

TAMILNADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Constituted under Section 99 of Tamilnadu Goods and Services Tax Act
2017)

A.R.Appeal No. 11/2019/AAAR

Date: 04/03/2021

BEFORE THE BENCH OF

1. Thiru G.V.KRISHNA RAO, MEMBER

2. Thiru M.A. SIDDIQUE, MEMBER

ORDER-in-Appeal No. AAAR/04/2021 (AR)

(Passed by Tamilnadu State Appellate Authority for Advance Ruling under Section
101(1) of the Tamilnadu Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Central Goods & Services Tax Act 2017/Tamilnadu Goods & Services Tax Act 2017("the Act", in Short), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the Order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the appellant has been given an opportunity of being heard.
2. Under Section 103(1) of the Act, this Advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only
 - (a). On the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling;
 - (b). On the concerned officer or the jurisdictional officer in respect of the applicant.
3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the said advance ruling have changed.
4. Under Section 104(1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

Name and address of the appellant	M/s. HYT SAM INDIA(JV) Hiregange & Associates, Fagun Chambers, Third Floor, No. 26, Ethiraj Salai, Egmore, Chennai 600 008.
GSTIN or User ID	33AABAH8574L1ZB
Advance Ruling Order against which appeal is filed	Order No. 08/AAR/2019 dated 22.01.2019
Date of filing appeal	03.12.2019
Represented by	Hiregange & Associates
Jurisdictional Authority-Centre	Chennai North Commissionerate
Jurisdictional Authority -State	The Assistant Commissioner (ST) Koyambedu Assessment Circle
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. CPIN No. 19123300017819 dated 03.12.2019

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

The subject appeal has been filed under Section 100(1) of the Tamilnadu Goods & Services Tax Act 2017/Central Goods & Services Tax Act 2017 (hereinafter referred to 'the Act') by The HYT-SAM India (JV) (hereinafter referred to as 'Appellant'). The appellant is registered under GST vide GSTIN 33AABAH8574L1ZB. The appeal is filed against the Order No.8/AAR/2019 dated 22.01.2019 passed by the Tamilnadu State Authority for Advance ruling on the application for advance ruling filed by the appellant.

2.1 The Appellant, is assessed as Association of Persons under the Income Tax law. The constituent partners of the JV are as follows:

- a. HYT Engineering Co Private Limited (Lead partner of JV);
- b. SAM (India) Built well Private Limited

The appellant is engaged in construction of Shed, Provision of M& P's in ICF Shell/ Furnishing Division/ retro-fitment/ re-conditioning/ re-sitting/ disposal of obsolete M&P's of Shell division including wet leasing of M&P's and associated Electrical Works on turn key basis at ICF Chennai.

2.2 The Integral Coach Factory (ICF for short) of Indian Railways, Government of India, located at Chennai is in the process of modernization of their activities wanted to put-up steel railway coach manufacturing set-up in place of existing setup. In the process, tender no. ICF/Complete Switchover Project Phase-II/T-1 dated 27.03.2017 was invited by Integral Coach Factory, Chennai for "construction of shed, provision of M&Ps in ICF Shell / Furnishing Division, retro-fitment / re-conditioning / re-sitting / disposal of obsolete M&Ps of shell division including wet leasing of M&Ps and associated Electrical works on turn-key basis" The Appellant had bid for the tender and the tender is allotted to HYT- SAM India (JV), and the Letter of acceptance hereinafter referred to as LOA bearing LOA No. M/CPM/ICF/CSP-II/T-1, dated 29.06.2017 was issued to the Appellant. The Appellant has duly accepted the same and signed.

2.3 Based on the said LOA, contract bearing Contract No. ICF/Complete Switchover Project-II/T-1 dated 19.08.2017 was entered into between Integral Coach Factory, Chennai, Government of India, and the Appellant, describing the terms and conditions of the works awarded to the Appellant. Few supplemental agreements were entered as per the terms of the LOA and the main contract dated 19.08.2017. On introduction of Goods and Service Tax [GST] the rate of tax on goods and services are notified vide notification No. 1/2017-CT(R) dated 28th June 2017 and Notification no. 11/2017-CT(R) dated 28th June 2017 [Similarly Notification No. GO.62 [rate of tax on goods), Notification No. GO.72 (rate of tax on services) of TN]]. The appellant claim that the nature of works awarded is that of works contract which in terms of Section 7 of CGST Act, 2017 read with Schedule II to the said Act, is supply of services. Accordingly, the rate of tax is to be determined in terms of Notification No. 11/2017-CT(R) as amended.

2.4 The Appellant made an application to ORIGINAL AUTHORITY on the following questions:

1. Whether the works awarded to the applicant is composite supply of services?
2. Whether the benefit of sl.No.3(v) of notification no.11/2017- Central Tax

(Rate) is applicable to subject works

3. Whether the applicant is required to raise invoice on completion of events/milestones and remit the tax

4. What is the value on which invoice has to be raised in case of event/milestone invoicing if required?

3. The original authority has ruled as follows:

a. With respect to supply of machine, plant and equipments including commissioning of spares in Schedule I, erection and commissioning of all civil structures in Schedule II, supply of electrical equipment including commissioning of spares in Schedule III, the same is a composite supply of works contract for original works pertaining to railways and is taxable at 6% CGST as per sl. No. 3(v)(a) of Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 as amended.

b. The supply in the agreement for wet leasing of Robotic spot welding machine and laser cutting and welding machine as per Schedule V(a) & V(b) are composite supply of services and not 'Works Contract' and therefore not eligible for serial no. 3(v)(a) of the notification.

c. The agreement for comprehensive Annual Maintenance Contract under Schedule VI(a) and VI(b) is not eligible for serial no. 3(v)(a).

d. The value of supply for each invoice raised should be as per section 15(2) of the CGST Act, 2017

e. For up-rooting and disposal of condemned M&Ps no advance ruling provided as the appellant is service receiver and not service provider.

f. Authority cannot provide advance ruling w.r.t time of raising of invoice by the Appellant.

4.1 Aggrieved to the extent of ruling that Scope of works in Schedule V and VI not being covered under Sl.No. 3(v)(a), the appellant has filed the appeal on the following grounds:

➤ The issue to be decided/involved in the present appeal are:

a. Whether the activities under tender agreement for wet leasing of Robotic spot-welding machine and laser cutting and welding machine as per Schedule V(a) & V(b) is eligible for concessional rate under Sl.No 3(v)(a) or 3(vi) of Notification No.11/2017 –CT(Rate) dated 20.06.2017 as amended and corresponding entry under state notification.

- b. Whether the activities under tender agreement for comprehensive Annual Maintenance Contract under Schedule VI(a) and VI(b) is eligible for serial no. 3(v)(a) or 3(vi) of Notification No.11/2017-CT(Rate) dated 20.06.2017 as amended and corresponding entry under state notification.
- The authority for advance ruling though clearly has recorded the fact that the LOA dated 29.06.2017 is one agreement and also agreed that it is composite supply, it has bifurcated LOA into four parts whereby from Schedule I, II and III as one part and Schedule IV, V and VI as separate parts. The impugned order has considered Schedule I, II and III of the LOA as composite supply works contract and ruled that it is eligible for the concessional rate as provided in Serial No. 3(v)(a) of notification No. 11/2017-CT(R).
 - On the other hand, it is ruled that scope of works at Schedule V, though composite supply it is not works contract and thereby the benefit of concessional rate under Sl. No. 3(v)(a) is not eligible. The said ruling requires modification for the following reasons;
 - a The scope of works under Schedule V is part of the same tender for works on turnkey basis;
 - b. The scope of works under Schedule V is part of the same LOA and part of total turnkey project;
 - c. Segregating a portion of the work and giving separate treatment is not in terms of Section 8 of CGST Act, 2017 and SGST Act,2017.
 - Based on the above grounds the ruling denying the benefit of Sl. No. 3(v)(a) be modified extending the benefit of concessional rate of tax under the said Sl. No. Further The Integral Coach Factory (ICF for short) of Indian Railways, Government of India, located at Chennai allotted the tender to HYT-SAM India (JV), for “construction of shed, provision of M&Ps in ICF Shell / Furnishing Division, retro-fitment / re-conditioning / re-sitting / disposal of obsolete M&Ps of shell division including wet leasing of M&Ps and associated Electrical works on turn.-key basis”. The Indian railways in acceptance letter No. M/CPM/ICF/CSP-II/T—1 dated 29.06.2017, accepted the original offer and agreed for executing the subject work in Schedule I to Schedule VI. It means that the work allotted to the Appellant is composite service.
 - The ruling is provided by considering each of the activity undertaken by them as separate and different. However, it is important to understand that the Appellant had quoted for one single tender and approval through LOA is

given on consolidated basis. Only for convenience of execution, payment purpose and other conditions to be applied for different stages of the work, different schedules were provided under the same LOA for each of the activities. Merely providing different schedules for each activity cannot be the basis for vivisecting each activity to classify under different heads. The said approach is not legal and proper.

- Further as far as the scope of works covered under Schedule VI to the LOA, it is accepted and admitted that it is composite supply of works contract. However the benefit of entry in Sl. No 3(v)(a) is not extended to the Appellant on the ground that the said Sl. No. does not cover maintenance. In this regard it is submitted that —

- a. The scope of works under Schedule VI is part of the same tender for works on turnkey basis;
- b. The scope of works under Schedule VI is part of the same LOA and part of total turnkey project;
- c. Segregating a portion of the work and giving separate treatment is not in terms of Section 8 of CGST Act, 2017 and SGST Act, 2017.
- d. Assuming but not admitting the scope of activities can be segregated and separated from other schedules, it is submitted that Sl. No. 3(vi)(a) of the above said notification read as follows:

“(vi) Composite supply of works contract as defined in clause (119) of section 2 of 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 —

- (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession”

- As can be seen that the factory in question is that of Government of India, Department of Railways Further the annual maintenance is that of Schedule I and Schedule III of LOA items, Further the coach building factory is for internal consumption of Indian Railways it is not for any business or commerce or industry. Further the contract in the preamble it is said “the performance of the said works is an act in which the public are interested.” Which means said construction and setting of modernized factory is not for

commerce, industry or any other business or profession. Thereby the appellant would alternatively be eligible for the benefit of concessional rate of tax under the Sl. No, 3(vi)(a) of the said notification No. 11/2017—CT(R) dated 20.06.2017 and similar state notification.

- Based on the above grounds it is submitted before the appellate authority that the ruling denying the benefit of Sl. No.3(v)(a) or 3(vi)(a) be modified extending the benefit of concessional rate of tax under the said Sl.No.
- Further the order in para 5.3 states that the Appellant is not eligible for the serial no. 3(vi)(a) for the reason that the factory is meant for manufacture by ICF which is an activity of industry, in this regard the Appellant submit as follows:

a. The contract in the preamble it is said “the performance of the said works is an act in which the public are interested.” Which means said construction and setting up of modernized factory is not for commerce, industry or any other business or profession.

b. Further, the Appellant satisfies the other conditions of serial no.

3(vi)(a) and the same is explained below:

Not meant predominantly for commerce, industry or business or profession:

- i. The civil structure or original works, should not be meant predominantly for commerce, industry or business or profession;
- ii. In the instant case the Integrated Coach Factory is intended for the purposes of building coach which is not for commerce or industry or business since it is being done by Government of India for the purpose of Indian Railways whose predominant objective is to service general public and not business or commerce or industry or profession.
- iii. Government cannot be said to be engaged in business or commerce or industry or profession especially when the President of India through its representative is signing the subject contract.

Hence, the Appellant contends that they are eligible for serial no. 3(vi)(a) of notification no. 11/2017-CT(R) as well.

PERSONAL HEARING:

5.1 Personal hearing was extended to the appellant to be held on 22.01.2020 and the appellant sought adjournment vide their letter dated 14.01.2020. Another opportunity was extended to the appellant to be heard on

12.02.2020 but the scheduled hearing was postponed due to administrative reasons. Due to the prevailing pandemic, the authority started to conduct the hearing in Virtual Mode and the willingness of the appellant was sought to participate in the Virtual Mode of hearing. The appellant vide their e-mail dated 27th July 2020 conveyed that the matter is little complex and requires detailed explanations to be provided, which would be little difficult to explain in case of a virtual personal hearing and requested to be heard in person. The appellant was addressed again seeking willingness to participate in Virtual hearing. The appellant vide their e-mail dated 9th September 2020 requested to be heard in person and also stated that since they would be required to travel from Pune, they requested to post the matter for hearing once the inter-state movement is relaxed. In view of the restrictions existed, the appellant was again asked to partake in virtual hearing which was again declined by the appellant. They requested to be heard in person and also requested to intimate the date of hearing well in advance, to plan their travel from Pune accordingly. In-person hearing was fixed to be heard on 03.02.2021 and the appellant was heard.

5.2 The Authorised representatives appeared for the in-person hearing. They stated that though the order of the Lower Authority is dated 22.01.2019, they received it late and they had filed the appeal within the Statutory time-limit. On merits of the case, they furnished as additional submission, which was taken on record. They reiterated their submissions.

5.3 In the additional submissions, they had inter-alia stated as follows:

- ruling is provided by considering each of the activity undertaken by them as separate and different. They had quoted for one single tender and approval through LOA is given on a consolidated basis. Only for convenience of execution, payment purpose and other conditions to be applied for different stages of the work, different schedules were provided under the same LOA for each of the activities. Merely providing different schedules for each activity cannot be the basis for vivisectioning each activity to classify under different heads. The said approach is not legal and proper.
- scope of work under schedule V and VI is part of same tender, same LOA and part of total turnkey project. Further, segregating a portion of the work and giving separate treatment is not in terms of Section 8 of CGST Act, 2017 and SGST Act, 2017.

- the tender allotted and the contract entered between Integral Coach Factory, Chennai (Ministry of Railways), Government of India (ICF) and HYT SAM India (JV) is for the entire works covered under tender and LOA wherein the main objective is to construct modernized stainless-steel railway coaches manufacturing factory. This has been given on turnkey basis. Further, the contract has been given on lumpsum basis, though for the purpose of convenience different parts are defined for administrative and execution purposes.
- to fit in Sl. No. 3(v)(a) as well as Sl. No. 3(vi)(a) of Notification No. 11/2017-Central Tax (Rate) as amended, the first and foremost condition is that the works should be a 'composite supply' and the following broad indicative parameters can be applied for determining whether supplies can be considered as being bundled naturally in the ordinary course of business or not:
 - Is it the normal or frequent practices adopted in a business
 - The perception of the consumer or the recipient -- whether large number of service receivers of such bundle of services reasonably expect such services to be provided as a package.
 - Majority of service providers in a particular area of business provide similar bundle of services.
 - The elements are normally advertised as a package. Once bundled, the different elements are not available separately as an option.
 - The different elements are integral to one overall supply - if one or more is removed, the nature of the supply would be affected.
- issuing of contracts on lumpsum basis involving various elements covering goods and services together and clearly laying down the scope and coverage of each element is a very common business practice in the construction and infrastructure industry and can be called as naturally bundled. They have been allotted with the entire work under a single contract. Although the same is divided in different schedules and agreements, the ultimate purpose is to complete the entire set up of factory for manufacture of stainless-steel railway coaches.
- The eventual objective is to complete the project in entirety, wherein the bundling of various supplies are naturally bundled being a common practice and are supplied in conjunction with each other. since this transaction is naturally bundled with two or more supplies, as per section 8, tax shall be

levied at the rate applicable to the 'Principle supply'. 'Principle supply' in a bundle can be decided based on the supply which has a predominance element and other supplies to such bundle are ancillary or incidental.

- In case of *Bharat Sanchar Nigam Limited vs U012006 (002) STR 0161 (SC)*, it was held that if there is an instrument of contract which may be composite in form in any case other than the exceptions in Article 366(29-A), then unless the transaction in truth represents two distinct and separate contracts and is discernible as such, then the state would not have the power to separate the agreement to sell from the agreement to render service, and impose tax on the sale. The test for deciding whether a contract falls into one category or the other is to as what is the substance of the contract. From the above judgement, it can be said that in case of composite contracts, the following principles would govern in determining of the taxation:
 - a. If one element of the transaction is incidental to main element or facilitates the main element, then the transaction is in the nature of composite contract and the taxation of such contracts would depend on the element governing the substance of the transaction i.e. the main element. The substance of the transaction can be determined based on the dominant nature test.
 - b. However, if both elements are not incidental to each other and one can be separately sold/ rendered irrespective of the other and the transaction in truth represents two distinct and separate contracts and is discernible as such then it can be said both are separate and tax shall be levied based on the statute governing that separate object.
 - c. Test for determining whether the transaction in truth represents two discernible, distinct and separate contracts is based on what the contracting parties have in mind or intention of the contracting parties.
- the intention of the ICF is not dominantly met merely by supplying of mechanical works or civil works or electrical works instead the expectation of the ICF is to provide the set up of entire factory of modernized steel railway coaches
- Therefore, in the present contract, the works are being undertaken on lumpsum basis which consists of various elements of goods as well as services, in order to

construct a factory for modernized steel railway coaches manufacturing set up. This is bundled in the ordinary course of business wherein the principal supply is that of setting up of the factory for modernized steel railway coaches manufacturing set up and various supplied covered in the contract are supplied in conjunction with each other. Merely dividing the responsibilities or work through different agreement does not change the colour of the original contract.

- Attention is drawn to the Page No. 3 of the agreement, Clause 5 of the agreement providing for the payment procedure, clause (1) provided in Pg.No.10 of the agreement, which gives the other documents forming part of the agreement to state that this agreement emanates from the same tender based on the letter of acceptance issued and they form an integral part of the agreement and they do not have a choice to pick or choose or accept and execute only the partial portion of the tender.
- In fact, it states that the various terms & conditions as specified in the tender documents and the LOA would form part of this agreement meaning thereby that all the obligations and responsibilities casted in the tender & LOA equally applies to this agreement also. For instance, Chapter No. V of the tender documents provide for the special conditions for the contract in pg. 28 of the tender document. These special conditions are commonly provided for and are commonly applicable to entire work executed under this contract. Further, Annexure IX to the tender documents provide for general conditions of the contract in pg. 1414. Now these general conditions are also common for the entire contract and no vivisection is made for the same.
- merely because two different documents are executed for the administrative convenience, the same cannot whittle down the substance of the intended transaction. They had submitted a bid for the entire tender which based on the letter of acceptance needs to be mandatorily executed in full. Therefore, for all the purposes the entire work is indivisible. Reference is made to the decision of Authority of Advance Ruling in the case of SIEMENS LTD. 2020 (36) G.S.T.L. 467 (App. A.A.R. - GST - Mali.) and M/s. SKILLTECH ENGINEERS AND CONTRACTORS PVT LTD - 2018-TIOL-38-AAR-GST.
- Further, various courts have held that supply of various components and equipment along with the supply of services by way of its installation and maintenance are covered under the ambit of 'works contract'. Reliance is placed

on the decision rendered in the case of Kone Elevator India Pvt. Ltd. v. State of Tamil Nadu [2014 (34) S.T.R. 641 (S.C.) = 2014 (304) E.L.T. 161 (S.C.)]. Reliance in this regard can be placed on the following judgments, wherein it is held that when two separate contracts have been entered into by either parties, identifying two separate works viz. supply and service, then it is wrong in holding the same as indivisible contract. a. M/s. Ishikawajma-Harima Heavy Indus. Ltd. v. Dir. of Income Tax, Mumbai, 2007 (6) S.T.R. 3 (S.C.), b. M/s. Linde Engineering Division v. Income Tax, (2014) 365 ITR 1, c. M/s. Siemens India Limited v. State of Kerala, 2003 (132) STC 0418, d. M/s. Titanium Equipments and Anode Manufacturing Corporation, (1998) 110 STC 4.

- Courts have often employed the doctrine of pith and substance which has been evolved by the judicial Committee whereby the impugned statute is examined to ascertain its 'Pith and substance' or its 'true nature and character' for the purposes of determining whether it is legislation in respect to matters in one list or the another. In present case, breakup of the contract in various schedules and agreements is more for the logical division of the work in various baskets for ease in determination of pricing and release of milestone payments to them, however this itself cannot be said to be an individual independent contract in themselves and the ultimate objective of the contract does not change due to such bifurcation. If they fail to fulfil all their contractual obligations as agreed on lumpsum basis till successful setting up of the whole project, they would be liable for forfeiture of all the amounts received under the contract. Hence, the entire contract could be construed as 'complete' only if all the activities mentioned in different schedules and agreements gets completed. The Supreme Court in the erstwhile Service tax regime had held that when there is lump sum contract and the same are broken into several wrap up contracts, it would still be one turkey contract.
- Reliance is placed in the case of ISHIKAWAJMA-HARIMA HEAVY INDUS. LTD Versus DIR. OF INCOME TAX, MUMBAI 2007 (6) S. T.R. 3 p.c.), wherein the Hon'ble Supreme Court of India has held that the terms of contract should be read as a whole to determine the true nature of such contract.
- Further it is trite that a document has to be read as a whole to understand and interpret its contents. The said submission has been echoed by Hon'ble Supreme Court in the case of Super Poly Fabriks Ltd. Vs Commissioner Of C.

Ex., Punjab [2008 (10) S.T.R. 545 (S. C.)], wherein the Hon'ble Apex Court held as under: "8. There cannot be any doubt whatsoever that a document has to be read as a whole. The purport and object with which the parties thereto entered into a contract ought to be ascertained only from the terms and conditions thereof". The above said decision has been relied by the Tribunals in number of cases, including the following:

- Commr. Of Cus., C. Ex. & S.T. Vs. Godavari Khore Cane Transport Co. (P) Ltd. [2015 (38) STR 468 (Bombay High Court)]
- Commr. Of Cus., C. Ex. & S.T., Aurangabad Vs. Shri Samarth Sevak Trust [2016 (41) STR 806 (Bombay High Court)].

- In the case of Ansaldo Energia SPA vs. ITAT, Chennai (2009) 310 ITR 237 (Mad.), the Madras High Court adjudged the contracts to be indivisible. The Pune Tribunal in the case of Dhariwal Industries Ltd. vs. ACIT (2008) 111 ITD 379 (Pune) acknowledged the concept of look through. It observed that Courts have time and again declined to be bound by labels and have always tried to look through it and reach to the substance. The Mumbai Tribunal in the case of ACIT vs. Asea Brown Boveri Ltd. (2007) 110 TTJ 502 (Mum) also chose this approach.
- In the present case, it is their obligation to set up the entire modernized steel railway coaches manufacturing factory for ICF for which the contract is divided in different agreements. Therefore, here it is important to understand that the part of work mentioned in agreement V and VI is not only in relation to wet leasing and maintenance, It is only upon completion of the same that it amounts to the completion of the project. It is instead full responsibility of the Appellant to set up the entire modernized steel railway coaches manufacturing factory in order to complete the entire project.
- Further, various Technical & general terms and conditions as provided in the Tender documents and LOA are commonly applicable to all the agreements covered by the said agreement. In the present case, responsibility casted upon the Appellant is to construct, supply, install, test & commission machinery & plant and electrical equipment for factory which is immovable property. It is, therefore, works contract, as defined under Section 2(119) of the GST Act.
- Thereby they understand that: a. The work awarded to the Appellant in relation to construction of shed, provision of M&Ps in ICF Shell/ Furnishing Division,

retro-fitment/ re-conditioning/ re-sitting/ disposal of obsolete M&Ps of shell division including wet leasing and associated Electrical works on turn-key basis for the construction of modernized steel railway coaches manufacturing factory is composite supply of service. The benefit of Sl. No. 3(v)(a) and 3(vi)(a) of Notification No. 11/2017- Central Tax (Rate) as amended and similarly State GST Act, as amended is applicable to the subject works are available to them.

Based on the above additional submissions, they requested the Hon'ble Appellant Authority for Advance Ruling to modify the impugned order passed by the authority for advance ruling as prayed in the appeal application.

DISCUSSIONS:

6. We have carefully considered the submissions made by the Appellant, the order of the Lower Authority and the applicable statutory provisions. Prima – facie, we find that the original ruling which is currently appealed is passed in the month of January 2019(22.01.2019). The appellant has stated the date of communication of the ruling as 05.11.2019 and the appeal is filed on 03.12.2019. As per Section 100(2), every appeal is to be filed within a period of thirty days from the date on which the ruling is communicated to the applicant. It is seen from the records available with the registry that the Lower Authority ruling was sent by RPAD to the correspondence address declared by the appellant in their original application and it was returned by the postal authority stating 'left'. Thereafter, on inclusion of the address to which the appellant has sought to send the ruling in the Registration Certificate of the appellant & on the request of the appellant vide their mail dated 14.10.2019 to send the original order to the desired address, the ruling has been again sent by RPAD which the appellant claims to have received. Further, from the records it is seen that the subject order was made available in GST Council's Website www.gstcouncil.gov.in as early as April 2019 and also in the webpage of GST & Central Excise Zone, Chennai- www.centralexcisechennai.gov.in. Section 169 of the GST Act provides the methods of serving any Order, communication under this Act. As per Section 169(1)(b) readwith sub-section (2), when the communication is sent by registered post with acknowledgement due to the person for whom it is intended at his last known place of business or residence, it shall be deemed to have been served on the date on which it is tendered. However, considering the fact that the originally sent ruling has not been received and returned as 'left', which has been subsequently sent after the receipt of e-mail

dated 14.10.2019 and placing on the websites above are not identified as the mode of service under the Act, we hold the appeal to have been filed within the statutory period and take up the issue on merits.

7.1 From the facts as available on record, we find that the appellant is engaged in construction of Shed, Provision of M& P's in ICF Shell/ Furnishing Division/ retro-fitment/ re-conditioning/ re-sitting/ disposal of obsolete M&P's of Shell division including wet leasing of M&P's and associated Electrical Works on turn key basis at ICF Chennai and the said work has been awarded vide LOA No. M/CPM/ICF/CSP-II/T-1 dated 29.06.2017. The appellant had sought ruling on whether the above works awarded to them are composite supply of services and the benefit of Sl.No. 3(v) of Notification No. 11/2017-C.T.(Rate) is applicable to subject works. The Lower Authority has ruled that the works undertaken as per Schedule-I, II and III is a composite supply of works contract and the benefit of Sl.No. 3(v) of Notification No. 11/2017-C.T.(Rate) is applicable; Supply in the agreement for wet leasing as per Schedule V are composite supply of services and not 'works contract' and therefore not eligible for the benefit under Sl.No. 3(v)(a) of the notification; The agreement for comprehensive Annual Maintenance Contract under Schedule VI is not eligible for entry at serial No. 3(v)(a). The appellant in the present appeal had required the following issues to be decided:

- a. Whether the activities under tender agreement for wet leasing of Robotic spot-welding machine and laser cutting and welding machine as per Schedule V(a) & V(b) are eligible for concessional rate under Sl.No 3(v)(a) or 3(vi) of Notification No.11/2017 –CT(Rate) dated 20.06.2017 as amended and corresponding entry under state notification.
- b. Whether the activities under tender agreement for comprehensive Annual Maintenance Contract under Schedule VI(a) and VI(b) are eligible for serial no. 3(v)(a) or 3(vi) of Notification No.11/2017-CT(Rate) dated 20.06.2017 as amended and corresponding entry under state notification.

7.2 The appellant claims that the works awarded to them vide the said LOA are to set up the entire modernized steel railway coaches manufacturing factory for ICF for which the contract is divided into different agreements and had claimed that the part of work mentioned in agreement V and VI is not only in relation to

wet leasing and maintenance but only upon completion of the same it amounts to the completion of the project. Their contention is that the works undertaken vide the LOA are a 'Composite supply' as per Section 8 of the GST Act, wherein the principal supply is that of setting up of the factory for modernized steel railway coaches manufacturing set up and therefore Segregating a portion of the work and giving separate treatment is not in terms of Section 8 of CGST Act, 2017 and SGST Act, 2017. They have relied on the decisions of Hon'ble Supreme Court in several cases and stated that

- the intent of the work allotted & 'Pith and Substance' of the entire tender is to be seen;
- a document has to be read as a whole & the purport and object with which the parties thereto entered into a contract ought to be ascertained only from the terms and conditions

Further, they have requested specific attention of this authority to the following documents to establish that the terms and conditions are the same for all the agreements entered into based on the LOA and have claimed that the works under the LOA is a single 'composite supply of Works Contract' :

- Page No. 3 of the agreement, Clause 5 of the agreement providing for the payment procedure,
- clause (1) provided in Pg.No.10 of the agreement, which gives the other documents forming part of the agreement to state that this agreement emanates from the same tender based on the letter of acceptance issued and they form an integral part of the agreement and they do not have a choice to pick or choose or accept and execute only the partial portion of the tender.
- Chapter No. V of the tender documents provide for the special conditions for the contract in pg. 28 of the tender document. These special conditions are commonly provided for and are commonly applicable to entire work executed under this contract.
- Annexure IX to the tender documents provide for general conditions of the contract in pg. 1414. Now these general conditions are also common for the entire contract and no vivisection is made for the same.

The appellant had further claimed that in respect of the Maintenance agreement for the works under Schedule VI, in the event of the same is not considered as a part

of the composite supply as claimed by them, still they are eligible for the benefit under Sl.No. 3(vi)(a) of Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 as amended which has been rejected by the LA, for the reason that the factory is meant for manufacture by ICF which is an activity of industry.

8.1 We find that the issues to be decided by us in the case at hand are :

- Whether all the works awarded through the LOA together is a 'Composite supply of Works Contract Service' in as much as the tender floated is for "construction of shed, provision of M&Ps in ICF Shell / Furnishing Division, retro-fitment / re-conditioning / re-sitting / disposal of obsolete M&Ps of shell division including wet leasing of M&Ps and associated Electrical works on turn-key basis" and thereby the benefit of sl.No.3(v) of Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 is available to works under Schedule V and Schedule VI, for which separate agreements are entered into.
- If found that the works under LOA is not a 'Composite supply of Works Contract' whether the benefit of sl.No. 3(vi)(a) of Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 is available to them for the CAMC work under Schedule VI

8.2 From the Contract Agreements, it is seen that

- the Contract Agreement No. ICF/Complete Switchover Project Phase-II/T-1 dated 19.08.2017 is the Agreement for the work of "Modernization of ICF for Complete Switch-over to Stainless steel coach manufacturing – Phase: II, consisting of construction of shed, provision of M & Ps in ICF Shell / Furnishing Division, retro-fitment / re-conditioning/ re-siting /disposal of obsolete M & Ps of shell division and associated Electrical Works on turn-key basis";
- as per clause 39.7, Wet leasing agreement for 1. Robotic spot welding machine and 2. Laser cutting and welding machine has been entered with vide agreement no. ICF/CPM/CSP-II/T-1/WET-Leasing/RSW dated 09.08.2017 and ICF/CPM/CSP-II/T-1/Wet- Leasing/LCW dated 09.08.2017.
- Delivery Schedule for the contract will be governed by Clause 82.0 and its sub-clauses, of Chapter V of the tender document read along with the corrigenda

- Other documents forming part of this agreement and that relevant to the proceedings are

S. No	Description
1.	Price Schedule as per the accepted rates - Annexure A
4	Copy of LOA duly accepted & signed by the contractor – Annexure-D
7	Copy of Tender document along with Corrigendum No. 1, 2 &3 submitted by the contractor duly accepted & signed by the firm – Annexure-G

- As per the Price Schedule at Annexure A, it is seen that the price in respect of Schedule V of the work, Wet leasing is mentioned as ‘Separate Agreement entered’ and it is specified that ‘The contract value will not cover AMC cost, as AMC contract commence on completion of Warranty period only and agreement for AMC will have to be entered into before completion of the warranty period at the quoted rate’.
- As per the LOA, the following agreements are to be entered into:
 - The agreement containing Schedule I, II, III & IV (Mechanical, Civil, Electrical, Up-rooting and disposal of Condemned M&P’s)
 - The agreements for the wet leasing –Schedule V(a) (Robotic Spot-Welding Machine for a period of 10 years); V(b) (Wet Leasing of Laser Cutting and Welding Machine for a period of 10 years)- before signing of the contract agreement containing Schedule I, II, III & IV
 - The agreement for the CAMC-Schedule VI(a)(Mechanical) and (b)(Electrical) –shall be entered into after the completion of the warranty period

and under Para 6- Performance Guarantee, Performance Guarantee for Schedule-I,II & III and that for Schedule V are separately stated at Para 6.1 and 6.2 of the LOA.

- From the Tender Document the following are seen:
 - As per Clause 14 of Chapter I the period of Completion of the entire work is 24 months
 - **The Approximate cost of the work as per Chapter -II of the Tender Notice is the total of Mechanical Engineering, Civil Engineering and Electrical Engineering amounting to Rs. 243.28 Crores**

- para 2.8 of Chapter V-Special Conditions of Contract, the Scope of LOA for the work will not include 'CAMC for five years from the completion of Warranty'. However, the CAMC portion will be binding on the firm as per the tender conditions.
- Para 39 of Chapter V deals with Mobilization Advance and for this purpose, the contract value of Schedule I,II,III are alone considered
- Para 78 of Chapter V - Scope of CAMC, commencement period, penalty clause, extension of Bank Guarantee, payment of AMC charges, termination of the contract, etc are mentioned in various sub-paras of para 78.
- Para 79.0 of Chapter V - Wet leasing of M&Ps- the bidder is to compulsorily quote for the Schedule-V and the Net Present Value of the offer will be considered for Commercial Evaluation of the Tender
- Para No.82.1 -Delivery Schedule- provides the schedule for Mobilization at site, Machinery and Plant, Civil Construction works, Electrical works and Commissioning trials & Prove out and the delivery schedule has been revised to 20 months vide S.No. 11 of the Corrigendum-2; Annexure-B of Corrigendum-2
- Chapter VIII E of the Tender Document specifies on 'Wet -Leasing of one Robotic Spot Welding Machine and one Laser Cutting and Welding Machine(Schedule V)- Terms & Conditions for Wet-Lease are provided in Para 1- As per
 - 1.2 – the lessor is to ensure working in two shift, including maintenance of machines by deputing sufficient number of suitable skilled and un-skilled labourers, for the period of lease;
 - 1.3, after the expiry of the lease period, the wet-leased machines will become property of ICF;
 - 1.6-the lessor to ensure working of the wet leased machines including its maintenance
 - 1.7-the lessor to make available all the consumables including gases, except those being provided by ICF at free of cost for operation of the equipment
 - 1.13-gives the penalty clause for non-maintenance

- 1.16-the lessor to bear the entire risk of loss and damage and continuously maintain and pay for all risk insurance against loss of and damage to the Equipment for not less than the book value of the Equipment
- 1.24-Upon expiry of the lease period, the lessor will transfer the ownership of Equipment to ICF
- 1.28-EXIT Clause- 1.28.1 provides the terms when ICF decides to exit from the wet-leasing contract and 1.28.2 provides the terms when the lessor exits
- As per Para 2 of the Chapter VIII, the Net Present Value (NPV) of the year-wise rates quoted for the wet-lease portion, totaled with the rates of the other Schedules of the composite tender, will be considered for commercial evaluation
- **As per D(iv) of Price Schedule at Chapter IX- Total cost for commercial evaluation of the tender shall be calculated as – Rates quoted in Schedule-I+ Rates quoted in Schedule-II+ Rates quoted in Schedule-III+ NPV calculated for Schedule V+ NPV calculated for Schedule VI- Schedule IV**

8.3 From the facts as enumerated above, we find that a Composite tender on turn-key basis has been floated by ICF for

- i. Construction of shed, provision of M & Ps in ICF Shell/ Furnishing Division with retro-fitment/ re-conditioning / re-sitting and associated Electrical works(Schedule-I, II, III);
- ii. Uprooting and disposal of obsolete M & Ps of shell division(Schedule-IV);
- iii. Wet-Leasing of M & Ps for a lease period of 10 years at the end of which the title of the M & Ps are to be transferred to ICF(Schedule-V);
- iv. Comprehensive Annual Maintenance after the warranty period(Schedule-VI)

The Value of tender is the cost of Mechanical, Civil and Electrical works as per Schedule-I,II and III. For commercial evaluation of the bids the NPV in respect of Schedule V & Schedule VI are added to the tender value and the value of the M&Ps sold of by ICF is subtracted. Thus, it is seen that the tender comprises of four categories of activities, viz.,

1. Construction of shed, provisioning of M&Ps, commissioning and installation

of the same including the retro-fitment/re-conditioning/re-siting of the existing M&Ps, which involves supply of goods and services bundled together and are required to be supplied together on turn-key basis for an immovable property which is the factory here and involves transfer of property of all the goods involved in executing it. **The tender value is the total cost of these works only.**

2. Disposal of the obsolete M&Ps as per Schedule IV for which the bidder has to pay ICF- here ICF is the supplier and the bidder recipient [This is so held by the LA and the appellant has accepted the same]
3. Wet-Leasing of certain M&Ps for a period of 10 years for leasing charges governed by specific conditions. The leasing agreement has been entered into before signing the contract agreement dated 19.08.2017 and the NPV is considered only to evaluate the commercial bid.
4. CAMC – the agreement for the same is to be entered only after the warranty period is completed and is governed by specific conditions. Again, the NPV is considered only to evaluate the commercial bid.

Tender is for Modernization of ICF for complete Switch-over to Stainless steel coach manufacturing facility and in the course, the related works required to put up the facility are put together in the said composite Tender. As is seen above, the said tender consists of supplies to be made by the bidder and that by the ICF(sale of obsolete M&Ps).

8.4 Section 2(30) of CGST Act, defines 'Composite Supply' as

"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".

In the case at hand, all the Supplies in the tender are not supply made by the appellant to ICF in as much as in respect of the disposal of the obsolete M&Ps, the supply is by the ICF and the appellant is the recipient. Further, the supplies are not made in conjunction with each other in as much as the Wet-leasing of M&Ps is for a period of 10 years; Construction, supply, installation, commissioning, etc is to be completed within 20 months of LOA and Comprehensive AMC is to be supplied for 5 years after the warranty period. Therefore, we find that the supplies under the Tender in Schedule-I to Schedule-VI are not supplies made to a recipient nor

done in conjunction with each other and hence the entire supplies based on the Tender is not a Composite Supply. The facts of the case laws relied upon by the appellant are factually different, in as much as in those cases all the supplies based on the tender are made by the bidder to the tenderer and the supplies are made in conjunction to each other as required under the extant provisions of the Law and the said decisions are not applicable to the appellant in the case at hand, as facts are different. Only supplies under Schedule-I, II and III are naturally bundled and supplied in conjunction with each other and is a composite supply of works contract. Therefore, we hold that there is no merit in the claim of the appellant that the supplies based on the entire tender is a Composite supply of Works Contract and the benefit of entry S.No.3(v) of notification No.11/2017-C.T.(Rate) dated 28.06.2017 is not available for the entire tender.

8.5 On the Wet-Leasing of the M&Ps, the appellant claims that the same are part of the tender; the ownership of the M&Ps are transferred to ICF at the end of the lease period and the intent of ICF is to have a complete manufacturing factory for which these M&Ps are essential and therefore are 'Works Contract'. While we agree with the essentiality of these wet-leased M&Ps for the intent of the tender to complete, the activity of supply of leasing of Machinery is totally different from the activity of supply of works contract service under Schedule-I,II & III above and in no way, within the statutory definition of Works Contract, the activity of leasing fits. Works Contract is defined under Section 2(119) of the CGST Act 2017 as

“works contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;

As per the contract agreement for wet-leasing, it is an activity consisting of leasing of M&Ps in working condition, providing skilled and unskilled manpower, spares, consumables for the entire period of leasing during which the leased goods are reflected in the books of the lessor. The lease charges are paid on a quarterly basis to the appellant based on the productivity. The M&Ps are transferred to ICF at the end of the lease period. Just because, there is a transfer of property in goods after the lease period, the activity is not a works contract. The activity of wet-leasing is squarely classifiable under SAC 9973 *Leasing or rental services with or without operator* as held by the LA and we uphold the same. Therefore the benefit of entry

at 3(v)(a) of Notification No.11/2017-C.T.(Rate) dated 28.06.2017 is not applicable in respect of Wet-Leasing of the M&Ps.

8.6 With respect to the CAMC, the activity being Maintenance, the same is not covered under entry 3(v) of Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 as amended, which is applicable only to works contract by way of construction, erection, commissioning or installation of original works pertaining to railways.

8.7 The appellant has claimed that they are eligible for the benefit of entry Sl.No. 3(vi)(a) of the Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 as amended. The LA has rejected this claim for the reason that factory is meant for manufacture by ICF which is an activity of industry. The appellant claims that in the instant case, the Integrated Coach Factory is intended for the purposes of building coach which is not for commerce or industry or business since it is being done by Government of India for the purpose of Indian Railways whose predominant objective is to service general public and not business or commerce or industry or profession and Government cannot be said to be engaged in business or commerce when the President of India through its representative is signing the subject contract. The relevant entry is examined as below:

Sl. No	Chapter Section, Heading Group or Service Code (Tariff)	Description of Services	Rate (Per cent)	Condition
3	Heading 9954 (Construction Service)	(vi) Composite supply of works contract as defined in Clause (119) of Section 2 of the CGST Act 2017, other than that covered by items (1),(ia),(ib),(ic),(id),(ie) and (if) above provided to the Central Government, State Government, Union Territory, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, restoration or alteration of-	6	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


		<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>Explanation: For the purposes of this item, the term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities</p>		<p>Territory or local authority as the case may be</p>
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The above entry is applicable in the case of composite supply of works contract of maintenance of a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession to the class of receivers specified. ICF is a 'Production unit' of Railways and belongs to 'Central Government' and manufacturing steel coaches is not an activity where the Government is engaged as public authorities. As per the Explanation to the said entry, it is evident that when the activity is not in the capacity of 'Public authority', then the activity is for 'business' only. ICF is putting up the said Plant to manufacture Stainless Steel coaches, which is not an activity undertaken as a 'Public Authority' and therefore, the benefit of the above entry is not applicable to the appellant in respect of CAMC as claimed by them and we hold so.

9. In view of the above we, pass the following Order:

ORDER

For reasons discussed above, we do not find any reason to interfere with the Order of the Advance Ruling Authority in this matter. The subject appeal is disposed of accordingly.


 (M.A.SIDDIQUE)
 Principal Secretary/
 Commissioner of Commercial Taxes,
 Tamil Nadu/Member, AAAR.


 (G.V.KRISHNA RAO)
 Pr.Chief Commissioner of GST & Excise
 Chennai Zone/Member, AAAR.



To
M/s. HYT SAM INDIA(JV)
Hiregange & Associates,
Fagun Chambers, Third Floor,
No. 26, Ethiraj Salai, Egmore,
Chennai 600 008..

//Speed Post with Ack. Due //

Copy Submitted to:

1. The Principal Secretary/Commissioner of Commercial Taxes,
II Floor, Ezhilagam, Chepauk, Chennai-600 005.
2. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.

Copy to:

1. The Commissioner of GST & Central Excise,
Chennai North Commissionerate,
Anna Nagar Division.
2. The Assistant Commissioner (ST),
Koyambedu Assessment Circle,
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2nd Floor, Koyambedu,
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3. Joint Commissioner(ST)/Member,
Authority for Advance Ruling, Tamil Nadu,
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Chennai-600 003.
4. Master File/ Spare – 2.