



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

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

**Present**

1. Sri. D. Ramesh, Additional Commissioner of State Tax (Member)
2. Sri. A. Syam Sundar, Additional Commissioner of Central Tax (Member)

**AAR No. 06/AP/GST/2021 dated: 18.01.2021**

1	Name and address of the applicant	M/s. Continental Engineering Corporation. Door No.1/1347, Opposite Vimala Nursing School, Sri Nagar Colony, Anantapur.
2	GSTIN	37AACCC6948C1ZO
3	Date of filing of Form GST ARA-01	04.08.2020
4	Personal Hearing	21.12.2020
5	Represented by	CA. Rajat Mohan
6	Jurisdictional Authority -State	Assistant Commissioner (State Tax) Anantapur-II Circle, Anantapur Division.
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;

**ORDER**

**(Under sub-section (2) of Section 98 of Central Goods and Services Tax Act, 2017 and sub- section (2) 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 CGST Act and APGST Act respectively) by M/s. Continental Engineering Corporation, Andhra Pradesh (hereinafter referred to as applicant), registered under the AP Goods & Services Tax Act, 2017.

### 3. Brief Facts of the case:

1. M/s. Continental Engineering Corporation is a civil engineering and construction company. Infrastructure engineering is the applicant's core business. The applicant is involved in various projects like highway, tunnel, bridge, mass rapid transit, and high-speed rail projects and is registered in the State of Andhra Pradesh with GSTIN 37AACCC6948C1ZO.
2. The applicant has entered into a contract on 20.02.2007 with National Highway Authority of India (NHAI) for the work of Rehabilitation and upgrading of existing 2-lane road to 4 lane road divided carriageway configuration from 293,400km to 336,000 km in Hyderabad- Bangalore section of NH-7 in the State of Andhra Pradesh on North South Corridor.
3. With regard to the above contract, the applicant completed its work contract services on 17.10.2012 i.e. prior to GST Regime (before 01.07.2017) as evident from the discharge liability certificate issued by the Engineer appointed by NHAI. However, at the time of making the payment to the applicant, dispute arose. So, the applicant filed claim under arbitration. Details regarding the seven claims is stated below:

#### Claim-1

#### Balance Payment of executed quantities of retaining wall constructed in lieu of RE Wall

The applicant replaced the scope of work contract by construction of retaining Wall instead of RE Wall with the permission of NHAI as it lead to fasten the work to be





done, subject to restriction that 'Any financial implication will be at Contractor's risk and without any extension of time'. If the RE Wall has been constructed, actual cost to be borne by the NHAI would have been INR 16,80,63,700. However the variation order approved by the NHAI engineers restricted the payment to INR 12,08,55,511. Actual cost borne by the applicant was INR 15,68,57,034 which was still less than the original cost to be borne by NHAI. The arbitration authority passed an award in favour of the applicant amounting to INR 7,23,30,632 (including Interest Amount).

#### **Claim-2**

##### **Non-payment of BOQ item 7.16a; 7.16b; 7.16d (Construction of water harvesting units alternatively on either side of the carriage way)**

Claim is for the work of Harvesting units executed as per the BOQ Items Nos. 7.16 a, b, c. However the payment for the said work was rejected by NHAI on the grounds that the applicant did not provide evidence of execution of the work of water harvesting units in the final statement of material used report. However, authority passed an award in favour of the applicant amounting to INR 1,09,58,464 (including Interest amount upto 30.06.2018).

#### **Claim-3**

##### **Additional Royalty charges deducted by the Engineer by applying varying compaction factors for calculating the quantities of soil for various Permanent works**

The applicant was under obligation to pay royalty of soil for permanent works as per "Andhra Pradesh Minor Mineral Concession Rules, 1966. However, the royalty was to be deducted by the NHAI from the applicants bill and which was deposited to the Mining department. NHAI made its own calculation and deducted more royalty than what actually needs to be deducted. However, applicable taxes were deposited by NHAI on the gross amount of work done. The authority passed an award in favour of the applicant amounting to INR 1,34,01,819. (Including interest amount upto 30.06.2018)



**Claim-4****Additional Expenses for extension of Bank Guarantee beyond defect liability period.**

Claim is for reimbursement of additional costs incurred by the claimant for extending the Bank Guarantees of Performance Security and Retention Money Bank Guarantee beyond the period specified in the agreement. Authority passed an award in favour of applicant amounting to INR 54,66,362. (including Interest amount upto 30.06.2018).

**Claim -5****Refund of amount deducted against increase in VAT (WCT/Sales Tax) from 4% to 5%**

At the time of entering into the contract, VAT (WCT) rate was 4%, subsequently, during execution of the contract, the Andhra Pradesh Government increased the VAT from 4% to 5% vide gazette notification dated 14.09.2011 and NHAI thereafter, started deducting 1% additional VAT (WCT) from payments made to the applicant. As per the contract, additional cost due to increase in taxes shall be added to the Contract Price. Thus, Authority passed an award in favour of the applicant amounting to INR 19,81,897. (including interest amount upto 30.06.2018).

**Claim-6****Interest on delayed payment of IPCs and Final Statement**

As per the agreement, the applicant was entitled to receive interest @10% compounded monthly on all sums unpaid from the date which the same should have been paid. Authority passed an award in favour of the applicant amounting to INR 2,84,14,356.

**Claim-7****Claim towards pedente-lite and future interest @10% from 01.07.2018 till date of release of payment by the respondent**

Interest @10% per annum was claimed by the applicant on total amount of award against all the six claims (INR 13,25,53,530) amounting to INR 1,10,46,128 for a period of 10 months from 01.07.2018 upto the date of award i.e. 30.04.2019. Authority passed an award in favour of the applicant amounting to INR 1,10,46,128.





### Claim-8

#### Reimbursement of NHAI's share fees paid by the applicant

As the NHAI did not pay its full share of fees to the members of AT, the applicant paid the balance fee pertaining to NHAI share and the authority passed an award in favour of applicant amounting to INR 21,37,500.

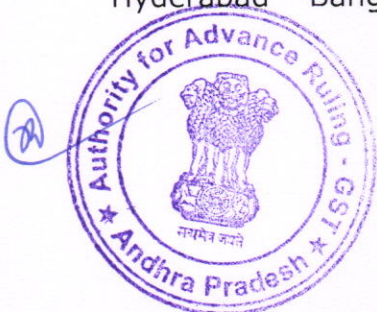
Thus, the total amount of INR 14,57,37,158 had been awarded in favour of the applicant on 30.04.2019.

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

- Whether GST is applicable on the proposed receipt of money in case of arbitration claims awarded for works contract completed in the Pre-GST regime?
- If the answer to the above Question is yes then under what HSN Code and GST rate the liability is to be discharged by the applicant?

On Verification of basic information of the applicant, it is observed that the applicant falls under State jurisdiction, i.e. Anantapur-II Circle, Anantapur Division. Accordingly, the application has been forwarded to the jurisdictional officer and a copy marked to the Central Tax authorities to offer their remarks as per the Sec. 98(1) of CGST /APGST Act 2017.

Remarks are received from the jurisdictional officers concerned. The Superintendent of Central Tax, Anantapur CGST Range-1 stated that no proceedings are lying pending or passed relating to the applicant on the issue, for which the Advance Ruling sought by the applicant. But the State jurisdictional officer, i.e. Assistant Commissioner, Anantapur-II Circle, Anantapur Division had remarked that no proceedings were passed so far but they were lying pending on the same issue pertaining to the applicant's works contract agreement with the Nation Highway Authority on 20.02.2007 for rehabilitation and up gradation of existing 2-lane Road to 4-lane divided carriageway configuration from 336km to 376km, Hyderabad – Bangalore Section of NH-7 in the State of Andhra Pradesh on North-



South Corridor Contract Pkg – C-13. The work has been completed and defect liability certificate was issued in pre-GST regime i.e., 01.04.2013 by the Engineer Egis Route appointed by NHAI. The arbitration authority passed an order on 15.03.2019 in favour of M/s. Continental Engineering Corporation – Andhra Pradesh for an amount of INR 12,73,06,493/- Thereafter, the NHAI has challenged the Arbitration Award dated 15.03.2019 before the Hon'ble High Court for Delhi. Afterwards, as per the settlement agreement dated 27.11.2019, the final settlement took place between the two parties for an amount of INR 10,00,00,000/- . The said amount was credited to M/s. Continental Engineering Corporation Andhra Pradesh in December 2019 with tax payer's refund claim of **Total Rs.1,07,14,286/-** (SGST Tax Rs.5357143/- and CGST Tax Rs.5357143/-) deducted from the consideration received during GST period which is pertaining to Works Contracts done under APVAT Act. Thus, based on the remarks of State Tax authorities, it is noticed that the refund claim on the same issue is lying pending with them.

#### **6. Record of Personal Hearing:**

The authorized representative of the applicant, CA. Rajat Mohan appeared for Personal Hearing on 21.12.2020 and reiterated the submission already made in the application.

#### **7. Discussion:**

We have examined the issues raised in the application and the submissions of the applicant as well. In the context of the remarks submitted by the jurisdictional officer, we examine the admissibility of the application before going into the merits of the case.

This authority after examining the relevant proviso to Sec 98(2), which reads as under,

*"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 of the provisions of this act:",*





makes the following observation that it is a fit case for rejection as the applicant approached the Authority for Advance Ruling for clarification while it is still pending with the Revenue on the same issue but under different provisions i.e., under refund provisions of the Act.

The applicant's plea for admission of his application for advance ruling in terms of provisions of sub section (2) of section 98 of CGST Act, 2017 is rejected.

### ORDER

In view of the foregoing, the application is not admitted.

**Sd/- D. Ramesh**  
**MEMBER**

**Sd/-A. Syam Sundar**  
**MEMBER**

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

  
**Deputy Commissioner (ST)**  
**DEPUTY COMMISSIONER (ST)**  
O/o. Chief Commissioner of State Tax,  
Government of A.P., Vijayawada

### TO

1. M/s. Continental Engineering Corporation, Door No.1/1347, Opposite Vimala Nursing School, Sri Nagar Colony, Anantapur. **(By Registered Post)**
2. M/s. Continental Engineering Corporation, Unit No.605, 606, 6<sup>th</sup> Floor, Emaar Palm Spring Plazsa, Golf Course Road, Sec-54, Gurgaon, Haryana-122003. **(By Registered Post)**

### Copy to

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



**Copy submitted to**

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Eedupugallu, Vijayawada, (A.P)
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.

