

AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH**Goods and Service Tax****O/o THE COMMISSIONER, COMMERCIAL TAX,****MOTI BUNGALOW,****MAHATMA GANDHI MARG, INDORE (M.P.) - 452007****e-mail : aar@mptax.mp.gov.in Phone : 0731- 2437315 fax. no. : 0731-2536229****PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING**
U/S, 98 OF THE GOODS AND SERVICES TAX ACT, 2017**Members Present**1. ShriManoj Kumar Choubey
Joint Commissioner

Office of the Commissioner of Commercial Tax, Indore Division-1

2. Shri Virendra Kumar Jain
Joint Commissioner

Office of the Commissioner CGST and Central Excise, Indore

GSTIN Number. If any/User-id	23AADCM4472A1ZZ
Name and address of the applicant	MADHYA PRADESH POWER GENERATINGCOMPANY LIMITED Block No. 9, Shakti Bhawan, Floor No. II, Rampur, Jabalpur Madhya Pradesh, 482002
Point on which advance ruling sought	(a) Classification of Goods or Services or both; (b) applicability of a notification issued under the provisions of this Act;
Present on behalf of applicant	CA Shree Neeraj Aggarwal
Case Number	11/2020
Order dated	18.12.2020
Order Number	21/2020

PROCEEDINGS(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and
the Madhya Pradesh Goods & Service Tax Act, 2017)

1. M/s MADHYA PRADESH POWER GENERATING COMPANY
LIMITED(hereinafter referred to as the Applicant) is wholly owned company of MP



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Government engaged in generation of electricity in the state of Madhya Pradesh. The Applicant is having a GST registration with GSTIN 23AADCM4472A1ZZ.

2. The provisions of the CGST Act and MPGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the MPGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or MP GST Act would be mentioned as being under the GST Act.

3. BRIEF FACTS OF THE CASE –

3.1. Madhya Pradesh Power Generating Co. Ltd. (MPPGCL) is a wholly owned company of MP Government engaged in generation of electricity in the state of Madhya Pradesh. It is a successor entity of erstwhile Madhya Pradesh State Electricity Board (MPSEB).

3.2. The Company, while operating and maintaining its existing units, is also constructing new Power Plants for increasing capacity in the State of Madhya Pradesh. It is having four thermal power plants namely SSTPS Dongalia (Khandwa), SGTPS Birsinghpur, ATPS Chachai and SSTPSSarni and 10 hydel stations all over Madhya Pradesh.

3.3. MPPGCL has issued various work orders for construction, erection, commissioning, maintenance, installation, repair, renovation, alteration etc. of its power houses. It has also issued work orders for operation and maintenance of powerhouses for generation of electricity and various ancillary works.

3.4. The honourable authority of Advance Ruling has passed an order no. 16/2019 dated 25th September 2019 in the case of M/s Kalyan Toll Infrastructure Ltd. In relation to balance general civil and related electrical and mechanical workspackage for 2*660 MW Shree Singaji Thermal Power Project (SSTPP) Stage-II Near Village Dongalia, Distt. Khandwa, Madhya Pradesh, India. In the said order at paragraph 7.10 the honourable authority stated that:

"In view of the discussions foregoing, we are inclined to hold that the work entrusted vide subject tender document/contract awarded to the applicant by MPPGCL cannot be termed as composite supply and thus entire work under the said contract shall not be entitled to concessional rate in terms of Notification No. 11/2017- CT(R) dated 28.06.2017. However, we also hold that the supply of goods and/or services which squarely fall within the ambit of scope of work entrusted to MPPGCL by the Government of Madhya Pradesh shall be entitled for concessional rate under Sr. No. 3(vi) to Notification No. 11/2017- CT(R). Accordingly, each and every supply under the subject contract shall be treated separately for determining the rate of tax under the CGST Act 2017 read with provisions of GST Tariff and respective exemption notification."



The company MPPGCL awards various construction, O&M and other ancillary contracts on composite basis which include various work that are in relation to the work entrusted to MPPGCL by Government of Madhya Pradesh i.e. towards generation of electricity. Thus in line with the said observation by the authority we are filing a fresh advance ruling application for determination of GST rate applicable on all contracts (construction, O&M, ancillary works etc.). In view of the said ruling the rate should be @12% as all these works squarely fall within the ambit of scope of work entrusted to MPPGCL. List of the contracts is enclosed.

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4. QUESTION RAISED BEFORE THE AUTHORITY -

4.1. Whether all such contracts towards construction, O&M and other ancillary contracts which are in relation to work entrusted to MPPGCL by the State Government are to be taxed as composite supply as per Schedule II of CGST Act 2017 or as individual supply as ordered in case of M/s Kalyan Toll Infrastructure Ltd by Honourable Authority of Advance Ruling?

4.2. GST Rate applicable on Construction contracts awarded by MPPGCL (list enclosed) which are in relation to work entrusted to MPPGCL by the State Government as per Notification No. 11/2017 CT(R) as amended? (Sample copies of order enclosed).

4.3. GST Rate applicable on O&M and other ancillary contracts awarded by MPPGCL (list enclosed) which are in relation to work entrusted to MPPGCL by the State Government as per Notification No. 11/2017 CT(R) as amended? (Sample copies of order enclosed).

5. DEPARTMENT VIEW POINT –The concerned officer is of view that in absence of copies of all contracts no opinion can be given.

6. RECORD OF PERSONAL HEARING -

6.1. CA Shree Neeraj Agrawal, counsel for Madhya Pradesh Power Generating Co. Ltd on behalf of the applicant for personal hearing on electronic mode and he reiterated the submission already filed along with the Application. The Applicant has submitted following additional submission on 29.10.2020 which is reproduced as under :-

6.2. MPPGCL has placed various work orders on various parties for the following works:

- a. Construction, alteration, repair, renovation, commissioning, installation, maintenance etc. of various civil structures like power houses, residential colonies, office buildings etc.
- b. Operation and Maintenance of power houses for ensuring generation of electricity which includes supply of manpower, annual overhauling contracts, annual maintenance contracts etc.
- c. Other Ancillary works which include supervision, testing, transportation, consultancy etc. in relation to generation of power.

6.3. Some of the sample contracts for each type have been attached herewith for understanding of the scope therein.

6.4. The MoA and AoA of the company are also attached herewith enunciating the various objects for which the company is authorized and all these objects are within the scope entrusted to MPPGCL.

6.5. For the purposes of fulfilling these objects the company procures and avails various services by floating various tenders towards construction, O&M and other ancillary contracts

6.6. It is now settled law that MPPGCL is a government entity as held in the case of M/s Shreeji Infrastructure Private Limited by AAR, Madhya Pradesh and also upheld in the case of M/s Kalyan Toll Infra Private Limited by AAR, Madhya Pradesh.

6.7. But in the case of M/s Kalyan Toll Infrastructure Private Limited it has been held that these goods and services should be taxed individually. The concessional rate is applicable only on the services provided by M/s KTIPL to MPPGCL in relation to work entrusted to MPPGCL by the State Government.



- 6.8. MPPGCL has been primarily entrusted the work of generation of electricity. So, M/s KTIPL has claimed concessional rate of GST on all the goods and services it has supplied in relation to such work.
- 6.9. Similarly, MPPGCL is availing similar services from other contractors as well. So, applying the same principle MPPGCL should get the benefit of concessional rate of GST.
- 6.10. The GST charged by the contractors is a cost to MPPGCL as it does not avail ITC on the same. The excess GST being charged by contractors ultimately increases the cost of production of electricity which is ultimately recovered from consumers through increased tariff.

6.11. **APPLICANTS INTERPRETATION OF LAW**

1. The CGST Rate on services has been notified by the Central Government via Notification No.11/2017- Central Tax (Rate) dated 28th June 2017. This Notification has been amended by Notification No. 20/2017- Central Tax (Rate), 24/2017 - Central Tax (Rate), 31/2017-- Central Tax(Rate), 46/2017 - Central Tax (Rate) and 01/2018 - Central Tax (Rate) and others.
2. "Government Entity" means an authority or a board or any other body including a society, trust, corporation,

- a. set up by an Act of Parliament or State Legislature; or
- b. established by any Government,

with 90 per cent. 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.

3. GST Rate @12% is defined on Construction Services at S.No. 3(vi) of the amended notification:

Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above, provided to the Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –

(a) **a civil structure or any other original works** meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or(iii) an art or cultural establishment; or

(c) 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

Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.

4. GST rate @5% is defined under same notification for below mentioned service:
 - vii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, involving predominantly earth work (that is, constituting more than 75 per cent. of the value of the works contract) provided to the Central Government, State Government, Union territory, local authority, a Governmental Authority or a Government Entity.

Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the



Central Government, State Government, Union territory or local authority, as the case may be.

5. On the basis of the above and as concluded by Honourable authority of advance ruling Madhya Pradesh in case of M/s Kalyan Toll Infrastructure Ltd in its contract to Madhya Pradesh Power Generating Co. Ltd we are of the opinion that all the contracted **which are in relation to the work entrusted to MPPGCL** will be eligible for concessional rate of 12% and the same will apply to all the orders as per notification no. 11/2017 CT(R) as amended.

6.12. FURTHER THE ASSESSEE BEGS TO SUBMIT AS UNDER:

1. Object for Incorporation of Company

- a. As per Memorandum of Association the company Madhya Pradesh Power Generating Co. Limited was incorporated with the following object. Copy of Relevant part of Memorandum of Association is enclosed as per **Annexure N/1**.

i. **To Construct**, Operate and maintain "**Electricity System**" as defined under Section 2(25) of the Electricity Act, 2003 [i.e. a system under the control of a generating company having one or more (a) generating stations; or (b) transmission lines; or (c) electric lines and sub-stations];

ii. **To Plan, promote, develop**, design, engineer, **construct**, operate and maintain "Electricity System" as defined under section 2(25) of Electricity Act, 2003 and integrated fuel system in all its aspect including design and engineering; prepare feasibility report, detailed project report and appraisal report; establish; own; construct; operate and maintain electricity system for generation, evacuation, transmission and distribution of power for supply to the State Electricity Utilities, Electricity Boards, Power Utilities, Generating Companies, Transmission Companies, Distribution Companies, State Governments, Licensees, statutory bodies, other organisations (including private; public and joint sector undertakings) and bulk consumers of power in accordance with the applicable laws, rules, regulation, policies, procedures, guidelines and objectives prescribed by Govt. of India from time to time.

iii. To act as Consultant/ Technical Adviser of Public/Private Sector Enterprises, etc. engaged in power generation, transmission and distribution and for financial institution; banks, Central Government and State Government and agencies engaged in research, design, engineering of all of power, both conventional and non-conventional.

2. Company is a Government Entity

It has been already held in the advance ruling order of M/s Shreeji Infra AAR, Madhya Pradesh and also in advance ruling order of M/s Kalyan Toll Infra, by AAR Madhya Pradesh that MPPGCL is a government entity.

3. Company has placed various orders for construction work in relation to Power Projects

- a. MPPGCL awards various contracts for executing the work entrusted to it The contracts can be divided into three categories:

i. Construction and related contracts: List of some of these contracts has been attached herewith. **(Annexure-N/2)**

ii. Operation and Maintenance work of various Power Houses: List of some of these contracts is also attached herewith. **(Annexure-N/3)**

iii. Other Works to various contractors.

- b. The honorable authority of Advance Ruling, Madhya Pradesh has passed an order no. 16/2019 dated 25th September 2019 in the case of M/s Kalyan Toll



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Infrastructure Ltd. In relation to balance general civil and related electrical and mechanical works package for 2*660 MW Shree Singaji Thermal Power Project (SSTPP) Stage-II Near Village Dongalia, Distt. Khandwa, Madhya Pradesh, India awarded by Madhya Pradesh Power Generating Co. Ltd. Entry No. 4 of the notification only covers Construction Contracts. Thus, all the contracts listed in Annexure N/2 are akin to the works of M/s Kalyan Toll Infra Limited.

4. Rate of GST on Construct Contract

1. Notification No. 11/2017 dated 28.06.2017 under SAC Code 9954 under serial No. 3 covers Construction Services in three points (i to iii).
2. The said Notification was amended by following Notifications:
 - a. Notification No. 20/2017- Central Tax (Rate), dated 22.08.2017
 - b. Notification No. 24/2017- Central Tax (Rate), dated 21.09.2017
 - c. Notification No. 31/2017- Central Tax (Rate), dated 13.10.2017
 - d. Notification no. 46/2017-Central Tax (Rate), dated 14-11-2017,
 - e. Notification no. 1/2018-Central Tax (Rate), dated 25-1-2018,
 - f. Notification no. 13/2018-Central Tax (Rate), dated 26-7-2018,
 - g. Notification no. 17/2018-Central Tax (Rate), dated 26-7-2018,
 - h. Notification no. 27/2018-Central Tax (Rate), dated 31-12-2018,
 - i. Notification no. 30/2018-Central Tax (Rate), dated 31-12-2018,
 - j. Notification no. 3/2019-Central Tax (Rate), dated 29-3-2019,
 - k. Corrigendum GSR 327(e), dated 25-4-2019,
 - l. Notification no. 10/2019-Central Tax (Rate), dated 10-5-2019
 - m. Notification no. 20/2019-Central Tax (Rate), dated 30-9-2019,
 - n. Notification no. 26/2019 - Central Tax (Rate), dated 22-11-2019,
 - o. notification no. 2/2020 - Central Tax (Rate), dated 26-3-2020
3. The amended S.No. 3 clause (vi) of the notification states that the following services will be taxed at the rate of GST of 12% (CGST 6%):
Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above, provided to the Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of—
 - a. a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
 - b. a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or
 - c. 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.

Explanation.—For the purposes of this item, the term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.

Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted



to it by the Central Government, State Government, Union territory or local authority, as the case may be

5. Work Entrusted to Madhya Pradesh Power Generating Co. Ltd

a. As specified in para 1 above the main object of Incorporation of Company as per Memorandum of Association was:

- i. **To Construct**, Operate and maintain "**Electricity System**" as defined under Section 2(25) of the Electricity Act, 2003 [i.e. a system under the control of a generating company having one or more (a) generating stations; or (b) transmission lines; or (c) electric lines and sub-stations];
- ii. **To Plan, promote, develop**, design, engineer, **construct**, operate and maintain "Electricity System" as defined under section 2(25) of Electricity Act, 2003 and integrated fuel system in all its aspect including design and engineering; prepare feasibility report, detailed project report and appraisal report; establish; own; construct; operate and maintain electricity system for generation, evacuation, transmission and distribution of power for supply to the State Electricity Utilities, Electricity Boards, Power Utilities, Generating Companies, Transmission Companies, Distribution Companies, State Governments, Licensees, statutory bodies, other organisations (including private; public and joint sector undertakings) and bulk consumers of power in accordance with the applicable laws, rules, regulation, policies, procedures, guidelines and objectives prescribed by Govt. of India from time to time.
- iii. To act as Consultant/ Technical Adviser of Public/Private Sector Enterprises, etc. engaged in power generation, transmission and distribution and for financial institution; banks, Central Government and State Government and agencies engaged in research, design, engineering of all of power, both conventional and non-conventional.

b. From the above para it is clear that M.P. Power Generating Co. Ltd was constituted with the object to generate electricity in the state of Madhya Pradesh and also to maintain and operate its units and construct new units.

c. All the work orders, be it related to construction or operation and maintenance are in relation to work entrusted to MPPGCL by Government of India.

Clause (vi) of SNo. 4 of the notification covers construction contracts. So applying the above referred judgement all construction contracts awarded by MPPGCL which are in relation to work entrusted to it should be taxed at the rate of 12%.

7. DISCUSSIONS AND FINDINGS

7.1. We have carefully considered the submissions made by the applicant in the application, the pleadings on behalf of the Applicant made during the course of personal hearing, additional submissions after the hearing and the Department's view provided by the jurisdictional officer.

7.2. Before we take up the questions, we first need to decide the eligibility of a recipient to raise a question regarding the supply being made by the supplier.

Advance Ruling under the Act is defined in Section 95(a) and is as under:

(a) advance ruling" means a decision provided by the Authority or the Appellate Authority [or the National Appellate Authority] to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 [or of section 101C], in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;

7.2.2. As per the definition, the ingredients of an Advance Ruling are:

- a) It is a decision on matters or on questions specified in Section 97(2);



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- b) The matter or the question is in relation to supply of goods or services by the applicant;
- c) The supply may be one that has already been undertaken or proposed to be undertaken.
- 7.2.3. The question should thus be one specified u/s 97(2) and should be in relation to supply of goods or services being undertaken or proposed to be undertaken by the applicant. Apparently, this seems to allude that the question should be in respect of goods / services being supplied by the applicant.
- 7.2.4. However, when the questions specified in Section 97(2) are perused, we come across question about admissibility of input tax credit of tax paid or deemed to have been paid, which is covered u/s 97(2)(d), further question u/s 97(2)(e) is about determination of the liability to pay tax on any goods or services or both and 97(2)(f) is about whether applicant is required to be registered. Question in 97(2)(d) is purely related to an inward supply while the questions 97(2)(e) and (f) may be with respect to an inward supply covered under RCM too.
- 7.2.5. **The definition states that the question should be in relation to supply and not about supply. There is nothing in the text of the section that states that the question can only be about supply. Once this assumed pre-condition is done away with, it becomes clear how subject matter of the questions listed in Section 97(2) get covered under an Advance Ruling as per Section 95(a). The definition of Advance Ruling contains the term "in relation to", which enlarges the scope of a provision.**
- 7.2.6. Clearly the provisions point towards the fact that an Application for Advance Ruling is not restricted only to goods or services being supplied, but it is open to everybody, so long as it is in relation to supply of goods and services by the applicant and is covered u/s 97(2).
- 7.3. The definition states that the question should be in relation to supply and not about supply. There is nothing in the text of the section that states that the question can only be about supply. Once this assumed pre-condition is done away with, it becomes clear how subject matter of the questions listed in Section 97(2) get covered under an Advance Ruling as per Section 95(a). The definition of Advance Ruling contains the term "in relation to", which enlarges the scope of a provision.
- 7.3.1. The Rule of Harmonious Construction is used to avoid any inconsistency and repugnancy within a section or between a section and other parts of a statute. The rule follows a very simple premise that every statute has a purpose and intent as per law, and should be read as a whole. The interpretation which is consistent with all the provisions and makes the enactment consistent shall prevail. The doctrine follows a settled rule that an interpretation that results in injustice, hardship, inconvenience and anomaly should be avoided. The interpretation with the closest conformity to justice must be picked. The Supreme Court laid down 5 main principles of the 'Doctrine of Harmonious Construction' -
- The courts must avoid a 'head of clash' of contradictory provisions and they must construe the contradictory provisions so as to harmonize them.^{vi}
 - When it is not possible to completely reconcile the differences in contradictory provisions, the court must interpret them in such a way so as to give effect to both provisions as much as possible.
 - Courts must keep in mind that the interpretation which reduces one provision to a useless standing is against the essence of 'Harmonious Construction'.
 - To harmonize the provisions is not to render them fruitless or destroy any statutory provision.



- The provision of one section cannot be used to render useless the other provision, unless the court, despite all its efforts, finds a way to reconcile the differences.

7.3.2. Again, the act has defined the terms "outward supply" and "inward supply" which encompass definition of supply given in the Act. A joint reading of the provisions of Section 95(a) and 97(2), interpreted following the principle of Harmonious Construction, it is clear that an Advance Ruling may be about an inward supply also, provided it is in relation to an outward supply made or proposed to be made.

7.3.3. In light of the above we are of the opinion that the rate of GST applicable on the inward supply of the applicant is covered under the definition of Advance Ruling as per section 95(a) of the GST Act and the application is therefore admissible.

7.4. We find that the extant application seeks Ruling on three questions, which we shall take up one by one. The first question is about the classification of contracts towards construction, O&M and other ancillary contracts which are in relation to work entrusted to MPPGCL by the State Government as a composite supply as per Schedule II of CGST Act 2017 or as individual supply as ordered in case of M/s Kalyan Toll Infrastructure Ltd by Honourable Authority of Advance Ruling.

7.4.1. A decision has a binding precedent based on Article 141 of the Constitution and the flowing Judicial Discipline therefrom. Further, a binding precedent also depends on the *ratio decidendi* of an order as well as whether the facts are *pari materia*.

7.4.2. These concerns do not apply to an Advance Ruling and its precedential value is NIL. An Advance Ruling may have persuasive value but cannot be a binding precedent on account of its limited applicability by virtue of Section 103 of the Act, which states that **an** advance ruling pronounced by the Authority or the Appellate Authority shall be binding only on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling and on the concerned officer or the jurisdictional officer in respect of the applicant.

Thus an Advance Ruling in respect of a transaction pronounced in a state is not binding on the same transaction undertaken by the same applicant in another state.

7.4.3. In light of the above status of the binding precedent of an Advance Ruling any question regarding the applicability of an Advance Ruling pronounced to another application is infructuous. Thus, the first question regarding applicability of the Advance Ruling in the matter of M/s Kalyan Toll Infrastructure Ltd is infructuous.

7.4.4. Further, an advance ruling is on the combined effects of a set of facts of a transaction and provision of applicable law. The question asked in the instant case refers to "all such contracts towards construction, O&M and other ancillary contracts" and therefore is not in respect of a specific transaction enabling us to answer the question. The question should be on a specific contract with a clear set of facts whose legal implications may be interpreted and answered in an Advance Ruling. The question relates to Entry No. 6 of Schedule II, which states that (a) works contract as defined in clause (119) of section 2; and (b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration shall be treated to be service. Therefore, the issue at hand is whether the contracts are in the nature of a works contract as defined in clause (119) of Section 2. In the absence of particulars of a contract, it is not possible to give a ruling in this regard.

7.5. Regarding the second and third question we have to state as under:

7.5.1. Regarding the GST Rate applicable on Construction contracts awarded by MPPGCL which are in relation to work entrusted to MPPGCL by the State Government as per Notification No. 11/2017 CT(R) as amended, we have to state that the definition of



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Government Entity states that a "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 per cent, 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."

7.5.2. We find that MPPGCL has been established by M.P. Government with the objective of carrying out power generation in the state of Madhya Pradesh. State Government of Madhya Pradesh holds 100% shares of MPPGCL. The State Government is also exercising full control over the activities of the said company. Therefore, M/s. MPPGCL qualifies to be called and termed as a 'Government Entity' for the purpose of GST law, as it fulfils the necessary and sufficient conditions laid down under notification supra in terms of Explanation to Notification No. 11/2017-C.T. (Rate), and also as per Notification No. 31/2017-C.T. (Rate), dated 13-10-2017.

7.5.3. Entry No. 3(vi) to the Notification No. 11/2017-C.T. (R) refers to different nature and type of Construction Services as composite supply. The provision is as under:

(vi) Composite supply of works contract as defined in clause (119) of Section 2 of the Central Goods and Services Act, 2017, provided to the Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity by way of Construction, erection, commissioning, installation, completion, fitting out, repair maintenance, renovation or alteration of -

- (a) a civil structure or any other original work meant predominantly for use other than for commerce, industry or any other business or profession;
- (b) a structure meant predominantly for use as (i) and educational, (ii) a clinical or (iii) an art or cultural establishment; or
- (c) 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 Act, 2017.

The applicable rate of GST on the supplies covered under this entry is 12% advalorem subject to the conditions provided under Column (5) of the said table in the Notification being fulfilled. The condition is as under:

Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union Territory or local Authority, as the case may be.

7.5.4. Therefore, it has to be established in each contract whether

- a) the supply is a works contract within in the meaning of Section 2(119) of the GST Act;
- b) the services are received by the Applicant have been procured by the Applicant in relation to a work entrusted to it by the Central Government, State Government, Union Territory or local Authority; and
- c) the services fall under either of Entry No. 3(vi)(a) / (b) / (c)

7.5.5. It also has to be borne in mind that the taxability of a supply depends on the supply fulfilling the conditions stated supra. There may be multiple supplies in a contract and tax rate of one supply shall not apply to another supply only on account of such supply being made under the same contract unless supplies are so integral to each other as to form part of a single supply.

7.6. The applicant has furnished four LoAs relating to supplies under contracts with Larsen & Toubro Limited relating to the period before GST. Further, the applicant has furnished correspondence of the applicant with Larsen & Toubro Limited in respect of Section 171 relating to the contracts whose LoA has been furnished. The contents of the different LoA range from supply of equipment; erection commissioning and installation; supply of Steel and Cement; and Civil Construction. In the absence of



relevant documents, it is not possible to ascertain the integral nature of the contracts to ascertain their coverage as discussed in para 8.5.4.

- 7.6.1. Further, the applicant has given two lists of contracts containing 68 contracts in total but has not provided the copies of the contracts as stated above, an advance ruling is on the combined effects of a set of facts of a transaction and provision of applicable law. The question asked in the instant case refers to Notification No. 11/2017 – Central Tax (Rate), which in turn refers to a Works Contract as per Section 2(119). In the absence of the contracts, it is not possible to ascertain whether the contracts are Works Contracts and which Entry of Notification No. 11/2017 – Central Tax (Rate) they fall under.
- 7.7. The provisions relating to Advance Ruling are to assist the applicants in making compliance under the Act and prevent litigation. This provision is not for the applicant to use as advisory service for GST matters. The applicant has furnished list of 68 contracts and sought the rate of GST applicable on those 68 contracts. From a perusal of the list it appears that the supplies under the contracts are not identical. The application made, in the facts of the matter, is not in keeping with the spirit of the provisions of Advance Ruling.

8. Ruling

- 8.1. In respect of first question, regarding classification of supply in Entry No. 6 of Schedule II to the GST Act we are unable to answer the question on account of insufficient information provided by the applicant.
Further in respect of first question, regarding applicability of the Advance Ruling in the matter of Kalyan Toll Infrastructure Ltd we have to state that the Advance Ruling in the matter of Kalyan Toll Infrastructure Ltd is not applicable to the Applicant on account of the provisions of Section 103 of the GST Act.
- 8.2. In respect of the second and third question regarding the rate of GST on supplies made under different contracts, in the absence of the copies of the contracts we are unable to give our ruling.
- 8.3. The ruling is valid subject to the provisions under section 103 (2) until and unless declared void under Section 104 (1) of the GST Act.

(Manoj Kumar Choubey)
(Member)

(Virendra Kumar Jain)
(Member)

Copy to:- No. 12/2020/A.A.R/R-28/46

(Member)
INDORE dated 18/12/2020

1. Applicant
2. The Principal Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal
3. The Commissioner(SGST) Indore
4. The Commissioner, CGST & Central Excise, Indore
5. The Concerned Officer
6. The Jurisdictional Officer – State/Central

सत्यप्रतिलिपि

