
	RAJASTHAN AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX KAR BHAWAN, AMBEDKAR CIRCLE, NEAR RAJASTHAN HIGH COURT JAIPUR – 302005 (RAJASTHAN)	
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ADVANCE RULING NO. RAJ/AAR/2021-22/25

J.P.Meena Additional Commissioner	:	Member (Central Tax)
M. S. Kavia Joint Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/s SKS INFRA PROJECTS, Flat no. 994, Block 24, Maharana Pratap Marg, Pachyawala, Near Vaishali Nagar, JAIPUR-302034, RAJASTHAN
GSTIN of the applicant	:	08ADZFS7238N1ZU
Clause(s) of Section 97(2) of CGST/SGST 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	:	01.10.2021
Present for the applicant	:	Anurag Kalavatiya, Advocate
Date of Ruling	:	12.10.2021

Note: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the SGST 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 provision under the SGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / SGST Act would be mentioned as being under the "GST Act".

The issue raised by M/s SKS INFRA PROJECTS, Flat no. 994, Block 24, Maharana Pratap Marg, Pachyawala, Near Vaishali Nagar, JAIPUR-302034, RAJASTHAN, - (hereinafter the applicant) is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2) (a) & (e) given as under:

- (a) Classification of any goods or services or both;
- (e) Determination of the liability to pay tax on any goods or services or both.

A. SUBMISSION AND INTERPRETATION OF THE APPLICANT:

- That the Applicant wants to apply in the capacity of a Sub-Contractor to the Principal Contractor who has been allotted tender by the Office of the Additional Chief Engineer, Public Health and Engineering Department, Region- Kota, Government of Rajasthan ('Originating Employer') for 'Operation and Maintenance of Integrated Ramganjmandi Pachpahar Water Supply Project- Transmission System for Three Years'.
- It is stated herein that the services provided by the Principle Contractor to the Originating Employer involves 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 State Government. Therefore, the Principal Contractor attracts 'nil' rate of tax under Goods and Services Tax ('GST') regime in terms of Sr. no. 3A of the Notification No. 02/2018- Central Tax (Rate) dated 25.01.2018. That the Clause 3A of the Notification No. 02/2018-Central Tax (Rate) dated 25.01.2018 is reproduced herein below for the ready reference:

1	2	3	4	5
"3A	Chapter 99	Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 percent of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental 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.	Nil	Nil

That in this regard the Applicant herein submits that:

1. That a Contractor and Sub-Contractor are not defined under the CGST Act, 2017 but as per the general definition:

I. Contractor means a person or firm that undertakes a contract from the Originating Employer to provide materials or labours to perform a service or do a job at a specific price.

II. A Sub-Contractor means a person who is hired by a Principal 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.

2. That when the Contractor awards either wholly or partially, the contractual obligation to a Sub-Contractor, the liability of the principal contractor towards the Originating Employer remains the same and even the identity of the contract doesn't change.

3. That moreover, when the Contractor awards either wholly or partially, the tendered work to the Sub-Contractor, the sub-contractor works in accordance with the conditions specified in the tender document itself and his obligations towards the Principal Contractor remains the same as the Principal Contractor has towards the Originating Employer.

4. That accordingly, when the Principal Contractor falls within the ambit of exemption / relaxation of tax rate of GST, the same should be applicable on the Applicant as well being a Sub-Contractor to the Principal Contractor.

5. That the intent of the Government behind providing exemption / relaxation to the Principal Contractor is on the basis that such work is being done by the Principal Contractor for the Government or Government Entities and majority of the work includes supply of services. On this basis, as the work done by the Applicant-Sub Contractor for the Principal Contractor also involves supply of services majorly and such work also gets transferred to the Government through the Principal Contractor, such composite works contract being performed by the Sub-Contractor for the Principal Contractor should also attract same rate of duty as applicable on the Principal Contractor.

6. Therefore, the taxability of the Sub-Contractor should be the same as of the Principal Contractor. Otherwise, the intention of the Government for providing relaxation in rate of duty to the Principal Contractor will get frustrated.

B. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT:-

Whether if a Contractor who is covered under Clause 3A of the Notification No. 02/2018-Central Tax (Rate) dated 25.01.2018 and whose composite supply of goods and services attracts 'NIL' rate of duty, assigns/sub-lets the said contracted work to a sub-contractor in accordance with the terms and conditions of the contract, whether the same rate of duty i.e. NIL shall also be applicable to the said sub-contractor as he is performing the same functions/providing composite supply of goods and services as that of the contractor and providing such composite supply of goods and services for the Central Government, State Government or Union Territory or Local Authority or a Government Authority or a Government Entity only.

C. PERSONAL HEARING

In the matter personal hearing was granted to the applicant on 01.10.2021. Shri Anurag Kalavatiya, Advocate (Authorised Representative) of applicant appeared for PH. During the PH, he reiterated the submissions already made in the written application. He requested for early disposal of the application.

D. FINDINGS, ANALYSIS & CONCLUSION:

1. We have gone through the facts of the case and submission made by the applicant at the time of preliminary hearing.
2. The Applicant wants to apply for a contract in the capacity of a Sub-Contractor with the Principal Contractor who has been allotted tender by the Office of the Additional Chief Engineer, Public Health and Engineering Department (PHED), Region- Kota, Government of Rajasthan ('Originating Employer') for 'Operation and Maintenance of Integrated Ramganjmandi Pachpahar Water Supply Project- Transmission System for Three Years'.
3. The applicant in their written submission stated that, the services provided by the Principle Contractor to the Originating Employer (i.e. PHED) involves 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 State Government. Therefore, the Principal Contractor attracts 'nil' rate of tax under Goods and Services Tax ('GST') regime in terms of Sr. no. 3A of the Notification No. 02/2018-Central Tax (Rate) dated 25.01.2018.
4. Before we delve deep to decide the case, it would be proper in the fitment of justice to discuss the relevant provisions of the statute which are as under-

- 4.1 The Clause 3A of the Notification No. 02/2018-Central Tax (Rate) dated 25.01.2018 is reproduced herein below:

1	2	3	4	5
"3A	Chapter 99	Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 percent of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental 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.	Nil	Nil

4.2 **Section 8 of CGST Act, 2017** reads as under:-

8. Tax liability on composite and mixed supplies. —

The tax liability on a composite or a mixed supply shall be determined in the following manner, namely: —

(a) 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;

4.3 Composite supply has been defined under Schedule-II under Entry 6 which is read under:

“6. Composite supply

The following composite supplies shall be treated as a supply of services, namely:

(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.”

4.4 As per Section 2(119) of CGST Act, 2017—works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of **any immovable property** wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

4.5 Under the General Clauses Act, 1897 the term immovable property has been defined under Section 3(26) as "immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.

5. Let us analysis the present case in the light of above legal provisions keeping in mind the facts and documents/information submitted by the applicant in this regard.

6. For availing benefits of Clause 3A of the Notification No. 02/2018-Central Tax (Rate) dated 25.01.2018, following key elements must be present:


- (i) Composite supply of goods and services.
- (ii) the value of supply of goods constitutes not more than 25 percent of the value of the said composite supply
- (iii) supply must be provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity
- (iv) supply must be 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.

7. In the instant case, the applicant wants to apply in the capacity of a Sub-Contractor to the Principal Contractor who has been allotted tender by the Office of the Additional Chief Engineer, Public Health and Engineering Department, Region- Kota, Government of Rajasthan ('Originating Employer') for 'Operation and Maintenance of Integrated Ramganjmandi Pachpahar Water Supply Project- Transmission Part for 3 Years'. Here it reveals that applicant has only applied a tender document for contract with the Principal Contractor. As per discussion held at the time of Personal Hearing, it emerged that there no contract/agreement has been done between applicant and Principal Contractor till date of Personal hearing.
8. During the time of personal hearing, on being asked about submission of supporting documents of the case, the authorized representative of the applicant has submitted a copy of 'Notice Inviting Tender' (NIT NO. 30/2021-22) (Page I to VI only) in respect of 'Operation and Maintenance of Integrated Ramganjmandi Pachpahar Water Supply Project- (Transmission Part) for 3 Years, PHED, Kota.
9. On examination of the 'Notice Inviting Tender' (NIT NO. 30/2021-22) provided by the applicant, we find that it was simply a tender document having general details of work description, estimated cost, earnest money, cost of tender document, tender processing fee, period for O&M, important dates of events and eligibility /technical criteria. There is nowhere mention about scope of work to be done by the applicant.
10. In the absence of clear scope of work to be performed by the applicant in the said project (i.e. 'Operation and Maintenance of Integrated Ramganjmandi Pachpahar Water Supply Project- Transmission Part), we are not in the position to ascertain whether the work to be awarded to the applicant by the principal contractor will be either wholly or partially or of goods & service both or only goods or only service.


11. Thus, in the absence of aforesaid information/ documents, we are not enough capable to examine whether the work to be allotted to the applicant will have all components of composite supply, works contract, immovable property etc. and will satisfy the elements of the Clause 3A of the Notification No. 02/2018-Central Tax (Rate) dated 25.01.2018. Further in the absence of proper contract/agreement/work order, how we can say that the value of supply of goods does not exceeds 25% of the total value of so called composite supply?
12. Further apart from the write up, the applicant neither produced any supporting documents in relation to the availability of exemption to the principal contractor in respect of Clause 3A of the Notification No. 02/2018-Central Tax (Rate) dated 25.01.2018 nor submitted any documentary evidence in respect of acceptance of tender filed by them by the principal contractor. Moreover, even name of principal contractor who will awards the contract, has not been provided by the applicant to the 'authority'.
13. In the case at hand, the applicant had not furnished any documentary evidence to substantiate their proposed scope of work, mode of supply (i.e. whether supply of goods or service or both) in the form of any work Order, quantum of goods or service or both to be supplied or any documentary evidence to prove the proposed supply of the applicant, i.e., any correspondences with the proposed principal suppliers with whom they intend to enter into transactions or contract/agreements/Purchase orders for supply. In this situation, without the specifics of the proposed supply, substantiated with the material facts, this authority is constrained to not to rule on the applicability of 3A of the Notification No. 02/2018-Central Tax (Rate) dated 25.01.2018. Further with the limited material data submitted by the applicant, with no Expression of Contract/ Agreement, time period etc. we find it prudent to refrain from pronouncing a Ruling. Therefore, without material evidence for the scope of work of proposed contract of proposed supply, no ruling is extended on the clarifications sought by applicant.
14. In view of the foregoing, we rule as follows: -

RULING

No ruling is extended for the reasons stated in para 13 above.


(J.P. MEENA) 12/10/2021
MEMBER
CENTRAL TAX




(M. S. KAVIA) 12/10/2021
MEMBER
STATE TAX

SPEED POST

M/s SKS INFRA PROJECTS,
Flat no. 994, Block 24,
Maharana Pratap Marg,
Pachyawala, Near Vaishali Nagar,
JAIPUR-302034, RAJASTHAN

o/c
at

F. No. AAR/SIP/2021-22/189 - 193

Date: 12/10/2021

Copy to: -

1. The Chief Commissioner, CGST and Central Excise, Jaipur Zone, NCRB, Statue Circle, Jaipur-302005 (Raj.).
2. The Commissioner, State Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005.
3. The Pr. Commissioner, Central Tax, CGST and Central Excise Commissionerate, NCRB, Jaipur-302005 (Rajasthan).
4. The Assistant Commissioner, Circle-P, Ward-III, Divisional KAR BHAWAN, Jhalana Doongari, Jaipur-1, Jaipur, Rajasthan.