

 सत्यमेव जयते	<b>ODISHA APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICE TAX</b> Central Revenue Building (GST Bhawan), Rajaswa Vihar, Near Vani Vihar, Bhubaneswar, Odisha-07 Ph: 0674-258 9606. Fax: 0674-258 9938	
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(CONSTITUTED UNDER SECTION 99 OF THE ODISHA GOODS AND SERVICES TAX ACT, 2017)

ORDER NO. 01/ODISHA-AAAR/Appeal/2020-21/

DATE: 29.09.2020

BEFORE THE BENCH OF



- (1) Shri R Manga Babu, Member (Chief Commissioner, GST, CX & Customs, Bhubaneswar Zone)
- (2) Shri Sushil Kumar Lohani, Member (Commissioner, Commercial Taxes & GST, Odisha)

GSTIN Number	21AAACT0061H1Z0
Legal Name of Appellant	M/s.Telecommunications Consultants India Ltd.
Registered Address	M/s.Telecommunications Consultants India Ltd., TCIL Bhawan, Greater Kailash-I, New Delhi -110048
Details of Appeal	Appeal No. 02 /2019-20/AAAR-Odisha dated 09.01.2020 against Advance Ruling No.03/ODISHA-AAR/2018-19 dated 09.10.2018
Jurisdictional Officer	Office of the Superintendent, CGST, Bhubaneswar I Range

Present for the Appellant (P.H. attended through Video Conference)

- 1.Shri Raju Malhotra, GM(F&A), M/s.TCIL
- 2.Shri Sandeep Chilana, Advocate




**1. BRIEFS FACTS OF THE CASE**

1.1. M/s Telecommunication Consultants India Ltd. (hereinafter referred to as the "Applicant" or "the Appellant") assigned with GSTIN 21AAACT0061H1Z0 having registered address at TCIL Bhawan, Greater Kailash-I, New Delhi-110048, had filed an application on 21.08.2018 under Section 97(1) of CGST Act, 2017 read with Rule 104 of CGST Rules 2017 & OGST Rules, 2017 in Form GST ARA-01 before the Authority for Advance Ruling, Odisha (herein after referred to as "AAR") seeking an Advance Ruling on the applicability of Entry No. 72 of Notification No.12/2017-Central Tax(Rate), dated 28.06.2017, read with Entry No. 72 of Notification bearing SRO No. 306/2017-Finance Department, Government of Odisha to the services provided by them under the category of Information and Communication Technology)ICT @ School Project.

1.2. The Appellant is a Public Sector undertaking working under the administrative control of the Department of Telecommunications, Ministry of Communications and Information Technology, Government of India and is duly registered under the Central Goods and Service Tax Act, 2017 as well as Odisha Goods and Service Tax Act, 2017 in the State of Odisha having registration No.21AAACT0061H1Z0. The Appellant is engaged in consultancy and engineering services pertaining cellular technology, information technology and other allied areas..

1.3. The present appeal concerns, one such ICT project being implemented by the Appellant in the State of Odisha. The Odisha Madhyamik Shiksha Mission (herein after referred to as "OMSM"), Government of Odisha, has mandated the Odisha Knowledge Corporation Limited (hereinafter referred to as "OKCL") to implement ICT project in 4000 Government schools and Government aided higher secondary schools across the State of Odisha. Accordingly, OKCL floated a tender (Tender Code No.3) on e-tendering portal of Secured e-Tendering System (SeTs).

1.4. The said tender was for Supply, Installation, Maintenance and Commissioning of Projection system, Interactive White Board, Computer Hardware, Connected Accessories, Installation of Software and other allied accessories, site preparation (i.e. vinyl flooring, furniture and fixtures, electrical fittings, power backup facilities,



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LAN, etc.), maintenance of equipment and provisions of computer training services for 5 years, in 4000 schools, divided in five zones on the BOOT Model basis.

1.5. The Appellant was successful bidder and was awarded the tender vide Letter of Award No .OKCL/SME/47/05 DATED 02.08.2013 to execute the contract in one of the six zones. Accordingly, the Appellant entered into an agreement with OKCL on 07.10.2013..

1.6. This contract period was for five years and as per agreement the entire infrastructure (supplied & installed) will be transferred to school and mass education department at zero transfer value. The total contract value of the project was **Rs.107,14,83,000/-**. The Appellant has filed an application on 21.08.2018 before the Authority for Advance Ruling of Odisha, under Section 97 of CGST Act, 2017 and OGST Act, 2017 read with Rule 104 of CGST Rules, 2017 & OGST Rules, 2017 in Form GST ARA-01 seeking an Advance Ruling on the applicability of Entry No. 72 of Notification No. 12/2017-Central Tax read with Entry No. 72 of Notification bearing SRO No. 306/2017-Finance Department, Government of Odisha to the services provided by them under the ICT @ School Project.

**Entry No. 72 of Notification No. 12/2017-Central Tax being relevant is quoted below:**

Sl. No.	Chapter Heading, Group or Service	Description of Services	Rate (per cent)	Condition
(1)	(2)	(3)	(4)	(5)
72	Heading 9992	Services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union territory administration.	Nil	Nil

(The Entry No.72 of Notification No. 12/2017-Central Tax is same as entry no. 72 of Notification SRO No. 306/2017-Finance Department of Odisha)



1.7. The AAR, Odisha, after examining the grounds filed in the application filed by the Appellant, has observed that three pre-requisites are to be satisfied for the supply of services to qualify for the notified exemption;

- a. the supply has to be a supply of Service provided to the Central Government, State Government or Union Territory administration;
- b. such Service must be 'under any training program;
- c. the total expenditure of such Service is borne by the Central Government, State Government or Union Territory administration.

1.8. After thoroughly examining the contract details, the service details as said to be rendered, mode of payment details etc., the AAR Odisha vide its Ruling vide Order No- 03/ODISHA-AAR/18-19, dated 09.10..2018, held that the Appellant is not entitled to the benefit of exemption under Entry No.72 of Notification No.12/2017-Central Tax(Rate). Dated 28.06.2017, and has given ruling as under:-

#### “RULING”

- a. Recipient of the service OKCL is a body corporate which cannot be regarded as Government.
- b. The supply undertaken by the Appellant is in the nature of composite supply. It includes supply of goods and services which are not naturally bundled. Each of the components of the composite supply are distinctly identifiable both in terms of quantify and value. The service provided or to be provided is not exclusively in the nature of training programme.
- c. Though the source of funding for the service is the State Government and Central Government, yet, as per the contract, the payment responsibility is vested on OKCL.

Therefore, the activities of the Appellant by way of supply, of, goods and services under the ICT project are not covered under Entry 72 of the notification no.12/2017 dated 28.06.2017, to be entitled to the benefit of exemption from GST.

1.9. While rendering the aforesaid Ruling, the AAR has also observed that as per Para 1(c) of Schedule II of the OGST/CGST Act, any transfer of title in goods under



an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods and not a service.

1.10. Aggrieved by the above mentioned Ruling, the Appellant i.e. M/s.TCIL have filed the subject appeal on 09.01.2020 before the Odisha Appellate Authority for Advance Ruling. The Appellant has paid the requisite fees Rs.20,000/- (CGST-Rs.10,000/- & SGST-Rs.10,000/-) through –e payment in ICICI BANK LTD, CPIN: 20012100004854 dated 03.01.2020. After due verification of the application and other aspects, the application is admitted. The Appellant in their appeal have, inter alia, prayed as follows:-

- (i) to set aside the impugned Ruling vide Order No. 03/ODISHA-AAR/2018-19 dated 09.10.2018 passed by the Learned Odisha Authority for Advance Ruling for Goods and Service Tax;
- (ii) to hold that Entry No.72 of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017, read with Entry No.72 of Notification SRO No.306/2017-Finance Department, is applicable to the services provided by the Appellant under the ICT Project.

### **GROUNDS OF APPEAL**

2. The grounds of appeal as mentioned by the Appellant, in their appeal, are summarised here-as-under;

**2.1. First pre-requisite: The services are provided under the training programme:**

The Appellant has contended that they are carrying out various activities viz. installation, commissioning, site maintenance, operation, etc. to implement the ICT Project in the Government schools in the State of Odisha.

The Appellant relies on the following points with a view to establish that the services provided by them are under training programme:

- i. All the activities undertaken under the ICT Project are naturally bundled, principal supply being that of provision of computer training;
- ii. The basic infrastructure under ICT Project is being developed to provide computer training to the students and teachers;



- iii. The ICT in Schools scheme has been introduced with an aim to promote computer literacy among the students and teachers;
- iv. BOOT Model achieves the object of imparting computer training and therefore, is preferred over outright purchase of assets;
- v. The Appellant is not providing operation or maintenance services;
- vi. There is no supply of goods during the period of contract.

The Appellant has stressed upon the facts mentioned under point Nos. (v) & (vi) above which are detailed below:

**Point No.(v) The Appellant is not providing operation or maintenance services:**

The Appellant has contended that in terms of the agreement, during the period of contract (i.e. 5 years), the operation and maintenance of the entire IT infrastructure equipment is to be carried out by the Appellant on its own cost. It is to be noted that during this period, the ownership of the equipment and infrastructure remains with the Appellant. This can be inferred from the following terms of the contract:

(a). during the period of contract, the equipment, infrastructure, etc. are to be repaired by the Appellant at its own cost,

(b). it is the responsibility of the Appellant to obtain necessary insurance for the equipment, infrastructure, etc. Thus, for the entire contract period, the risk remains with the Appellant.

(c). the Appellant is also claiming the depreciation of the IT equipment, infrastructure, etc. Thus, the IT equipment, infrastructure appears as assets in the books of accounts of the Appellant.

Therefore, the above referred terms of the agreement clearly establish that during the period of contract, the ownership of the equipment and infrastructure lies with the Appellant.

As the entire infrastructure is owned by the Appellant, the activities of maintenance or operation of the infrastructure, hardware, software, etc. carried out by the Appellant are with regard to self-owned equipment. Thus, it cannot be said that the Appellant is engaged in the supply of operation or maintenance services in



as much as operation or maintenance of self-owned equipment. Thus it cannot be said that the Appellant is engaged in the supply of operation or maintenance services in as much as operation or maintenance of self-owned equipment does not amount to supply of services to third party.

Thus, it is clear that the entire infrastructure is owned by the Appellant and the repair and maintenance activities undertaken by the Appellant are in regard to the self-owned equipment. Therefore, there is no supply of maintenance or operation services by the Appellant.

In fact, the repair and maintenance of the equipment and infrastructure is performed by the Appellant so that it may continue to provide computer training during the contract period in a smooth manner, without any obstruction.

**Point No.(vi) There is no supply of goods during the period of contract:**

As already submitted, the activities undertaken by the Appellant are under BOOT model basis and therefore, the ownership in the infrastructure developed by it would be transferred after the expiry of the contract period (i.e. 5 years). This is also clearly provided in the agreement that the ownership of the entire hardware, software, other equipment, etc. will be transferred at zero value at the end of the contract period.

In view of the above, it can be concluded that during the entire period of contract, the Appellant is not engaged in the supply of goods in as much as supply of goods is taking place only after the expiry of contract period of 5 years.

It is to be noted that the Appellant is claiming depreciation of the IT equipment in its books of accounts and as per the accounting policy, the normal life span of IT equipment is 5 years. Thus, after 5 years, the net realizable value of IT equipment in the books of account of the Appellant reduces to zero. As the IT equipment does not have any realizable value in the books of accounts of the Appellant, the same are being transferred to SMED at zero value.



Without prejudice to the above discussion regarding supply of goods, it is humbly submitted that even if some value is to be attributed towards supply of goods (equipment/infrastructure), the supply of goods here is ancillary to the principal supply of computer training service. As stated above, the basic idea of the ICT project implementation is provision of computer training to the students and teachers in the specific schools in the State of Odisha and not procurement of equipment mere creation of infrastructure.

In view of the above discussion, it is submitted that the Appellant is responsible for provision of computer training for five years using the newly built infrastructure. Entry No. 72 of Notification No. 12/2017 requires that the services must be provided under a training programme. It is important to analyse if the services of provision of computer training by the Appellant can be considered to have been provided under a training programme.

It is pertinent to note that the term 'training' used in the above referred Entry No. 72 has not been defined in the Notification No. 12/2017. Further, this term is also not defined in the CGST/OGST Act as well as CGST/OGST Rules.

2.2 Further, the Appellant has rebutted to the findings of the Advance Ruling Authority which is mentioned herein below:

- (a) that under the CGST Act, the concept of composite supply is applicable only when two or more identifiable and taxable supplies of goods or services or both, which are naturally bundled, are rendered in conjunction with each other. To understand the same, attention is invited to the definition of composite supply under the CGST Act.
- (b) As per Section 2(30) of the CGST Act, "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.



- (c) It is, therefore, evident that for any two or more supplies to constitute composite supply as per Section 2(30) of the CGST Act, it is necessary that they are naturally bundled. It is, thus, legally untenable for a supply to be "composite" and "artificially bundled" at the same time. To this extent the impugned ruling is legally incorrect and unsustainable.
- (d) Assuming without admitting (for the sake of argument only) that Para 1 (c:) of Schedule II is applicable to the present case, it is humbly submitted that there has never been any denial on part of the Appellant as regards the said transfer involving supply of goods. Conversely, in the application as well as in the additional submissions submitted by the Appellant before the Ld. AAR, the Appellant has emphasized on the fact that supply under the ICT Project involves supply of goods as well as supply of services, and while supply of services is the principal supply, supply of goods is merely an ancillary supply taking place at the end of the contract period, at zero value.

The Appellant would like to highlight that as per the contract entered into between the Appellant and OKCL, title in the goods/infrastructure is transferred to SMED and not to OKCL. In such a case, even by applying Para 1(c) of Schedule II, it cannot be said that the Appellant is supplying goods to OKCL.

- (e) With respect to services provided to Government of State of Odisha, the Appellant submitted that OKCL is a corporation established under Companies Act, 1956, which has been mandated by OMSM, Government of Odisha to act as an implementing agency to implement the ICT Project, on its behalf.

Further, admittedly, the funds for implementation of this project are being provided by OMSM to OKCL, for further release to the Appellant, in accordance with the agreed terms. Moreover, in case, OKCL fails to discharge its obligations under the agreement entered into between OMSM and OKCL, OMSM would step into OKCL's shoes and would discharge all the responsibilities. All these terms of the agreement between OKCL and OMSM clearly provides that OKCL is merely acting as an implementing agency on behalf of OMSM.



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Moreover, at the end of the project after 5 years, the assets are being transferred to OMSM and not to OKCL. Thus, as OKCL is merely an implementing agency on behalf of OMSM, the service recipient in the instant case would be the Government of Odisha (OMSM), through its instrumentality/ agency i.e. OKCL.

- (f) On the issue of entire expenditure is borne by the Central Government and the State Government of Odisha the Appellant submitted that in the instant matter, the tender document floated by the Government of Odisha specifically provides that the expenditure of implementing ICT Project in the State of Odisha would be borne by the Central and State Government in the ratio of 75:25.

The Appellant has further submitted that the expression used in Notification No. 12/2017 is 'borne' ("total expenditure is borne by the Central Government. ..") and not 'paid' by the government. There is no dispute as regards the fact that it is the responsibility of OMSM (State Government) to ensure that appropriate funds are provided for implementation of the ICT Scheme. In fact, the said submission can be traced to Clause 5.2 of the agreement between OMSM and OKCL. Therefore, even though the expenditure is 'paid' by OKCL under contract to the Appellant, the same is 'borne' by Central and State Government only (jointly).

### PERSONAL HEARING

3. The Appellant was offered a Personal Hearing vide letter C.No.IV(01)02/CC/ODISHA-AAAR/BBSR/2019-20/4109-13A dated 13.02.2020 on 25.02.2020 at 11.00 A.M.. The Appellant vide their letter TCIL/2019-20/ODISHA-AAAR dated 17.02.2020 has requested to adjourn the P.H. to any other date after 01.04.2020. Again, the P.H. was fixed on 17.03.2020 at 11.00 AM and the Appellant requested to adjourn the date to any convenience date after 30.04.2020 due to pandemic COVID19. Finally, the P.H. was offered on 15.07.2020 at 12.00 noon. The Appellant vide their letter dated 14.07.2020 has expressed to inability to present personally for scheduled PH due to pandemic COVID19.. The Appellant requested in their letter to conduct the PH online through Video Conference(VC) as per the instruction issued by CBIC dated 27.04.2020. Taking into consideration of the Appellant's request, the opportunity of the Personal Hearing was offered through



Video Conference on 09.09.2020 at 4.00 P.M.. Shri Raju Malhotra, GM(F&A), M/s.TCIL & Shri Sandeep Chilana, Advocate, on behalf of the Appellant attended the PH through Video Conference on 09.09.2020 at 4.00 PM. The authorised advocate Shri Sandeep Chilana during the PH, told that all their grounds are already mentioned in the written submission. During the PH, the Members of AAAR asked some questions and the authorised advocate complied as mentioned below:-

**Q1:** Whether the agreement made with OKCL includes tax or excludes tax?

**Ans:** The advocate replied that the agreement made for Rs.107,14,83,000/- includes tax. It clarified that under Para 3.2 of the agreement, it is clearly mentioned that the price and total value of goods and services shall be firm for the contract period and shall be inclusive of all the taxes, duties, levies and all other charges including service charges.

**Q2:** In terms of agreement what is the percentage of value of the goods supply?

**Ans;** The advocate admitted that the supply is a composite supply. But he could not specifically clarify the value of goods of the supply.

**Q3:** In terms of Para 1(c) of Schedule II of CGST Act, 2017/SGST ACT, 2017 "any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment at full consideration as agreed, is a supply of goods and not a service. In terms of Para 8.20 of the agreement, it is cleared, after the expiry of the contract period, the entire infrastructure supplied and installed will be transferred to the School and Mass Education Department, Government of Odisha at a zero transfer value. Accordingly, the supply in question will be appropriately treated as supply of goods in terms of Schedule II of Para 1(c).

**Ans:** The advocate replied that they are not objecting that the entire infrastructure will be transferred at zero value after the contract period. But the supply is a composite supply and the principal supply is the computer training. Therefore, it is requested to consider in totality as imparting training service rather the supply of goods.



**Q4:** Whether in such type of application/disputes any Ruling has been delivered?

**Ans:** In Delhi, one such application is pending before Advance Ruling Authority for decision. In Odisha, in case of M/s.IL&FS Education and Technology Services Ltd., the Advancing Ruling Authority has already rejected the benefit of Exemption Entry No.72 of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017, read with Entry No.72 of Notification SRO NO.306/2017-Finance Department. And the Appellate Authority for Advance Ruling Authority has upheld the Ruling of AAR, Odisha.

#### **4. DISCUSSION AND FINDINGS**

**4.1.** We have carefully considered the submissions made by the Appellant in their appeal as well as oral submissions made by them during the course of hearing held through video conference on 09.09.2020

**4.2.** . Now coming to the merits of the case, we notice that the prime issue raised by the Appellant is, as to whether the services provided by them to M/s.OKCL are eligible for exemption under Entry No.72 of the Notification No.12/2017, Central Tax (Rate) dated 28.06.2017 and entry No.72 of Notification SRO No.306/2017, dated 29.06.2017, issued by the Finance Department, government of Odisha, which is reproduced below for ready reference:-

To elaborate, Entry No. 72 of Notification No.12/2017-Central Tax being relevant is quoted below:

SL No.	Chapter, Heading, Group or Service Code	Description of Services	Rate (per cent)	Conditio
(1)	(2)	(3)	(4)	(5)
72	Heading 9992	Services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union territory administration.	Nil	Nil

*\* Entry No. 72 of Notification SRO No. 306/2017-Finance Department is identical to the Entry No. 72 of Notification No.12/2017-Central Tax.*



4.3. On going through the aforesaid notification, it is noticed that the following three pre-requisite are to be satisfied in order for the supply to qualify for the notified exemption, under Entry No.72 of Notification No.12/2017-Central Tax(Rate)..

- (a) The supply has to be a supply of Service provided to the Central Government, State Government or Union Territory Administration;
- (b) Such service must be under any training programme;
- (c) The total expenditure of such service is borne by the Central Government, State Government or Union Territory Administration.

4.4. To examine the issue as to whether the supplies are made to Central Government, State Government or Union Territory Administration, we notice that in terms of Section 2(53) of the CGST Act, 2017 and in terms of Section 2(53) of the SGST Act, 2017, "Government" means the Central Government or Government of Odisha respectively.

4.5. There is no denying of the fact that the Appellant is providing service to Odisha Knowledge Corporation Limited (**here-in-after referred to as "OKCL"**) which is a body corporate. The Appellant has failed to produce any documentary evidence as to how the provision of service to OKCL qualifies to be a provision of service to the Central Government, State Government or Union Territory Administration. The argument put forth by the Appellant that they are the implementing agency on behalf of the Government is not correct, as they are not providing any services to Government.

4.6. In terms of para-8 of the agreement dated 07.10.2013 between OKCL and the Appellant, it is noticed that the Appellant is required to supply and install the specified goods and provide specified services in the ICT Labs of the Govt. and Govt. Schools located in the specified zones. Therefore, it is evident that the Appellant made supplies to OKCL which is a body corporate and registered under the Companies Act, 1956 as a Company.

4.7. We notice that the Authority for Advance Ruling, Odisha, in their findings(para 5.3 of the Order) has clearly observed that OKCL was promoted by the Higher Technical Education Department, Govt of Odisha and was incorporated under the Companies Act, 1956, as a Public Sector Undertaking to create new paradigm in education and development through universalisation and integration of Information



Technology in teaching, learning and educational management processes in particular and socio-economic transformative processes in general. **OKCL can sue and be sued in its own name and capacity distinct from its owners. The Government, being the Union or State Government, on other hand, can also sue and be sued, but in the name of Union of India or the Government of a State as empowered under the Article 300 of the Constitution of India. Article 300 of the Constitution of India is applicable to Government and does not apply to OKCL.** OKCL being a registered entity under the Companies Act 1956 can execute all contracts in its own name and capacity. The Union or State Government, can also execute contracts made in the exercise of the executive power of the Union or of a State, and shall be expressed to be made by the President, or by the Governor of the State under Article 299 of the Constitution of India. Article 299 of the Constitution of India does not apply to OKCL. Article 300 of the Constitution of India provides that State can sue or be sued as juristic personality in the name of Union of India and Government of a State. Therefore, OKCL is neither the State Government nor a part of the State Government of Odisha or the Central Government and therefore the supplies by the Appellant to OKCL should not be held to be a supply to Government.

**4.8.** No counter argument was put forth by the Appellant to substantiate their claim that the supplies were made to the Government. Therefore, we fully agree with the findings arrived at in the Advance Ruling given by the Authority for Advance Ruling(AAR), Odisha on this point and hold so. Even if, some percentage of shares is owned by Government of Odisha in the OKCL, the company cannot be construed as Government. **Therefore, we hold that the Appellant does not meet the primary requirement of the conditions as laid down under Entry No. 72 of Notification No.12/2017-Central Tax(Rate), dated 28.06.2017, so as to be eligible for the said exemption, as the services provided by the Appellant to OKCL cannot be construed as services provided to the Central Government, State Government or Union Territory Administration.**

**4.9.** It is also observed that the Appellant at para-11.2 of their Appeal, have clearly admitted that the funds for implementation of project are being provided by OMSM to OKCL, for further release to the Appellant.. The Appellant has cited the agreement copy of OMSM and OKCL, where it is provided that if OKCL fails to discharge the obligation under the agreement, OMSM would discharge all the



responsibilities. The agreement cited between OMSM and OKCL is not relevant to the present issue. The Appellant themselves have admitted that OKCL will release the money for the supplies made by the Appellant. The contention/pleading of the Appellant that they merely act as an implementing agency on behalf of OMSM, is factually not correct.

**4.10.** In this regard , we find that at para 10.10.1 of the said appeal , the Appellant themselves have contended that the activities undertaken by the Appellant are under BOOT model basis and therefore, the ownership in the infrastructure developed by it would be transferred after the expiry of the contract period (i.e. 5 years). This is also clearly provided in the agreement that the ownership of the entire hardware, software, other equipment, etc. will be transferred at zero value at the end of the contract period. Therefore, the stand taken by the Appellant is self-contradictory in as much as on one hand, they claim that there was provision of service, as operation or maintenance of self-owned equipment does not amount to supply of services to third party. But on the other side, they claim that the ownership in the infrastructure developed by it would be transferred after the expiry of the contract period (i.e. 5 years). The said transfer of ownership is also unconditional. Therefore, we hold that the consideration received by the Appellant is in respect of provision of supplies, taxability of which has been discussed in the foregoing paragraphs. Moreover, under Schedule-II (1)(c) of the CGST Act, 2017/SGST Act, 2017, it is clearly defined that any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.

**4.10.1.** On perusal of Para 1.1.1 of the agreement between OKCL & TCIL, the tender is for supply, installation and commissioning of Computer Hardware, Connected Accessories, Software provided by OKCL, Maintenance of Equipment and Provision of Computer Education Services in 4000 Government and Government Aided High Schools of Odisha on BOOT model under ICT@School Project.. The Appellant also has affirmed in their appeal under Para 1.16 to 1.21 to carry out the above jobs for a total consideration of Rs.107,14,83,000/- which is payable by instalments by OKCL. On plain reading of the job carried out by the appellant includes supply of goods, installation & commissioning of hardware, repair



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maintenance equipment and computer education service. Under 4.1 of the agreement, it is clearly mentioned that the payment is for goods and service. But the Appellant claims that they have rendered only computer training service, it is not correct at all.

**4.10.2.** The service rendered by the Appellant is not only one service, but includes three types of service i.e. (1) installation commissioning service, (2) Repair & maintenance service and (3) computer education service. In this regard, to get more clarity regarding the supply when the Appellant was asked to quantify the percentage of value of the total value of the project for computer education service. The Appellant failed to give any evidence/information. Instead the Appellant simply claimed that their principal component is computer training service, which can be <sup>not</sup> acceded to. Moreover, the Appellant has not executed only one service but three service as mentioned above.

**4.10.3.** The Appellant under Para 10.9 of the appeal has claimed that they are not providing operation and maintenance service, the operation & maintenance of the entire IT infrastructure equipments is to be carried out by the Appellant on its own cost. The above claim of the Appellant is not acceptable because as discussed above, the total project amount of Rs.107, 14,83,000/- includes for the supply of goods & service, which also includes repair & maintenance service.

**4.10.4.** The Appellant under Para 1.22. of the appeal has mentioned that after the expiry of contract period of five years, the entire infrastructure will be transferred to SMED, Government of Odisha at zero transfer value. This is also clearly provided under Para 8.20 of the agreement, . that the ownership of the entire hardware will be transferred at zero value at the end of the contract period. This said transfer of the ownership is also unconditional. Therefore, we hold that the consideration received by the Appellant in respect of provision of supply could not be treated as the consideration for only service rendered. Moreover, under Schedule II of Para 1(c) of the CGST Act, 2017/SGST Act, 2017, it is clearly defined that any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.

**4.11.** Having held that the Appellant have failed to meet the primary requirement of the conditions of the notification i.e., the supply has to be a supply of Service provided to the Central Government, State Government or Union Territory



Administration; we refrain from discussing the other aspects of the notification and pass the following order:

**ORDER**

We uphold the Advance Ruling passed by the Authority for Advance Ruling, Odisha, made under Section 98 of the Goods and Services Act, 2017, vide their Order No.03/ODISHA-AAR/18-19 dated 09.10.2018. Consequently, the appeal No.02/2019-20/AAAR-ODISHA dated 09.01.2020 filed by the Appellant i.e. M/s. Telecommunications Consultants India Ltd, under the provisions of Section 101 of the CGST Act, 2017/Section 101 of SGST Act, 2017 is hereby rejected.




(Sushil Kumar Lohani)  
Member



(R Manga Babu)  
Member



Certified true copy

  
11/01/2020.  
(बी. कि. नायक B.K. Nayak)  
सहायक आयुक्त (सी. सी. ओ.)  
Joint Commissioner (AAR)

Copy to:

1. M/s.Telecommunications Consultants India Ltd., TCIL Bhawan, Greater Kailash-I, New Delhi -110048
2. The Authority for Advance Ruling, Odisha.
3. The Chief Commissioner, CGST & C.Ex., Bhubaneswar.
4. The Commissioner, Commercial Taxes & GST, Govt. of Odisha, Cuttack.
5. The Jurisdictional CGST Commissioner/Jurisdictional Assistant/Deputy Commissioner of Central/State Tax.
6. The Web Manager, [www.gstcouncil.gov.in](http://www.gstcouncil.gov.in)
7. Office Copy.

