

**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/2020/07  
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/56)

**Date: 19.05.2020**

Name and address of the applicant	:	<b>M/s NEC Technologies India Pvt. Ltd.,</b> 702, RTC (Royal Trade Centre) building, In front of Star Bazar, Hazira – Adajan Road, Jalaram Society, Adajan, <b>Surat-</b> 395009
GSTIN/ User Id of the applicant	:	24AACCN3496J1Z8
Date of application	:	14.09.2018
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(i) Classification of goods and/or services or both. (ii) Applicability of a notification issued under the provisions of the Act. (iii) Determination of the liability to pay tax on any goods or services or both.
Date of Personal Hearing	:	12.03. 2020
Present for the applicant	:	Shri Amit Agrawal

The applicant is engaged in providing of solutions and services in multiple areas in public safety, private network, retail, IT, logistics, engineering services etc.. They are registered under GST vide GSTN Number-24AACCN3496J1Z8. They have preferred an application seeking Advance Ruling in respect of the following questions:

- (A) *Whether the supply made by NEC under the Automatic Fare Collection (AFC) project would qualify as: a. ‘works contract’ defined under section 2(119) of the CGST Act, 2017; or b. ‘composite supply’ defined under section 2(30) of the CGST Act, 2017?*
- (B) *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 Notification 24/2017-Central Tax (Rate) dated 21 September 2017?*
- (C) *Whether the HSN classification of supply made by NEC would fall under ‘8470’ or ‘9954’?*

*(D) Whether the maintenance and management services post implementation 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-Central Tax (Rate) dated 28 June 2017 in case value of supply of goods constitutes not more than 25% of the value of the said composite supply?*

2. The applicant in the Statement of the Facts stated that they have been awarded a comprehensive Contract by the Surat Municipal Corporation ('SMC') (a Municipal body incorporated under the Bombay Provincial Corporation Act, 1949) and the Surat Smart City Development Limited (SSCDL) (a Company incorporated under the Companies Act, 2013) 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 City').

2.1 The **objective** of the AFC system is to provide seamless travel with single smart card/ ticket on city's BRTS and City Bus Services. The AFC system is typically implemented in the following:

- **Bus Stations:** Supply of AFC system at the Bus Stations would involve supply as well as installation and commissioning of Point of Sell ('POS') machines, turnstiles, validators to be fitted on Turnstile Gates-Hardware component, Station Servers, Station UPS, Swing Gates, Network Rack etc. AFC System is to be supplied and installed to 195 BRT Bus Stations.
- **City Buses:** Supply of AFC system at the City Buses would involve supply as well as installation and commissioning of handheld Electronic Ticketing Machines ('ETMs') or ETM with printer for bar-coded ticket issuance and reader for smartcard readers for City Buses. Further, supply of AFC system at the City Buses would also include supply of pole based entry/exit smart card validator for City Buses. The number of buses on which such system needs to be installed is 650.

2.2 The **scope of work** under the proposed contract would comprise of the following two activities by the applicant for the SMC and M/s SSCDL:

1. Setting up of AFC System; and
2. Operation, Management and Maintenance of the AFC system

2.2.1 **Setting up of AFC System:**

As discussed above, the contract is for design, develop and supply of AFC system for BRTS and City Bus Services in the City. Setting up of AFC system comprises of the following activities:

(i) Design, development, procurement, supply, integration, testing and commissioning of the AFC system:

The applicant is responsible to provide multiple hardware (such as POS machines, Electronic Ticketing Machines (ETMs) (hand held and fixed to BRTS stations/poles), flap gates, station card validators and pole validators etc. and software. They are also responsible for installation, commissioning, integration, initialization of the equipment and software supplied under the contract. This includes installation of the requisite hardware at the BRTS Bus Stations and integration of the same with back end Servers and Software. This also involves providing of hand held ETM's, installation of Pole Validators in all City Buses and integration of the same with back end Servers and Software.

(ii) Integration of the AFC system with the card host, central clearing house system and smart cards provided by authority appointed bank:

The local authority will appoint a bank for implementation of a common payment system for multiple municipal and retail services. The applicant would be required to provide the Application Platform Interface ('API'), Accessory Development Kit ('ADK') and interfacing protocols for the Bank to develop their own system for integration with the AFC System. Further, the applicant is also jointly responsible to integrate the AFC System with the Common Payment System to be developed by the Bank appointed by the local authority. Under this phase, the applicant would not be supplying any hardware.

(iii) Commissioning, Management and Operation of Central Control Centre ('CCC'):

The responsibility to provide the site/location and furniture and fixture to set up a CCC shall be of the local authority. For setting up of CCC, the applicant would be required to supply hardware, software and install such hardware and software of the AFC System at the given site for the purpose of carrying out central monitoring and supervision of operation and functionality of the AFC System. CCC would also be used for handling ticketing and smart card related queries of the computers. Further, the applicant would also be responsible to maintain continuity of the AFC system in bus stations as well as the Buses in case of any stoppage or failures. This activity would be carried out in second phase of the Contract i.e. post completion of the AFC System.

**2.2.2 Maintenance and Management of AFC system during Contract Period:**

The applicant is required to maintain and manage all hardware and software forming part of the AFC system during the contract period (this would range from 7-10 years). This would typically include repair and maintenance of

hardware and software and ensuring that the AFC system continues to function as per the agreed parameters. This would also include supply of spares etc. for undertaking repairs, in case required.

***Applicant's Interpretation:***

**Question:1**

3. With respect to said supply, the question that arises is whether such supply would qualify as a '**Works Contract**' as defined under Section 2(119) of the CGST Act, 2017 or as a '**Composite Supply**' as defined under Section 2(30) of the CGST Act, 2017.

3.1 Two possible views for the above question presented by the applicant, are as below:

**A. VIEW 1:**

4. 'Works Contract' has been defined under Section 2(119) of the CGST Act, 2017, 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.

4.1 Under said contracts with local authorities, the hardware and software to be provided by the applicant consists of POS machines, ETMs, flap gates, validators, station servers, communication components, control centre hardware, manual swing gates for disabled etc.. Apart from the flap gates and manual swing gates which can arguable to be said to be fixed/ annexed to immovable property, rest all hardware are movable property. The flap gates, POS machines and manual swing gates are attached with screws and bolts at the entry gates of the bus station.

4.2 It would be relevant to ascertain whether setting up of the AFC System (comprising of Hardware and Software) would result into an immovable property to determine whether such supply would qualify as "Works Contract" under Section 2(119) of the CGST Act, 2017. To qualify as an immovable property, the AFC System supplied by the applicant would need to be permanently fastened to anything attached to the earth. These gates can be easily removed without damaging such gates and re-attached to some other locations. Hence, it cannot be said that such gates are permanently embedded to the bus stations and hence, should be considered as an immovable property. Further, the flap gates are just a part of the AFC system and is not the main equipment of the AFC system. Even if, it is argued that the flap gates are permanently fastened to the earth and form part of the immovable property, it cannot be construed that the whole AFC system would form part of the immovable property.

4.3 Further, in case of city buses, hand held ETM machines with electronic payment integration are provided for AFC system. In certain cases, Pole Validators with AFC system are installed on the buses. Considering that the buses are movable properties, such equipment would not be construed as immovable property. Further, the purpose and function of the AFC system installed on the city buses and BRTS bus stations is the same i.e. fare collection and providing seamless travel with a single smart card/ticket. Hence, it can be seen that the fixation/ attachment of the hardware to bus station/ terminal is not mandatory for the whole system to operate.

4.4 In view of the above, it can be concluded that the AFC system does not qualify as an immovable property. Thus, in the absence of any immovable property being supplied under such contract, **the supply of AFC system would not qualify as a “Works Contract” under GST.**

5. **‘Composite Supply’** has been defined as *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.*

5.1 Thus, for a supply to qualify as a composite supply, the following needs to be satisfied:

- (i) There should be more than two supplies of goods or services or both;
- (ii) They should be naturally bundled and supplied in conjunction with each other in the ordinary course of business; and
- (iii) There should be one principal supply.

5.2 The above conditions have been examined in the present case, as under:

5.2.1 *There should be more than two supplies of goods or services or both:*

In the current case, there are more than two supplies of goods (hardware) and services (software) and commissioning and installation of hardware, software (services). Thus, there is supply of more than two goods and services. Hence, this condition is satisfied.

5.2.2 *They should be naturally bundled and supplied in conjunction with each other in the ordinary course of business:*

The Flyers issued by the Central Board of Excise and Customs (‘CBEC’) for composite and mixed supplies have provided guidance on how to determine whether supplies are naturally bundled in the ordinary course of business as below:

“Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below: -

- The perception of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package, then such a package could be treated as naturally bundled in the ordinary course of business.
- Majority of service providers in a particular area of business provide similar bundle of services. For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.
- The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. For example, service of stay in a hotel is often combined with a service or laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.
- Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are –
  - There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.
  - The elements are normally advertised as a package.
  - The different elements are not available separately.
  - The different elements are integral to one overall supply - if one or more is removed, the nature of the supply would be affected.

In this case, the applicant would be awarded a consolidated contract for supply of AFC system which involves supply and installation of hardware and software and integration of AFC system with the citywide common payment system. The contract would be awarded by SMC and M/s SSCDL to the applicant for providing the AFC system and not for individual hardware and software. The ownership of the AFC system would only pass on to them only once the same is installed, tested and commissioned. Therefore, the supplies are perceived by local authority as a naturally bundled supply. Further, it can be seen from the existing contract that the requirement of local authority is to obtain complete AFC system and not individual hardware and software which form part of the AFC system.



Even if one or more of the elements are removed, the functioning of the AFC system would get affected.

Further, it can also be said that while providing AFC system is the principal supply, supply of hardware and software would be incidental to the main supply of AFC system. Hence, this test appears to be satisfied.

#### 5.2.3 There should be one principal supply:

As discussed above, in this case, there is one principal supply of AFC system. Supply of hardware and software would be incidental to the main supply of AFC system. Hence, this condition also appears to be satisfied.

5.3 Therefore, as per the applicant it can be clinched that ***the supply of AFC system should qualify as a composite supply with the supply of AFC system as the principal supply.***

#### **B. VIEW 2:**

6. As discussed above, for a supply to qualify as a works contract under GST, the AFC System would need to qualify as an immovable property. For the AFC System to qualify as an immovable property, the same would need to be permanently fastened to anything to the earth.

6.1 To ascertain whether a particular thing/object is permanently fastened to earth. English and Indian courts have consistently used two fold tests i.e.

- (i) the extent of annexation; and
- (ii) the object/intent of annexation.

6.2 The applicant has examined the said two tests in the present case as below:

- (i) The extent of annexation means by annexing a particular thing to an immovable property, such particular thing ceases to be detachable. To remove such thing, one would need to demolish it. While considering whether the thing/object is permanently annexed, the question is not the loss in value of the underlying thing/object, the question is whether economically, the asset is same as it was before removal i.e. does it retain its commercial character, or the same gets lost in the process of removal.
- (ii) As per the test of intent/object of annexation, it needs to be determined whether the annexation is for permanent beneficial enjoyment of the immovable property or of the movable property being attached to such immovable property. If the intent of annexation is the beneficial enjoyment of the movable property,

then the property still remains movable. This test may sound quite subjective, however, it is pertinent to note that here the precondition is “permanent beneficial enjoyment”. There are following two implications of the intent test:

- (a) The annexation must only be such as is required for beneficial enjoyment of the movable property. For example, a machine is cemented to earth because that is best way to use the machine. But if a storage tank, made of bricks and cement is built, one cannot say that the object of annexation is to use the storage tank. The tank has become such permanent part of the land that it is land which is being used by putting storage tank on it;
- (b) The second implication goes back to the extent test, i.e. if something is permanently attached so as to make it permanent fixture on land or another immovable property, one cannot contend that the intent of doing so as is to enjoy the fixture.

6.3 The Applicant stated that certain parts of the AFC system such as flap gates, POS machines and manual Swing Gates are embedded to the bus stations and, hence, becomes part of the immovable property i.e. the bus station. Hence, it may be viewed that the AFC system would qualify as an immovable property and, therefore, a Works Contract.

7. The next question which arises is whether the supply of the AFC system would qualify as a **‘Composite Supply’**. As discussed above, for a supply to qualify as a composite supply, the following conditions need to be satisfied:

- (i) There should be a combination of two or more taxable supply of service/ goods or any combination thereof.
- (ii) The supply should be naturally bundled with each other.
- (iii) Out of these supplies, one must be a principal supply and other must be ancillary supply.

7.1 Since, in the current case, there are more than one supply of goods (hardware) and services, the first condition appears to be satisfied.

7.2 With respect to the second condition, they would like to mention as follows:

- (i) “Naturally bundled supply” means a bundles of provision of various services/goods wherein an element of provision of one service is combined with an element or elements of provision of any other



service or services or goods or any combination thereof. For example, air transport services provided by airlines wherein an element of transportation of passenger by air is combined with an element of provision of catering service on board.

- (ii) Another example could be of “Rajdhani Express” in which the fare include provision of food served during the journey and the fare is not reduced even if the passenger do not opt for food. This is a naturally bundled supply.
- (iii) Further, as discussed above in view 2, Flyer issued by CBIC under the GST law for composite and mixed supply have discussed the conditions and factors relevant to determine whether a supply is naturally bundled supply. Such conditions and factors have been discussed above and the same have not been reiterated here for the sake of brevity. Basis these factors, it can be concluded that where the recipient’s perception is to receive all the supplies together and as per business practices all the supplies being offered by the supplier are as a bundled supply, the supplies would be considered as naturally bundled supplies.
- (iv) In the current case, it can be argued that the recipient has an option to avail the supply of goods from one contractor and supply of service from another contract. Hence, the recipient is under no obligation to avail both the supplies from one contractor only.
- (v) Further, in such cases, the recipient issued a detailed Request For Proposal (‘RFP’) specifying individual goods and services and based on the RFP, the applicant would submit the proposal. Thus, it cannot be said that the said product which would be drafted, prepared and tendered by the technical department of the recipient would be a standard product which can be offered to any other clients by the contractor in local market. Every client might have different need for different goods and services.
- (vi) Thus, it can be argued that this being a customized product as per the requirement of the recipient, cannot be said to have all the components of a naturally bundled supply. Thus, the supplies under the transactions should not be termed as naturally bundled. Hence, the second condition does not appear to be satisfied.

7.3 With respect to the third condition, it can be argued that both supply of hardware and software are equally important. As, hardware component would not work without the software component and vice versa, it cannot be said that any one of the supply would classify as a principal supply. Thus, the third condition also does not appear to be satisfied.

7.4 In view of the above, the supply of goods and services in present case would not qualify as a ‘Composite Supply’.

**QUESTION 2:**

8. ***Whether the supply made by the applicant 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 6% provided in the Notification No. 24/2017-Central Tax (Rate) dated 21 September 2017?***

8.1 Two possible views for the above question presented by the applicant are as below:

**VIEW-1:**

9. As per the Notification No. 24/2017–Central Tax (Rate) dated 21<sup>st</sup> September, 2017, the CGST rate of 6% has been prescribed for services provided to a local authority by way of erection, commissioning, installation, of a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession. The relevant extract of the Notification has been provided below for ready reference:

<i>Description of Service</i>	<i>Rate (per cent.)</i>	<i>Condition</i>
<p>.....</p> <p><i>“(vi) Services provided to the Central Government, State Government, Union Territory, <u>a local authority</u> or a governmental authority by way of construction, erection, <u>commissioning</u>, <u>installation</u>, completion, fitting out, repair, maintenance, renovation, or alteration of –</i></p> <p><i>(a) a <u>civil structure</u> or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;</i></p> <p><i>(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or(iii) an art or cultural establishment; or</i></p> <p><i>(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the</i></p>	6	-

<i>Schedule III of the Central Goods and Services Tax Act, 2017.</i>		
<i>(vii) Construction services other than (i), (ii), (iii), (iv), (v) and (vi) above.</i>	9	-

9.1 Further, Original works has been defined in the GST regime, vide Notification No. 12/2017-Central Tax (Rate) dated 28<sup>th</sup> June, 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;”*

9.2 From the above definition of “Original works”, it appears that the original works only includes erection, commissioning and installation services for a plant, machinery or equipment and does not cover supply of such equipment.

9.3 In this case, the proposed contract is for supply of the AFC system comprising supply of multiple hardware and software and commissioning, installation and integration of the same. All the supplies i.e. hardware, software, installation and integration etc. are integral part of the AFC system and any of such individual supply is not the principal supply. The principal supply would be the AFC system as a whole. Thus, commissioning and installation cannot be said to be a principal or main supply under the contract.

9.4 Further, typically, there is no separate price for such commissioning and installation specified under the contract. The price of the whole AFC system is inclusive of commissioning and installation charges and the same cannot be separately identified. The relevant extract from the existing Contract has been provided below for ready reference:

***“25.1 Prices of Hardware, software to be designed developed, supplied, installed and Payment Terms:***

*The agreed terms of prices of hardware and software are stipulated below:*

- (i) The prices of hardware and software units to be supplied and installed are inclusive of all taxes, duties, sales tax, excise duty and VAT.*
- (ii) The Prices are inclusive of installation and commissioning charges.*
- (iii) The prices of hardware and software are inclusive of warranty, operation and maintenance costs for one year of operation. The*

*operation shall be considered to start from the date of issuance of Project Acceptance / Go Live Certificate for Request Order issued.*

*(iv) The Payment shall be made in local currency only i.e. in INR.*

9.5 In view of the above, the applicant stated that it can be concluded that the supply of the AFC system would not qualify as 'original works'. Thus, the rate of 6% as provided in entry number (vi) of the Notification No. 11/2017 – Central Tax (Rate) as amended by Notification No. 24/2017 - Central Tax (Rate) should not be applied in case of the AFC system.

**VIEW-2:**

10. As discussed above, supply of erection, commissioning and installation services to a local authority for any 'Original Works' meant for use other than business, profession or commerce would be subject to a concessional GST rate of 6%.

10.1 The concept of "original Works" has been discussed above. Since, in the current case, the transaction is of installation of various equipment and structures, the same may qualify as "Original Work".

10.2 Further, the transportation of general public will be one of the duties entrusted to a municipality under the Article 243W of the Constitution. This task has been listed under Sr. No. 17 of the Twelfth Schedule as **"Public Amenities including Street Lighting, Parking Lots, Bus Stops and Public Conveniences."**

10.3 Thus, this being obligatory duties on the part of a municipality, this will be termed as any activity for use other than for commerce, industry, or any other business or profession.

10.4 Basis the above discussion, it can be argued that supply of the AFC system would qualify as "Original works". Thus, the rate of 6% as provided in entry number (vi) of the Notification No. 11/2017–Central Tax (Rate) as amended by the Notification No. 24/2017 - Central Tax (Rate) should apply in case of the AFC system.

**QUESTION- 3:**

11. ***Whether the HSN classification of supply made by NEC would fall under '8470' or '9954'?***

12. Two possible views for the above question presented by the applicant are as below:

**VIEW-1:**

12.1 The description of the HSN code '9954' as provided in the Notification No. 11/2017 – Central Tax (Rate) dated 28<sup>th</sup> June, 2017 is “*composite supply of works contract as defined in clause 119 of section 2 of the Central Goods and Services Tax Act, 2017*”

12.2 As discussed above, the supply by NEC India should not qualify as a works contract. Since, the supply by NEC India should not qualify as works contract, such supply should not get classified under '9954'.

12.3 Further, the description of the HSN code '8470' as provided in the Notification No.01/2017-Central Tax (Rate) dated 28<sup>th</sup> June, 2017 is “*calculating machines and pocket-size data recording, reproducing and displaying machines with calculating functions; accounting machines, postage-franking machines, ticket-issuing machines and similar machines, incorporating a calculating device; cash registers*”.

12.4 Considering that the main purpose of the AFC system is to compute the fare automatically and issue tickets along with integration of the system with the banks, the most appropriate HSN classification appears to be '**8470**'. Considering the rate of GST prescribed for HSN '8470' is 18%, the same should be applicable in this case.

**VIEW-2:**

13. As discussed in foregoing paras, supply of the AFC system would qualify as a works contract and hence, it is a service. Accordingly, HSN classification “**99546**” pertaining to the “*Installation Services*” to the immovable property will be the appropriate HSN.

**QUESTION- 4:**

14. ***Whether the maintenance and management services post implementation 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-Central Tax (Rate) dated 28<sup>th</sup> June, 2017 in case value of supply of goods constitutes not more than 25% of the value of the said composite supply?***

14.1 Apart from installation of the AFC system, the applicant would also be responsible to maintain and manage the AFC system for a period agreed in the contract. Such maintenance activity would also involve replacement of defective parts with spare parts to ensure smooth functioning of the AFC system. There is no separate consideration for parts to be supplied and consolidated fee for management or maintenance services is charged. Considering that multiple supplies are being provided for a consolidated fee, the concept of composite supply would need to be discussed.

14.2 **“Composite supply”** is defined as 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. Thus, for a supply to qualify as a composite supply, the following conditions need to be satisfied:

- *There should be more than two supplies of goods or services or both:*

In the current case, since management and maintenance would involve both goods and services i.e. more than two supplies, this condition appears to be satisfied.

- *They should be naturally bundled and supplied in conjunction with each other in the ordinary course of business:*

Supply of goods and services for maintenance and management of the AFC system would be naturally bundled as such supplies would only be provided where maintenance is to be done by the applicant. Even the intention of the recipient is to receive maintenance services. The nature of supplies which comprise of maintenance services is the responsibility of the service provider i.e. the applicant. Hence, in case maintenance of the AFC system is not done by the applicant, such supplies comprising of maintenance services would never be made. Hence, this condition also appears to be satisfied.

- *There should be one principal supply:*

In the current case, the objective/intention of the recipient is to receive management and maintenance of the AFC system. Hence, the principle supply would be of maintenance services. Supply of goods, if any would be incidental to it. Hence, this condition also appears to be satisfied.

14.3 In view of the above facts, the applicant stated that the supply of management and maintenance of the AFC system would qualify as a composite supply with maintenance services being the principle supply.

14.4 Further, as per the Notification No.12/2017 – Central Tax (Rate), dated 28<sup>th</sup> June, 2017, as amended by the Notification No. 02/2018 – Central Tax (Rate) dated 25<sup>th</sup> January, 2018, *composite supply of goods and services in which the value of supply of goods constitutes not more than twenty-five percent of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a*



*Municipality under article 243W of the Constitution has been exempted from levy of GST.*

14.5 Since Entry number 17 of the Schedule 12 of the Article 243W of the Constitution of India covers services in relation to public amenities including bus stops and public conveniences. The applicant is providing services in respect to bus stops and public conveniences to local authority. The applicant understand that such services should be eligible for exemption under GST provided goods constitute not more than twenty five percent of the value of the said composite supply.

**RECORD OF PERSONAL HEARING:**

15. Shri Amit Agrawal appeared for personal hearing on 12<sup>th</sup> March, 2020 and reiterated the facts as stated in the Application and mentioned herein above.

**OBSERVATION AND FINDINGS:**

16. We have gone through the facts of the case, documents on records and submissions made by the applicant.

17. The applicant is engaged in providing of solutions and services in multiple areas in public safety, private network, retail, IT, logistics, engineering services etc.. They are registered under GST, vide GSTN Number-24AACCN3496J1Z8.

18. As per the applicant, they have been awarded a comprehensive contract by the Surat Municipal Corporation ('SMC') (a Municipal body incorporated under the Bombay Provincial Corporation Act, 1949) and M/s Surat Smart City Development Limited (SSCDL) (a company incorporated under the companies act, 2013) 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 City').

18.1 The **objective** of the AFC system is to provide seamless travel with single smart card/ ticket on city's BRTS and City Bus Services. The AFC system is typically to be implemented in the following:

- **Bus Stations:** Supply of AFC system at the Bus Stations would involve supply as well as installation and commissioning of Point of Sell ('POS') machines, turnstiles, validators to be fitted on Turnstile Gates-Hardware component, Station Servers, Station UPS, Swing Gates, Network Rack etc. AFC System is to be supplied and installed to 195 BRT Bus Stations.
- **City Buses:** Supply of AFC system at the City Buses would involve supply as well as installation and commissioning of handheld Electronic Ticketing Machines ('ETMs') or ETM with printer for bar-coded ticket issuance and reader for smartcard readers for City Buses. Further, supply of AFC system at

the City Buses would also include supply of pole based entry/exit smart card validator for City Buses. The number of buses on which such system needs to be installed is 650.

18.2 The **scope of work** under the proposed contract would comprise of the following two activities:

- (i) Setting up of the AFC System; and
- (ii) Operation, Management and Maintenance of the AFC system.

18.2(i) **Setting up of the AFC System:**

As discussed above, the contract is for design, develop and supply of AFC system for BRTS and City Bus Services in the City. Setting up of AFC system comprises of the following activities:

*(a) Design, development, procurement, supply, integration, testing and commissioning of the AFC system:*

The applicant is responsible to provide multiple hardware (such as POS machines, Electronic Ticketing Machines (ETMs) (hand held and fixed to BRTS stations/poles), flap gates, station card validators and pole validators etc. and software. They are also responsible for installation, commissioning, integration, initialization of the equipment and software supplied under the contract. This includes installation of the requisite hardware at the BRTS Bus Stations and integration of the same with back end Servers and Software. This also involves providing of hand held ETM's, installation of Pole Validators in all City Buses and integration of the same with back end Servers and Software.

*(b) Integration of the AFC system with the card host, central clearing house system and smart cards provided by authority appointed bank:*

The local authority will appoint a bank for implementation of a common payment system for multiple municipal and retail services. The applicant would be required to provide the Application Platform Interface ('API'), Accessory Development Kit ('ADK') and interfacing protocols for the Bank to develop their own system for integration with the AFC System. Further, the applicant is also jointly responsible to integrate the AFC System with the Common Payment System to be developed by the Bank appointed by the local authority. Under this phase, the applicant would not be supplying any hardware.

(c) Commissioning, Management and Operation of Central Control Centre ('CCC'):

The responsibility to provide the site/location and furniture and fixture to set up a CCC shall be of the local authority. For setting up of CCC, the applicant would be required to supply hardware, software and install such hardware and software of the AFC System at the given site for the purpose of carrying out central monitoring and supervision of operation and functionality of the AFC System. CCC would also be used for handling ticketing and smart card related queries of the computers. Further, the applicant would also be responsible to maintain continuity of the AFC system in bus stations as well as the Buses in case of any stoppage or failures. This activity would be carried out in second phase of the Contract i.e. post completion of the AFC System.

**18.2 Maintenance and Management of the AFC system during Contract Period:**

The applicant is required to maintain and manage all hardware and software forming part of the AFC system during the contract period (this would range from 7-10 years). This would typically include repair and maintenance of hardware and software and ensuring that the AFC system continues to function as per the agreed parameters. This would also include supply of spares etc. for undertaking repairs, in case required.

19. In the subject case, we, thus, find that the proposed contract is for supply of the AFC system comprising supply of multiple hardware and software and commissioning, installation and integration of the same. Under said contracts, the hardware and software to be provided by the applicant consists of POS machines, ETMs, flap gates, validators, station servers, communication components, control centre hardware, manual swing gates for disabled etc.. All the supplies i.e. hardware, software, installation and integration etc. are integral part of the AFC system.

20. On perusing the submissions of the applicant and the documents submitted by them, we find that the basic issue before us is whether in the subject case there is a supply of "Works Contract" or "Composite Supply".

21. We shall now discuss the provisions relating to "Works Contract" and "Composite Supply". Under GST laws, the definition of "Works Contract" has been restricted to any work undertaken for an "Immovable Property" unlike the erstwhile VAT and Service Tax provisions where works contracts for movable properties were also considered.

22. The "**Works Contracts**" has been defined in Section 2(119) of the CGST Act, 2017 as:

*"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.”*

22.1 From the above, it, thus, can be seen that the term “works contract” has been restricted to contract for building construction, fabrication etc. **of any immovable property only**. Any such composite supply undertaken on goods say for example a fabrication or paint job done in automotive body shop will not fall within the definition of term works contract per se under GST. Such contracts would continue to remain composite supplies, but will not be treated as a Works Contract for the purposes of GST.

23. As per Para 6 (a) of the Schedule II to the CGST Act, 2017, works contracts as defined in Section 2(119) of the CGST Act, 2017 shall be treated as a supply of services. Thus, there is a clear demarcation of a works contract as a supply of service under GST. Hence, Works contract will be treated as service and tax would be charged accordingly.

24. In present case, it would also be relevant to ascertain whether setting up of the AFC System (comprising of Hardware and Software) would result into an immovable property to determine whether such supply would qualify as “Works Contract” under Section 2(119) of the CGST Act, 2017. To qualify as an immovable property, the AFC System supplied by the applicant would need to be permanently fastened to anything attached to the earth.

25. As per the applicant, apart from the flap gates and manual swing gates, which can arguable to be said to be fixed/ annexed to immovable property, rest all hardware to be supplied under said contracts are movable property. The flap gates, POS machines and manual swing gates are attached with screws and bolts at the entry gates of the bus station. These flap gates can be easily removed without damaging such gates and re-attached to some other locations. Hence, it cannot be said that such gates are permanently embedded to the bus stations and, hence, should be considered as an immovable property. Further, the flap gates are just a part of the AFC system and is not the main equipment of the AFC system. Even if, it is argued that the flap gates are permanently fastened to the earth and form part of the immovable property, it cannot be construed that the whole AFC system would form part of the immovable property.

26. The applicant further submitted that in case of city buses, hand held ETM machines with electronic payment integration are provided for the AFC system. In certain cases, Pole Validators with the AFC system are installed on the buses. Considering that the buses are movable properties, such equipment would not be construed as immovable property. Further, the purpose and function of the AFC system installed on the city buses and BRTS bus stations is the same i.e. fare

collection and providing seamless travel with a single smart card/ticket. Hence, it can be seen that the fixation/ attachment of the hardware to bus station/ terminal is not mandatory for the whole system to operate.

27. In view of the above, we agree with the applicant's contention that the contract for supply of the AFC system to the local authority does not qualify as a 'Works contract' under Section 2(119) of the CGST Act, 2017, since the installed AFC system cannot be said to result in the emergence of an immovable property.

28. As observed herein above that the AFC system is not an immovable property as it can be dismantled and moved to a different location without any damage. We further find from their submissions and agreement that the contract is considering a clear demarcation of goods & services to be provided by the applicant. Now, we have to decide whether the supplies are naturally bundled & in conjunction with each other as required by the definition of "composite supply". Hence, we refer to the definition of '**Composite Supply**' as mentioned in sub-section (30) of Section 2 of CGST Act, 2017, which is as under:

***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'.*

29. Thus, for a supply to qualify as a 'composite supply', the following needs to be satisfied:

- (i) There should be more than two supplies of goods or services or both;
- (ii) They should be naturally bundled and supplied in conjunction with each other in the ordinary course of business; and
- (iii) There should be one principal supply.

30. The above conditions have been examined in the present case, as under:

30.1 *There should be more than two supplies of goods or services or both:*

In the current case, there are more than two supplies of goods (hardware) and services (software) and commissioning and installation of hardware, software (services). Thus, there is supply of more than two goods and services. Hence, this condition is satisfied.

30.2 *They should be naturally bundled and supplied in conjunction with each other in the ordinary course of business:*

**The Flyers issued by the Central Board of Excise and Customs ('CBEC')** for composite and mixed supplies have provided guidance on how to determine

whether supplies are naturally bundled in the ordinary course of business as below:

*“Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below: -*

- *The perception of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package, then such a package could be treated as naturally bundled in the ordinary course of business.*
- *Majority of service providers in a particular area of business provide similar bundle of services. For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.*
- *The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. For example, service of stay in a hotel is often combined with a service or laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.*
- *Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are –*
  - *There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.*
  - *The elements are normally advertised as a package.*
  - *The different elements are not available separately.*
  - *The different elements are integral to one overall supply - if one or more is removed, the nature of the supply would be affected.*

In this case, the applicant would be awarded a consolidated contract for supply of the AFC system which involves supply and installation of hardware and software and integration of the AFC system with the Citywide Common Payment system. The contract would be awarded by the local authority to the applicant for providing the AFC system and not for individual hardware and software. The ownership of the AFC system would only pass on to local authority only once the



same is installed, tested and commissioned. Therefore, the supplies are perceived by local authority as a naturally bundled supply. Further, it can be seen from the existing contract that the requirement of local authority is to obtain complete AFC system and not individual hardware and software which form part of the AFC system. Even if one or more of the elements are removed, the functioning of the AFC system would get affected.

Further, we find that that while providing, the AFC system is the principal supply, supply of hardware and software would be incidental to the main supply of the AFC system. Hence, this test found to be satisfied.

### 30.3 There should be one principal supply:

As discussed above, in this case, there is one principal supply of the AFC system. Supply of hardware and software would be incidental to the main supply of the AFC system. Hence, this condition also appears to be satisfied.

31. From the discussions made above, we find that in the contract submitted by the applicant, the major part of the contract is supply of goods (hardware) i.e. POS machines, ETMs, Flap gates, Validators, Station servers, Communication components, Control centre hardware, Manual swing gates for disabled etc.. All these goods are integral part of the AFC system. These goods are being delivered to the client by the applicant and such goods that are supplied are used by the applicant to provide services of installation, testing and commissioning of the AFC System. Without these goods, the services cannot be supplied by the applicant and, therefore, we find that the goods (hardware) and services (software, installation and integration etc.) are supplied as a combination and in conjunction and in the course of their business where the principal supply is supply of goods. Thus, we find that there is a composite supply in the subject case.

32. Now that we have found that there is no works contract involved in the subject case and the supply is nothing but a composite supply with supply of goods being the principal supply, we come to the second question raised by the applicant which is, *whether the supply made by the applicant 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 Notification No. 24/2017-Central Tax (Rate) dated 21<sup>st</sup> September, 2017?*

33. As per the Notification No. 24/2017–Central Tax (Rate) dated 21<sup>st</sup> September, 2017, the CGST rate of 6% has been prescribed for services provided to a local authority by way of erection, commissioning, installation, of a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession. The relevant extract of the Notification is provided below for ready reference:

<i>Description of Service</i>	<i>Rate (per cent.)</i>	<i>Condition</i>
<p>.....</p> <p><i>“(vi) Services provided to the Central Government, State Government, Union Territory, <u>a local authority</u> or a governmental authority by way of construction, erection, <u>commissioning</u>, <u>installation</u>, completion, fitting out, repair, maintenance, renovation, or alteration of –</i></p> <p><i>(d) a <u>civil structure</u> or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;</i></p> <p><i>(e) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or(iii) an art or cultural establishment; or</i></p> <p><i>(f) 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.</i></p>	6	-
<i>(vii) Construction services other than (i), (ii), (iii), (iv), (v) and (vi) above.</i>	9	-

34. Further, **“Original works”** has been defined in the GST regime, vide para 2 of the Notification No. 12/2017-Central Tax (Rate) dated 28<sup>th</sup> June, 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;”*

34.1 From the above definition of “Original works”, it appears that the original works only includes erection, commissioning and installation services for a plant, machinery or equipment and does not cover supply of such equipment.

35. In this case, the proposed contract is for supply of the AFC system comprising supply of multiple hardware and software and commissioning, installation and integration of the same. All the supplies i.e. hardware, software, installation and integration etc. are integral part of the AFC system and any of such individual supply is not the principal supply. The principal supply would be the goods i.e. the AFC system as a whole. Thus, the services of commissioning and installation cannot be said to be a principal or main supply under the contract.

35.1 Further, typically, there is no separate price for such commissioning and installation services specified under the contract. The price of the whole AFC system is inclusive of commissioning and installation charges and the same cannot be separately identified. The relevant extract from the existing Contract has been provided below for ready reference:

***“25.1 Prices of Hardware, software to be designed developed, supplied, installed and Payment Terms:***

*The agreed terms of prices of hardware and software are stipulated below:*

*(v) The prices of hardware and software units to be supplied and installed are inclusive of all taxes, duties, sales tax, excise duty and VAT.*

***(vi) The Prices are inclusive of installation and commissioning charges.***

*(vii) The prices of hardware and software are inclusive of warranty, operation and maintenance costs for one year of operation. The operation shall be considered to start from the date of issuance of Project Acceptance / Go Live Certificate for Request Order issued.*

*(viii) The Payment shall be made in local currency only i.e. in INR.*

36. In view of the above, we find that the supply of the AFC system would not qualify as **‘original works’**. Thus, the rate of 6% as provided in entry number (vi) of the Notification No.11/2017 – Central Tax (Rate) as amended by the Notification No. 24/2017 - Central Tax (Rate) should not be applied in case of the AFC system.

37. Now, we come to the third question raised by the applicant which is, *whether the HSN classification of supply made by the applicant would fall under ‘8470’ or ‘9954’?*

38. The description of the HSN code ‘9954’ as provided in the Notification No. 11/2017 – Central Tax (Rate) dated 28<sup>th</sup> June, 2017 is “*composite supply of works*

*contract as defined in clause 119 of section 2 of the Central Goods and Services Tax Act, 2017”.*

38.1 As discussed above, the supply to be made under proposed Contract by the applicant does not qualify as a “Works contract”. Since, the supply by the applicant does not qualify as works contract, such supply should not get classified under ‘9954’.

39. Further, the description of the HSN code ‘8470’ as provided in the Notification No.01/2017-Central Tax (Rate) dated 28<sup>th</sup> June, 2017 is “*calculating machines and pocket-size data recording, reproducing and displaying machines with calculating functions; accounting machines, postage-franking machines, ticket-issuing machines and similar machines, incorporating a calculating device; cash registers*”.

39.1 Considering that the main purpose of the AFC system is to compute the fare automatically and issue tickets along with integration of the system with the banks, the most appropriate HSN classification is to be ‘**8470**’. Considering the rate of GST prescribed for HSN ‘8470’ is 18%, the same should be applicable in this case.

40. Now, we come to the last question raised by the applicant which is, *whether the maintenance and management services post implementation 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-Central Tax (Rate) dated 28 June 2017 in case value of supply of goods constitutes not more than 25% of the value of the said composite supply?*

41. Apart from installation of the AFC system, the applicant would also be responsible to maintain and manage the AFC system for a period agreed in the contract. Such maintenance activity would also involve replacement of defective parts with spare parts to ensure smooth functioning of the AFC system. **There is no separate consideration for parts to be supplied and consolidated fee for management or maintenance services is charged.** Considering that multiple supplies are being provided for a consolidated fee, the concept of composite supply would need to be discussed.

41.1 **“Composite supply”** is defined as 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. Thus, for a supply to qualify as a composite supply, the following conditions need to be satisfied:

- There should be more than two supplies of goods or services or both:

In the current case, there are more than two supplies of goods (hardware) and services (software, installation, integration and commissioning of hardware, maintenance and management of the AFC system). Thus, there is supply of more than two goods and services. Hence, this condition is satisfied.

- They should be naturally bundled and supplied in conjunction with each other in the ordinary course of business:

In this case, the applicant would be awarded a comprehensive contract for design, development, implementation, maintenance and management of open loop solution based AFC System for BRTS and City Bus Operation in Surat City. As per the Contract, the applicant is required to maintain and manage all hardware and software forming part of the AFC system during the contract period (this would range from 7-10 years). This would typically include repair and maintenance of hardware and software and ensuring that the AFC system continues to function as per the agreed parameters. This would also include supply of spares etc. for undertaking repairs, in case required. Thus, the said contract would be awarded for supply of the AFC system along with maintenance and management of the all hardware and software forming part of the AFC system. The proposed contract is not for individual supply of service of maintenance and management of the AFC system. Therefore, the supplies are perceived by local authority as a naturally bundled supply. Further, it can be seen from the existing contract that the requirement of local authority is to obtain complete AFC system along with maintenance & management of all hardware and software forming part of the AFC system during the contract period and not individual service (i.e. maintenance & management). Even if one or more of the elements are removed, the functioning of the AFC system would get affected.

Further, we find that that while providing the AFC system, which is the principal supply, supply of goods (hardware) and services (software, installation & commissioning, maintenance and management) would be incidental to the main supply of the AFC system. Hence, this test found to be satisfied.

- There should be one principal supply:

In the current case, the objective/intention of the recipient is to receive the AFC system. Hence, the principle supply would be of the AFC System. Supply of service (maintenance and management) would be incidental to the main supply of the AFC system. Hence, this condition is also satisfied.

41.2 In view of the above, we find that the supply of the maintenance and management services to be provided post implementation of the AFC system under proposed contract would also qualify as a 'composite supply' with the AFC system, being the principle supply.

42. Now, we come to the question *whether supply of the maintenance and management services post implementation of the AFC system would be eligible for exemption under Notification No.12/2017-Central Tax (Rate) dated 28 June 2017 in case value of supply of goods constitutes not more than 25% of the value of the said composite supply.*

42.1 The Notification No. 12/2017 – Central Tax (Rate), dated 28<sup>th</sup> June, 2017, as amended by the Notification No.02/2018–Central Tax (Rate) dated 25<sup>th</sup> January, 2018 provides that *composite supply of goods and services in which the **value of supply of goods** constitutes **not more than 25 percent of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity** by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution would be exempted from levy of GST.*

42.2 We find that the said contract would be awarded for supply of the AFC system along with maintenance and management of the all hardware and software forming part of the AFC system. The supply of the AFC system comprises supply of goods (multiple hardware) and services (software, installation, commissioning, integration of the same). Further, the maintenance and management would also include supply of spares etc. for undertaking repairs of the AFC system. The proposed contract, thus, comprises composite supply of goods and services. We further note from the contract that the value of the supply of all goods (hardware, spares etc.) under the proposed contract constitutes more than 25% of the value of the said composite supply. Further, the proposed contract is to be awarded by the **Surat Municipal Corporation ('SMC')** and **M/s Surat Smart City Development Limited (SSCDL)** to the applicant. We find that M/s SSCDL is a company incorporated under the Companies Act, 2013 and, hence, does not fall under the definition of the *local authority or a Governmental authority or a Government Entity*. As such, supply of the maintenance and management services to be provided post implementation of the AFC system does not eligible for said exemption.



43. In light of the foregoing, we rule as under –

### **R U L I N G**

**Question 1:** Whether the supply made by the applicant under the Automatic Fare Collection (AFC) project would qualify as: (a) ‘works contract’ defined under section 2(119) of the CGST Act, 2017; or (b) ‘composite supply’ defined under section 2(30) of the CGST Act, 2017?

**Answer:** The supply made by the applicant under the Automatic Fare Collection (AFC) project would qualify as ‘composite supply’ defined under section 2(30) of the CGST Act, 2017.

**Question 2:** Whether the supply made by the applicant 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 Notification No. 24/2017-Central Tax (Rate) dated 21<sup>st</sup> September, 2017?

**Answer:** The supply made by the applicant under the AFC project does not qualify as an original works meant predominantly for use other than for commerce, industry, or any other business or profession, thereby GST rate of 12% provided in the Notification No. 24/2017-Central Tax (Rate) dated 21<sup>st</sup> September, 2017 would not be applicable.

**Question-3** Whether the HSN classification of supply made by the applicant would fall under ‘8470’ or ‘9954’?

**Answer:** The HSN classification of the supply made by the applicant is to be ‘**8470**’. The Rate of GST for the same is 18%.

**Question-4:** Whether the maintenance and management services post implementation 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-Central Tax (Rate) dated 28<sup>th</sup> June, 2017 in case value of supply of goods constitutes not more than 25% of the value of the said composite supply?

**Answer:** The maintenance and management services to be provided post implementation of the AFC system under proposed contract would qualify as “composite supply” with the AFC system, being the principle supply, as defined under section 2(30) of the CGST Act, 2017. Further, such supply would **not** be eligible for exemption provided under Notification No.12/2017-Central Tax (Rate) dated 28<sup>th</sup> June, 2017 as amended by the Notification No.02/2018–Central Tax (Rate) dated 25<sup>th</sup> January, 2018, as (i) the value of the supply of all goods (i.e. hardware for AFC System & spares for its repairs) under the proposed contract

constitutes more than 25% of the value of the said composite supply; and (ii) the said ***composite supply*** *is to be made to the SMC and M/s SSCDL*, which is a company incorporated under the Companies Act, 2013 and, hence, not fall under the definition of the ***local authority or a Governmental authority or a Government Entity***.

**(SANJAY SAXENA)**  
**MEMBER**

**(MOHIT AGRAWAL)**  
**MEMBER**

Place: Ahmedabad

Date: 19.05.2020.