

**GUJARAT AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,
A/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



**ADVANCE RULING NO. GUJ/GAAR/R/06/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/44)**

Date : 19.03.2020

Name and address of the applicant	:	M/s. Magnam Netlink Private Limited, 809 to 812, Sanket Heights, 8 th Floor, Sun Pharma Road, Vadodara : 390015. (Guj)
GSTIN of the applicant	:	24AAGCM6003L1ZK
Date of application	:	13.08.2018
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(b) applicability of a notification issued under the provisions of CGST Act.
Date of Personal Hearing	:	12.03.2020
Present for the applicant	:	Shri Abhay Desai, C.A

BRIEF FACTS

The applicant has submitted that they are in the business of providing services of providing execution of works contract regarding EPC (engineering, procurement and construction/commissioning) solutions to dairy and food processing industry. They have been awarded a contract for design, construction, supply, installation and commissioning of a Dairy Plant for the Bihar State Milk Cooperative Federation Ltd. The said contract is divided into two parts viz:-

Part - A: Civil work - This comprises of civil construction of Dairy plant building, service block, processing, administrative block, workers amenities, godown, time keeping office, boundary wall, roads, water tank, E.T.P. (only civil work) water supply/sanitary & plumbing, hard park, internal/external electrification and all complete works as per the drawing and specification on turn-key basis.

Part - B: Electro-mechanical work - This comprises of design, supply, installation and commissioning of equipments including dairy plant, utility/services, lab equipments, ETP (electromechanical works) etc. on turn-key basis.

2. The applicant submitted that the dairy plant will be processing raw milk obtained from the farmers and producing pasteurised milk as well as milk products there from. The raw milk procured by the Dairy will be regarded as 'agricultural produce' and hence the said Dairy shall be covered as a 'unit processing agricultural produce'. The applicant has put the following question for advance ruling in their application:-

*"Does the Notification No. 20/2017-Central Tax (Rate) New Delhi, the 22nd August, 2017 that covers the Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to mechanised food grains handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages, cover **works contract for units processing milk (i.e. Dairy and food processing industry)?"***

3. The applicant has submitted that "agricultural produce" is neither defined in the CGST ACT, 2017 nor defined in the notification no. 20/2017-Central Tax (Rate) dated 22nd August, 2017. However "agricultural produce" is defined in the Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017. Relevant portion in Para 2 of the same is re-produced here under:

*[(d) "agricultural produce" means any produce out of cultivation of plants and **rearing of all life forms of animals**, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market;]*

4. The applicant has further submitted that from the above definition of "agricultural produce", it may be derived that since any produce out of rearing of all life forms of animals except the rearing of horses, is considered as "agricultural produce", the produce out of rearing of animals for food may cover "Milk" as well. Therefore "agricultural produce" may include "Milk" also for the purpose of Notification No. 20/2017-Central Tax (Rate) dated 22nd August, 2017. If it is so, then the entry at item (v)(f) against serial no. 3 of the table under the notification no. 11/2017- Central Tax (Rate) dated 28th June, 2017, as amended vide Notification No. 20/2017-Central Tax (Rate) dated 22nd August, 2017, for 'Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to, mechanised food grain handling system, machinery or equipment

for units processing agricultural produce as food stuff excluding alcoholic beverages, may cover the composite supply of works contract for units processing milk as well and accordingly benefit of lower rate of GST 12% (6%+6%) shall be available to the works contracts pertaining to the dairy industry in their case.

5. The applicant contended that to fall under the above entry following conditions must be satisfied:

- (a) There should be composite supply of works contract.
- (b) The supply should be by way of construction, erection, commissioning, or installation of original works.
- (c) Such work should pertain to mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.

6. The applicant further contended that for the present contract they fulfil all the above referred conditions on the following grounds:

- (a) *There should be composite supply of works contract.*

-**The contract** is indeed a composite supply of **works contract** and hence the said condition is duly fulfilled. **Works Contract** is defined under clause (119) of Section 2 of the Central Goods and Services Tax Act, 2017, as under:

*[(119) “**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;]*

-**Both the parts of the contract** (i.e. Part - A and Part - B) shall fall within the ambit of **works contract**. Part - A comprises of civil work which involves construction of dairy building on turnkey basis. The Contract under clause 2.0 provides that the rate charged includes the cost of goods to be used for said construction. The clause 4.0 on the same page provides that all the civil materials are in the scope of the applicant. Further since the contract is on "turnkey" basis, all the costs associated with the setting up of the dairy plant are in the scope of the applicant. Hence this part will fall within the scope of "works contract" since the same is in the nature of construction of civil structure specially designed for dairy which is an immovable property and also includes transfer of property in goods. Part - B comprises of supplying various dairy equipments and carrying of

installation and commissioning of the same on turnkey basis. The dairy equipments after installation partakes the character of immovable property due to the reasons that the recipient intends to obtain entire dairy plant on turnkey basis along with the requisite machinery. Thus the intent is to procure an immovable dairy plant on turnkey basis and not to purchase individual equipments. The contract clearly provides for designing and thereafter supply and installation of the dairy equipments. Hence the contract unmistakably lays down that the applicant is appointed not merely to supply equipments but there is design work even before the supply of equipments. The Contract also provides that the applicant shall be involved from the designing stage itself since the same is in his scope which is even before the supply of equipments. The Contract does not merely provide for supply of dairy equipments but also provides for installation and commissioning of dairy plant. Hence it cannot be termed as a contract for mere supply of goods. The Contract under clause 20.0 provides that the applicant shall obtain all the necessary approvals from the Factory inspector, Boiler inspector, Electrical inspector, Weights & Measures Inspector, Explosive Inspector as well as all other relevant authorities at the cost of the applicant. Hence the contract is clearly for setting up of the dairy plant on turnkey basis and not merely of supply of goods. Relying the decision of the Apex Court in the case of **M/s TTG Industries Limited** [2004 (167) ELT 501 (SC)], the applicant submitted that what emerges out of the activity carried out by the applicant is a dairy plant which is immovable in nature and hence the same cannot be moved without first dismantling it. The dairy plant so commissioned by the applicant is never intended to be shifted to any other location. Moreover it can even not be shifted without dismantling the same and hence the same satisfies the test of "permanency". Thus the dairy plant shall tantamount to immovable property. The dairy plant commissioned at site is incapable of being sold as it is and hence partakes the character of immovable property. The Apex Court decision in the case of **M/s Sirpur Paper Mills Ltd.** [(1998) 97 ELT 3] shall not be applicable to the present facts since in that case the whole purpose behind attaching the machine to a concrete base was to prevent wobbling of the machine and to secure maximum operational efficiency. In the present case the whole purpose is to commission a dairy plant at the site of the recipient and hence the same has to be considered as an immovable property. Therefore, it is contended that the design, supply, installation and commissioning of the dairy plant under the referred contract shall be considered as a "works contract" u/s 2(119) of the CGST Act, 2017.

(b) The supply should be by way of construction, erection, commissioning, or installation of original works.

-**Original works** is defined under clause (zs) of the definition section under Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 as under:

[(zs) "original works" means-all new constructions —

(i) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(ii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;]

-**The contract** in question clearly stipulates new construction of entire dairy plant along with the supply and installation of dairy equipments and machinery. Hence the said condition is duly fulfilled.

(c) *Such work should pertain to mechanised food grain handling system, machinery or equipment for units processing **agricultural produce** as food stuff excluding alcoholic beverages.*

-**Agricultural Produce** is defined under clause (d) of the definition section under Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 as under:

*[(d) "agricultural produce" means any produce out of cultivation of plants and **rearing of all life forms of animals**, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market;]*

-**The Dairy plant** to be set up by the applicant is a unit which shall process agricultural produce as food stuff. As per by-laws of the client, 'Bihar State Milk Co-operative Federation Limited', the objective of the Federation shall be 'to carry out activities for promoting production, procurement, processing and marketing of **milk and milk products** for economic development of the farming community, as stated at para 3.1 of the said by-laws. The main input, for the Dairy plant which is to be set up by the applicant, is in the form of raw-milk obtained from various farmers in the region. Said raw milk shall be processed by the Dairy which will be set up to produce various milk products including **packaged milk as well as other ancillary food products**.

-The Milk is a produce arising out of rearing of life form of animals for food, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market. The input for the Dairy, in the form of raw-milk obtained by farmers, is out of rearing of animals and the same is clearly for food. In absence of any further processing on the same the said raw milk is clearly an agricultural produce.

-Said condition also requires that the processing which is to be carried out by the unit should result in food stuff. In common parlance 'food' is something that is eaten. In a wider sense 'food' may include not only solid substances but also a drink. Still the fact remains that whether a solid or a liquid, the substance called 'food' should possess the quality to maintain life and its growth; it must have nutritive or nourishing value so as to enable the growth, repair or maintenance of the body, as held by the Apex Court in the case of M/s Harrisons Malayalam [(2004) 1 SC 256]. Applying this decision, the packaged milk as well as milk products processed by the dairy which is to be set-up by the applicant are clearly "food stuff" as something that is eaten and possesses the quality to maintain life and its growth. Applying the above definitions, packaged milk as well as other milk products are clearly "food stuff" since it is intended for human consumption and hence the unit (viz. dairy) pertaining to which works contract is rendered can be clearly said to be processing agricultural produce as food stuff.

6. The applicant also contended that the applicant in the present contract has fulfilled all the requirements stipulated under Entry No. 3(v)(f) of Notification No. 11/2017-Central Tax (Rate) and hence the applicable tax rate should be 6%.

7. Without prejudice to the above submission, the applicant also submitted that Part — B of the referred contract clearly includes design, supply, installation & commissioning of the dairy plant and machinery and hence the same must at least be included in the referred Entry No. 3(v)(f) of Notification No. 11/2017-Central Tax (Rate).

8. The applicant also further submitted that the dairy plant will be processing raw milk obtained from the farmers and producing pasteurised milk as well as milk products there from. The raw milk procured by the Dairy will be regarded as 'agricultural produce' and hence the said Dairy shall be covered as a 'unit processing agricultural produce'.

9. At the time of personal hearing, the applicant also submitted that the only finished product being produced by the said Dairy will be pouch milk produced from raw milk and there is no other finished products being produced in this Dairy plant. The same can be evidenced from the bill of quantity (electromechanical

work) Section 4 Reconstruction/Recombination Milk Marketing Section Point 4.6 Pouch Filling Machine with online pouch coding machine of Make-Domino on page 237 of 261 of the tender document submitted in the first submission. **There is no other equipment for finished product packing being supplied in this contract.**

DISCUSSION & FINDINGS

10. We have considered the submissions made by the applicant in their application for advance ruling as well as at the time of personal hearing. The issue involved in this case pertains to applicability of notification no. 20/2017-Central Tax (Rate) dated 22.08.2017, which amends notification no. 11/2017-Central Tax (Rate) dated 28.06.2017, issued under the Central Goods and Services Tax Act, 2017 (herein after referred to as the '*CGST Act*'), in the case of the applicant. As per work order issued by M/s Bihar State Milk Cooperative Federation Ltd., Patna, vide no. COMFED: EGG:317:Vol-VIII/1787 dated 09.05.2018, the applicant has been awarded a contract for construction, supply, installation and commissioning of a Dairy Plant at Purnea, under Kosi Dairy Project on turn-key basis. The said work is divided into two parts viz. Civil work for Rs. 10.71 crore and Electro-mechanical work for Rs. 14.69 crore. The Electro-mechanical work is again divided into two parts viz. Supply part for Rs. 13.51 crore and Installation part for Rs. 1.18 crore.

11. It is observed that Civil work comprises of civil construction of Dairy plant building, service block, processing, administrative block, workers amenities, godown, time keeping office, boundary wall, roads, water tank, E.T.P. (only civil work) water supply/sanitary & plumbing, hard park, internal/external electrification and all complete works as per the drawing and specification on turn-key basis. This civil work nowhere involves any supply of machinery or equipment. In absence of the same it will not fall under Entry No. (v)(f) of Sr. No. 3 of the table under Notification No. 11/2017-Central Tax (Rate) as amended by Notification No. 20/2017-Central Tax (Rate).

12. It is further observed that Electro-mechanical work comprises of design, supply, installation and commissioning of equipments including dairy plant, utility/services, lab equipments, ETP (electromechanical works) etc. on turn-key basis. This part includes Supply Part as well as Installation Part. The applicant has submitted at the time of personal hearing that the only finished product being produced by the said Dairy will be pouch milk produced from raw milk and there is no other finished products being produced in this Dairy plant. They also submitted that the same can be evidenced from the bill of quantity (electromechanical work) Section 4 Reconstruction/Recombination Milk Marketing Section Point 4.6 **Pouch Filling Machine with online pouch coding machine of Make-Domino** on page 237 of 261 of the tender document and **there is no other equipment for finished product packing being supplied in this contract.** In view of this, the only dispute now remains is, in respect of supply of Pouch Filling Machine with online pouch coding machine of Make-Domino. As admittedly submitted by the applicant themselves, **there is no other equipment for finished product being supplied in**

this contract. In view of this, we come to the conclusion that all the supplies of other parts are out of the purview of machinery or equipment for units under Entry No. (v)(f) of Sr. No. 3 of the table under Notification No. 11/2017-Central Tax (Rate) as amended by Notification No. 20/2017-Central Tax (Rate).

13. Now we come to the core issue of supply of Pouch Filling Machine with online pouch coding machine of Make-Domino. To be eligible under Entry No. (v)(f) of Sr. No. 3 of the table under Notification No. 11/2017-Central Tax (Rate) as amended by Notification No. 20/2017-Central Tax (Rate), the said supply must be a ‘*Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to,- (f) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages*’. Therefore the said supply of Pouch Filling Machine has to pass following tests to be eligible for inclusion under Entry No. (v)(f) of Sr. No. 3 of the table under Notification No. 11/2017-Central Tax (Rate) as amended by Notification No. 20/2017-Central Tax (Rate):-

- (a) *Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017;*
- (b) *Supply by way of construction, erection, commissioning, or installation of original works; and*
- (c) *Supply pertaining to mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages’.*

14. We discuss the issue point-wise as under:-

- (a) **Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017.**

14.1 Composite supply is defined under clause (30) of Section 2 of the Central Goods and Services Tax Act, 2017, as under:

[(30) “composite supply” means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

***Illustration.**— Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;*

14.2 We observe that the work order itself separately mentions under Part B-Electromechanical work, for goods supply portion under sub-part (a) Supply Part for Rs. 13.51 crore and for services supply portion under sub-part (b) Installation Part for Rs. 1.18 crore. Further, as per point (c) at page 1 of the above said work order, the applicant was required to submit to the Managing Director of the Bihar State Milk Co-operative Federation Limited, Patna, the detailed item-wise price break-up based on supply of individual equipment with GST rate applicable as per individual HSN code. Therefore the individual supply of the above said Pouch Filling Machine does not fall under ‘Composite supply’ as defined above with illustration.

14.3 **Works Contract** is defined under clause (119) of Section 2 of the Central Goods and Services Tax Act, 2017, as under:

*[(119) “**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;]*

14.4 We observe that coming into existence of **an immovable property** out of the said works, is an essential ingredient to be covered under works contract, e.g. Road, Building or Bridge etc. The supply being discussed herein relates to an individual item of goods namely, **Pouch Filling Machine with online pouch coding machine of Make-Domino**. This item being movable and saleable in the market cannot in any case be termed as immovable property. However, it may be fixed to earth after delivery at the place of the recipient but till the supply to the place of the recipient it is movable. The item in question will already be in existence before supply. This said item does not come into existence by virtue of any work to be defined as works contract. The said items will not be manufactured at site but it will be supplied from a manufacturer whose brand is also affixed on the product, namely ‘DOMINO’. The Apex Court, in the case of **M/s Sirpur Paper Mills Ltd.** [1998 (97) ELT 3 (SC)], has held that just because a plant and machinery are fixed in the earth for better functioning, it does not automatically become an immovable property.

14.5 In view of the above we find that the above said supply of **Pouch Filling Machine with online pouch coding machine of Make-Domino**, is not an

immovable property and hence supply of the same cannot be termed as supply of 'works contract'.

(b) Supply by way of construction, erection, commissioning, or installation of original works.

14.6 We find that the above discussed goods namely **Pouch Filling Machine with online pouch coding machine of Make-Domino**, is already in existence before supply and there is no construction at site to bring up a new original item in existence.

(c) Supply pertaining to mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages'.

14.7 We find that the above discussed goods namely **Pouch Filling Machine with online pouch coding machine of Make-Domino**, as submitted by the applicant, is to be used for packing the milk. This process is to take place after the milk has already gone under various processes of filtration, straining, chilling, pasteurizing, cream processing, standardising etc.

14.8 **Agricultural Produce** is defined under clause (vii) of Paragraph 4 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 as under:

*[(vii) "agricultural produce" means any produce out of cultivation of plants and **rearing of all life forms of animals**, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market;]*

14.9 We find that Agricultural Produce shall not include further processed produce other than such processing is done by a cultivator or producer which does not alter its essential characteristics. Therefore the milk on which processes have been carried out by other than a cultivator or a producer shall not fall under Agricultural Produce. The milk when brought to process by the said **Pouch Filling Machine** would have already gone under various processes of filtration, straining, chilling, pasteurizing, cream processing, standardising curding etc and the essential characteristics of milk would have been already altered. Therefore the said machinery cannot be said to be used for processing agricultural produce.

15. Thus we come to the conclusion that the supply of Pouch Filling Machine with online pouch coding machine of Make-Domino, as well as other supplies of civil work and electro-mechanical work will NOT fall under Entry No. (v)(f) of Sr.

No. 3 of the table under Notification No. 11/2017-Central Tax (Rate) as amended by Notification No. 20/2017-Central Tax (Rate).

16. In view of the foregoing, we rule as under –

R U L I N G

The Notification No. 20/2017-Central Tax (Rate) dated 22nd August, 2017 that covers the Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to mechanised food grains handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages, DOES NOT COVER the supplies made or to be made by the applicant under work order issued by M/s Bihar State Milk Cooperative Federation Ltd., Patna, vide no. COMFED:EGG:317:Vol-VIII/1787 dated 09.05.2018 for the reasons discussed hereinabove.

(SANJAY SAXENA)
Member

(MOHIT AGRAWAL)
Member

Place : Ahmedabad

Date : 19.03.2020.