



TELANGANA STATE AUTHORITY FOR ADVANCE RULING
CT Complex, M.J Road, Nampally, Hyderabad-500001.
(Constituted under Section 96(1) of TGSAT Act, 2017)

Present:

Sri J. Laxminarayana, Additional Commissioner(Grade-I) (State Tax)

Sri B. Raghu Kiran, IRS, Joint Commissioner (Central Tax)

A.R.Com/24/2018

Date.29-06-2020

TSAAR Order No. 06/2020

[Under Section 100(1) of the CGST/TGSAT Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this Order]

1. M/s. Vishwanath Projects Limited, 3-5-874/A, #401, R.K.Vipanchi estates, Hyderaguda, Hyderabad – 500 029 (hereinafter referred to as ‘the applicant’), registered under GSTIN No. 36AACCV2054N1Z3 has filed an application in **FORM GST ARA-01** under Section 97(1) of TGSAT Act, 2017 read with Rule 104 of CGST and TGSAT Rules.

2. At the outset, it is made clear that the provisions of both the CGST Act and the TGSAT 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 TGSAT Act. Further, for the purposes of this Advance Ruling, the expression ‘GST Act’ would be a common reference to both CGST Act and TGSAT Act.

3. It is observed that the queries raised by the applicant fall within the ambit of Section 97 of the GST ACT. The Applicant enclosed copies of challans as proof of payment of Rs. 5,000/- for SGST and Rs. 5000/- for CGST towards the fee for Advance Ruling. The concerned jurisdictional officer also raised no objection to the admission of the application. The application is therefore, admitted.

4. QUESTION RAISED

Whether EPC Contract in respect of power distribution and Transmission company fall under the category of “Government Entity” as per GST notification number 1/2018 – Central Tax(Rate), if so the rate of GST applicable.

On Verification of basic information of the applicant, it is observed that the applicant falls under State Jurisdiction, i.e. Assistant Commissioner (State Tax), Narayanaguda – M.J Market Circle, Hyderabad. Accordingly, the application has been forwarded to the jurisdictional officer to offer their remarks as per the Section 98(1) of TGSAT Act, 2017. It is submitted that there is ‘No’ pendency of the issue in respect of M/s Vishwanath Project Ltd., as such the VAT Audit & CST Assessment was completed upto June, 2017 in the above case.

5. THE FACTS OF THE CASE HAVING A BEARING ON THE QUESTIONS

- a. The applicant is providing services viz., Supply, Erection. Testing & Commissioning of 51 Nos. 33/11kV Substations with Associated Lines to M/s Odisha Power Transmission Corporation Limited, Janapath, Bhubaneswar(herein after referred to as “OPTCL). The applicant desires to

get ruling as to whether OPTCL is a Government Entity and if so the rate of tax in respect of aforementioned services provided by them to OPTCL.

- b. As per the applicant's interpretation, the power distribution and transmission companies are treated as Government Entity and the applicable GST rate is 12%.

6. PERSONAL HEARING

A personal hearing was held on 20-12-2019 at 3.00 PM, Mr. V. Sri Harsha, CFO & Meher Tej, Authorised representative of M/s. Vishwanath Projects Limited, appeared for the personal hearing and reiterated the facts mentioned above.

7. DISCUSSION & FINDINGS

We have gone considered the submissions made by the applicant in their application for advance ruling as well as the additional submissions made by Sri A. K. R. S. V. Mehertes & Sri Harsha during the personal hearing. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts.

At the outset, we would like to state that the provisions of both the CGST Act and the TGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the TGST Act.

It is noticed that M/s Odisha Power Transmission Corporation Limited, Janapath, Bhubaneswar, desires the contractor to execute the contract, for "Supply, Erection. Testing & Commissioning of 51 Nos. 33/11kV Substations with Associated Lines in SOUTHCO area within the districts of Ganjam, Gajapati, Kandhamal, Koraput, Malkangiri, Rayagada, Boudh & Nabarangpur in Odisha on EPC contract basis" as per "NIT / ODSSP/OPTCL/10/Phase-III dated 27-06-2015, and Tender document No. ODSSP/ PH-III (PKG-2)|SOUTHCO/2015-16 and has accepted the bid of the Contractor for the execution of this contract.

As per the Notification No. 11/2017 – CGST, dt. 28-06-2017 issued in G.O.Ms No. 110, Revenue (CT-II) Department, dt. 29-06-2017 the entry in serial number 3 reads as under :

Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
3	Heading 9954 (Construction services)	(i) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	9	-
		(ii) composite supply of works contract as defined in clause 119 of section 2 of Telangana Goods and Services Tax Act, 2017	9	-
		(iii) construction services other than (i) and (ii) above.	9	-

Subsequently the above notification was amended by the following Notifications from time to time as under :

1. Notification No. 20/2017 – Central Tax (R), Dt. 22-08-2017 vide G.O.Ms No. 227, Revenue (CT-II) Department, Dt. 05-10-2017.
2. Notification No. 24/2017 – Central Tax (R), Dt. 21-09-2017 vide G.O.Ms No. 252, Revenue (CT-II) Department, Dt. 22-11-2017
3. Notification No. 31/2017 – Central Tax (R), Dt. 13-10-2017 vide G.O.Ms No. 253, Revenue (CT-II) Department, Dt. 23-11-2017
4. Notification No. 46/2017 – Central Tax (R), Dt. 14-11-2017 vide G.O.Ms No. 280, Revenue (CT-II) Department, Dt. 12-12-2017.
5. Notification No. 01/2018 – Central Tax (R), Dt. 25-01-2018 vide G.O.Ms No. 46, Revenue (CT-II) Department, Dt. 28-02-2018.
6. Notification No. 27/2018 – Central Tax (R), Dt. 22-08-2017 vide G.O.Ms No. 6, Revenue (CT-II) Department, Dt. 29-01-2020.
7. Notification No. 03/2019 – Central Tax (R), Dt. 29-03-2019 vide G.O.Ms No. 63, Revenue (CT-II) Department, Dt. 04-06-2019.

A careful reading of the above notifications along with the amendments made to the above notifications it is concluded that vide Notification No. 24/2017 – Central Tax (Rate), Dated. 21-09-2017 vide G.O.Ms No. 252, Revenue (CT-II) Department, Dt. 22-11-2017, Government of India by inserting entry no. (vi) notified concessional GST rate of 6% for the construction services provided to Central Government, State Government, Union Territory, a local authority or a Government Authority 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 mean 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 culture 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 Telangana Goods and Services Tax Act, 2017.

Further, vide Notification No. 31/2017 - Central Tax (Rate), Dated: 13-10-2017 vide G.O.Ms No. 253, Revenue (CT-II) Department, dt. 23-11-2017, Government of India substituted the word “Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity” in place of ‘Central Government, State Government, Union Territory, a local authority or a Governmental Authority’.

Now, we examine the question that the Applicant Contractee i.e. M/s. Odisha Power Transmission Corporation Limited, Janapath, Bhubaneswar is a Government Entity or not?

As per Notification No. 31/2017 Central Tax (Rate), Dated.13-10-2017 vide G.O.Ms No. 253, Revenue (CT-II) Department, dt. 23-11-2017, Government Entity is defined as under:

“Government Entity” means an authority or a board or any other body including a society, trust, corporation.

- i) *Set up by an Act or Parliament or State Legislature; or*
- ii) *Established by any Government, with 90 percent 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.*

It is evident from the website of OPTCL it is understood that with the enactment of the Electricity Act, 2003, the Government of Orissa through notification of a Transfer Scheme transferred the transmission business of GRIDCO and vested the same with OPTCL with effect from 01-04-2005. OPTCL, registered on 29th March, 2004 under the Companies Act, 1956, is a wholly owned Government Company. Under the Transfer Scheme, OPTCL has been notified as the State Transmission Utility (STU) and is also mandated to discharge the State Load Dispatch functions. Under the provisions of the Electricity Act, 2003, OPTCL is a deemed transmission licensee. It undertakes the activities of transmission of electricity in the State of Orissa under regulatory control of Orissa Electricity Regulatory Commission (OERC) and also in compliance of the provision of the Orissa Electricity Reform Act, 1995 and Electricity Act, 2003. Thus, M/s Odisha Power Transmission Corporation Limited falls under the domain of Government entity in terms of the provisions of Not. No. 11/2017-CT Dt. 28.06.2017 (as amended).

Now we examine the applicability of Tax rate prescribed under entry no. (vi) Sl. No. 3 of Not. No. 11/2017-CT Dt. 28.06.2017 is applicable to the services rendered by the applicant to OPTCL.

It is noticed that the applicant is engaged in execution of works awarded by M/s Odisha Power Transmission Corporation Limited, Janapath, Bhubaneswar as detailed in Para above. The works under discussion have been undertaken to execute/implement for Erection, Testing and Commissioning of 51 nos 33/11 kv Substation and Associated Lines on EPC contract basis with complete facilities within the jurisdiction of DISCOM SOUTH CO in the districts of Ganjam, Gajapati, Kandhamal, Koraput, Malkangiri, Rayagada, Boudh and Nabarangput under Package-2 of Phase-III, ODDSSP.

As per Section 2 of CGST Act, 2017 and TGST Act, 2017 defines “works contract” as 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) is involved in the execution of such contract;

The composite supply works contract as defined at Section 2 of CGST Act, 2017 and TGST Act, 2017 is treated as supply of service in terms of serial no. 6, Schedule II of CGST Act, 2017 and TGST Act, 2017.

As seen from the nature of the work stated by applicant in Contract agreement with M/s Odisha Power Transmission Corporation Limited, Janapath, Bhubaneswar, the works are of Industrial nature as those works are to be done to industrial feeders too. The contractee is not rendering any non-commercial services as the structure arising out of works contract services will be used by M/s OPTCL for the purpose of commerce, and even in situations where it “appears” that the structure is pre-dominantly meant for non-commercial purposes, it turns out that they get reimbursed for their activity on behalf of their customers from the State Government, which by no stretch of imagination can be called as “Non-commercial”.

Therefore, since the works are used for commercial / business purpose the benefit of Concessional Rate of 12% (6% under Central tax and 6% State tax) or any other concessional rate is NOT available to the applicant.

We find that the services rendered by the applicant squarely falls under the works contract and fall under entry no. (ii) of S.No. 3 of the of Not. No. 11/2017 – CT (R), Dt. 28-06-2017 (as amended) and corresponding notifications under TGST Act, 2017, and the applicable rate of tax is 18% (9% CGST + 9% SGST) for the period from 01.07.2017 to 31.03.2019.

It is further observed that entry no. (ii) of S. No. 3 was omitted w.e.f 01.04.2019 by Not. No. 03/2019-CT (R) dated 29.03.2019. Nevertheless, we find that entry no. (xii) of S. No. 3 of Not. No. 11/2017 – Central Tax (Rate), Dt. 28-06-2017 (as amended) prescribes rate of tax is 18% (9% CGST + 9% SGST) in respect of constructions not specified under entry numbers other than (i), (ia), (ib), (ic), (id), (ie), (if), (iii), (iv), (v), (va), (vi), (vii), (viii), (ix), (x) and (xi) of S. No. (3). For the period from 01.04.2019, the services rendered by the applicant fall under the said residual entry and attract rate of tax @18% (9% CGST + 9% SGST).

ADVANCE RULING

8. In view of the observations stated above, the following rulings are issued :

Question	Advance Ruling issued
<i>(i) Whether EPC contract in respect of power distribution and transmission company fall under the category of “Government Entity” As per GST Notification number 1/2018 – Central Tax(Rate), if so the rate of GST applicable</i>	(a) Services Rendered to M/s OPTCL falls under services provided to a Government entity. (b) The applicable rate of tax is 18% (9% CGST + 9% SGST) for the services referred to by the applicant.

Sd/- J. Laxminarayana
ADDL. COMMISSIONER (State Tax)

Sd/- B. Raghu Kiran
JOINT COMMISSIONER (Central Tax)

To,
M/s. Vishwanath Projects Limited,
3-5-874/A, #401, R.K.Vipanchi estates,
Hyderaguda, Hyderabad – 500 029

Copy submitted to :
1. The Commissioner (State Tax) for information.

Copy to:
1. The Joint Commissioner (State Tax), Abids.
2. The Assistant Commissioner (State Tax), Narayanguda.