


GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/2022/17
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2021/AR/41)

Date: 12.04.2022

Name and address of the applicant	:	M/s. Surat Smart City Development Ltd., 3 rd Floor, 115, Surat Municipal Corporation, Muglisara, Surat-395003
GSTIN/ User Id of the applicant	:	24AAWCS9229G1ZR
Date of application	:	02-11-21
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a), (b) and (e)
Date of Personal Hearing	:	18-02-22; 22-03-22
Present for the applicant	:	Shri Hardik P Shah, CA on 22-03-22.

Brief Facts

M/s. Surat Smart City Development (‘hereinafter referred to as SSCDL, for the sake of brevity) has submitted that it had awarded a Comprehensive Contract to NEC technology India Pvt. Ltd. for design, development, implementation, maintenance and management of open loop solution based Automatic Fare Collection (AFC) System for Bus Rapid Transit System (BRTS) and City Bus Operation in Surat City. The scope of work under the proposed contract would comprise of the following two activities by NEC:

1. Setting up of AFC System; and
2. Operation, management and maintenance of the AFC system.

2. Question on which Advance Ruling sought?

1. Whether the supply made by NEC under the AFC project would qualify as a:

- (a) ‘Works Contract’ as defined under Section 2 (119) of the CGST, 2017; or
 - (b) “Composite Supply” as defined under Section 2(30) of the CGST Act, 2017;
2. **Whether the supply made by NEC** under the AFC project would qualify as an original works meant predominantly for use other than for commerce, industry, or any other business or profession, thereby attracting GST rate of 12% provided in the Not. No. 24/2017-CT (Rate) dtd. 21-9-17.
 3. Whether the classification of supply made by NEC would fall under 8470 or SAC 9954?
 4. Whether the maintenance and management services post service would qualify as Composite Supply as defined under Section 2(30) of the CGST Act, 2017? Further,

whether such supply would be eligible for exemption under Notification No. 12/2017-CT (rate) dtd. 28-6-17 in case value of supply of goods constitutes not more than 25% of the value of the said Composite supply?

3. Personal Hearing.

Request for Adjournment of Virtual Hearing granted on 18-2-22 was acceded to by us. Then after, Shri Hardik Shah attended the hearing on 22-3-22.

Revenue's Submission:

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

Findings:

4. We find from the facts on record and Question raised for deciding in subject matter, that SSCDL awarded a Work Contract to NEC technology India Pvt. Ltd. for specified supply therein. It is fact on record that SSDCL, in subject matter is a recipient and Supplier is NEC technology.

5. During hearing, Shri Shah insisted that subject application is maintainable as subject supply vide said Contract is an inward supply to SSDCL and that Section 95(a) covers inward supply also.

6. We refer to Section 103(1) CGST Act, which stipulates that Advance Ruling shall be binding only on the applicant who had sought it and on the concerned officer/jurisdictional officer in respect of the applicant. Now, NEC Technologies Pvt. Ltd. is the supplier of service and our Ruling cannot be binding on the supplier of service M/s NEC Technologies Pvt. Ltd., who is a GST registered person in Delhi with GST 07AACCN3496J1Z4.

7. Section 95(a) CGST Act defines advance ruling as a decision provided on questions specified in Section 97 (2) in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. Further Section 97 CGST Act specifies the questions shall be in respect of

a. classification of any goods or services or both;

b. applicability of a notification issued under the provisions of this Act;

c. determination of time and value of supply of goods or services or both;

d. admissibility of input tax credit of tax paid or deemed to have been paid;

e. determination of the liability to pay tax on any goods or services or both;

f. whether applicant is required to be registered;

g whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term

7.1 We find that SSDCL is not the supplier of service to seek the Service code (Tariff)/ GST Rate/ nature of service supplied by NEC Technologies Pvt. Ltd.

8. We note that recipient of supply may seek Rulings in cases pertaining to admissibility of ITC of tax paid or deemed to have been paid (Section 97(2)(d)) or when the recipient is liable to pay tax under RCM. We find no such case before us to hold that SSDCL has locus standi, in subject matter.

9. In the Contract submitted before us, we find that the Advance Ruling is sought by SSDCL to determine the SAC, and GST Tax rate liability supplied by NEC Technologies Pvt. Ltd. to SSDCIL. Shri Shah during hearing insisted that the subject application is maintainable and has, thereby, failed to appreciate the statutory provisions of Chapter XVII- Section 95, 97 and 103 CGST Act.

10. We pass the Ruling,

Ruling:

1. We find the application non-maintainable as per the Section 95(a) CGST Act.
2. We find any Ruling issued will not be binding on the Supplier of Service M/s NEC Technologies Pvt. Ltd., a Delhi registered person with GSTIN07AACCN3496J1Z4 who has to raise invoice in this case with details of Service description and GST tax rate in the invoices raised by it. Thereby the very thought for Issuance of Ruling in this case by us, would frustrate Section 103(1) CGST Act and thereby glaringly mock the provision of Laws.
3. The Application is hereby rejected in pursuance to Section 95(a) and Section 103(1) CGST Act as SSDCL has no locus standi in said matter.

(ATUL MEHTA)
MEMBER (S)

(ARUN RICHARD)
MEMBER (C)

Place: Ahmedabad

Date: 12.04.2022