to interfere with the ruling passed by the Authority of Advance Ruling in the present case. We uphold the order 21/2020 dated 18.12.2020 passed by Advance Ruling Authority and the appeal filed by M/s MADHYA PRADESH POWER GENERATING COMPANY LIMITED stands dismissed on all accounts.


Navneet Goel
(Member)

Madhya Pradesh Appellate Authority

No. .02../2021/A.A.A.R../.04


Raghwendra Kumar Singh
(Member)

Madhya Pradesh Appellate Authority

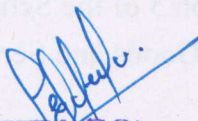
Indore, dated -

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Copy to:-

1. The Appellant
2. The AAR, Madhya Pradesh
3. The Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
4. The Commissioner of State Tax, Madhya Pradesh
5. Office Copy

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