

**GUJARAT AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/43/2021

(IN APPLICATION NO. Advance Ruling/SGST&CGST/2021/AR/22)

Date: 11-08-2021

Name and address of the applicant	:	M/s. Kababhai Popatbhai Savalia (Shreeji Earth Movers), Village-Kolithad, Taluka-Gondal, Rajkot-360311.
GSTIN of the applicant	:	24BBTPS3402D1ZR
Date of application	:	25-06-2021.
Clause(s) of Section 97(2) of CGST/ GGST Act, 2017, under which the question(s) raised.	:	(a)Classification of any goods or services or both. (e)Determination of the liability to pay tax on any goods or services or both.
Date of Personal Hearing	:	27-07-2021.
Present for the applicant	:	Shri R.B.Rakholia, Advocate.

BRIEF FACTS:

The applicant M/s. Shreeji Earth Movers, Village-Kolithad, Taluka-Gondal, Rajkot-360311 is engaged in providing works contract service directly to sub-contractors who execute the contract with the main contractor for original contract work with the irrigation department(State of Gujarat). The applicant has filed the present application to seek clarification for the rate of tax to be levied from the sub-contractor for original contract work pertaining to irrigation and construction work (works contract). The applicant submits that they should be charged 12% GST only and not 18% as applicable in other cases.

2. The applicant submits that JSIW Infrastructure pvt.ltd. has received the original contract from the irrigation department (State of Gujarat) for the construction of pumping station at 161.03 km. near Jalansar and supplying and laying MS pipeline of 2650 mm. Diameter to 600 mm dia from Ch.146.383(UND-III) to 216.053 km with branches for moh and sorathi with all allied work (total pipeline length 104.165 km.) etc. and maintenance of the commissioned project for 10 years. Copy of the contract is submitted. The applicant further submits that JSIW Infrastructure has executed the same contract with Radhe Construction (copy submitted) and M/s. Radhe Construction has further executed the agreement with the present applicant qua to the original work. Copy of the contract executed by Radhe Construction with the applicant is submitted.

3. The applicant submits that as per Notification No.20/2017-Central Tax(Rate) dated 22-8-2017, the rate of GST is 12% for the composite supply of works contract supplied by way of construction, erection, commission or installation of original works pertaining to the irrigation and construction works supply to the irrigation department, State of Gujarat; that as per Sr.No.12 in press release of 25th meeting of GST council held at New Delhi on 18-1-2018, the rate of GST applicable to the main contractor should be levied by sub-contractors; that as per Notification No.1/2018-Central Tax(Rate) dated 25-1-2018, the service provided by sub-contractors to the main contractor for irrigation and construction works supply to the State Government is not specified in the notification; that the applicant is the works contractor who executes and undertakes composite supply of works contract as defined in clause (119) of Section 2 of the CGST Act, 2017 and has been awarded a sub-contract by another works contractor to execute the original work of civil construction irrigation and construction works supply to the irrigation department, State of Gujarat; that as per the schedule of GST rate for service under GST, composite value of works contract is classified as under:

SAC Code	Description of Services	Rate in %
	“(iii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied to the Government, a local authority or a Governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, - (a) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958); (b) canal, dam or other irrigation works; (c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.	12%

4. The applicant submits that sub-contractors providing services to the main contractor is further classified only under two categories as under:

SA C code	Description of Service	Rate in %
3.	“(ix) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services	12

	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. 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.	
	(x) 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 (vii) above to the Central Government, State Government, Union territory, a 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.	12

5. The applicant submits that even though they being sub-contractors are providing service to the main contractor affecting the original works contract for civil construction irrigation and construction works supply to the irrigation department, State of Gujarat, which may not be covered in the above entry, they believe that the rate applicable to them is 12% only which is the rate applicable for the composite supply of works contract as defined in clause(119) of Section 2 of the CGST Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to:-civil construction, irrigation and construction work supply to the irrigation department of State of Gujarat. The applicant has referred to the definition of 'Works Contract' as appearing in Section 2(119) of the CGST Act, 2017 as well as the definition of 'agent' as appearing in Section 2(5) of the said Act. The applicant states that the terms 'Contractor' and 'Sub-contractor' are not defined under the CGST Act, 2017 but as per general definition:

- Contractor means a person or firm that undertakes a contract from the employer to provide materials or labour to perform a service or do a job at a specified price.
- A sub-contractor means a person who is hired by a general contractor (or prime contractor, or main contractor) to perform a specific task as part of the overall project or the total project at a specified price for services provided to the project by the originating employer.

6. The applicant submits that when the contractor awards either wholly or partially, the contractual obligation to a sub-contractor the contract remains the same and the identity of the contract does

not change; that when the contractor awards either wholly or partially, the work to be performed by the contractor as well as the sub-contractor remains same and identical to what is specified in the contract between the main contractor and the employer; that it can also be seen from the definition quoted above that sub-contractor is not doing anything other but only what is specified in the contract between the main contractor and the employer; that as per the definition of agent, an agent is a person who carries on the same business of supply and/or receipt of goods or services or both on behalf of another and thus we can call a sub-contractor as an agent also who is undertaking the same supply of service for main contractor; that it can also be said that, the sub-contractor is only an agent of the contractor and the works job undertaken by him passes directly from the sub-contractors to the employer; that as the work gets transferred directly to the employer by the sub-contractor the works contract remains the same and therefore leads to the conclusion that there is only one contract which is undertaken by the contractor as well as the sub-contractors; that they are only an agent of the contractor and the property in goods passes directly from the sub-contractors to the employer which leads them to the conclusion that there is only one contract that is between the irrigation department(State Government) and contractor as well as sub-contractor and they are doing the job for irrigation department(State of Gujarat).

7. The applicant further submits that they would also like to highlight the intent of the Government to bring the rates of main contractor and sub-contractor at par while they are providing their services to Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity; that irrigation department being a Governmental Authority/Entity is already covered under clause(x) of heading 9954 of section 5 of classification of services even though not specified separately; that the rate applicable for civil works contract carried out for railways in para(v) of heading 9954 of section 5 of classification of services should be applicable to sub-contractors also. The applicant has concluded their submission by stating that their application for advance ruling is to have certainty in the tax liability in relation to an activity provided by them.

8. The applicant vide their additional submission dated 23-7-2021 have submitted copies of the following judgements:

- (i) Order No.AAR/GST/PB/0/0 dated 6-9-2019 of the Punjab Authority of Advance Ruling in the case of S.P.Singla Construction pvt.ltd.
- (ii) Order No.MAT/AAAR/SS-RJ/15/2018-19 dated 3-1-2019 of the Maharashtra Appellate Authority of Advance Ruling in the case of M/s. Shree Construction.
- (iii) Mary Matha Construction Company (2018)98.Taxmann(om.164) (AAR-Kerala).
- (iv) Kunal Structure India pvt.ltd.(2021)127.Taxmann.123.

- (v) State of Andhra Pradesh and others versus Larsen & Tubro ltd. & others.

Question on which Advance Ruling sought?

9. The applicant has sought Advance ruling on the following:
- a) At what rate of tax the liability should be determined on services provided by us (sub-contractors) to the main contractor pertaining to the irrigation, construction and maintenance works to the irrigation department, State of Gujarat?
 - b) Under which head we should classify our services to execute irrigation, construction and maintenance work supplied to the irrigation department, State of Gujarat?
 - c) Whether to charge a tax rate of 12% GST or 18% GST?

Personal Hearing:

10. Shri R.B.Rakholia, Advocate appeared for the hearing (Video Conferencing) on 27-7-2021 and reiterated the contents of the application.

FINDINGS:

11. At the outset we would like to make it clear that the provisions of CGST Act and GGST Act are in pari materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the GGST Act.

12. We have carefully considered the submissions of the applicant.

13. We note that the Government Irrigation Division awarded work contract to Main Contractor M/s JSIW for EPC of a pumping station. Subsequently, the Main contractor awarded the said work to sub contractor M/s Radhe Construction. Subsequently, the sub contractor awarded the said work to the applicant, who is now a sub-sub contractor.

14. We hold that to be eligible for being covered at Sr no 3 (iii) of said NT 11/2017 CT(R), the following two conditions shall be satisfied:

- i. Composite Supply of Works Contract to be supplied by Main Contractor to Government and
- ii. Supply by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of canal, dam or other irrigation works.

We observe that the applicant does not satisfy condition 1 , but satisfies only condition no. 2.

15. Further, We hold that to be eligible for being covered at Sr no 3 (ix) of said NT 11/2017CT(R), the following two conditions shall be satisfied:

- i. Composite supply of works contract provided by a sub-contractor to the main contractor and
- ii. That main contractor shall provide services specified in item (iii) to Government.

15.1 We find that the applicant is not a sub contractor but a sub sub contractor. The person to whom the service is supplied is specific in the Notification. Either, the service shall be supplied by main contractor to Government or the service shall be supplied by a sub contractor to the main contractor providing services to Government. We observe that the applicant does not satisfy both the conditions. The gist of the findings is tabulated as follows:

SNo	Contractor Type	Name of supplier	Name of Recipient of service	Eligibility of entry in NT 11/2017CT(R)
1	Main Contractor	JSIW	Government	Sr no 3(iii)
2	Sub Contractor	Radhe Construction	JSIW providing service to Government	Sr no 3(ix)
3	Sub sub contractor	Applicant	Radhe Construction	Not eligible for entry at Sr no 3(iii)/(ix)

15.2 The Wording in the said Notification, when clear, plain and unambiguous and only one meaning can be inferred, we are bound to give effect to the said meaning. We give due regard to the clear meaning of words and matter should be governed wholly by the language of the notification. We note that the wordings of the Notification and its conditions imposed for satisfaction to merit entry in the said serial number. We cannot allow any scope for intendment. We find that our view of strict interpretation of the wordings of the said notification is in compliance to the Supreme Court Judgements as follows:

- **2015 (324) E.L.T. 656 (S.C.) [para 31]**
- **2011 (265) E.L.T. 14 (S.C.) [para 10]**
- **1989 (40) E.L.T. 239 (S.C.) [para 11].**
- **1978(2) ELT(J350)(SC) [para 5]**
- **CCE1995(77) ELT474(SC) [para 16].**

16. M/s JSIW, M/s Radhe Construction and the applicant are all taxable persons. It is only the main contractor supplying subject service to Government and the sub contractor of the said main contractor who will merit entry at sr no 3(iii) and sr no 3(ix) of said NT 11/2017-CT(R) respectively. We hold that if condition of Notification was only that composite supply of works contract to be supplied by way of irrigation works, irrespective of the recipient being Government or not, then sub-sub contractor is also eligible for said entry in Notification. But the Notification lays down the condition that supply should be provided to Government by main contractor and only sub contractor to said main contractor enjoys the benefit of being covered under cited entries of said NT. As said applicant is sub-sub contractor and supplies service to M/s Radhe sub contractor and not to M/s JSIW main contractor, the conditions of said entry 3(iii)/ 3(ix) to said Notification is not satisfied.

17. We note that the applicant cited the following case laws:

- i. Order No.AAR/GST/PB/0/0 dated 6-9-2019 of the Punjab Authority for Advance Ruling in the case of S.P.Singla Construction pvt.ltd: This Ruling pertains to classification of works contract service in relation to bridges and the tax payer is a sub contractor. The present issue at hand is applicant is a sub sub contractor.
- ii. Order No.MAT/AAAR/SS-RJ/15/2018-19 dated 3-1-2019 of the Maharashtra Appellate Authority for Advance Ruling in the case of M/s. Shree Construction: This Ruling pertains to a subcontractor for Railway work and therefore not applicable to our subject matter at hand as cited Ruling pertains to the classification and GST liability in respect of supply of work contract pertaining to Railways provided by the sub-contractor. The said supply has been classified under Sr.No.3(v) of Notification No.11/2017-Central Tax(Rate) dated 28-6-2017 on the ground that even if the sub-contractor has provided the service to the main contractor, it still 'pertains to' railways only as it is clear from a plain reading of the item(v) of Sr.3 of the Notification that any supply of works contract pertaining to the railways including monorail and metro is subject to concessional rate of 12% GST.
- iii. Mary Matha Construction Company (2018)98.Taxmann(om.164) (AAR-Kerala). This Ruling pertains to the GST liability on the construction of Hospital buildings in Government Medical College, Construction of Non science building at Central University of Kerala and Construction of Biotech lab and Administrative Block at Life Science Park, Trivandrum which is different from the present case, as in this cited Ruling, the appellant was subcontractor to the Principal contractor.
- iv. Kunal Structure India pvt.ltd.(2021)127.Taxmann.123.This Ruling pertains to GST rate for sub-contractor of the main contractor for construction of Medical College.
- v. Further, Rulings of AA/ AAA as per the provisions of Section 103 of the CGST Act shall be binding only on the applicant who had sought it and the jurisdictional officer in respect of the applicant.

- vi. State of Andhra Pradesh and others vs Larsen & Tubro ltd. & others: In this case, the question which was considered was whether the A.O. was right in his conclusion that there were two deemed sales, one from main contractor to the contractee and the other from the sub-contractors to the main contractor as there was no privity of contract between the contractee and the sub-contractors.
We note that the subject matter before us is not covered under this issue.

18. In Conspectus of aforementioned findings, we issue the Ruling:

RULING

GST rate on subject supply is 18% for services supplied by the sub-sub-contractor to sub-contractor M/s Radhe and supply merits entry at Heading 9954, Entry No 3(ii) of Notification No.11/2017-CT(R) dated 28-6-17.

(SANJAY SAXENA)
Member(S)

(ARUN RICHARD)
Member(C)