



BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH

Goods and Service Tax

D.No.12-468-4, Adjacent to NH-16 Service Road, Kunchanapalli, Guntur-522501

Present

1. Sri. K. Ravi Sankar, Commissioner of State Tax (Member)
2. Sri. RV Pradhamesh Bhanu, Joint Commissioner of Central Tax (Member)

AAR No. 01 /AP/GST/2023 dated: 16.03.2023

1	Name and address of the applicant	M/s. The Indian Hume Pipe Company Limited
2	GSTIN	37AAACT4063D1ZL
3	Date of filing of Form GST ARA-01	06.09.2022
4	Personal Hearing	11.01.2023
5	Represented by	Manish Goel , CA
6	Jurisdictional Authority - State	Special Circle ATP , Anantapur Division
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	(e) determination of the liability to pay tax on any goods or services or both;

ORDER

(Under sub-section (4) of Section 98 of Central Goods and Services Tax Act, 2017 and sub-section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and SGST Act, 2017 are in pari materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the APGST Act.
2. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to as CGST Act and APGST Act respectively) by M/s. The Indian Hume Pipe Company Limited (hereinafter referred to as applicant), registered under the AP Goods & Services Tax Act, 2017.

3. Brief Facts of the case:

3.1 M/s The Indian Hume Pipe Company Limited (hereinafter referred to as "applicant") undertakes contracts for construction of head works, sumps, pumprooms, laying, jointing of pipe line and commissioning and maintenance of the entire work for water supply projects /sewerage projects. Applicant is having GST Registration number 37AAACT4063D1ZL.

3.2 The major customers for the applicant include government bodies, government entities, authorities local bodies and municipalities. The applicant was awarded contract by M/s. Andhra Pradesh State Irrigation Development Corporation Limited vide agreement No. 28/2018-19 dated 13-02-2019 for construction for commissioning of Tandyamlift Irrigation System (LIS) on Relligeddadrain in ponduru mandal of srikakulam district;

3.3 The applicant submits that the M/s Andhra Pradesh State Irrigation Development Corporation Limited holds GSTIN 37VPNA01219B1DA under the Goods & Services Tax Act, 2017 as a tax deductor, and constitution of business is declared as government department in the registration certificate.

4. Questions raised before the authority:

The applicant seeks advance ruling on the following:

1. Whether the supply of services by the applicant to M/s. Andhra Pradesh State Irrigation Development Corporation Limited is covered by Notification No. 15/2021- Central Tax (Rate), dated 18th November, 2021 r/w. Notification No. 22/2021- Central Tax (Rate), dated 31st December, 2021;
2. If the supplies in question are covered by Notification No. 15/2021- Central Tax (Rate), dated 18th November, 2021, r/w. Notification No. 22/2021- Central Tax (Rate), dated 31st December, 2021, then what is the applicable rate of Tax under the Goods and Services Tax Act, 2017 on such Supplies made w.e.f. 01-01-2022 until such notification is applicable;
3. In case if the supplies in question are not covered by the notification stated supra then what is the applicable rate of tax on such supplies under the Goods and Services Tax Act, made w.e.f. 01-01-2022 until such notification is applicable; AND
4. Whether a "Person" can have different Constitution of Business –
 - i. Under the different Acts – Income Tax Act/GST Act;
 - ii. Under the same Act – GST Act.

5. Applicant's Interpretation of Law:

- 5.1 The Contractee's of the applicant in question are holding GSTIN 37VPNA01219B1DA. The registration certificate issued by the GST department classifies the contractee as Government department.
- 5.2 M/s. Andhra Pradesh State Irrigation Development Corporation Limited is a company, incorporated on 7th September 1974. It is classified as State Govt Company and is registered with Registrar of Companies, Vijayawada. It is involved in growing of crops, marketing, gardening and horticulture. State government holds 99.29% of paid up share capital of M/s. Andhra Pradesh State Irrigation Development Corporation Limited and the rest 0.71% is held by central government.

In view of the above, the applicant submits that, the following interpretations for the questions stated supra

- a. The said transaction in question is covered by Notification No. 15/2021-Central Tax (Rate) dated 18th November, 2021 r/w. Notification No. 22/2021- Central Tax (Rate), dated 31stDecember, 2021; which after amendment now reads as "(iii) Composite supply of works contract as defined in clause (119) of Section 2 of the Central Goods and Services Tax Act, 2017, supplied to Central Government, State Government, Union territory or a local authority";
- b. The said transaction in question is liable to tax at the rate of 12%.
- c. The applicant is of the opinion that "Person" cannot have different constitution of business.

- 5.3 The applicant further submits that, Notification No. 15/2021-Central Tax (Rate) seeks to amend parent Notification No.11/2017 - Central Tax (Rate) dated 28th June, 2017, which prescribed Rate of Tax on Construction Services at Serial No. 3 of the Table i.e "(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017" at 9% under CGST Act, thereby implying total GST at 18% (CGST – 9% + SGST - 9%). Notification No. 11/2017-Central Tax (Rate) dated 28th June, 2017 was subsequently amended vide Notification No.20/2017-Central Tax (Rate) dated 22nd August, 2017, whereby at Serial No. 3 of the Table, the following item was inserted

"Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied to the Government, a local authority or a Governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, - (a)....., (b)canal, dam or other irrigation works; (c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal to be taxed at the rate 12% ".

Subsequently Notification No. 31/2017 dated 13th October, 2017 was issued to amend Serial No. 3(iii) i.e "Central Government, State Government, Union territory, a local authority, a Governmental authority or a Government entity". Further this Notification also clarified the meaning of the terms Government authority and Government entity, which is given as under:

"Governmental Authority" means an authority or a board or any other body, - (i) set up by an Act of Parliament or a State Legislature; or (ii) established by any Government, with 90 percent or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243W of the Constitution or to a Panchayat under article 243 G of the Constitution.

"Government Entity" means an authority or a board or any other body including a society, trust, corporation, i) set up by an Act of Parliament or State Legislature; or ii) established by Government, with 90 per cent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority."

The functions entrusted to a Municipality under the Twelfth Schedule to Article 243W of the Constitution are as under:

- (a) Urban planning including town planning.
- (b) Regulation of land-use and construction of buildings.
- (c) Planning for economic and social development.
- (d) Roads and bridges.
- (e) Water supply for domestic, industrial and commercial purposes.
- (f) Public health, sanitation conservancy and solid waste management.
- (g) Fire services.
- (h) Urban forestry, protection of the environment and promotion of ecological aspects.

- (i) Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
- (j) Slum Improvement and up gradation.
- (k) Urban poverty alleviation.
- (l) Provision of urban amenities and facilities such as parks, gardens, play grounds.
- (m) Promotion of cultural, educational and aesthetic aspects.
- (n) Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
- (o) Cattle pounds; prevention of cruelty to animals.
- (p) Vital statistics including registration of births and deaths.
- (q) Public amenities including street lighting, parking lots, bus stops and public conveniences.
- (r) Regulation of slaughter houses and tanneries.

5.4 The applicant further submits that, notification No. 15/2021-Central Tax (Rate) dated 18th November, 2021, r/w. notification No. 22/2021- Central Tax (Rate), dated 31st December, 2021 now issued seeks to amend at Sr. No. 3 (iii) as – "Union territory or a local authority there by deleting the words - a governmental authority or a Government entity.

On Verification of basic information of the applicant, it is observed from the records of this office, that audit proceedings were initiated for the dealer. The application was filed by applicant before Authority for Advance Ruling while Audit proceedings were pending.

6. Personal Hearing:

The proceedings of Personal Hearing were conducted on 11.01.2023, and authorized representative, Manish Goel, CA has attended personal hearing and reiterated the submissions already made.

7. Discussion and Findings:

It is observed by the members of the authority for advance ruling that, audit was initiated by the jurisdictional authority under section 65 of the CGST act, 2017 and APGST act 2017, to verify all the issues regarding the business activities of the applicant and also issued a notice to them in ADT 01 on 29-09-2021 and therefore their case falls under the first proviso to Sec 98(2) of the CGST Act, 2017 wherein their application is liable to be rejected as the question raised by them in the application is pending or decided in such proceedings before the audit officer.

The first proviso under Section 98(2) reads as follows: "Provided that the authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any provisions of this Act". Thus if the question raised is pending or decided in any proceedings pertaining to the applicant the authority shall refuse to admit such application.

In the present case, the audit officer has issued a notice in ADT01 on 29-09-2021, while the application for advance ruling was filed on 06.09.2022. The application before the AAR was filed after the audit officer has initiated proceedings and this issue was not brought to the notice of the members while filing the application nor during the personal hearing. Thus as the proceedings are pending, when the application was filed before the advance ruling authority under chapter XIII of the CGST Act, 2017 regarding the question raised by the applicant, their application stands rejected.

SD/-K. Ravi Sankar
Member

Sd/- RV Pradhamesh Bhanu
Member

//t.c.f.b.o//

Deputy Commissioner (ST)
Registrar

Authority for Advance Ruling
O/o. Chief Commissioner (State Tax)
Andhra Pradesh, Vijayawada.

To

M/s. The Indian Hume Pipe Company Limited, D.No. 6-3-23, Ground Floor, Ramnagar, Anantapur, A.P., 515001

(By Registered Post)

Copy to

1. The Assistant Commissioner of State Tax, Special Circle- ATP, Anantapur Division. **(By Registered Post)**
2. The Superintendent, Central Tax, CGST Anantapur-1 Range, Anantapur Division. **(By Registered Post)**

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Kunchanapalli, Guntur District, (A.P)
2. The Principal Chief Commissioner (Central Tax), O/o Principal Chief Commissioner of Central Tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035. A.P. **(By Registered Post)**

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act, 2017, within a period of 30 days from the date of service of this order.