



**BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH  
Goods and Service Tax**

D. No. 5-56, Block-B, R.K. Spring Valley Apartments, Edupugallu, Vijayawada-521151

Present:

1. Sri. D. Ramesh, Additional Commissioner of State Tax (Member)
2. Sri. M. Sreekanth, Joint Commissioner of Central Tax (Member)

**AAR No. 42/AP/GST/2019      dated:25.11.2019**

1	Name and address of the applicant	M/s KPC Projects Limited 31-15-29 Katari Vari Street, Machavaram Down Vijayawada-52004, Andhra Pradesh
2	GSTIN	37AACCK7073N1ZZ
3	Date of filing of Form GST ARA-01	27.9.2019
4	Date of Personal Hearing	23.10.2019
5	Represented by	Sri Ch. Rajendra Prasad
6	Jurisdictional Authority – Centre	Superintendent, Suryarao pet Range, CGST Division Vijayawada.
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	b) applicability of a notification issued under the provisions of this Act; and e) determination of the liability to pay tax on any goods or services or both;

**PROCEEDINGS**

**(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. 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 CGST Act and APGST Act respectively) by M/s KPC Project Limited, (hereinafter referred to as applicant), registered under the Goods & Services Tax.



2. The provisions of the CGST Act and APGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the APGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or AP GST Act would be mentioned as being under the GST Act.

**3. Brief Facts of the case:**

M/s KPC Project Limited, 31-15-29, Katuri Vari Street, Machavaram Down, Vijayawada (hereinafter referred to as Applicant), a company incorporated under the Companies Act, 1956 with main object of providing works contract services, executes and conducts general contracting business, submits tenders and undertakes all sort of contracts 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 Sec 2(119) of GST Act.

The applicant submits that they bagged a work order through Agreement No.09/CE-II/APIIC/2016-17, Dt.02/06/2016 from Andhra Pradesh Industrial Infrastructure Corporation Limited (herein after referred to as APIIC), Office of the Chief Engineer-II, APIIC Towers, Plot No.1, IT Park, Mangalagiri-522503 Andhra Pradesh for Construction of Millennium Tower at Plot No.16& 17 (in 4.00 Acres) at Hill No.3. Madhurawada, Visakhapatnam District

**4. Questions raised before the authority:**

1. Applicability of GST Rate for construction of Millennium tower at Madhurawada, Visakhapatnam for information Technology and Communication Department, Government of Andhra Pradesh and through Nodal Agency APIIC. Clarification is requested for the applicable Rate of GST under works contract service.
2. If GST should be payable @12%, whether a claim for refund be submitted in RFD-01.



On Verification of basic information of the applicant, it is observed that the applicant falls under Central jurisdiction of Superintendent, SuryaraoPet Range, CGST Division Vijayawada. Accordingly, the application has been forwarded to the jurisdictional officer and a copy marked to the State tax authorities to offer their remarks as per the Sec. 98(1) of CGST /APGST Act 2017.

In response, the jurisdictional officer concerned remarked that there are no proceedings lying pending or passed relating to the applicant on the issue, for which the Advance Ruling sought by the applicant. In addition, the jurisdictional officer opined that the services under consideration provided by the applicant to APIIC appear to fit under Sl.No.3(vi) of Notification No.20/2017 – Central Tax (Rate) dt:22.08.2017 and attract Central Tax at 9%.

**5. Record of Personal Hearing:**

Sri CH. Rajendra Prasad, the authorized representatives of the applicant appeared for personal hearing on 23.10.2019 and they reiterated the submission already made in the application.

**6. Applicant's Interpretation of Law and Facts**

The applicant submits that APIIC has to be considered as 'governmental entity'. As per the explanation X of the Notification 11/2017-Central Tax (Rate) dated 28.06.2017, as amended, a government entity is defined as follows:

***(x) –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.***

Therefore, any board or body (including a society, trust, corporation), which is setup by an Act of the Parliament or State legislature, where 90% or more participation by way of equity or control shall be held as government entity. Further, a local authority is also considered to be a government entity.



In this regard, they submit that APIIC is incorporated under the Companies Act 1956. APIIC is a limited company with an authorized share capital of Rs.20,00,00,000/- (Rs. Twenty Crores only) divided into 2,00,000 (Two Lakh only) equity shares and Paid up capital of Rs.9,52,22,000/- (Rupees Nine Crore Fifty Two Lakh Twenty Two Thousand only) divided into Rs.95,222 (Rupees Ninety Five Thousand Two Hundred and Twenty Two only) in accordance with the Companies Act, 1956. Further, the subscribers of the equity shares are nominees on behalf of the Government of Andhra Pradesh.

Assuming without admitting that APIIC is not a governmental entity, it is submitted that APIIC is still covered under the Notification 11/2017-Central Tax (Rate) dated 28/06/2017, as amended, as the Government of Andhra Pradesh had empowered APIIC with Local Authority Status by amending the Section 147 of Andhra Pradesh State Panchayat Raj Act, 1994, U/s 389-GB of Andhra Pradesh Municipalities Act, 1965 and U/s 679-F of Hyderabad Municipal Corporation Act, 1955.

And also they submit that the APIIC was formed through Andhra Pradesh GO No.831, Dt. 10/09/1973.

In regard of the above, they submit that APIIC is a government entity as per the explanation X of the Notification 11/2017-Central Tax (Rate) dated 28.062017, as amended.

And also they submit that, as per G.O. RT No.50, Dt.14/03/2016 of Government of Andhra Pradesh, the Government of Andhra Pradesh has issued IT Policy to pursue the promotion of Electronic Manufacturing Clusters (EMC)/ Information Technology (IT)/ Information Technology Enabled Services and spread of IT industry to all regions of the State not only to see that the fruits of IT reaches the last mile of the State, but also generate gainful employment to the rural youth of all the sections of the society in the State. As per the Information and Communication Technology (ICT) Policy, it is mandate of Government to provide infrastructure facilities such as road, power, water and sewerage to the door step of the EMC/IT/ITES Layouts/ parks/ SEZs/Campuses of IT Industry.



The Government of Andhra Pradesh has nominated APIIC as the Nodal Agency of the Government for undertaking development of EMC's/IT Parks/IT SEZs/ IT Layouts, for coordinating with necessary Government agencies and provide basic infrastructure like power, water, sewerage, access roads to the doorsteps of the proposed EMCs/IT Parks/ IT SEZs/ IT Campuses. APIIC has also been nominated as Industrial Area Local Authority (IALA) in Madhurawada IT layout for undertaking provision & maintenance of Infrastructure facilities.

In continuation to the above, Information Technology, Electronics and Communications ITE&S has requested APIIC to develop an IT Tower of 3,00,000 sft in 4.0 acres of land at Madhurawada, Visakhapatnam for accommodating Small and Medium Enterprises (SMEs) and Startups. In this regard, Government of Andhra Pradesh is proposed for Construction of Millennium IT Towers at Madhurawada, Visakhapatnam at an estimated cost of Rs.190.00 Cr and for provision of external and internal infrastructure at these places, improvements to approach roads, provision of drinking water etc in the IT layouts.

In continuation to the above APIIC called Tenders for the Construction of Millennium Tower at Plot No.16&17, (in 4.00 Acres) at Hill No.3, Madhurawada, Visakhapatnam Dist work and accepted the quote by KPC and awarded work for Rs.85,80,31,302/- (Rupees Eighty Five Crores Eighty Lacs Thirty One Thousand Three Hundred and Two only).

### **Scope of the Work:**

The applicant submits that the awarded work i.e., Construction of Millennium Tower at Plot No.16& 17 (in 4.00 Acres) at Hill No.3. Madhurawada, Visakhapatnam District includes Earth Works, Civil Works, Plain and Reinforced Cement Concrete works, Flooring and Wall Finishes works, Doors and Window Works, Elevation Features works, Water Proofing Works, Painting and Finishing Works, Drainage, Sewerage, Water Supply, Plumbing System works, HVAC Works, Electrification Works for IT Tower, Basement, Security Room, Canteen, Dietary-Sanitary and for Common areas. And also scope of the Contract include cost of all Constructional material, labour, machinery, transportation, erection, maintenance and completion with all general risks, liabilities and obligations set out of implied in the Contract.





In this regard they further submit that the Contract awarded by the APIIC, shall fall under the purview of Works Contract Service as defined under Section 2(119) of GST Act as mentioned hereunder:

*—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;*

The applicant further submits that, on receipt of the work order they have been executing the work prior to the implementation of GST, and they are paying the applicable taxes Under Andhra Pradesh VAT and Service Tax Act, which are being reimbursed by the APIIC in turn.

In line with the above, the applicant submits that, after implementation of GST the APIIC has been making payments against RA Bills including the work done value along with GST applicable rate @ 18% till October 2017, and the same has been reflected and the tax liability is discharged through GSTR 3B on the work done value accordingly.

Further the applicant submits that the APIIC making payment only for work done values and not releasing any GST amounts from November 2017 and informing that the GST will be released after the clarity on applicable rate of GST. In this situation they have been discharging their liability @ 18% through GSTR 3B as per Section 15 and Rule 35 of the GST Act as mentioned here under:

**Section 15.** (1) *The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.*

(2) *The value of supply shall include---*

(a) *any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;*

(b) *any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;*



(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments. Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

(3) The value of the supply shall not include any discount which is given— (a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if—

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply

(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

Explanation.—For the purposes of this Act,—

(a) persons shall be deemed to be -related persons if—

(i) such persons are officers or directors of one another's businesses;

(ii) such persons are legally recognized partners in business;

(iii) such persons are employer and employee;

(iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family;

(b) the term -person also includes legal persons;

(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.



**Rule 35 : Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax.**-Where the value of supply is inclusive of integrated tax or, as the case may be, central tax, State tax, Union territory tax, the tax amount shall be determined in the following manner, namely

$$\text{Tax amount} = (\text{Value inclusive of taxes} \times \text{tax rate in \% of IGST or, as the case may be, CGST, SGST or UTGST}) \div (100 + \text{sum of tax rates, as applicable, in \%})$$

Further the applicant submits that when they approached APIIC for releasing the GST amount on the subject works, they mentioned that they have to follow the G.O. Ms. No.58, Dt.08/05/2018 issued by Government of Andhra Pradesh, Finance Department and GST will be released as mentioned here under:

- a) The rate of GST fixed @18% (9% CGST and 9% SGST) for the work contracts from 01-07-2017 to 21-08-2017 and GST @12% (6% CGST and 6% SGST) from 22-08-2017 with input tax credit.
- b) With effect from 13.10.2017 the works contract involving predominantly earth work (i.e., constituting more than 75% of the value of the work) attracts 5% GST with input tax credit.

In view of all the above the applicant requests for an advance ruling on Applicability of GST Rate for Construction of Millennium Tower at Madhurawada, Visakhapatnam for Information Technology and Communication Department, Government of Andhra Pradesh and through Nodal Agency APIIC and if at all GST should be payable @12%, whether a claim for refund be submitted in RFD-01.

## **7. Discussion and Findings:**

We have examined the specific issues raised in the application i.e. M/s APIIC is Government Entity or otherwise, classification of the service and applicable rate of tax thereon for the agreed works under the provisions of respective GST Acts.

### **Whether M/S. APIIC is a Government Authority / Entity or otherwise**

The para 4 of clauses (ix) & (x) of Notification No.11/2017 – CT (Rate) dated 28.06.2017 as amended by Notification No.31/2017 – CT (Rate) dated 13.10.2017 is as hereunder;





(ix) "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% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243 W of the Constitution or to a Panchayat under article 243 G of the Constitution.

(x) "Governmental 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 a State Legislature; or

(ii) established by any Government, with 90% or more participation by way of equity or control, to carry out any function entrusted by the Central Government, State Government, Union Territory or a local authority.

Andhra Pradesh Industrial Infrastructure Corporation Ltd. (APIIC) was formed in 1973 by the GO No: 831 dated 10-SEP-1973 issued by Government of Andhra Pradesh. As seen from the share holding ratios of the 41<sup>st</sup> Annual Reports for the years 2013-14 as made available by APIIC website <https://www.apiic.in>, the Government of Andhra Pradesh including its nominees is having 100% of share holding and thus it is covered under the definition of 'Government Entity' under the above said provisions. Therefore, we conclude that M/s APIIC is a "Government Entity" for the purpose of GST matters.

### **Classification of Service and rate of tax**

As seen from the Agreement, the applicant agreed for construction of Millennium tower at Madhurawada, Visakhapatnam for information Technology and Communication Department, Government of Andhra Pradesh and through Nodal Agency APIIC, which includes procurement and supply of goods and services, for agreed consideration. The activity of construction includes both supply of goods and also services.



***The Section 2 (119) of CGST Act, 2017 / APGST Act, 2017 defines "works contract" as 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;***

**The composite supply of works contract under Section 2 (119) of CGST Act, 2017 / APGST Act, 2017 is treated as supply of service in terms of Serial No.6 (a) of Schedule II of CGST Act '2017 / APGST Act, 2017.**

The Government of India, vide notification No. 11/2017 - Central Tax (Rate), dated - 28<sup>th</sup> June 2017 notified the rate of GST applicable on supply of services. Under this notification for heading 9954 the applicable rate of GST is 9%.

The said notification has been amended from time to time and the following notifications are issued by the Government of India and the said amendment Notifications are as follows -

- 1) Notification No- 20/2017 - Central Tax (Rate), Dated - 22/08/2017.
- 2) Notification No- 24/2017 - Central Tax (Rate), Dated - 21/09/2017.
- 3) Notification No- 31/2017 - Central Tax (Rate), Dated - 13/10/2017.
- 4) Notification No- 46/2017 - Central Tax (Rate), Dated - 14/11/2017.
- 5) Notification No- 01/2018 - Central Tax (Rate), Dated - 25/01/2018.

Vide notification No. 24/2017 - Central Tax (Rate), Dated - 21/09/2017, Government of India by inserting entry No. (vi) notified concessional GST rate of 6% for the construction services provided to 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, 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;



b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or

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 Central Goods and Services Tax Act, 2017.

The applicant is engaged in Construction work for Millennium Tower at Plot No.16& 17 (in 4.00 Acres) at Hill No.3. Madhurawada, Visakhapatnam District through Nodal agency APIIC, which is meant for undertaking development of EMC's/IT Parks/IT SEZs/ IT Layouts, for coordinating with necessary Government agencies and provide basic infrastructure like power, water, sewerage, access roads to the doorsteps of the proposed EMCs/IT Parks/ IT SEZs/ IT Campuses. APIIC has also been nominated as Industrial Area Local Authority (IALA) in Madhurawada IT layout for undertaking provision & maintenance of Infrastructure facilities.

Now we examine whether the construction work in which the applicant is engaged in is meant for any business or otherwise

As seen from the 41<sup>st</sup> Annual Report for the year 2013-14 as made available by APIIC in their website <https://www.apiic.in/Annualreports.html>, they are engaged in land acquisition and development and allotment of plots and sheds to various industrial ventures in the State making investments in joint venture, in associate companies, in related party companies, in subsidiary companies etc., and the income they are getting is revenue from operations like sale of land, houses, interest on hire purchase and long term borrowings etc.,

In this context, it is worthwhile to make a reference to an aspect in page no. 25 of the above mentioned Annual Report regarding "Land Conversion Charges"

*"The state investment promotion Committee (SIPC) in its meeting held on 26.04.2013, decided not to provide exemption to the corporation from payment of land conversion fee for non-agricultural purposes foregoing state revenues since APIIC would pass on any costs to the end client".*

It is evident from the above statement that the activities of M/s APIIC are business activities and not otherwise. The applicant informed that the said construction is for accommodating Small and Medium Enterprises (SMEs) and



Startups. Moreover, the applicant did not provide any information or documentary proof evidencing that the construction/ building is for use other than for commerce, industry, or any other business or profession to be eligible for concessional rate of 12% ( 6% CGST + 6% SGST) available under Notification No.24/2017 – CT (Rate) dated 21.09.2017.

In this case, the contract entered by the applicant is classifiable under SAC heading No. 9954 under construction services, and it falls under entry no (ii) of serial No.3 of notification no. 11/2017 Central Tax (Rate) dated 28.06.2017 i.e., Composite Supply of Works Contract as defined in clause 119 of Section 2 of Central Goods and Services Act, 2017 and the applicable rate of tax is 18% (9% under Central tax and 9% State tax).

### **RULING**

#### **(Under Section 98 of Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017)**

The activity of the applicant under the said agreement with M/s APIIC is a Composite Supply of Works Contract as defined in clause 119 of Section 2 of Central Goods and Services Act, 2017.

M/s APIIC is a Government Entity within the meaning of para 4 of clause (x) of Notification No.11/2017 – CT (Rate) dated 28.06.2017 as amended by Notification No.31/2017 – CT (Rate) dated 13.10.2017.

As the purpose of the construction / building is meant for accommodating Small and Medium Enterprises (SMEs) and Startups, which are not other than for commerce, industry, or any other business or profession, the concessional rate of 12% under Notification No.24/2017-Central Tax (Rate) dated 21.09.2017 read with Notification No.31/2017 - Central Tax (Rate) dated 13.10.2017 is not available to the applicant.

The activities under the agreement referred by the applicant are classifiable under SAC heading No. 9954 under construction services, which fall under entry no (ii) of serial No.3 of notification no. 11/2017 Central Tax (Rate) dated



28.06.2017 and the applicable rate of tax is 18% (9% Central Tax Plus 9% State Tax).

**Sd/-D. Ramesh  
Member**

**Sd/- M. Sreekanth  
Member**

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

  
**Assistant Commissioner (ST)**  
Assistant Commissioner (State Tax)  
The Chief Commissioner of State Tax,  
Andhra Pradesh, Vijayawada.

**TO**

1. M/s KPC Projects Limited, 31-15-29, Katuri Vari Street, Machavaram Down, Vijayawada- 52004 (Andhra Pradesh) **(By Registered Post)**

**Copy to**

1. The Assistant Commissioner of State Tax, Sitharampuram Circle, Vijayawada-II Division. **(By Registered Post)**
2. The Superintendent of Central Tax, Suryaraopet Range, CGST Division Vijayawada.  
**(By Registered Post)**

**Copy submitted to**

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Eedupugallu, Vijayawada.
2. The Chief Commissioner (Central Tax), O/o 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, with in a period of 30 days from the date of service of this order.

