

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)

(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

ARN No.	AD270619000180F
GSTIN Number, if any/ User-id	27AHIPM3876H1ZX
Legal Name of Applicant	M/s. Core Construction (Yatin Manoj Mora)
Registered Address/Address provided while obtaining user id	401-402 Deepak Niwas 4th Floor, M.G. Road, Vile Parle East, Maharashtra, MUMBAI-400057
Details of application	GST-ARA, Application No. 08 Dated 28.08.2020
Concerned officer	MUM-VAT-C-931, Nodal Division-006 Mumbai
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A Category	Works Contract
B Description (in brief) (as submitted by the applicant)	M/s. Core Construction, the applicant has been awarded a Sub-Contract for construction of Concrete Roads in the Aurangabad City. The Original Contract has been Awarded to M/s JP Enterprises by Aurangabad Municipal Corporation (AMC). M/s. J.P. Enterprises has entered into a Contract with applicant to execute the Original Work of AMC. As a Sub-Contractor applicant is supposed to give the same services & obligated to do the same work as the Main Contractor.
Issue/s on which advance ruling required	➤ Classification of any goods or services or both
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below

NO.GST-ARA- 08/2020-21/B-

109

Mumbai, dt.

10/12/2021

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and MGST Act” respectively] by M/s. **Core Construction** the applicant, seeking an advance ruling in respect of the following questions :

- 1. What Tax Rate to be charged by the sub-contractor to main contractor on Work Contract Services on Construction of Roads?**

2. Whether to Charge GST tax of 12% or 18%?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions made by M/s. Core Construction, the applicant are as under:-

- 2.1 *Applicant is providing work contract service (WCS) as a sub-contractor to the main contractor for construction of Roads to be used by the general public. As per Notification No 20/2017 C.T.(Rate) dtd 22/08/2017 the rate of GST is 12% for Construction, erection, commissioning, installation, completion repair, maintenance renovation alteration of Roads to be used by the general Public. Also as per Sr No.12 in press release of 25th meeting of GST council held at New Delhi on 18/01/2018, proposed that the rate of GST applicable to main contractor should be levied by sub-contractor, although Notification No. 01/2018 C.T. (R) dated 25/01/2018 doesn't specify the service provided by a sub-contractor to main contractor for construction of a Roads.*
- 2.2 *Applicant feels that they are a sub-contractor providing service to the main contractor for original contract work of constructing the Roads to be used by the General Public for which 12% GST is applicable and not 18%, as applicable in other cases. Works conducted by applicant as a sub-contractor is identical to the works to be performed by the main contractor & nature of Transactions also remain the same so according to applicant, this transaction will be charged to GST @ 12%.*

Applicant Submission dated 30.10.2021:-

- 2.3 *Applicant is engaged in the business of construction, erection, commissioning and completion of roads and provides WCS as a sub-contractor to main contractor for original contract work pertaining to roads. Applicant has been awarded a **Sub-Contract** from M/s J. P. Enterprises vide Agreement dated 27th November 2018, for Executing Work of construction of Concrete Roads in Aurangabad City Packages P-2. The Contract was awarded to M/s J. P. Enterprises from Aurangabad Municipal Corporation vide Agreement dated 29th day of December 2018. As a Sub-Contractor, applicant is obliged to provide the same services and do the same work as the Main Contractor is supposed to, under his Contract.*

- 2.4 Further, as per the Letter of Acceptance, the GST rate on Original Works is specified as 12%, which is as provided in Notification No. 11/2017-C.T.(R) read with Notification No. 20/2017-Central Tax (Rate). Applicant has been awarded total subcontract of Rs.20,53,14,671/- as per the agreement between M/s J. P Enterprise & the applicant.
- 2.5 As per entry (iv) of the said notification, CGST @ 6% and SGST @ 6% has been specified for supply by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,- (a) a road, bridge, tunnel, or terminal for road transportation for use by general public...
- 2.6 The aforesaid entry at serial no. 3(iv) does not specify that it should be made applicable only to a contractor and not a sub-contractor. In the absence of such specification, it should apply to the services provided by sub-contractor also. Attention is also invited to the entry at S.No. (iii) of the same notification, wherein the description of service mentions as "supplied to", the benefit of reduced rate is applicable only in case of services provided to or supplied to specified contractee.
- 2.7 In Notification 11/2017 the entries ix & x to Sl.no.3 have been inserted to extend the benefit to sub-contractors, when the works are "that covered under Sl.No. 3 (iii), (vi) and (vii). However, in respect of entry covering the relevant work or project [entry iv] the requirement for the separate entry for Sub-Contractors does not arise.
- 2.8 As per the Press Release for Decisions relating to Services in the 25th meeting of GST Council held at New Delhi on 18.01.2018 it is specified in serial number (12) to reduce GST rate (from 18% to 12%) on the Works Contract Services (WCS) provided by **sub-contractor to the main contractor** providing WCS to Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity, which attract GST of 12%.
- 2.9 As stated earlier, the entry at 3(iv) do not specify the class of service provider to whom it applies. The entry is specific to the composite supply of works contract pertaining to roads. This view is fortified by the justification of the recommendation of the Fitment Committee to the 25th GST Council meeting after which the downward revision of the rate was effected.
- 2.10 The service provided by sub- contractor to main contractor for construction of roads original works contract services is not specified in Notification No-01/2018- Central Tax (Rate) dated 25-01-2018. No weightage has been assigned to the contractee. In other words, if the project fulfills the characteristics of a road contract, then the tax rate of 12% applies irrespective of the person from whom the contract has been received.



2.11 Even though applicant is a sub-contractor providing service to main contractor for original contract work pertaining to roads, it should charge 12% GST only and not 18% as applicable in other cases. This is because the entry is applicable, only if the following are satisfied:

- (1) the service should be under the Heading 9954 (Construction Service)
- (2) the supply should be a 'Composite Supply'
- (3) the work should be 'works contract' as defined in Clause (119) of Section 2 of CGST Act and
- (4) the work should be 'by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alternation of original works' pertaining to a road, bridge, tunnel or terminal for road transportation for use by general public.

2.12 Impugned services fall under the SAC 9954 as a composite supply (as defined in clause 30 of section 2 of CGST Act) of works contract by way of construction of roads. As per section 2(119), "works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract. At the end of our contract of construction of roads, property of the immovable nature will be transferred to the Government.

2.13 Applicant relies on :

-Ruling dated 11.07.2018 of the AAR, Maharashtra in the Application filed by Shree Constructions.

-Ruling dated 06.09.2019 of AAR, Punjab in the Application of S. P. Singla Constructions P. Ltd.

-Ruling dated 28.09.2020 of AAR, Tamilnadu in the Application of ST Engineering Electronics Ltd

03. CONTENTION – AS PER THE CONCERNED OFFICER:

Officer Submission dated 10.11.2021:-

3.1 Applicant, M/s. Core Construction (Yatin Manoj Mora), the Applicant, a Works Contractor from Mumbai, is holding GSTIN-27AHIPM3876H1ZX.

3.2 In reference to the application before Hon' Advance Ruling Authority, it is submitted that majority of the subcontractor work is completed and applicant has already raised tax invoices for completed work. Further applicant has already filed annual returns in GSTR-9C for year 2018-19 and 2019-20. Hence, in reference to provisions of invoices as mentioned in Section

31 of CGST Act and time line of allowable modifications in Time and Place of supply, any retrospective amendments in invoices will be difficult. The subject application may either be rejected or the ruling should be announced only for future invoices in current sub-contracted work.

3.3 Notification 1/2018-Central Tax (Rate) dated 25 January 2018, has clear mention that

“(ix) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (iii) or item (vi) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.” Attracts levy of CGST at 6%.

3.4 Whereas, activity undertaken by applicant, construction of roads is related to item (iv) of the original notification 11/2017 and hence its does not qualify for tax rate of 6% CGST i.e. 12 percent tax rate. Hence, the impugned activity undertaken by applicant does not qualify for 12% tax rate, it should attract 18% tax rate i.e. 9% CGST and 9% MGST.

04. HEARING

4.1 Preliminary e-hearing in the matter was held on 16.06.2021. Shri. Arun Valera, learned CA and Shri. Vaibhav Shah, learned CA appeared, and requested for admission of the application. Jurisdictional Officer Shri. Vijay Salunkhe, learned Asst. Commissioner, MUM-VAT-D-917, Nodal-06, Mumbai also appeared.

4.2 The application was admitted and called for final e-hearing on 09.11.2021. The Authorized representative of the applicant, Shri. Arun Valera, Learned CA and Shri. Vaibhav Shah, learned CA were present. The Jurisdictional officer was absent.

4.3 We heard both the sides.

05. OBSERVATIONS AND FINDINGS:

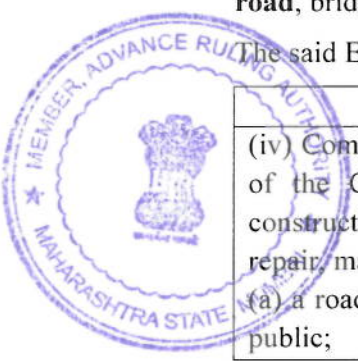
5.1 We have perused the documents on record, facts of the matter and submissions made by the applicant as well as the jurisdictional/concerned officer in the matter.

5.2 In the present case, the works contract i.e. composite contract of construction of roads has been awarded by the Aurangabad Municipal Corporation to M/s J.P. Enterprises (Main contractor) and the said main contractor has awarded part of said contract to the applicant. The applicant is thus a sub-contractor and for the supply undertaken, has issued invoices by charging GST @ 12%. The jurisdictional officer has raised objection/apprehension that most of the work (75%) is over and further that as per provisions of Section 95(a) application for advance ruling can be filed in respect of supply being undertaken or proposed to be undertaken. In this respect it is noticed from the submissions made by the applicant that, GST has

been charged at 12% and not at 18% as apprehended by the jurisdiction officer. Further, the jurisdictional officer has contended that, in respect of the supply already executed prior to the date of filing of this application the applicant shall not be eligible for benefits, if any, under this ruling, in respect of the quantum of supply already completed prior to the date of this application. However, we find that, the supply of service under the impugned contract is not yet completed. It is still a work being undertaken by the applicant at the time of filing of the application and therefore satisfies the provisions of Section 95 of the CGST Act. Hence, the subject application cannot be rejected outright on the ground contended by the jurisdictional officer. Hence, the application of the applicant is being considered.

- 5.3 The applicant has submitted that, their supply falls under Entry No. (iv) of Notification No. 20/2017-Central Tax (Rate) dated 22nd August 2017 as per which, CGST and SGST @ 6% each, has been specified for supply by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,- (a) a road, bridge, tunnel, or terminal for road transportation for use by general public...

The said Entry No. (iv) is reproduced as under:-



3	4	5
(iv) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,- (a) a road, bridge, tunnel, or terminal for road transportation for use by general public;	6	

- 5.4 We find that, the aforesaid entry at serial no. 3(iv) does not specify that it should be made applicable only to a contractor and not a sub-contractor. In the absence of such specification, we are of the opinion that the said entry should apply to the services provided by sub-contractor also. Further, we observe that, the above mentioned entry (iv) is based on a project and not based on the nature of the contractor/Contractee / recipient of service, etc.
- 5.5 The jurisdictional officer has submitted that, as per Sr. No. 3 (ix) of the above mentioned notification amended by Notification 1/2018-Central Tax (Rate) dated 25 January 2018, "Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (iii) or item (vi) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity." attracts levy of GST at 12%. The jurisdictional officer has stated that, since the activity undertaken by applicant, construction of roads is related to item (iv) of the




original notification 11/2017 and hence its does not qualify for tax rate of 12% GST due to the fact that the said Entry No. (iv) is not mentioned in the amended Sr. No. 3(ix) reproduced above. Hence, according to the jurisdictional officer, as the activity undertaken by applicant does not qualify for 12% tax rate, it should attract 18% tax rate i.e. 9% CGST and 9% MGST.” However at this stage we would like to mention that, the principal rate Notification No. 11/2017, as amended was further amended vide Notification No. 1/2018-Central Tax (Rate), dated 25.01.2018 to amend the entries at Serial No 3 by inserting new entries at Serial No. 3(ix), 3(x), 3(xi) and 3(xii). The Composite Supply, of Works Contract services provided by a sub-contractor to the main contractor were dealt with in entries at Serial No. 3(ix) & 3(x) of the amended Notification No. 11/2017 and are concerned with **services supplied to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity**. However, the entry at Serial No. 3(iv) was not clubbed in the newly created serial Nos. 3(ix) and 3 (x). Further, we also find that the subject supply of service (falling under Entry No. 3(iv)) is excluded from the 18% tax rate entry newly enumerated at 3(xii) which reads as” (xii) Construction services other than (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x) and (xi) above.

5.6

Further, Entry No. 3(iv) being relied upon by the applicant, itself is very clear and unambiguous, that it covers the impugned contract of construction of roads and further it does not restrict that such road construction will be liable to tax of concessional rate of 12% only if that the said road construction is carried out by the main contractor. There is no such restriction regarding who should carry out the said construction of roads (in Entry No.iv). Therefore, even if the construction of road is carried out by a sub-contractor, still it shall attract the rate of 12%.

5.7

Further, The GST Council in their 25th meeting on 18.01.2018 had made recommendations at item No. 12 as under:

“to reduce GST rate (from 18% to 12%) on the Works Contract Services (WCS) provided by sub-contractor to the main contractor providing WCS to Central Government; State Government, Union territory, a local authority, a Governmental Authority or a Government Entity, which attract GST of 12%. Likewise, H/CS attracting 5% GST, their sub-contractor would also be liable to pay @ 5%.”.

The wording of the above release shows or throws light on the intent of the government service provided by a sub-contractor to a contractor would attract GST @ 12%.

- 5.8 The jurisdictional officer has failed to show under which particular entry the said works contract is taxable to attract 18% GST, if it is not taxable under the entry no. 3(iv) of the above referred notification.
- 5.9 The wording of the entry no (iv) is very clear and unambiguous. It gives importance to the works listed therein and not to the particular recipient of said works contracts or provider of the works contract.
- 5.10 Where the intention of the legislature is to give importance to particular supplier or class of supplier, then that schedule entry or that items is generally worded accordingly. Here, the item no. (iv) does not indicate that it applies only to the main contractor and not to the sub-contractor. Further, the jurisdictional officer has submitted that if the applicant has already collected or paid tax at 18%, then the applicant shall not be entitled to the benefits of present ruling to claim refund of the said taxes, as the said transactions have already been concluded accordingly. We find, as per the applicant's submissions that, the applicant has charged and paid GST @12%.
- 5.11 In view of the above, we find merit in the contentions made by the applicant. The applicant has relied on the Ruling dated 11.07.2018 of the Authority of Advance Ruling, Maharashtra in the Application filed by Shree Constructions, but in this case supply was to railways, however, principle of supply by sub-contractor to main contractor is same as in present case.
- 5.12 The applicant has also made reference to the decision of the Punjab Advance Ruling Authority dated 06.09.2019, in the case of S.P. Singla Constructions Pvt. Ltd. M/s. S.P. Singla Constructions Pvt. Ltd.(Applicant) was engaged as a sub-contractor to the main Contractors who were awarded the construction contracts pertaining to construction/widening of roads by the Government/ Government Entities such as the National Highway Authority of India (NHAI). In the said case, the main contractor was awarded works covered by entry no. (iv), as in the present case. In the said case it was held that, the services provided by the Applicant as sub-contractor to the principal contractors continued to be covered under the Sr. No. 3(iv) of the principle rate notification 11/2017 which was inserted vide Notification no 20 of 2017 dated 22/8/2017.”
- 5.13 Similarly, in the case of M/s Building Roads Infrastructure & Construction Private Limited, in a similar matter, the Advance Ruling Authority of Andhra Pradesh vide its order dated 18.01.2021, held that the ‘works contract’ services pertaining to construction, erection, commissioning and completion of ‘Bridges and Roads’ provided by the applicant as a subcontractor to the Contractors who have been awarded the construction contract pertaining to construction/widening of roads by the Government Entities such as National Highway



Authority of India, falls under Serial No 3 (iv) of the Notification No.11/2017 as amended from time to time and chargeable to GST @ 12%.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

For reasons as discussed in the body of the order, the questions are answered thus –

Question 1:- What Tax Rate to be charged by the sub-contractor to main contractor on Work Contract Services on Construction of Roads?

Answer: In respect of Sub-Contract awarded to the applicant by M/s J. P. Enterprises (main contractor), to whom Aurangabad Municipal Corporation awarded the contract for Executing Work of construction of Concrete Roads in Aurangabad City Packages P-2, the rate to be charged is 6% SGST plus 6% CGST, total 12%, as discussed above.

Question 2:- Whether to Charge GST tax of 12% or 18%?

Answer:- As mentioned in Answer to Question No 1 above.


RAJIV MAGOO
(MEMBER)


T. R. RAMNANI
(MEMBER)



Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. The Joint Commissioner of State Tax, Mahavikas for Website.

Note:- An Appeal against this advance ruling order shall be made before, The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.