



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

AAR No.20/AP/GST/2021 dated: 15.07.2021

1	Name and address of the applicant	M/s. Technosoft Solutions Flat No. #48-14-35/1, Opposite Sri Chaitanya Girls Campus, Ramataalkies Road, Asilmetta, Visakhapatnam -530003.
2	GSTIN	37AEWPA9021R1ZQ
3	Date of filing of Form GST ARA-01	04.03.2021
4	Hearing (Virtual)	29.06.2021
5	Represented by	Sri Bojja S.Srinivas, Advocate
6	Jurisdictional Authority - State	Assistant Commissioner (ST) Dwarakanagar Circle, Visakhapatnam 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 (e) determination of the liability to pay tax on any goods or services or both

ORDER

(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. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and SGST Act, 2017 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 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. Technosoft Solutions(hereinafter referred to as applicant), registered under the AP Goods & Services Tax Act, 2017.

3. Brief Facts of the case:

- 1) The applicant, M/s. Technosoft solutions, Visakhapatnam is a registered GST dealer having GST No.37AEWPA9021R1ZQ and engaged in electrification work. The applicant entered in to contract with Andhra Pradesh Eastern Power Distribution Company

Limited (APEPDCL) relating to "Erection of S-Ph 16KVA DTRs, 6.3KV & LT lines to extend Grid supply to Tribal habitations which were already electrified with DDG projects in Srikakulam and Visakhapatnam Circles on partial turnkey basis under Tribal Sub- Plan (TSP) at a cost of Rs.1,81,57,657.35/- vide Agreement No.07/2017-18 dated 13.11.2017.

- 2) The applicant submitted that 5 nos of RA bills had been raised on supply receipt charging 18% GST and APEPDCL paid the same and applicant subsequently discharged the GST liability at the rate of 18%. Further APEPDCL has deducted 6% GST from the RA bill amount and stated that this amount is difference of GST 18%-12% which was paid earlier. APEPDCL has calculated GST @12% on all the earlier bills and deducted difference of 6% in the 6th RA bill amount.
- 3) The applicant further stated that APEPDCL had informed them that the GST rate applicable was 12% and not 18% basing on their internal communication and they further stated that tribal Sub-Plan works were implemented with 100% grants given by Government of AP.
- 4) When APEPDCL had directed the applicant to charge 12% on the ground that tribal sub plan works were implemented with 100% grants given by Govt of AP., the applicant approached this authority seeking Advance Ruling on this issue.

The applicant had filed an application in form GST ARA-01 dated 04.03.2021 by paying required amount of fee for seeking Advance Ruling on the following issues, as mentioned below:

4. Questions raised before the authority:

1. Whether APEPDCL can be treated as a limb of Government of AP or not?
2. The rate of tax is 12% or 18% and also under which SAC/ HSN code the above work which was awarded by the APEPDCL falls.

Broad scope of work: "Erection of S-Ph 16KVA DTRs, 6.3KV & LT lines to extend Grid supply to Tribal habitations which were already electrified with DDG Projects in Srikakulam and Visakhapatnam Circles on partial turnkey basis under Tribal Sub-Plan (TSP).

3. Whether the rate of tax 12% to be charged as directed by the APEPDCL as the tribal sub work, which are implemented with 100% grants given by Government of AP are liable to be taxed at the rate of 12% or 18%.

On Verification of basic information of the applicant, it is observed that the applicant is under State jurisdiction, i.e. Assistant Commissioner (ST), Dwarakanagar Circle, Visakhapatnam 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 Sec. 98(1) of CGST /APGST Act 2017.

In response, remarks were received from the jurisdictional officers concerned stating that no proceedings were passed so far or lying pending on the issue, for which the Advance Ruling was sought by the applicant.

5. Virtual Hearing:

The proceedings of Hearing were conducted through video conference on 29th June, 2021, for which the authorized representative, Sri Bojja S.Srinivas, Advocate attended and reiterated the submissions already made.

6. Discussion and Findings:

We have examined the issues raised in the application. The taxability of the goods and services supplied, as governed under the provisions of respective GST Acts are examined to decide the question involved in the present Ruling.

The issue on which the applicant approached this authority is taxability of the supply made by the applicant to APEPDCL relating to "Erection of S-Ph 16KVA DTRs, 6.3KV & LT lines to extend Grid supply to Tribal habitations which were already electrified with DDG Projects in Srikakulam and Visakhapatnam Circles on partial turnkey basis under Tribal Sub-Plan (TSP).

When we look into the nature of the work under taken by the applicant, it is a 'works contract' as per section 2(119) of the CGST Act, 2017 which 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;"*. As per Schedule II of the GST Act, 2017 of para 6(a), works contract shall be treated as "supply of service".

The Government of India vide Notification No.11/2017 - Central Tax (Rate), dated: 28th June 2017 notified the rate of GST applicable on supply of services. *"The composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017 under Sl.No.3 of chapter heading 9954 attracts a tax rate of 18%. The said notification has been amended from time to time and entry No.VI is inserted vide Notification no 24/2017-Central Tax (Rate) date: 21.09.2017, notifying a concessional GST rate of 6% for "the 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;"

Further, vide Notification No. 31/2017 - Central Tax (Rate), Dated: 13.10.2017, Government of India substitute the word *"Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity"* in place of *"Central Government, State Government, Union Territory, a local authority or a Governmental Authority"*.

Now we examine whether the works undertaken by the applicant would fall under the above category attracting concessional rate or not. The two parameters that are to be meted out in this context are:

- a. The service recipient i.e., APEPDCL shall fit in the nomenclature of "Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity"
- b. The works involved shall be meant predominantly for 'use other than for commerce, industry, or any other business or profession;'

Now we examine the above two parameters in detail :

- a) Status of APEPDCL: As per Notification No. 31/2017 - Central Tax (Rate), Dated - 13/10/2017 issued under CGST Act, 2017 and corresponding notification under APGST 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 90 percent 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.

The Applicant Contractee, APEPDCL is a Government Company i.e. wholly owned by the Government of Andhra Pradesh. It is evident from the schedule of Equity Share Capital of the Annual Statement that 100% share capital is held by the Government of Andhra Pradesh in the name of Honourable Governor of Andhra Pradesh. Based on the above facts, it is concluded that the Government of Andhra Pradesh is having full control over APEPDCL and it is covered under the definition of Government Entity.

- b) The works involved shall be meant predominantly for 'use other than for commerce, industry, or any other business or profession;'

If we examine the Memorandum of Association of the APEPDCL Company, the main objects to be pursued by the Company on its incorporation are to engage in the business of procurement, supply and distribution of electricity; to take over the distribution and supply of electricity business from the Transmission Corporation of Andhra Pradesh Limited; to acquire business/companies; to acquire know-how etc. Thus, the incorporation of the company itself is based on business purposes. Thus, the services were provided by the applicant to a business entity i.e., APEPDCL in the present context. It is an undeniable fact that APEPDCL is not rendering any non commercial services but receiving payment/reimbursement for its commercial activity from the Government of A.P. in form of 100% grants.

Finally, even though APEPDCL has been considered as a 'Government entity', the services provided by the applicant are proved to be for the use of business purpose. Hence, The Applicant is not entitled for the benefit of concessional rate of GST @12% (6% under Central tax and 6% State tax) in terms of Notification No.24/2017-Central Tax (Rate) dated:21.09.2017 read with Notification No.31/2017-Central Tax (Rate) dated:13.10.2017.

With the foregoing, we rule as under.

RULING

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

1. **Question:** Whether APEPDCL can be treated as a limb of Government of AP or not?

Answer: APEPDCL is a 'Government Entity'.

2. **Question:** The rate of tax is 12% or 18% and also under which SAC/ HSN code the above work which was awarded by the APEPDCL falls.

Answer: The applicable rate of tax is 18% (9% under Central tax and 9% State tax) under Heading 9954 for the services referred by the Applicant as per entry no. (ii) of Sl.No.3 of the table of Notification No.11/2017 - Central Tax (Rate), Dated: 28th June 2017.

3. **Question:** Whether the rate of tax 12% to be charged as directed by the APEPDCL as the tribal sub work, which are implemented with 100% grants given by Government of AP are liable to be taxed at the rate of 12% or 18%.

Answer: Already answered above.

Sd/-D. Ramesh
(MEMBER)

Sd/- A. Syam Sundar
(MEMBER)



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


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

To

1. M/s. Technosoft Solutions, Flat No. #48-14-35/1, Opposite Sri Chaitanya Girls Campus, Ramataikies Road, Asilmetta, Visakhapatnam -530003 **(By Registered Post)**

Copy to

1. The Assistant Commissioner of State Tax, Dwarakanagar Circle, Visakhapatnam Division. **(By Registered Post)**
2. The Superintendent, Central Tax, CGST Marripalem Range, Visakhapatnam Central 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 Principal Chief Commissioner (Central Tax), O/o Principal 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.