


GUJARAT AUTHORITY FOR ADVANCE RULING, GOODS AND SERVICES TAX, A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380009.	
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ADVANCE RULING NO. GUJ/GAAR/R/2022/09

(In Application No. Advance Ruling/SGST&CGST/2021/AR/47)

Dated: 07.03.22

Name and address of the applicant	:	M/s. Intellecon Pvt. Ltd., B-20, GIDC Electronics Estate, Sector 25, Gandhinagar, Gujarat-3802024
GSTIN of the applicant	:	24AAACI4324C1Z9
Date of application	:	16/12/2021
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(b)
Date of Personal Hearing	:	18/02/2022
Present for the applicant	:	Ms. Ruchita Shah, CA

Brief Facts

M/s. Intellicon Private Limited, hereinafter referred to as Intellicon for the sake of brevity, submits that it supplies EPABX system along with its installation and commissioning. Installation of a complete EPABX system *inter alia* requires other equipments along with lying of cables through the wall/duct/conduit/ceiling at the premises of the customers on the basis of their requirement.

2. Intellicon submits that EPABX system stands for Electronic Private Automatic Branch Exchange which is a private telephone network used by the organizations for various types of communication, either between the employees or with the outside clients. The EPABX works like an exchange that sends, receives and forwards calls from the organization to the outside world. It also helps the staff to communicate among them free of cost.

3. Intellicon submitted that for the purpose of installation and commissioning of a fully functional EPABX system, the EPABX machine is configured and connected to the exchange lines of the Telephone Exchange through cables. A main distribution frame is connected to the EPABX machine through wires/cables. The main distribution frame is terminating point for all the extension lines which are laid through wall, duct, and conduit to connect to the telephones, as per the requirement of the organizations. EPABX machine, main distribution frame, switches, telephones, various cards along with cables laid through wall/conduit/duct (to connect the EPABX machine to main distribution frame and subsequently, to various telephones) are cohesively treated as a fully functional EPABX system.

4. The supplies made by Intellicon to its customers include two types of contracts, as follows:

- A. Supply, installation and commissioning of EPABX machine along with laying cables through wall, duct, conduit and earthing.
- B. Supply, installation and commissioning of EPABX machine involving cabling from EPABX machine to main distribution frame.

Detailed scope of work is as follows-

5. Supply, installation and commissioning of EPABX system along with laying cables through wall, duct, conduit and earthing (hereinafter referred to as 'Contract I')

5.1 The Intellicon sets up a functional EPABX system along with the required extension line cables infrastructure. It supplies, installs and commissions the EPABX machine and all other equipments such as main distribution frame, media gateway, switches, line cards etc. Intellicon's scope of work in such cases would thus involve:

- a. Supply of EPABX machine and all other incidental equipment as stated above;
- b. Laying of cables to connect the EPABX machine and the main distribution frame;
- c. Laying extension lines cables through wall, ducts, conduit of the premises of the customer and undertake associated earthing work in order to connect various telephones installed by Intellicon to the main distribution frame, which is in turn connected to EPABX machine. This activity of laying extension line cables would also involve undertaking associated civil works.

5.2 Intellicon has submitted sample purchase order Letter No: Dhanbad Division-S AND T / SG-664-18-Tele-2019-20 dated 22-6-20 issued by Dhanbad Division-S and T, East Central Railway, in relation to such supply. The relevant clauses of scope of work is reproduced as follows:

- 1. *'Supply, Installation, Testing & commissioning of Set of two Servers along with VOIP software to working as PBX & SIP router as specified in the system architecture and fully Hot Standby. As per technical specification attached as Annexure - A or latest.*
- 2. *Supply of Monitoring / Maintenance Console (Desktop) Make - HP/DELL or similar. As per technical specification attached as Annexure - A or latest.*
- 14. *Supply of MDF with Krone modules & IPM as per technical specification equipped for termination of 250 Pairs and sized suitably to accommodate 300 pairs. As per technical specification attached as Annexure - A or latest.*
- 31. *Laying charge of optical Fiber Cable / UTP CAT-6 Cable/Power cable through Wall/Duct/conduit, including clamping/fixing duct/ conduit over wall/ceiling/open space /terrace /existing fixture etc as per directive of Railway Site Engineer.*
- 34. *Installation, testing & commissioning of whole system.*

35. *Laying of S&T cables of different sizes as per cable route plan approved by railway and meggering of all main & tail cables as per technical specification of tender. (Cable route plan will be supplied by site engineer at the time of execution of work).'*

6. Supply, installation and commissioning of EPABX machine involving cabling from EPABX machine to main distribution frame (hereinafter referred to as 'Contract II'):

6.1. Under the contract of this nature, Intellicon sets up a functional EPABX system by supplying, installing and commissioning the EPABX machine and all other equipments such as main distribution frame, media gateway, switches, line cards and cables etc. Intellicon scope of work involves:

- a. Supply of EPABX machine and all other incidental equipment as stated above;
- b. Laying of cables to connect the EPABX machine and the main distribution frame and in turn connecting such equipment with extension line cables already available on premises of the customer.

6.2 Intellicon submitted a sample contract No. GEMC-511687702286858 dated 18-8-21 of West Central Railway, Railway in relation to such supply.

7. Intellicon submits that supplies made under Contract I and Contract II are covered under Entry No. 3(v) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 (the Notification), as amended from time to time. Entry No. 3(v) of the Notification reads as follows:

Description of Service	Rate (per cent)	Condition
“(v) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above, supplied by way of construction, erection, commissioning, or installation of original works pertaining to,- (a) railways, including monorail and metro; (b) a single residential unit otherwise than as a part of a residential complex; (c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;” ...	6%	-

7.1 Section 2(119) of the Central Goods and Services Tax Act, 2017 provides the definition of works contract which reads as:

“(119) “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;”

7.2 The term ‘Original Works’ is not defined in the CGST Act as well as the Notification. However, the same is defined under the Notification 12/2017-Central Tax (Rate) dated 28.06.2017, which reads as:

original works means- all new constructions;

(i) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(ii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

7.3 Intellicon submits that to cover under the Entry no. 3(v) of the Notification they needs to fulfil following conditions to fall under the said entry:

- i. Supply should be made to Railways, including monorail and metro
- ii. Supply should be in nature of composite supply of works contract as defined under Section 2(119) of CGST Act
- iii. Supply should be by way of construction, erection, commissioning or installation of original works
- iv. Supply must not be covered by the items (i), (ia), (ib), (ic), (id), (ie) and (if) of the Entry no. 3 of the Notification.

8. Intellicon submits as follows:

i. It is engaged in supply to Railways as well as other customers. The present application is filed in relation to the supplies to Railways.

ii. Intellicon submits that any contract for erection, installation or commissioning of any immovable property involving transfer of property in goods would qualify to be a works contract as defined under Section 2 (119) of CGST Act. The term immovable property is not defined in the CGST Act, however reference can be drawn to definition of immovable property as defined in Section 2 of the General Clauses Act, which is:

“Immovable property shall include land, benefits to arise out of land, and things attached to earth, or permanently fastened to anything attached to the earth”

From the above definition of immovable property, it is evident that anything attached to earth or permanently fastened with anything attached to earth becomes an immovable property. Intellicon submits that it is engaged in supply of entire EPABX system which involves supply, installation and commissioning of EPABX machine along with various other equipments. Based on the requirement of the customers, it also

undertakes laying of cables through the wall, ducts, conduits, ceiling, furniture of the premises in which EPABX system is being installed.

iii. Intellicon submits that it is apparent from the nature of the supplies, EPABX system installed by it becomes integral part of the building/premises in which the same is installed. Installation of EPABX system involves, installation of EPABX machine, laying of cables through the walls, ducts, conduits of the premises. An EPABX system is not a ready-made assembled unit. The installation and commissioning of an EPABX system involves elaborate work and has to be correlated with and tailored to meet the needs and requirement of the customers. Accordingly, once the EPABX system is commissioned and installed in the premises, it becomes integral part of the immovable property.

iv. The applicant has placed reliance on the judgement of the Hon'ble Apex Court in case of M/s. Kone Elevator India Pvt. Ltd. Vs State of Tamil Nadu and others [2014 (5) TMI 265-Supreme Court] wherein the issue before the Larger Bench of the Hon'ble Apex Court was to decide correctness of the Judgement in case of State of Andhra Pradesh vs. Kone Elevators [2005 (2) TMI 519- Supreme Court] wherein a three judges bench held that contract of manufacture, supply and installation of lifts is to be treated as sale of goods, as opposed to a works contract. However, the Larger Bench of the Hon'ble Supreme Court overruled the said decision of three judges bench and held that the said contract in question is not merely a sale of goods since the same does not involve chattel (lift) sold for chattel. The Larger Bench of the Supreme Court upheld that the contract in question as a works contract since the same did not involve sale of chattel simpliciter but involved installation of chattel at site amounting to chattel being attached to another chattel. In this context, it was remarked that:

“64.It is necessary to state here that if there are two contracts, namely, purchase of the components of the lift from a dealer, it would be a contract for sale and similarly, if separate contract is entered into for installation, that would be a contract for labour and service. But, a pregnant one, once there is a composite contract for supply and installation, it has to be treated as a works contract, for it is not a sale of goods/chattel simpliciter. It is not chattel sold as chattel or, for that matter, a chattel being attached to another chattel. Therefore, it would not be appropriate to term it as a contract for sale on the bedrock that the components are brought to the site, i.e., building, and prepared for delivery. The conclusion, as has been reached in Kone Elevators (supra), is based on the bedrock of incidental service for delivery. It would not be legally correct to make such a distinction in respect of lift, for the contract itself profoundly speaks of obligation to supply goods and materials as well as installation of the lift which obviously conveys performance of labour and service. Hence, the fundamental characteristics of works contract are satisfied. Thus analysed, we conclude and hold that the decision rendered in Kone Elevators (supra) does not correctly lay down the law and it is, accordingly, overruled.”

v. Intellicon relies on the judgement of the Hon'ble Bombay High Court in case of Otis Elevator Company (India) Ltd. Vs Superintendent of Central Excise, Range-I [2003

(151) ELT 499 (BOM)] wherein the Court held that elevator does not come into existence until it is installed in building and once the same is installed it becomes integral part of the immovable property. The relevant extract of the said judgment is as under:

“9. Having heard the rival contentions and having examined all the citations referred to hereinabove, we are clearly of the opinion that the same shall apply to the facts of this case in full force and item in question being immovable property cannot be subjected to excise under the tariff heading claimed by the Revenue. The case sought to be made out by the petitioner is also covered by the decision of the Government of India in reference, OTIS Elevator Company (India) Ltd. - 1981 (8) E.L.T. 720 (G.O.I.), wherein, it was clearly held that if an article does not come into existence until it is fully erected or installed, adjusted, tested and commissioned in a building, and on complete erection and installation of such article when it becomes part of immovable property, it cannot be described as goods attracting levy of any excise duty. Thus, applying the ratio of all the above judgments including the order of the Government of India referred to hereinabove, the case sought to be made out by the petitioner has to be upheld. The contention sought to be advanced by the petitioner has a lot of merits in their submission and the issue is squarely covered against the Revenue that once the item has been held to be an immovable property, then, for the purpose of valuation the cost of construction and proportionate escalation charges cannot be added in the assessable value, as such, the impugned communication dated 20th August, 1987 of the respondent No. 1 is quashed and set aside and it is declared that the erection of lift is not excisable under Tariff Item No. 68 of the First Schedule to the said Act.”

vi. Intellicon submits that rationale adopted by the Hon’ble Court in the above referred judgements are relevant in the facts of their case. **The EPABX system supplied by it comes into existence once the same is commissioned and installed by the Applicant in the premises of the customers. An EPABX system is incomplete till EPABX machine, telephones, cables and various other equipments are not commissioned and installed at the premises of the customers. EPABX system, once it is commissioned and installed, becomes an integral part of the immovable property i.e. the building of the customer.**

vii. Intellicon relies on the judgement of the Hon’ble Tribunal in the matter of Blue Star Limited Vs Commissioner of Central Excise, Jaipur [2002 (143) ELT 391 (Tri. - Del.)] wherein the Hon’ble tribunal while examining the excisability of Central Air-conditioning Plant (‘CAP’), held that CAPs cannot be taken as such to the market for sale. In order to take it to the market, the same would require to be dismantled in components and parts, and which will not remain as a complete CAP. Hence, the Hon’ble Tribunal held that the CAP is an immovable property and hence, not marketable. The relevant extract of the said judgement is as follows:

“In the instant case, the factual position is analogous to that of Triveni Engg. & Industries. Even the Revenue has no case that the CAP was capable of being taken as

such to the market for sale. It required to be disassembled or dismantled into its components for the purpose of removal from its site, but then, certain parts would be damaged beyond repair and what could be taken to the market would be only the remaining parts, which would not make a CAP. The marketability test laid down by the Apex Court in Triveni Engg. & Industries is, therefore, not satisfied in the instant case.”

viii. Intellecton submits that **EPABX system once installed cannot be taken to market in as such condition. It would be required to be dismantled and disassembled in parts and components. In the process of dismantling, some parts of the EPABX system such as cables, connectors may possible even be damaged and will not be usable again. It can be said that a full functional EPABX system cannot be moved in as it is condition and therefore it is an immovable property.** The similar view was also upheld by the Hon’ble Supreme Court in the case of Commissioner of Central Excise, Indore vs. Viridi Brothers [2007 (207) ELT 321(SC)].

ix. Intellecton further places reliance on the ruling given by the Authority for Advance Ruling, Gujarat in case of M/s. The Varachha Co. Op. Bank Ltd. [2021 (8) TMI 736-AAR, Gujarat]. In the said ruling, the Hon’ble Authority was deciding on the credit eligibility of the input tax incurred qua the cost of CAP, lift, electrical fittings, fire safety extinguisher and roof solar plant etc. in a building. In context of the same, the Hon’ble Authority held that all these products comprise of various components and cannot be moved as it is condition, once installed and commissioned in the building. Accordingly, such products become integral part of the immovable property and thereby credit of the same is blocked under section 17(5)(c) of the CGST Act.

x. Intellecton refers to the definition of term original works as provided in the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. As per the said definition, original works includes erection, commissioning and installation of plant, machinery and equipment or structures. On perusal of the definition of original works, the term can be dissected into two parts, which are as follow:

- The work should be in nature of erection, commissioning and installation
- Such work should be in relation to plant, machinery and equipment or structures.

xi. In this regard, Intellecton refers to the definition of terms Machinery, Machine and Equipment as provided in the Oxford English reference dictionary.

Machinery - Machines collectively or the components of a machine

Machine - An equipment using or applying mechanical power, having several parts each with definite function and together performing certain kinds of work

Equipment - *The things that are needed for a particular purpose or activity*

xii. Intellecon submits that EPABX system and components of the same are used for a specific function of establishing private telephone network in any organization. Accordingly, the EPABX system and the components of the same would qualify to be machinery and equipment.

xiii. Intellecon submits that to qualify under Entry no. 3(v) of the Notification, the supply must not be covered by the items (i), (ia), (ib), (ic), (id), (ie) and (if) of the Entry no. 3 of the Notification. Intellicon submits that based on the bare reading of the said entries, all these entries are in relation to construction services.

9. Intellecon has summarized the conditions fulfilled to cover under the ambit of entry no. 3(v) the Notificationas follows:

Condition	Fulfillment by Contract I	Fulfillment by Contract II
Supply pertains to Railways	Supplies to East Central Railway	Supplies to West Central Railway
Supply is in relation to immovable property	<p>Intellecon supplies, installs, and commissions the EPABX system including the laying of cables through the walls, conduits, ducts and furniture of the premises of the customer. Installation of entire EPABX system with cabling makes it permanently attached to the immovable property and resultantly, being integral part of the same. EPABX system installed by the Company cannot be removed in as it is condition. Removal of the same would require dismantling the entire system and moving it in parts. Such dismantling of EPABX system would damage some parts, resulting into them being permanently non-usable. A complete EPABX system installed by Intellecon becomes an integral part of the immovable property and thereby fulfilling the condition of qualifying as works contract.</p>	<p>Intellecon supplies, installs and commissions the EPABX machine along with various other equipments. Intellecon also installs the cables to connect the EPABX machine and the main distribution frame. <u>Once the EPABX machine and all other equipments are installed, they cannot be removed in as it is form. They can only be removed by dismantling the entire system and moving in parts. Such dismantling of the system would result in some parts such as cables etc. being permanently damaged and unusable. Accordingly, the EPABX machine along with all other equipments installed by Intellecon becomes part of the immovable property i.e. building of the customer. Further, the extension cables and the EPABX machine and other equipments are of no use in standalone. It can only make a fully functional EPABX system when the</u></p>

		<u>EPABX machine and other equipments are installed and connected with extension cables. Such fully functional EPABX system becomes integral part of the premises of the Customer.</u>
Supply is by way of commissioning or installation of original works	Intellicon submits that it is undertaking the work of EPABX system which involves supply, commissioning and installation of EPABX machine along with various other equipment such as switches, line cards etc. Further, Intellicon may also undertake to lay cables in the walls, ducts, conduits and ceiling of the premises of the customers.	
Supply must not be covered by the items (i), (ia), (ib), (ic), (id), (ie) and (if) of the Entry no. 3 of the Notification	Intellicon submits that all these entries are in relation to construction services and therefore, not relevant in the present facts.	

9.1 Intellicon submits that supplies made by it to Railways qualify for concessional rate of 12% of GST.

10. Intellicon submits that West Central Railway, in their PO, annexed, has categorically mentioned that for the goods and services for which bids have been invited by them, qualifies for concession rate of 12% of GST. Relevant extract of the said PO is as follows:

3.10 The buyer organization is an institution eligible for concessional rates of GST as notified by the Government of India. The goods for which bids have been invited fall under classification of GST concession and the conditions for eligibility of concession are met by the institution. A certificate to this effect will be issued by Buyer to the Seller after award of the Contract. Sellers are requested to submit their bids after accounting for the Concessional rate of GST.
Applicable Concessional rate of GST : 12%”

11. Intellicon submitted a Certificate No. GEM Contract No. 511687702286858 dated 26-10-21 issued by West Central Railway in this regard.

Question on which Advance Ruling sought

12. Whether the Entry no. 3(v) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 (the Notification), as amended from time to time, is applicable to supplies by Intellicon under the Contract I and Contract II and resultantly, whether such supplies are subjected to 12% rate of Goods and Services Tax (‘GST’).

Personal Hearing

13. Personal hearing granted on 18-2-22 was attended by Ms.Ruchita Shah, CA and written submission was reiterated.

Revenue's Submission

14. Revenue has neither submitted its comments nor appeared for hearing

Findings

15. At the outset we would like to make it clear that the provisions of CGST Act and GGST Act are in *parimateria* 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 GGST Act.

16. We have carefully considered the submissions made by Intellicon.

17. We find that the EPABX system comes into existence by assembly and connection of various goods/components, wherein transfer of property of such goods is involved in the execution of said contracts. We note that EPABX system once installed cannot be taken to market in as such condition. It would be required to be dismantled and disassembled in parts and components. In the process of dismantling, some parts of the EPABX system such as cables, connectors may even be damaged/ may not be usable again. We, thereby, hold that an installed and commissioned EPABX system becomes an immovable property and thereby its supply with installation and commissioning is Works Contract Service supply.

18. We find it apt to refer to CBEC Order No. 58/1/2002-Cx dated 15-1-2002 issued for the purpose of uniformity in connection with classification of goods erected and installed at site. This said CBEC order was issued in wake of plethora of judgments appear to have created some confusion with the assessing officers, the matter was examined by the Board (CBEC) in consultation with the Solicitor General of India and the matter was clarified vide said Order and the relevant extract is reproduced as follows and we hold that its rationale and concept are relevant under GST scheme of law also. CBIC in Para (e), 5 (iv) has clarified that,

(e) If items assembled, or erected at site and attached by foundation to earth cannot be dismantled without substantial damage to its components and thus cannot be reassembled,

then the items would not be considered as moveable and will, therefore, not be excisable goods.

5 (iv) If the goods are incapable of being sold, shifted and marketed without first being dismantled into component parts, the goods would be considered as immovable and therefore not excisable to duty.”

19. We find it apt to refer to case law: Municipal Corporation of Greater Bombay & ors. V. Indian Oil Corporation Ltd. [199 Suppl. SCC 18] , wherein one of the questions Hon’ble Supreme Court considered was whether a petrol tank, resting on earth on its own weight without being fixed with nuts and bolts, had been erected permanently without being shifted from place to place. It was pointed out that the test was one of permanency; if the chattel was movable to another place of use in the same position or liable to be dismantled and re-erected at the later place, if the answer to the former is in the positive it must be a movable property but if the answer to the later part is in the positive then it would be treated as permanently attached to the earth. We find the test of permanency laid down by the Apex Court has been answered in subject case. Further, EPBAX system once installed and commissioned in the building is transferred to the building owner and this involves transfer of property.

20. The subject supply pertains to Railways as it is for supply in railway office. As per Section 2(31)(d) Railways Act, 1989 , railway includes all offices and any other works constructed for the purpose of, or in connection with, railway.

21. In conspectus of aforementioned findings, we pass the Ruling:

RULING

The subject supplies of EPABX system for Railways is covered at entry No. 3 (v) of Notification No. 11/2017-CT (R) dated 28-6-17, as amended, and liable to 12% GST.

(ATUL MEHTA)
MEMBER (S)

(ARUN RICHARD)
MEMBER (C)

Place: Ahmedabad
Date: 07.03.2022