

**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/36/2020
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/60)

Date: 03.07.2020

Name and address of the applicant	:	M/s. SKG-JK-NMC Associates (JV), Shaligram, C-201, Lake View, Nr.Vaishnvo Devi Circle, S.P. Road, Khoraj, Gandhinagar, Gujarat-382735
GSTIN of the applicant	:	24ABIFM9433G1Z5
Date of application	:	24.10.2018
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	:	11.06.2020 (through Video Conferencing)
Present for the applicant	:	CA Suresh Kumar Goyal

BRIEF FACTS

The applicant is engaged in the execution of Works Contract of 'Construction of Pavement, Track Work, Warehouse, Admin Building, E&M works and other miscellaneous works at Khodiyar, Gandhinagar, Gujarat awarded by M/s RITES Ltd..

2. The applicant has been awarded the work of 'Construction of Pavement, Track Work, Warehouse, Admin Building, E&M works and other miscellaneous works at Khodiyar, Gandhinagar, Gujarat awarded by M/s RITES Ltd. (a Public Sector Undertaking owned by Indian Railways) vide Works Order No. Rites/RPO-ADI/NHSRCL/CONCOR/DCT-KHD/2018 dated 13.06.2018 for Rs.49.27 Crores (exclusive of GST). Copy of allotment letter enclosed).

3. The Scope of work as envisaged in clause 1.4 of the Tender includes:

Phase-I works:

- a. Track work complete as per Layout plan.
- b. Pavement along the track as per layout plan (appox.30500 sqm.).
- c. High mast lighting in the pavement along the track.

- d. Admin Building (G+1, approx..475 sqm. per floor) including all civil, electrical, water supply, sanitary and fire-fighting work.
- e. Electrical sub-station (ESS).
- f. Main entry gate and security cabin.
- g. Electrical installations in Admin building, ESS, Entry gate, Security gate etc.

Phase-II works:

- a. Warehouse-3 nos. of 140x30m each (3x4200 sqm=12600sqm.)
- b. Balance Pavement area like area around warehouse and connecting road between pavement near track and pavement around warehouse.
- c. EIMWB and EIMWB room.
- d. Electrical & fire-fighting works.
- e. Other misc. works as per requirement.

4. In backdrops of above, the applicant sought advance ruling on following question:

Whether the said work can be covered under clause 3(v)(a) of the Notification No.11/2017-Central Tax (Rates) dated 28.06.2017 i.e. Works Contract by way of construction, erection, commissioning or installation of original works pertaining to railways so as the entitle it for charging rate of GST@ 12% instead of 18% ?

Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s):

5. As per clause 3(v)(a) of the Notification No.11/2017-Central Tax (Rates) dated 28.06.2017, composite supply of Works Contract as defined in clause (119) of Section 2 of CGST Act, 2017 by ways of construction, erection, commissioning or installation by way of construction, erection, commissioning or installation of original works pertaining to,-

(a) Railways, including monorail and metro---

shall attract reduced rate of GST@ 12% instead of normal GST applicable @18% to Works Contracts.

6. Therefore, for the purpose of applicability of clause 3(v)(a) of the Notification No.11/2017-Central Tax (Rates) dated 28.06.2017, following conditions are required to be satisfied:

- (a) Whether the work awarded can be covered under the definition of Works Contract as defined u/s 2(119) of the CGST Act, 2017?
- (b) Whether the said work can be considered as 'original work' as mentioned in clause 3(v)(a) of the Notification No.11/2017-Central Tax (Rates) dated 28.06.2017?
- (c) Whether the said work can be considered as works contract pertaining to railways including monorail and metro?

7. They submitted their understanding in the light of interpretation of various relevant provisions of the CGST Act, 2017, as below:

A. Whether the work awarded can be covered under the definition of Works Contract as defined u/s 2(119) of the CGST Act, 2017?

A.1 As per Section 2(119) of the CGST Act, 2017, '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.

A.2 In view of the definition of works contract as mentioned above and specification of work as mentioned in para 3 of Annexure 1 above, as per their understanding, the said contract is also for construction in relation to immovable property wherein transfer of property in goods is involved in the execution of such contract. Therefore, the work awarded to the applicant should be covered under the definition of 'Works Contract', as defined under Section 2(119) of the CGST Act, 2017.

B. Whether the said work can be considered as 'original work' as mentioned in clause 3(v)(a) of the Notification No.11/2017-Central Tax (Rates) dated 28.06.2017?

B.1 As per clause (zs) of the Notification No.12/2017-Central Tax (Rates) dated 28.06.2017, the term 'Original work' has been defined 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;

B.2 Perusal of the detailed scope of work as per clause 1.4 of the tender document and brief scope of work as mentioned in para 3 above indicates that the work awarded to the applicant comprises of laying of track work as per layout plan, pavement along the track, construction of admin building, warehouse and electrical/fire-fighting works. Therefore, the applicant is of the understanding that all the said work as mentioned in the scope of work are in the nature of new work to be executed and, thus, covered under the definition of original work as defined in clause (zs) of said Notification and the work awarded can be considered as original work.

C. Whether the said work can be considered as works contract pertaining to railways including monorail and metro?

C.1 As discussed in para a and b above, it can be seen that in order to avail the reduced rate of GST levy @ 12% in terms of clause 3(v)(a) of the Notification No.11/2017-Central Tax (Rates), the first two conditions i.e. the work should be works contract and it should be an original work are satisfied. Now, they can examine the third condition which requires that the work should **pertain to railways, including monorail and metro.**

C.2 The said work has been awarded by M/s Rites Limited, which is a Public Sector Undertaking owned by the Ministry of Railways, Government of India. The work comprises of laying of track work as per layout plan, pavement along the track, construction of admin building, warehouse and electrical/fire-fighting works.

C.3 “Railways” has not been defined under CGST Act, 2017, therefore, it would be pertinent to refer various provisions of the Railway Act, 1989. **Section 2(31) of the Railway Act, 1989 defines “railways”,** as reproduced below:

“(31) “railway” means a railway, or any portion of a railway, for the public carriage of passengers or goods, and includes—

(a) all lands within the fences or other boundary marks indicating the limits of the land appurtenant to a railway;

(b) all lines of rails, sidings, or yards, or branches used for the purposes of, or in connection with, a railway;

(c) all electric traction equipments, power supply and distribution installations used for the purposes of, or in connection with, a railway;

(d) all rolling stock, stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, roads and streets, running rooms, rest houses, institutes, hospitals, water works and water supply installations staff dwellings and any other works constructed for the purpose of, or in connection with, railway;

(e) all vehicles which are used on any road for the purposes of traffic of a railway and owned, hired or worked by a railway; and

(f) all ferries, ships, boats and rafts which are used on any canal, river, lake or other navigable inland waters for the purposes of the traffic of a railway and owned, hired or worked by a railway administration, but does not include—

(i) a tramway wholly within a municipal area; and

(ii) lines of rails built in any exhibition ground, fair, park or any other place solely for the purpose of recreation;”

C.4 Further, Section 2(20) and (25) of the Railways Act, 1989 define “Government railway” and “Non-Governmental railway”, as reproduced below:

(20) “Government railway” means a railway owned by the Central Government;

(25) “non-Government railway” means a railway other than a Government railway;

Perusal of scope of work covered under the impugned Contract clearly shows that nature of works as mentioned in Phase-I & II of the Works Contract are covered under various clauses of definition of Railway under Section 2(31) of the Railway Act, 1989.

C.5 Reliance is placed on ruling by the **Authority of Advance Rulings-2016 (9) TMI 50** Other Citation: 2016 (45) S.T.R. 583 (A.A.R.) in the case of M/s Steadfast Corporation Ltd. Vs. Principal Commissioner of Service Tax,

Hyderabad, Telangana State. In this case, M/s Steadfast Corporation Ltd., is a Public Limited Company. They proposed to take up the activity of construction of Railway Works including siding for private companies as well as Indian Railways. They have raised the following question for ruling by the Authority:

“Whether construction of railway siding for private parties is exempted under Notification No. 25/2012-ST dated 20.06.2012, as amended vide entry no. 14(a) thereof?”

In this case, the basic thrust of argument on behalf of the Revenue is that out of two types of railway i.e. Government and Non-Government railway, benefits of Notification No. 25/2012-ST would be applicable only to Government railway. It is admitted fact that construction of railway siding would be construction of original work pertaining to railway in terms of Notification No. 25/2012-ST. It is to be observed that subject Notification No. 25/2012-ST does not differentiate between Government and Non-Government railway. “Railway” as per the Railway Act, 1989 inter-alia means means a railway, or any portion of a railway, for the public carriage of passengers or goods. However, Notification No. 25/2012-ST dated 20.06.2012 vide entry at S. No. 14(a) grants exemption to “railways” and is not restricted to “railway”. Even if the definition of “railway” is taken from the Railways Act, 1989 for interpreting said Notification, as Revenue has resorted to do, the benefit of Notification would be available to “railways” including “railway” used for purposes other than for public carriage of passengers or goods.

In view of above, they rule as under:

Construction of railway siding for private parties is exempt under Notification No. 25/2012-ST dated 20.06.2012, as amended vide entry No. 14(a) thereof.”

In view of the above Advance Ruling, in the instant case, the work relating to construction of rail tracks/ pavements etc. has been awarded by M/s RITES Ltd., which is a Public Sector Undertaking owned by the Ministry of Railways, Government of India. Further, the same is covered under Section 2(31) of the Railways Act, 1989. Therefore, the work awarded in the instant case by M/s RITES Ltd. to the applicant should be considered as work pertaining to railways in terms of clause 3(v)(a) of the Notification No.11/2017-Central Tax (Rates) dated 28.06.2017.

C.6 Further, the definition of railway under section 2(31) has also been adopted by the CESTAT, Chandigarh in the case of M/s Nabha Power Limited Vs. Commissioner of Central Excise & ST, Chandigarh in Appeal No.ST/52893/2015-DB in Final Order No.62617/2018.

C.7 In view of the above, as per their outstanding, the impugned works contract seems to be falling within the definition of railways and, hence, as per their opinion, GST rate applicable to said works should be 12% in terms of clause 3(v)(a) of the Notification No.11/2017-Central Tax (Rates) dated 28.06.2017.

8. They have also furnished an additional submission, vide their letter dated 10.06.2020, wherein they brought the following case laws on records for consideration during next hearing scheduled on 11th June, 2020:

A. Ruling by the Authority for Advance Rulings, West Bengal-27/WBAAR/2018-19-Case No. 28 of 2018 dated 21.12.2018 in RE: RITES Limited, wherein it has been ruled that construction of a private railway siding for carriage of a coal and oil fuel to Raghunathpur TPS, as described in the agreement between the Applicant and DVC, is a composite supply of works contract taxable @12% under Serial No. 3(v)(a) of the Notification No.11/2017-Central Tax (Rates) dated 28.06.2017.

B. Ruling by the Authority for Advance Rulings, Karnataka-2019 (10) TMI 1134 in RE: M/s Quatro Rail Tech Solutions Limited, wherein it has been ruled as under:

*“4.8 Since, this involves the works related to railway, the contract can be said to be pertaining to Railways. **The term “pertaining to Railway’ is more expansive and included other establishments other than Indian Railways. Hence, the contract is pertaining to Indian Railways.***

4.9 There is no stipulation in said entry that this contract must be executed to the Railways but is sufficient, that it must be pertaining to Railways and the supplier and the recipient in each of the contract is immaterial.”

C. In the instant case, the work has been awarded by M/s Rites Limited, which is a Public Sector Undertaking owned by the Ministry of

Railways, Government of India. Further, the same is covered under Section 2(31) of the Railways Act, 1989.

9. At the time of personal hearing held through Video Conferencing on 11.06.2020, the Authorised Representative of the applicant, CA Suresh Kumar Goyal reiterated the facts as stated in the Application and their additional submission dated 10.06.2020.

9.1 Further, the applicant vide their letter dated 24.06.2020 submitted that the said works contract is pertaining to Railways and the same is covered under clause 3(v)(a) of the Notification No.11/2017-Central Tax(Rate) dated 28.06.2017 i.e. works contract by way of construction, erection, commissioning or installation of original works pertaining to railways so as to entitle it for reduced rate of GST@12% instead of 18%.

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 and in subsequent submission dated 24.06.2020. We also considered the question/issue on which advance rulings have been sought for by the applicant, relevant facts having bearing on the questions/ issues raised and the applicant's understanding/interpretation of law in respect of the issue. We also considered the issue involved, on which advance ruling is sought by the applicant, relevant facts & the applicant's interpretation of law. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

11. The applicant has sought advance ruling in respect of following question:

Whether the said work can be covered under clause 3(v)(a) of the Notification No.11/2017-Central Tax (Rates) dated 28.06.2017 i.e. Works Contract by way of construction, erection, commissioning or installation of original works pertaining to railways so as to entitle it for charging rate of GST@ 12% instead of 18%?

12. We find that the applicant has been awarded the Contract by M/s Rites

Limited, which is a Public Sector Undertaking. Said contract was awarded for execution of works of laying of track as per layout plan, pavement along the track, construction of Admin building, Warehouse, Electrical works and Fire-fighting works etc. at Khodiyar, Gandhinagar, Gujarat. Further, contract is involving both supply of goods and services and is a composite supply in the nature of Works Contract Supply.

13. Entry No. 3(v)(a) of the Notification No.11/2017-Central Tax (Rates) dated 28.06.2017, as amended by Notification No. 20/2017-Central Tax (Rate) dated 22.08.2017 reads as under:

“Composite supply of Works Contract as defined in clause (119) of Section 2 of CGST Act, 2017 by ways of construction, erection, commissioning or installation by way of construction, erection, commissioning or installation of original works pertaining to,-

(a) Railways, including monorail and metro---;”

14. The Contract of the applicant should satisfy the following conditions to get covered under the above entry:

- (i) The Contract must be a composite supply of Works Contract;
- (ii) The Works must be a *construction, erection, commissioning or installation by way of construction, erection, commissioning or installation of original works;*
- (iii) It must pertain to Railway.

14.1 We find that the work awarded to the applicant comprises of laying of track as per layout plan, pavement along the track, construction of Admin building, Warehouse, Electrical works and Fire-fighting works etc. at Khodiyar, Gandhinagar, Gujarat. These works are in the nature of new works to be executed. These also involve construction of “original works”. As such, same are covered under the definition of ‘original work’, as defined in clause (zs) of the Notification No.12/2017-Central Tax (Rates) dated 28.06.2017 and as reproduced herein below and, hence, the second condition is satisfied.

(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;

14.2 We further find that as it is relating to an immovable property wherein transfer of property in goods is involved, the entire contract is covered under the definition of 'Works Contract', as defined under Section 2(119) of the CGST Act, 2017 and, hence, the first condition is satisfied.

14.3 The main issue is whether this is a contract pertaining to Railways. We find that in the instant case, the work relating to construction has been awarded by an entity, viz. M/s RITES Ltd. However, the applicant has submitted no evidence in support of the claim that work awarded to them pertains to Railways.

14.3.1 We find that "Railways" has not been defined under CGST Act, 2017, therefore, we refer to various provisions of the Railway Act, 1989. **Section 2(31) of the Railway Act, 1989 defines "railways"**, as reproduced below:

"(31) "railway" means a railway, or any portion of a railway, for the public carriage of passengers or goods, and includes—

(a) all lands within the fences or other boundary marks indicating the limits of the land appurtenant to a railway;

(b) all lines of rails, sidings, or yards, or branches used for the purposes of, or in connection with, a railway;

(c) all electric traction equipment's, power supply and distribution installations used for the purposes of, or in connection with, a railway;

(d) all rolling stock, stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, roads and streets, running rooms, rest houses, institutes, hospitals, water works and water supply installations staff dwellings and any other works constructed for the purpose of, or in connection with, railway;

(e) all vehicles which are used on any road for the purposes of traffic of a railway and owned, hired or worked by a railway; and

(f) all ferries, ships, boats and rafts which are used on any canal, river, lake or other navigable inland waters for the purposes of the traffic of a railway and owned, hired or worked by a railway administration, but does not include—

(i) a tramway wholly within a municipal area; and

(ii) lines of rails built in any exhibition ground, fair, park or any other place solely for the purpose of recreation;”

14.3.2 Further, Section 2(20) and (25) of the Railways Act, 1989 define “Government railway” and “Non-Governmental railway”, as reproduced below:

(20) “Government railway” means a railway owned by the Central Government;

(25) “non-Government railway” means a railway other than a Government railway;

14.3.3 The Applicant has produced no evidence that the work was allotted to M/s RITES Ltd was pertaining to railways as defined at Section 2(31) of the Railway Act, 1989. There is also no evidence on record whether the work has been awarded in respect of “Government railway” or “Non-Governmental railway”. Although, the applicant has sought to infer that the said work was in respect of railways owned by Ministry of Railways, but he has not provided any supporting evidence in the form of agreement between M/s RITES Ltd and Ministry of Railways to establish the same. Therefore, in absence of any such conclusive proof that the work pertains to railways, we hold that third condition is not satisfied.

14. In view of the above, we hold that the contract work is not covered under clause no. 3(v)(a) of the Notification No.11/2017-Central Tax (Rates) dated 28.06.2017, as amended by Notification No. 20/2017-Central Tax (Rate) dated 22.08.2017.

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

R U L I N G

Question-1: Whether the said work can be covered under clause 3(v)(a) of the Notification No.11/2017-Central Tax (Rates) dated 28.06.2017 i.e. Works Contract by way of construction, erection, commissioning or installation of original works pertaining to railways so as the entitle it for charging rate of GST@ 12% instead of 18%?

Answer: No. The said contract work is not covered under clause 3(v)(a) of the Notification No.11/2017-Central Tax (Rates) dated 28.06.2017, as amended by Notification No. 20/2017-Central Tax (Rate) dated 22.08.2017.

(SANJAY SAXENA)

MEMBER

(MOHIT AGRAWAL)

MEMBER

Place: Ahmedabad

Date: 03.07.2020.