



HARYANA AUTHORITY FOR ADVANCE RULING,
GOODS AND SERVICES TAX,
HARYANA VANIJYA BHAWAN, PLOT NO 1-3, SECTOR 5,
PANCHKULA-134151 (HARYANA)



ADVANCE RULING NO.HAR/HAAR/R/2019-20/26
(In Application No.: 26/2019-20, dated 17.01.2020)

Name & Address of the Applicant	:	M/s KSC Buildcon Private Limited, KSC Tower, 1 st Floor, Circular Road, Meham Gate, Near Kajal Nursing Home, Bhiwani, Haryana.
GSTIN of the Applicant	:	06AAECK5780G1ZF
Date of Application	:	17.01.2020
Clause(s) of Section 97(2) of CGST/HGST Act, 2017, under which the question(s) raised.	:	Clause(b)-applicability of a notification issued under the provisions of this Act.
Date of Personal Hearing	:	18.06.2020
Present for the Applicant	:	Sh. Ankit Sapra (Authorized Representative).

Memo No.: 1066/AAR
Dated: 28.08.2020

Brief Facts of the Case:

1. M/s KSC Buildcon Private limited is incorporated as Private limited company under the provisions of The Companies Act, 1956 and is also registered under the provisions of the Central Goods and Services Tax Act, 2017 read with the provisions of the Haryana State Goods and Services Tax Act 2017 (hereinafter known as the "Applicant").
2. That the applicant is engaged in the business of providing composite supply of work contract including sale of goods and also indulged in the mining of various stones & minerals and alike in the state of Haryana since 2011. The applicant also transfers the property in goods so produced during the process of work contract to various government entities engaged in the business of mining & private firms in trading of said goods.
3. The applicant has applied for seeking advance ruling under section 97(1) of the CGST Act, 2017 for a work Contract allotted by Haryana State Industrial & Infrastructure Development Corporation Ltd (hereinafter referred to as "HSIIDC") as per the terms in their mutual contract and LOI as annexed with the application.



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4. That further it has been detailed by the applicant in the contract and appurtenant to other supporting documents that the skilled and unskilled labour, special purpose vehicles & equipments, construction services, technical Knowhow, loading and unloading of goods, transportation services, excavation of stones, trading & supply of various types of stones, development of mines as per the statutory provisions of MMR-1961 & DGMS and transferring of property in goods has been initiated at the Khanak mining site of Bhiwani district, Haryana.
5. That the work contract allotted as discussed above is in the nature of earthwork supplied to a government entity and the same was entrusted by state government to HSIIDC and the applicant is a contractor providing composite supply of work contract as defined in clause 119 of Sec-2 of the CGST Act, 2017, involving pre dominantly earth work (i.e. constituting more than 75% of the value of work in contract) provided to Central Government, State Government, Union Territory, Local authority, a government authority or a Government Entity.
6. That as further explained by the applicant, the above consideration will be subject to TDS deduction u/s 194C of Income Tax Act, 1961.

Question(s) on which advance ruling is required:

7. The question on which advance ruling has been sought is-

Whether the Serial No. 3 of Notification No. 31/2017-Central Tax (Rate) dated 13th October, 2017 issued under the GST Act, being Composite supply of work contract as defined in clause 119 of Sec-2 of the CGST Act, 2017, involving pre dominantly earth work i.e. constituting more than 75% of the value of work in contract) provided to Central Government, State Government, Union Territory, Local authority, a government authority or a Government Entity having GST rate of 5% applicable to the applicant.



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Discussion and findings:

8. The nature of work awarded is related to earthwork viz drilling, excavation, removal, and dumping of waste material along with supply of skilled & unskilled manpower, special purpose vehicles & equipments, supply of stones, construction including haul roads/ramp/benches on the mining site and transportation of the excavated goods. Such type of work is related to mining development and generally is done on earth surface to excavate stones as per requirement of contract.
9. As per Section 2 Clause (119) of 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. They have also specified the scope of work allotted in their tender document as follows:

- To deploy necessary Mining Machinery and equipments along with diesel & other consumables, operation and maintenance personnel for mine development work viz drilling, excavation, removal, transportation and dumping of waste material at the place earmarked for the purpose as per Mining Plan or Mines Manager/Mining Engineer guidelines.
- Construction, formation and maintenance of approach/road/ramp/benches, etc as per MMR 1961 and relevant applicable Circulars issued by DGMS. Construction of staff quarters and building for storage of stores & consumables at the mining site

10. That the applicant has provided a composition of various inseparable services and goods which are naturally bundled whose consideration has been received through undistributed bills. The following are the major heads of goods and services supplied, thus making it a composite supply of work contract.



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- SAC 99731: Supply of mining machinery along with operators/drivers.
- SAC 9985: Supply of manpower including skilled & unskilled manpower at the site.
- SAC 995426: Construction of mining site including development of approach, road, benches, plinths and other mining benches.
- SAC 995421: Electrification of approach road, boundary wall of the mining site.
- SAC 99651: Transportation of goods.
- HSN 2517: Supply of goods including rodi, dust, crusher stone, blue stone, red stone to HSIIDC.

11. As per the definition described in the said Notification No. 31/2017-Central Tax (Rate), "**Government Entity**" means an authority or a board or any other body including a society, trust, corporation,

(i) set up by an Act of Parliament or State Legislature or

(ii) established by any government,

with 90% or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.

Also, As per Section 2, Clause 53 of HGST Act, 2017 "**Government**" means the **Government of the State of Haryana**.

12. The applicant submitted that the 100% equity of the Corporation M/s Haryana State Industrial & Infrastructure Development Corporation (HSIIDC) is held by the State Government of Haryana and as such the Corporation is a Government Company under Section 617 of the Companies Act, 1956; hence the above is a government entity under the GST.

13. The work of Mining project at Village Khanak, District Bhiwani has been entrusted to Haryana State Industrial and Infrastructure Development Corporation Limited by Department of Industries and Commerce, Government of Haryana. This has been specified to clarify the condition of the Notification that where the services are supplied to a Government entity, this should have been procured by the said entity in relation to a

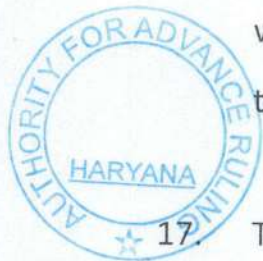


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work entrusted to it by the Central Government, State Government, Union Territory or Local Authority as the case may be.

14. Section 51 of the CGST Act, 2017 prescribes that TDS under GST is required to be deducted at the rate of 1% on payments made to the supplier of taxable goods and/or services or both, where the total value of such supply, under a contract, exceeds Rs. 2,50,000. One of the entities liable to deduct tax at source under GST Act is an authority or a board or any other body which has been set up by Parliament or a State Legislature or by a government, with 51% equity owned by the government.
15. That the tax has been deducted at source by the HSIIDC and is reflecting in Part C of their Form GSTR-2A. Thus, HSIIDC fulfils all conditions of being a government entity & they have supplied composite supply of work contract involving predominantly earthwork to HSIIDC for which the work has been entrusted to the corporation by Government of Haryana.
16. That the TDS under Income Tax was deducted under Section 194C (Contractual Payments) of the Income Tax Act, 1961 as the said condition of work order by HSIIDC. The section of the said act dealing with rent/Lease of property is 194I. The applicants have also annexed a decided case law of M/s City Corporation Ltd vs Department of Income Tax, dt.12/08/2015; ITA No.593/594/PN/2014 whereby tribunal has placed reliance on the decisions of Hon'ble Gujarat High Court in the case of Shree Mahalaxmi Transport Co. reported as 339 ITR 484 (Guj.) and Swayam Shipping Services Pvt Ltd reported as 339 ITR 647 (Guj.) Whereby similar tender allotted to has been regarded as contract and not leasing by the Hon'ble High Court. It was concluded that payments made for hiring machinery like JCB, Poclain etc with driver are in nature of works contract and not 'rent' and will be liable to deduction of tax at source u/s 194C.



17. The applicants had also quoted advance ruling order no. - JHR/AAR/2018-19/01 issued by JHARKHAND AUTHORITY OF ADVANCE RULING GOODS AND SERVICES TAX under clauses of section 97(2) of CGST/SGST/UGST Act, 2017 regarding applicability of notification no. 39/2017 IGST dated

13.10.2017 {as similar to 31/2017 CGST) regarding definition of government entity & earthwork excavation & categorised as Work Contract as defined in section 2(119) of CGST Act, 2017. The applicable classification is "Composite Supply of Works Contract involving predominantly earthwork supplied to a Government entity is taxable @ 5%".

18. The Haryana State Industrial & Infrastructure Development Corporation (HSIIDC) is a company incorporated under the provisions of the Companies Act, 1956 with the objectives to develop industrial infrastructure in the State of Haryana under the aegis of Department of Industries and Commerce, Haryana. 100% equity of the Corporation is held by the State Government and as such the Corporation is a Government Company under Section 617 of the Companies Act, 1956 and hence Government Entity under GST.
19. As per Section 51 of the CGST Act, 2017, a government entity is entitled to deduct tax at source under GST at the rate of 1% on payments made to the supplier of taxable goods and/or services or both, under a contract if it exceeds Rs. 2,50,000. In the present case, HSIIDC being a government entity and applicant being a contractor in terms of work contract allotted to them, TDS in terms of Goods & service tax was deducted and deposited by HSIIDC, concluding the nature of payments as contractual services.
20. In order to ascertain the applicability of the notification no. 31/2017 on the present contract of the applicant, the nature of work needs to be examined.

The term "Earth Work" has not been defined under any GST provisions. The Webster Dictionary defines Earth Work as "an embankment or construction made of earth specially one used as a field fortification. The Collins dictionary defines Earth Work as "excavation of earth as in engineering construction; a fortification made of earth. The Wikipedia defines Earth Work as "Earth Work are engineering works through the processing of parts of earth surface involving quantities of soil or unformed rocks. After going through different definitions of earth work, we find bulk earthworks include removal, moving or adding of large quantities of soil or rock from a



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particular area to another. They are done in order to make an area of suitable height and level for a specific purpose.

21. It is evident that the said work order is in the nature of composite supply of work contract involving predominantly earthwork. It has also been detailed in PART III of the allotted tender (as annexed with the application by the applicant) that the nature of work is production of stones, supply of skilled & unskilled manpower, supply of special purpose vehicles & other mining equipments also involving construction services and supply of goods wherein transfer of property in goods is involved. The major part of the contract involves earth work i.e. more than 75% of the work involves earth work.

Comments of the Officer under Section 98(1) of the CGST, HGST Act 2017

22. The Deputy Excise & Taxation Commissioner (ST), Bhiwani, Haryana has submitted the comments of the proper officer under Section 98(1) of the HGST Act, 2017 vide letter No. 2535 dated 24.02.2020. The comments have been described below:
23. The dealer is engaged in undertaking work contract for excavation of stones, loading and unloading of goods, transportation services, development of mines as per the statutory provisions of MMR-1961 & DGMS.
24. As per the nature of work assessed by the proper officer pertaining to work contract as awarded by Haryana State Industrial & Infrastructure Development Corporation (HSIIDC) to the applicant, it involves predominantly earthwork & the same is in the nature of composite supply of work contract as defined in clause 119 of section 2 of CGST/HGST Act, 2017. Also HSIIDC is undertaking a government entity as 100% equity shares of company are held by the state government and as per clause 53, Section 2 of HGST Act, government entity was Government of Haryana. Also as per section 617 of Companies Act, 1956, HSIIDC is registered as a government company.



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25. From the above findings, the proper officer assessed that notification 31/2017 is applicable to the contract of the dealer.
26. In view of the above, since the major part of the work order, i.e. more than 75% is "Earth Work", we find that the said work order qualifies for the benefit of Serial No. 3 of Notification 31/2017 dated 13.10.2017 issued under GST Act, being composite supply of works contract as defined in clause 119 of sec-2 of the CGST Act, 2017, involving pre dominantly earth work i.e. constituting more than 75% of the value of work in contract provided to Central Government, State Government, Union Territory, Local authority, a government authority or a Government Entity. Therefore, GST will be applicable at the rate of 5% (2.5% CGST + 2.5% HGST).

Advance Ruling under section 98 of the CGST/HGST Act 2017

- i) As per Serial No. 3, Heading 9954 of the Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017 under the CGST Act, 2017 and as per Notification No. 31/2017-Central Tax (Rate), dated 13.10.2017 under the CGST Act, 2017 and the corresponding State Tax notification under HGST Act, 2017, The work carried by the applicant is a Composite supply of work contract involving pre dominantly earth work provided to a Government Entity and thus attract 5% GST (2.5% CGST + 2.5% HGST). Thus, the Serial No. 3 of Notification No. 31/2017-Central Tax (Rate) dated 13.10.2017 under the CGST Act, 2017 is applicable to the applicant.

Ordered accordingly.
To be communicated.

26.06.2020
Panchkula.




(Sangeeta Karmakar)
Member CGST


(Madhubala)
Member SGST

Regd. AD/Speed Post

**M/s KSC Buildcon Private Limited,
✓KSC Tower, 1st Floor, Circular Road,
Meham Gate, Near Kajal Nursing Home,
Bhiwani, Haryana.**

Copy to:

1. Commissioner of Central Goods and Services Tax, 2nd Floor, Pacific City Centre, Opposite Shangrila Hotel, Near Jat Bhawan, Delhi Bypass, Rohtak, Haryana.
2. Deputy/Assistant Commissioner, CGST Division Bhiwani, SCO-1, City Centre HUDA, Near Basiya Bhawan, Bhiwani, Haryana.
3. Deputy Excise and Taxation Commissioner (ST), Bhiwani.