

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560 009**

Advance Ruling No. KAR ADRG 48 / 2021

Date : 30-07-2021

Present:

1. Dr. M.P. Ravi Prasad
Additional Commissioner of Commercial Taxes Member (State)
2. Sri. Mashhood Ur RehmanFarooqui,
Joint Commissioner of Customs & Indirect TaxesMember (Central)

1.	Name and address of the applicant	M/s. Bangalore Street Lighting Private Limited, 7 th Floor, Property No.124, Surya Chambers, Off Old Airport Road, Murgeshpalya, Bengaluru-560 017.
2.	GSTIN or User ID	29AAICB3573E1ZL
3.	Date of filing of Form GST ARA-01	17-06-2021
4.	Represented by	Sri Karthik Dadhia, C A & Duly Authorised Representative
5.	Jurisdictional Authority – Centre	The Commissioner of Central Taxes, Bangalore East Commissionerate, Bengaluru (RANGE-AED5)
6.	Jurisdictional Authority – State	ACCT, LGSTO-045A, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act & Rs.5,000/- under KGST Act vide CIN SBIN20052900124791 dated 26/05/2020.

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER SECTION 98(4) OF THE KGST ACT, 2017**

M/s. Bangalore Street Lighting Private Limited, 7th Floor, Property No.124, Surya Chambers, Off Old Airport Road, Murgeshpalya, Bengaluru-560 017. having GSTIN 29AAPCA3170M1Z5, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of KGST Rules, 2017, in form GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.



2. The Applicant is a Private Limited company registered under the provisions of Central Goods and Services Tax Act, 2017 as well as Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act and KGST Act respectively). The 'Applicant ESCO' is a special purpose vehicle incorporated by a selected consortium, M/s. Shapoorji Pallonji and Company Pvt. Ltd., M/s. SMC Infrastructures Private Limited and M/s. Samudra Electronic System Pvt. Ltd., (hereinafter collectively called as 'consortium bidder'), to implement and execute the Energy performance contract dated 01-03-2019, for supply and installation of LED luminaries, feeder panels, switch gears, cables & other equipment and their installation and operation & maintenance of the Public Lighting Network.

3. In view of the above, the applicant sought advance ruling in respect of the following questions:

- i. Whether the street lighting activity undertaken under the Energy Performance Contract dated 1st March 2019 (which involves supply of various goods and rendition of various services), is to be considered as a Composite Supply under the CGST / KGST Act 2017?
- ii. If so, whether supply of luminaires, without which there can be no energy conservation, and which is the primary deliverables, constituting approximately 70% of the total project cost, can be construed as the principal supply? What would be the applicable rate of GST on supply made under this contract?
- iii. If supply of services is held to be the principal supply, which of the various services being rendered would constitute the principal supply? What would be the applicable rate of GST on supply made under this contract?
- iv. Whether the Applicant is entitled to the benefit of exemption under Entry 3A of Notification No.12/2017-Central Tax (Rate) dated 28-06-2017, as amended?
- v. If the transaction is treated as a supply of luminaires, what is the time of such supply? Whether Applicant ESCO would be liable to pay tax at the time when invoices are issued as envisaged in Explanation 1 to Section 12(2) of the CGST / KGST Act only at the time when the possession and ownership in goods are vested in "BBMP" at the end of tenure?
- vi. What would be the value of the aforesaid taxable supply given the fact that payments are to be received based on energy savings, which can be computed on a monthly basis, with reference to the energy auditor certifying the workings submitted by Applicant?



4. **Admissibility of the application:** The question is about “applicability of a notification issued under the provisions of this Act”; “determination of the liability to pay tax on any goods or services or both”; “whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term” and hence is admissible under Section 97(2)(b)(e)& (g) of the CGST Act 2017.

5. **BRIEF FACTS OF THE CASE:** The applicant furnished the following facts relevant to the issue:

5.1 The Applicant stated that they have entered into an Energy Performance Contract dated 01.03.2019 with Bhruhat Bengaluru Mahanagara Palike (hereinafter referred to as BBMP), wherein it is required to install and implement energy conservation measures and also operate and maintain the Project Public Lighting Network, in the city of Bengaluru, for a period of ten years, through a special purpose vehicle incorporated by the consortium bidder. The Applicant ESCO is the said SPV incorporated by the consortium bidder.

5.2 In terms of the energy performance contract, the Applicant ESCO is primarily required to supply LED luminaires so as to replace the existing luminaires forming part of the project **Public Lighting Network**, dimming of switching point LUX during designated hours, as also undertake measures to achieve guaranteed energy savings.

5.3 The Applicant states that as per clause 2 of the energy performance contract, the scope of the project includes-

- a) *Designing, financing, identifying, installing and implementing ECMs and installing Other Initiatives for the Switching Point Lights and any New Lights subsequently added to the Project Public Lighting Network.*
- b) *Upgrading, rehabilitating and replacing such parts of the Project Public Lighting Network, including the Feeder Panels, Feeder Panel Cables, Meters, outreach arms etc.*
- c) *Operating and maintaining the Project Public Lighting Network and Other Initiatives, including making necessary replacements of LED Luminaires and other equipment during the term, in line with good industry practice, key performance indicators and standards specified in the contract.*
- d) *Achieving energy savings, at least to the level of Guaranteed Energy savings.*

5.4 The expression ‘ECM’ has been defined in the Energy Performance Contract to mean, energy conservation measures and when used in the context of the Project shall inter alia include replacement of existing luminaires forming part of Project Public Lighting Network with LED luminaires. In terms of clause 2.3 of the energy performance contract, the full ownership, rights and title to the Project Public



Lighting Network, as upgraded, rehabilitated or installed by the consortium along with meters, underground cables and overhead conductors incorporated by the consortium therein, shall vest with BBMP. The property in the LED luminaires, feeder panels etc., shall be transferred from the Applicant ESCO to BBMP on expiry of the contract or termination thereof.

5.5 The Applicant ESCO estimates that out of the total cost of the project running into about Rs.1100 crores, the cost of procuring LED luminaires would be around Rs.700 crores, while the cost of all Equipment such as feeder panels, feeder panel cables, switch gears is about Rs.100 crores. The cost of installing the entire network of the project is around Rs.45 crores, while the cost of operating and maintaining the project Public Lighting Network would be approximately Rs.300 crores.

5.5 In terms of Clause 9 of the energy performance contract, the consideration for the work to be executed under the contract is in two parts-

- a. Share of energy saving calculated on a monthly basis.
- b. Fixed payment of Rs.500 per annum per Switching Point Light. Clause 9.2 of the energy performance contract stipulates the manner of billing on a monthly basis. Further Clause 9.8 stipulates that the tax on the aforesaid consideration is to be charged extra, on actuals.

6. Applicant's Interpretation of Law:

6.1 The Applicant ESCO submits that the energy performance contract in question involve supply of LED Luminaires, feeder panels, switch gears, etc. (goods) and installation of the same for the project Public Lighting Network, along with operation and maintenance of the said network for a period of ten years.

6.2 In the Applicant's view, the supply of goods and services are naturally bundled and supplied in conjunction with one another, in the ordinary course of business. Consequently, the energy performance contract appears to be a contract for making a 'Composite Supply', which is defined in Section 2(30) of the CGST Act, to mean a supply made by a taxable person to a recipient consisting 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.

6.3 The expression principal supply has been defined under Section 2(90) of the CGST Act to mean the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary. In the Applicant's submission, the principal supply under the energy performance contract is supply of goods viz. LED luminaires. This is so because the intention of the contracting parties is to achieve energy savings, which cannot be given effect to without the supply of LED



luminaires. It is by replacing old luminaires with LED luminaires that the energy conservation is to primarily happen. Further about 70% of the entire project cost is attributable to the supply of LED luminaires. In the Applicant's view, the supply of LED luminaires is thus the predominant element of the composite supply.

6.4 The supply of other equipment such as feeder panels, underground cables, meters, installation of the equipment, operation and maintenance of the project Public Lighting System are ancillary to the supply of LED luminaires, which are the sine qua non of any effort to achieve energy conservation. There could have been no energy conservation initiated without the supply of LED luminaires, which form the very edifice of the entire energy performance contract. Accordingly, in the Applicant's view, the principal supply under the composite contract is that of supply of LED luminaires.

6.5 Section 8 of the CGST Act stipulates that a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply. Thus, in terms of Section 8 of the CGST Act, the entire contract ought to be taxed as a supply of goods i.e. LED luminaires.

6.6 Insofar as the time of supply in the present case is concerned, Section 12(2)(a) of the CGST Act stipulates that the time of supply is the earlier of the date of issuance of invoice or the date on which the supplier is required to issue an invoice under Section 31(1) of the Act. In terms of Explanation 1 thereto, a supply is deemed to have been made to the extent it is covered by the invoice.

6.7 In the instant case, the energy performance contract provides for raising a monthly invoice. Applying the Explanation 1 to Section 12(2) of the CGST Act, the supply to the extent the invoice has been raised will be deemed to have been made on a monthly basis. Thus even though the property in the LED Luminaires is contractually to be transferred at the end of the contract or on its termination, by virtue of Explanation 1 to Section 12(2), there will be a deemed supply to the extent of the invoice that is raised, Each month.

6.8 In the Applicant's view, since there is a deemed supply of goods to the extent the invoice is raised every month, the value of supply would be as stated in the invoice.

6.9 The Applicant ESCO has also mentioned that the Authority for Advance Ruling in Karnataka has, in an application made by Karnataka State Electronics Development Corporation Ltd., (Advance Ruling No.KAR ADRG 07/2020), analysed a similar contract for achieving energy savings and held that the supply under the contract is a composite supply where the principal supply is supply of goods i.e. LED luminaires. The authority also held that the time of supply shall be the date of the invoice.



6.10 The Applicant ESCO submits that it may not be eligible for exemption in terms of SL.No.3A of Notification No.12/2017 dated 28.06.2017 inasmuch as the value of goods covered under the composite supply contract is more than 25% of the value of the composite supply. For case of reference, the relevant entry is extracted herein below-

"Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent of the value of the said composite supply provided to the Central Government, state Government or Union territory or local authority or a Government 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."

PERSONAL HEARING: / PROCEEDINGS HELD ON 30-06-2021

7. Sri Karthik Dadhia, Chartered Accountant & Authorised Representative of the applicant appeared for personal hearing proceedings held on 30-06-2021 and reiterated the facts narrated in their application.

FINDINGS & DISCUSSION

8. We have considered the submissions made by the applicant in their application for advance ruling. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts along with the arguments made by the applicant & the submissions made by their learned representative during the time of hearing. At the outset, we would like to state that the provisions of both the CGST Act and the KGST 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 KGST Act.

9. The Applicant entered into an Energy Performance Contract dated 01.03.2019 with BBMP to install and implement energy conservation measures and also to operate and maintain the project Public Lighting Network, in the city of Bengaluru, for a period of ten years, through a special purpose vehicle incorporated by the consortium bidder. The Applicant is primarily required to supply LED luminaires so as to replace the existing luminaries as part of the said project, dimming of switching point LUX during designated hours, and also to undertake measures to achieve guaranteed energy savings.

10. The applicant contends that their supply includes LED luminaries etc., and operation & maintenance of the same and thus the said supply qualifies to be a composite supply wherein the supply of LED luminaries becomes principal supply and hence the rate of GST would be the rate of tax applicable to supply of LED luminaries. Further the time of supply is date of invoice.



11. We observe on examination of the contract that the LED luminaries, feeder panels, switch gears etc., are not handed over to the BBMP, whereas the applicant installs, operates and maintains the same. The applicant receives consideration on the basis of energy savings. The applicant also contends that they also receive fixed payments. We observe that these fixed payments are not relevant to the energy savings but for the O&M services of switching point lights.

12. In this regard we rely on the order of the Appellate Authority for Advance Ruling, vide Order No.04/2020-21 dated 27.09.2020, in the case of M/s Karnataka State Electronics Development Corporation Ltd., (KEONICS), wherein it is mainly held as under, in addition to the time of supply of service.

- a) *The street lighting activity under the energy performance contract is considered as a composite supply of goods & services with the supply of service being the predominant supply. The service is classified under heading 999112.*
- b) *The rate of tax applicable on the above supply is 18% (9% CGST & 9% KGST) as per entry Sl.No.29 of Notification No.11/2017-Central Tax (Rate) dated 28.06.2017. The appellant is not eligible for the benefit of exemption under entry 3 or 3A of exemption Notification No.12/2017-Central Tax (Rate) dated 28.06.2017.*

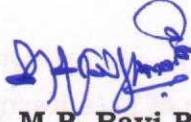
13. In view of the foregoing, we pass the following

RULING

- i. The street lighting activity undertaken under the Energy Performance Contract dated 1st March 2019 (which involves supply of various goods and rendition of various services), is to be considered as a Composite Supply under the CGST / KGST Act 2017, where the principal supply is the service, classified under SAC 999112.
- ii. The applicable rate of GST on supply made under this contract is 18% (9% CGST & 9% KGST) as per entry Sl.No.29 of Notification No.11/2017-Central Tax (Rate) dated 28.06.2017.
- iii. O & M of the installed equipments would constitute the principal supply and the applicable rate of GST on the said supply is as at (ii) supra.
- iv. The Applicant is not entitled to the benefit of exemption under Entry 3A of Notification No.12/2017-Central Tax (Rate) dated 28-06-2017, as amended.



- v. The time of supply of luminaries is not relevant as the impugned transaction is held to be a supply of service.
- vi. The value of the aforesaid taxable supply includes all the amounts received from BBMP pursuant to the contract dated 01.03.2019.



(Dr. M.P. Ravi Prasad)

Member

MEMBER

Karnataka Advance Ruling Authority
Place: Bengaluru,
Bengaluru - 560 009

Date : 30.07.2021

To,

The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Central Tax, Bangalore East Commissionerate, Bengaluru.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-45A, Bengaluru.
5. Office Folder.



(Mashhood Ur Rehman Farooqui)

Member

MEMBER

Karnataka Advance Ruling Authority
Bengaluru - 560 009

