

AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH**Goods and Service Tax()****O/o THE COMMISSIONER, COMMERCIAL TAX,****MOTI BUNGALOW,****MAHATMA GANDHI MARG, INDORE (M.P.) - 452007****e-mail : aar@mptax.mp.gov.in Phone : 0731- 2437315 fax. no. : 0731-2536229****PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING****U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017****Members Present**

1. Rajiv Agrawal

Additional Commissioner,

Office of the Commissioner, CGST and Central Excise, Indore

2. Manoj Kumar Choubey

Joint Commissioner,

Office of the Joint Commissioner of Commercial Tax, Indore Division-1

GSTIN Number. If any/User-id	23AAGCS7898M1ZH
Name and address of the applicant	M/s. SHREEJI INFRASTRUCTURE INDIA P.LTD. 1180, University Road, South Civil Lines, JABALPUR – 482001
Date of Application	19-07-18
Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	b. Applicability of notification issued under the provisions of this Act; e. Determination of the liability to pay tax on any goods or services or both;
Date of Personal hearing	11.10.2018
Present on behalf of applicant	Shree Anil kumar Gupta, CA
Case Number	18/2018
Order dated	18-10-18
Order Number	15/2018

PROCEEDINGS**1. BRIEF FACTS OF THE CASE:**

1.1. M/s. Shreeji Infrastructure Private Limited (herein after referred to as the 'applicant company'), having its registered office at 1180, University Road, South Civil Lines, Jabalpur, (MP) and CIN U45203CT1999PTC020826.

1.2. That, the applicant company is engaged in carrying out the works contract in relation to construction of road, bridges, buildings, civil structures of government, semi-government and private undertakings, secured through tenders in the case of



government undertakings, and through personal negotiations in case of private undertakings.

- 1.3. The Madhya Pradesh Power Generating Co. Ltd. (MPPGCL), a company owned by the Government of Madhya Pradesh, floated a tender through e-tending process, for General Civil Work Package of 2*660 MW Shri Singaji Thermal Power Project Stage-II, near village Dongalia, distt. Khandwa (MP) India (Tender Spn. No. MPPGCL/CIVIL ENGINEERING/SSTPP-II/CB/01) (Online Tender Spn. No. 3497). The applicant company filled the tender and the same was allotted to it by MPPGCL, as per the scope of work mentioned below:

Scope of Work:- Construction of building and structure for colony at village Siveria on lumpsum turnkey basis, which includes approximately 599 staff quarters for plant personnel, all internal connecting roads and drains, necessary geotechnical investigations, complete site clearance & site developmet work, complete water supply system, overhead tanks & underground sump, complete sanitary & sewage works system including Sewage treatment plant, rain water harvesting system, complete electrification system, etc. The contractor shall carry out all other miscellaneous work that will be necessary for completing this package on turnkey basis.

- 1.4. That, during the course of carrying out the construction work, the applicant company raised Running Bills (RA bills) for the portion of work completed at a point of time. To MPPGCL by charging CGST and SGST at the rate of 9% each, in view of **Notification no. 11/2017Central Tax (rate) dated 28.06.2017 Chapter 99 Section 5 Heading 9954- entry 3(ii).**

S.NO.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
1.	Chapter 99	All Services		-
2.	Section 5	Construction Services		-
3.	Heading 9954 (Construction services)	(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.	9	-

- 1.5. Whereas, on the other hand, the service recipient, MPPGCL is of the opinion that in the work under reference, the applicable rate of GST should be 12%(6+6), as against 18(9+9)% as claimed by the applicant company (service provider) in their bill. For this belief, MPPGCL finds its base from Notification no. 11/2017Central Tax (rate) dated 28.06.2017 Chapter 99 Section 5 Heading 9954- **entry 3(vi)(c)**, by treating itself as a government entity and the work allocated to the service provider is the work which is the work supplied to it by the government.

S.N O.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
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1.	Chapter 99	All Services		-
2.	Section 5	Construction Services		-
3.	Heading 9954 (Construction services)	(vi) Composite supply of works contract as defined in clause(119) of section 2 of the CGST Act, 2017 provided to the Central government, State government, or a local authority or government authority or a government entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of- (a) _____ (b) _____ (c) a residential complex predominantly meant for self use or the use of their employees or other persons specified in paragraph III of the CGST Act, 2017,	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 CG, SG or the Union Territory or local authority, as the case may be.

1.6. That, by arguing that the work contract carried out by the applicant company is covered under entry 3(vi)(c) of the notification (supra), MPPGCL released the GST payment only to the extent of 12 (6+6)% as against 18 (9+9)% as claimed by the applicant company in their bills.

1.7. In order to claim itself as a 'government entity', MPPGCL submitted its nature of constitution as under:

- That, MPPGCL is a wholly owned company of MP Government engaged in generation of electricity in the state of Madhya Pradesh. It is a successor entity of erstwhile Madhya Pradesh State Electricity Board (MPSEB).
- The Company has been incorporated as a part of the implementation of the power sector reform in Madhya Pradesh initiated by the Government of Madhya Pradesh.
- The Company has taken over the Generation activities of MPSEB.
- The Company is a public company fully owned by Govt. of M.P
- The Company was incorporated on 22.11.2001.
- The Company obtained the Certificate of Commencement of Business on 16-07-2002.
- The Registered office of the Company is at Shakti-Bhawan, Rampur, Jabalpur



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- h. The Authorized Capital of the Company at present is Rs. 10,000 Cr. (Ten Thousand Crore) divided into 10,000,00,000 Shares of Rs.100 each.
- i. The issued, subscribed and paid up capital is Rs.5325,54,68,800 (Rs. Five Thousand Three Hundred Twenty Five Crores Fifty Four Lacs Sixty Eight Thousand Eight Hundred only) divided into 5,3255,4,688 shares of Rs.100 each.
- j. The Govt. of MP vide Gazett Notification (Extraordinary) No. 226 notified order no. 3679/ FRS/ 18/13/2002 Dtd. 31-05-2005 to give effect to the reorganization of the Madhya Pradesh State Electricity Board. The Para2(a) of the said order is reproduced below :
- k. "With effect from 01.06.2005 (the effective date) the function of Generation of electricity as specified in schedule A to the Transfer Scheme Rules, 2003, shall be conducted and shall be carried on by Madhya Pradesh Power Generating Company Limited as its own business and not as an agent of or on behalf of the Madhya Pradesh State Electricity Board"
- l. The opening balance sheet of Madhya Pradesh Power Generating Company Limited as on 31.05.2005 has also been notified
- m. Accordingly, the Company has started functioning independently, from 01-06-2005
- n. The Corporate Identity Number(CIN) of MPPGCL is U40109MP2001SGC014882

1.8. That, as per explanation to the said Notification no. 11/2017 Central Tax (rate) dated 28.06.2017, the term **government entity** is explained as under:

"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 any Government,*

With 90 percent or more participation by way of equity or control, to carry out the function entrusted by the Central Government, State Government, Union Territory or a local authority".

1.9. That MPPGCL claimed that, it has been established by the Madhya Pradesh government, and 100% shareholding and control is being carried out by the MP state government. Further, this company has been exclusively formed to carry out the work of power generation. Therefore, it is an entity unequivocally covered under the purview of "Government Entity".

1.10. That, MPPGCL further claimed that, the construction of 599 residential quarters for its staff is also covered under the condition prescribed under entry 3(vi)(c) of the notification (supra). The condition prescribes that, the concessional rate of 12 (6+6)% is applicable on fulfillment of the following:

"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 CG, SG or the Union Territory or local authority, as the case may be."



MPPGCL stated that construction of 599 residential quarters for its staff is the work procured by it from the MP state government, whose work contract for construction was then allotted to the applicant company.

1.11. On the ground as stated supra in para 7, 8 & 9, MPPGCL construed that:

That, MPPGCL is a "government entity",

And the service supplied to it is a service procured by it from the state government. Therefore, it is squarely covered under entry 3(vi)(c) Chapter 99, heading 9954 of the Notification no. 11/2017 dated 28.06.2017 amended from time to time and the applicable rate of GST for such supply made to it is 12% (6+6), and applicant company is not correct in charging the GST rate at 18% (9+9)

1.12. The applicant company is of the view that, supply in the impugned, is not covered under **entry 3(vi)(c)** of Notification no. 11/2017 Central Tax (rate) dated 28.06.2017 Chapter 99 Section 5 Heading 9954, as entry 3(vi)(c) prescribes the applicable rate of GST on construction services at 12%, on fulfilment of the following condition:

"Composite supply of works contract as defined in clause(119) of section 2 of the CGST Act, 2017 provided to the Central government, State government, or a local authority or government authority or a government entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of-

(a) _____

(b)-----

(c) *A residential complex predominantly meant for self use or the use of their employees or other persons specified in paragraph 3 of the schedule III of the CGST Act, 2017,*

*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 CG, SG or the Union Territory or local authority, as the case may be.***"

1.13. That, in view of the above facts and circumstances, even if we consider MPPGCL to be a "Government Entity", then also the moot question remains as to whether the construction work of 599 residential quarters as allotted to the applicant company by MPPGCL is the service which has been procured by MPPGCL entity in relation to a work entrusted to it by the MP state government.

1.14. The applicant company is of the view that, construction of 599 residential quarters is not a work which has been entrusted by the MP state government to MPPGCL. MPPGCL has carried out the construction activity to facilitate its staff and it is a part of furtherance of its business of generation of electricity.



1.15. In view of the applicant company, the work entrusted to the government entity means the work of sovereign nature. For eg. If construction of road is directly allotted to the applicant company by the government, then the applicable rate of GST would be 12%. And in the same line, if the work is allotted through medium of government entity, then also the rate shall be 12%.

1.16. However in the impugned case, MPPGCL, has allotted the work contract of construction of 599 residential quarters to the applicant company, and by any stretch of imagination, it cannot be said that this work has been entrusted to MPPGCL by the MP government which thereafter allotted the same to the applicant company. Therefore the riddle of the proviso clause has remained intact. And thus, the work contract does not become entitled to the concessional rate of 12(6+6)%.

2. QUESTIONS RAISED BEFORE THE AUTHORITY:

The following questions have been posted before the Authority :-

- 2.1. Whether Madhya Pradesh Power Generation Company Limited is a 'Government Entity'?
- 2.2. If yes, whether the work contract service of construction of 599 residential quarters allotted to the Applicant company under the tender, will be charged under the GST rate of 12% (6+6) [as per entry 3(vi)(c)] or 18% (9+9) [under entry 3(ii)];
- 2.3. Or otherwise if the works contract service is not covered under entry 3(vi)(c), in the facts and circumstances of the Applicant company, then what is the applicable rate of GST?

3. DEAPRTMENT'S VIEW POINT:

The CGST & Central Excise Commisionerate, Jabalpur has furnished its opinion vide letter C.No.GST/PartyIssues/HQRS-JBP/2017-18 dtd. 05.09.2018 of the Joint Commissioner, CGST & Central Excise, Jabalpur. It has been opined that MPPGCL fulfils the conditions laid down in the definition of 'Government Entity' as defined in terms of Notification No.31/20107-Central Tax (Rate) dtd.13.10.2017, and accordingly it would be a 'Government Entity' for the purpose of CGST Act 2017. However, in respect of the service impugned in the Application, it has been opined that '... Composite work contract service of 599 residential quarters proposed to be provided by the applicant to M/s.MPPCGL appears taxable under Heading 9954 at the rate of 9% CGST and 9% SGST for intra state supply and 18% IGST for inter state supply. The concessional Rate of 6% CGST provided in Serial Number 3(vi)(c) of Notification no.11/2017-CT (R) does not appear to be applicable in this case as the construction of residential quarters does not appear to be a service supplied to a Government entity, which have been procured by the said entity in relation to a work entrusted to it by the Central Government, State



Government, UT or local authority as the case may be (which is a condition for concessional rate of 6%)

4. RECORD OF PERSONAL HEARING:

- 4.1. Shri Anil Kumar Gupta, C.A. Authorised Representative, appeared on behalf of the applicant for Personal Hearing on 11.10.2018 and he reiterated the submissions already made in the application. He urged for an early ruling in the matter

5. DISCUSSIONS AND FINDINGS:

- 5.1. We have carefully considered the submissions made by the applicant in the application, the pleadings on behalf of the Applicant made during the course of personal hearing. At the outset, we find that the issue raised in the Application is squarely covered under Section 97(2)(b) of the CGST Act 2017 and MPGST Act 2017 being a matter related to applicability of exemption notification, and the applicant have complied with the all the requirements for filing this application as laid down under the law. We therefore admit the application for consideration on merits.

- 5.2. The moot questions to be answered in present application are as under:

- i. Whether M/s. Madhya Pradesh Power Generation Company Limited (MPPGCL) is a Government Entity for the purpose of GST law?
- ii. Whether the works contract service of construction of residential quarters provided by the Applicant to MPPGCL would be entitled to a concessional rate of GST @12% (6% CGST + 6% SGST) in terms of Sr. No.3(vi)(c) of Notification no.11/2017-CT (Rate) dtd.28.06.2017 or it would attract GST @18%.

- 5.3. We first deal with the question related to MPPGCL being a Government Entity. As per Notification No. 31/2017 - Central Tax (Rate), Dated – 13/10/2017 issued under CGST Act, 2017 and corresponding notification under MPGST Act, 2017. Government Entity is defined as under -

"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 any Government, with 90per 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."

- 5.4. We find in the Application itself that MPPGCL has been established by the Government of Madhya Pradesh and the Government of Madhya Pradesh has a 100% shareholding in the company. The State Government is also exercising full control over the activities of the said company. Needless to say that in the given circumstances M/s.MPPGCL qualifies to be called and termed as a 'Government Entity' for the purpose



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of GST law, as it fulfils the necessary and sufficient conditions laid down under notification *supra*.

5.5. Now, the said Government Entity i.e. MPPGCL has been entrusted with the work of power generation in the State of Madhya Pradesh. Though we do not have details of work entrusted by the State Government to MPPGCL, on the basis of facts brought on record through the present application, we safely conclude that the essential and sole work entrusted to MPPGCL by the Government of Madhya Pradesh is of electricity (power) generation. M/s.MPPGCL has awarded a works contract for construction of 599 residential quarters at Shri Singaji Thermal Power Project Stage-II, Near Village Dongalia Distt Khandwa, to the Applicant. However, the civil construction of residential quarters is neither the primary work entrusted to MPPGCL nor it has any bearing on the work i.e. power generation by any means. Accordingly, we fail to understand as to why the benefit of concessional rate @12% GST should be available to this particular works contract awarded to the Applicant? The intention of the legislature has been to concessional rate to such work which has been entrusted to a government entity for public interest in general. Any work having direct involvement in the entrusted work i.e. power generation would merit exemption envisaged under Sr.No.3(vi)(c) of the Notification No.11/2017-CT(Rate) under CGST Act and corresponding notification under MPGST Act 2017, but extrapolating and extending this concessional rate to any or all activities of MPPGCL will not only be unwarranted but also defeat the very purpose of concessional rate.

5.6. We also take a note of the departmental opinion given in this matter by the Joint Commissioner, CGST & Central Excise, Jabalpur, as discussed in foregoing paras, and we express our agreement with the same. The activity in question definitely does not have any relation to the principal work of power generation entrusted by the state government to MPPGCL, and therefore the works contract service of construction of residential quarters would attract GST @18% (9% CGST + 9% SGST) in terms of Notification No.11/2017-CT Rate dtd.28.06.2017 and corresponding notification under MPGST Act 2017.

5.7. Thus in view of the discussions foregoing, we conclude that the impugned activity of the applicant would attract GST @18% (9% CGST + 9% SGST) classifiable under SAC 9954 readwith Notification No.11/2017-Central Tax (Rate) and corresponding notification under MPGST Act 2017.

RULING

6. The Advance Ruling on question posed before the authority is answered as under:
- M/s.Madhya Pradesh Power Generation Company Limited is a Government Entity as defined under Notification No.31/2017-Central tax (Rate) for the purpose of GST law.**



- ii. The works contract service of construction of 599 residential quarters allotted to the applicant by MPPGCL will merit classification under SAC 9954 and would attract GST @ 18% (9% CGST + 9% SGST).
- iii. This ruling is valid subject to the provisions under section 103(2) until and unless declared void under Section 104(1) of the GST Act.

Sd/-
RAJIV AGRAWAL
(MEMBER)

No. 19/2018/A.A.R/R-28/45

Copy to:-

1. Applicant
2. The Principal Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
3. The Commissioner(SGST) Indore
4. The Commissioner, CGST & Central Excise, Jabalpur
5. The Concerned Officer
6. The Jurisdictional Officer – State/Central

Sd/-
MANOJ KUMAR CHOUBEY
(MEMBER)

INDORE, dt. 18/10/2018

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