

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)
 (2) Shri Pankaj Kumar, Joint Commissioner of Central Tax, (Member)

GSTIN Number, if any/ User-id		27AAACE2764Q1Z6
Legal Name of Applicant		EMCO LIMITED
Registered Address/Address provided while obtaining user id		N-104, MIDC Area, Mehrun, Jalgaon- 425003
Details of application		GST-ARA, Application No. 16 Dated 27.04.2018
Concerned officer		Dy. Commissioner of State Tax (E-643) LTU-04, Mumbai
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Factory/Manufacturing , Service Provision Works contract
B	Description (in brief)	The Applicant is engaged in the business of manufacturing and selling various products and solutions as required in Power Transmission and Distribution Sector.
Issue/s on which advance ruling required		(v) determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required		As reproduced in para 02 of the Proceedings below.

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"] by EMCO LIMITED, the applicant, seeking an advance ruling in respect of the following questions :

- 1.1. The question/ issue before Your Honor is whether GST is leviable on the transportation charges levied by the Applicant on PGCIL?
- 1.2. In case the GST is payable, what would be the rate of GST to be charged on such charges?

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 such 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, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

02. **FACTS AND CONTENTION - AS PER THE APPLICANT**
 The submissions, as reproduced verbatim, could be seen thus -

STATEMENT OF RELEVANT FACTS HAVING A BEARING ON THE QUESTION(S) ON WHICH ADVANCE RULING IS REQUIRED.

1. This Application is being filed by EMCO Ltd. ('the Applicant'/'the Company'), having Goods and Services Tax ('GST') Registration No.27AAACE2764Q1Z6. The Applicant is engaged in the business of manufacturing and selling various products and solutions as required in Power Transmission and Distribution Sector. The

Company has two divisions namely (i) Transformer division and (ii) Project division. The Transformer division manufactures widest range of transformers which are used in the power industry. The Project division has two Strategic business units (i) Sub-station SBU (ii) Manufacturing Tower and Transmission Line SBU. Sub-station SBU focuses on turnkey projects in the Transmission & Distribution area strengthening the substation and distribution network and Transmission Line SBU offers a wider portfolio of products and solutions for Transmission and Distribution of Power.

2. The Applicant, as part of its activities under the Project division has entered into following contracts with Power Grid Corporation of India Limited (hereinafter referred to as 'PGCIL') as under:

- (i) Supply of Towers and Transmission line Products; (referred to as 'Supply contract' / 'First Contract')
- (ii) Services contract (referred to as 'Service contract' / 'Second Contract'); and

Supply contract

As per the Supply contract, the Applicant has agreed to supply various equipment, materials, transmission line towers, insulators, accessories and other spares which are required for commissioning the transmission line. All the materials would be supplied on ex-works basis. The detailed scope of supply is given at Appendix 6 of the Supply contract which is annexed hereto as **Exhibit A**.

As per the Supply contract, PGCIL agrees to pay the Applicant the Contract price along with all the taxes and duties as applicable on the same.

Service contract

The Applicant has entered into a Service contract with PGCIL in respect of various services to be undertaken for commissioning of the Transmission line. The Service contract *inter alia* includes planning, survey, transportation of goods, loading and unloading at site, installation and commissioning of the Transmission line. Separate consideration has been decided for various services specified in the contract.

As per the Service contract, PGCIL agrees to pay the Applicant the contract price along with all the taxes and duties as applicable on the same.

The Applicant issues separate invoices to PGCIL for (i) for the supply of goods (ii) supply of services. With respect to the services, the Applicant issues separate invoice for each service.

3. The Applicant, for the purposes of transportation of goods, avails the service of a Goods Transport Agency (GTA) who transports the said goods to the location of PGCIL. The Applicant also pays tax under reverse charge on the said services availed from a GTA.

4. In view of the above, the issue for determination before the Authority for Advance Ruling ('AAR') is whether GST is leviable on such freight charges being recovered and if so at what rate.



STATEMENT CONTAINING THE APPLICANT'S INTERPRETATION OF LAW AND/OR FACTS, AS THE CASE MAY BE, IN RESPECT OF THE QUESTION(S) ON WHICH THE ADVANCE RULING IS REQUIRED

2. ISSUE FOR DETERMINATION

2.1. The question/ issue before Your Honor is whether GST is leviable on the transportation charges levied by the Applicant on PGCIL?

2.2. In case the GST is payable, what would be the rate of GST to be charged on such charges?

2.3. The question / issue placed for determination before Your Honor has to be appreciated in light of the following position of law and its applicability to the activity by the Applicant, discussed hereunder.

3. POSITION OF LAW AND SUBMISSIONS OF THE APPLICANT

At the outset, the Applicant would like to refer to Notification 12/2017-Central Tax (Rate) dated 28th June 2017 which exempts various services from the levy of GST.

EXEMPTION NOTIFICATION 12/2017- CENTRAL TAX (RATE) DATED 28TH JUNE 2017

3.1. Entry no. 18 of the Notification No. 12/2017 dated 28th June 2017 exempts services by way of transportation of goods by road except *inter alia* by a GTA. The relevant extract of the entry is reproduced below:

S.No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
18	9965	Services by way of transportation of goods- (a) by road except the services of - (i) a goods transportation agency; (ii) a courier agency; (b) by inland waterways.	NIL	NIL

3.2. As understood from above, supply of services by way of transportation of goods by road (unless provided by a GTA or courier agency) are exempt from GST and thereby not subject to tax.

3.3. As per clause (ze) of the above Notification, 'Goods Transport Agency' is defined to mean- "any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called"

- 3.4. It is submitted that the Applicant does not issue any consignment note in the course of providing the transportation services to PGCIL. This being the case, the Applicant is of the view that it does not qualify as a 'Goods Transport Agency'. The Applicant is also not a courier agency and accordingly, the transportation services provided by the Applicant may not be subject to GST.
- 3.5. Since the transportation services of the Applicant are part of the overall contract with PGCIL, it is also important to refer to the provisions pertaining to composite supply under GST.

COMPOSITE SUPPLY AND PRINCIPAL SUPPLY OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 (hereinafter referred to as 'CGST Act'):

Composite Supply [Section 2(30) of CGST Act]

"composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration: Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply."

3.6. **Principal Supply [Section 2(90) of CGST Act]:**

"principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;

TAXABILITY OF COMPOSITE SUPPLY [SECTION 8 OF THE CGST ACT]

- 3.7. 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; and
- b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

3.8. Upon reading of the above provisions, it can be seen that in cases where two or more taxable supplies of goods or services or both are naturally bundled in the course or furtherance of business the supply would qualify as Composite supply. Further, as per Section 8 of CGST Act, the Composite supply would be treated as a supply of 'Principal supply' for the purposes of CGST Act and would be taxed accordingly.

A 'Principal supply' would mean the predominant element of supply involved in the Composite supply. The Composite supply can, therefore, be broadly divided into two parts (i) Principal Supply i.e. predominant element (ii) other ancillary supplies.

3.10. As observed from above, a supply would qualify as a Composite supply only in cases where such supply consists of two or more taxable supplies. Therefore, it is crucial to analyze the term 'Taxable supply' as defined under Section 2(108) of CGST Act. The same is reproduced hereunder:

"taxable supply" means a supply of goods or services or both which is leviable to tax under this Act;

3.11. Further, the guidance note released by Central Board of Excise and Customs (CBEC) in respect of Composite supply lays down certain indicators by which one can determine whether the supplies are naturally bundled or not. Some of these indicators are listed as under:

- Large number of recipients expect such a bundle of supply;
- Majority of suppliers provide such a bundle;
- One supply is main and other is ancillary

3.12. In respect of the above position in law, it would be important to determine whether the transportation services provided by the Applicant would qualify as a 'taxable supply' or not in terms of the facts mentioned above and also whether such services form part of a Composite supply, if any especially since a Composite supply only covers two or more taxable supplies.

4. RELEVANT CLAUSES OF THE AGREEMENT BETWEEN Emco Ltd. AND PGCIL

Reference is sought to the underlying agreement under Exhibit A between the Applicant and PGCIL. The relevant clauses of the same are reproduced hereunder for ready reference:

SUPPLY CONTRACT –

THIS CONTRACT AGREEMENT No. CC-CS/651-SR1/TW-3573/3/G10/CA-1/7292(also referred to as 'Ex-works Supply Contract/the First Contract') is made on the 8th June 2017;

Article 2 – Contract Price and Terms of Payment

2.1 Contract Price:

The employer hereby agrees to pay to the contractor the contract price in consideration of the performance of the contractor of its obligations hereunder. The Contract Price shall be aggregate of INR 1,19,30,24,988/- (Rupees One Hundred Nineteen Crores Thirty Lacs Twenty Four Thousand Nine Hundred Eighty Eight only), or such other sums as may be determined in accordance with the terms and conditions of the Contract. The break-up of the Contract Price is as under:

Sr. No.	Price Component	Amount (INR)
1.	Ex-works price	1,19,29,94,308
2.	Type Test Charges	30,680
Total Ex-works price for Supply Contract		1,19,30,24,988

4.1. Article 5. of the contract (Para 1):

The Contract Agreement No.CC-CS/651-SR1/TW-3573/3/G10/CA-II/7293 has also been made on the 8th June 2017 between Employer and the Contractor for the Services contract (also referred to as the "Second Contract") for the subject package which includes performance of all the services inter alia including inland transportation, insurance, delivery, , unloading, handling, storage, erection (of all equipment and material) including associated civil works, detailed survey including route alignment, profiling, tower spotting, optimization of tower locations, soil resistivity measurement and geotechnical investigation (including special foundation locations viz. pile/well foundation locations, whenever applicable and covered under BPS), check survey, classification of foundation for different type of tower and casting of foundation for tower as per POWERGRID's foundations drawing, tack welding of bolts and nuts including supply and application of zinc rich plant, fixing of insulator strings, stringing of conductors and earth wires/OPGW along with all necessary line accessories; Stringing Power line crossing section under Live Line Condition (wherever applicable); painting of towers & supply and erection of span markers, obstruction lights (wherever applicable) for aviation requirements (as required), testing and commissioning of all equipment and materials supplied under Ex-Works Supply Contract for the Complete execution of Tower Package TW05 for +-800kV Raigarh – Pugalur Transmission Line Part-V associated with HVDC Bipole Link between Western region (Raigarh, Chhattisgarh) and Southern region (Pugalur, Tamil Nadu)- North Trichur (Kerala).

SERVICE CONTRACT-

4.2. THIS CONTRACT AGREEMENT No. CC-CS/651-SR1/TW-3573/3/G10/CA-II/7293 (also referred to as 'Service Contract/the Second Contract') is made on the 8th June 2017;

4.3. WHEREAS, the Employer desires to engage the contractor for providing all the services inter-alia including inland transportation, insurance, delivery, , unloading, handling, storage, erection (of all equipment and material) including associated civil works, detailed survey including route alignment, profiling, tower spotting, optimization of tower locations, soil resistivity measurement and geotechnical investigation (including special foundation locations viz. pile/well foundation locations, whenever applicable and covered under BPS), check survey, classification of foundation for different type of tower and casting of foundation for tower as per POWERGRID's foundations drawing, tack welding of bolts and nuts including supply and application of zinc rich plant, fixing of insulator strings, stringing of conductors and earth wires/OPGW along with all necessary line accessories; Stringing Power line crossing section under Live Line Condition (wherever applicable); painting of towers & supply and erection of span markers, obstruction lights (wherever applicable) for aviation requirements (as required), testing and commissioning of all equipment and materials, etc. for complete execution of the Tower Package TW05 for +-800kV Raigarh – Pugalur Transmission Line Part-V associated with HVDC Bipole Link between Western region (Raigarh, Chhattisgarh) and Southern region (Pugalur, Tamil Nadu)- North Trichur (Kerala) as detailed in the Contract document ("the facilities"), and the Contractor has agreed to such engagement upon and subject to the terms and conditions hereinafter appearing.

4.4. Article 2 – Contract Price and Terms of Payment

2.1 Contract Price:

The employer hereby agrees to pay to the contractor the contract price in consideration of the performance of the contractor of its obligations hereunder. The Contract Price shall be aggregate of INR 80,43,90,567/- (Rupees Eighty Crores Forty Three Lacs Ninety Thousand Five Hundred Sixty Seven only), or such other sums as may be determined in accordance with the terms and conditions of the Contract. The break-up of the Contract Price is as under:

Sr. No.	Price Component	Amount (INR)
1.	Transportation, Insurance and other incidental Services	5,95,56,644
2.	Installation Charges	74,48,33,923
Total Service Contract Price		80,43,90,567

5. **PRAYER**

In the light of the above background and facts, a Ruling is sought from the Hon'ble Authority on the following:

- Whether GST is leviable on invoice raised by Applicant towards freight and other incidental expenses outsourced by the Applicant?
- If GST is payable, applicable rate of tax on the said transportation service?

03. **CONTENTION - AS PER THE CONCERNED OFFICER**

The submission, as reproduced verbatim, could be seen thus-

1. **Issue for determination-**

1.1 The question/issue before Your Honor is whether GST is leviable on the transportation charges levied by the Applicant on PGCIL?

1.2 In case the GST is payable, what would be the rate of GST to be charged on such charges?

Dealer's Contention:

As per notification No. 12/2017 dated 28.06.2017 Entry No. 18, exempt services by way of transportation of goods by road except inter alia by GTA.

As understood from above, supply of services by way of transportation of goods by road (unless provided by a GTA or courier agency) are exempt from GST and thereby not subject to tax.

Department's Submission:

Composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

Illustration: where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply.

Taxability of Composite Supply (Section 8 of the CGST Act)

1. 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; and

b. A mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

2. Upon reading of the above provisions, it can be seen that in cases where two or more taxable supplies of goods or services or both are naturally bundled in the course or furtherance of business the supply would qualify as Composite Supply. Further as per Section 8 of CGST Act, the Composite supply would be treated as a supply of 'Principal Supply' for the purposes of CGST Act and would be taxed accordingly.

3. A 'Principal Supply' would mean the predominant element of supply involved in the Composite supply. The composite supply can, therefore, be broadly divided into two parts (i) Principal Supply i.e. predominant element (ii) other ancillary supplies.

4. As observed from above, a supply would qualify as a Composite supply only in cases where such supply consists of two or more taxable supplies. Therefore, it is crucial to analyze the term 'Taxable supply' as defined under Section 2(108) of CGST Act. The same is reproduced hereunder: 'taxable supply means a supply of goods or services or both which is leviable to tax under this Act.

M/s. Power Grid Corporation of India Ltd (A Govt. of India Enterprise) proclaimed a tender and M/s. Emco Ltd filed tender and finally got the tender of work of tower project Pugalpur Transmission Line Part-V associated with HVDC Bipole link between Western Region (Raigarh, Chhattisgarh) and Southern Region (Pugalpur, Tamilnadu) - North Trichur (Kerala) and made with contract for supply and also service on 08.06.2017. The contract is supply of material, supply of accessories and installation commissioning, etc. Another contract is service contract which includes performance of all services inter alia including inland transportation, insurance, delivery, unloading, handling, storage, etc.

Citation: -

1. Advance Ruling No. KAR ADRG 03/2018 Dated: 21st March, 2018

M/s Skill tech Engineers & Contractors Pvt Ltd.

2. Judgement of Supreme Court of India

M/s India Meters Ltd vs State Of Tamil Nadu on 7th September, 2010

3. Judgement of Supreme Court of India

Hindustan Sugar Mills Etc vs State Of Rajasthan And Others on 22nd August, 1978

4. Advance ruling Judgment of M/s. Emc LTD dt.12.02.2018

In the light of the above, contract is a composite contract (indivisible) and GST should be levied on total contract price including material, supply, service, freight etc. GST should be levied on fabricated galvanized steel structure tower (HSN Code: 7308) at the rate of 18 percent.

04. HEARING

The case was taken up for Preliminary hearing on dt. 26.06.2018 with respect to admission or rejection of present application when Sh. Harsh Shah, Advocate along with Sh. Jigar Vachharajani Advocate, Sh. Amit Singh, GM Transmission, Mr. Ganesh Tawari, Company Secretary and Mr. Suresh Disale, Manager Tax appeared and made submissions as per contentions made in ARA. Jurisdictional Officer, Sh. S. D. Tandale, Dy. Commissioner of S.T. (E- 643) LTU-04, Mumbai appeared and made written submissions.

The application was admitted and called for final hearing on 11.07.2018, Sh. Harsh Shah, Advocate along with Sh. Jigar Vachharajani Advocate, Mr. Suresh Disale, Manager Tax and Ms. Priya Sarkar Dy. Manager Taxation appeared and made oral and written contentions as per details in their ARA. Jurisdictional Officer, Sh. S. D. Tandale, Dy. Commissioner of S.T. (E- 643) LTU-04, Mumbai appeared and made written submissions.

05. OBSERVATIONS

We have gone through the facts of the case, documentary evidences like copies of agreement and written submission made by the applicant and the officer.

We find that the Applicant is registered under Goods and Services Tax ("GST") Act 2017 and is engaged in the business of manufacturing and selling various products and solutions as required in Power Transmission and Distribution Sector. The Company has two divisions namely (i) Transformer division and (ii) Project division. The Applicant, as part of its activities has entered into following contracts with Power Grid Corporation of India Limited (hereinafter referred to as 'PGCIL') as under:

- (i) Supply of Towers and Transmission line Products; (referred to as 'Supply contract'/'First Contract')
- (ii) Services contract (referred to as 'Service contract'/'Second Contract');

In this case applicant's submission is that it has entered into two separate contracts one for supply of goods and other for supply of services. As regards supply of services applicants has stated that goods that are sold ex-factory basis and thereafter they were transported to the project site for which separate consideration has been decided.

As per second contract entered into with PGCIL in respect of various services to be undertaken upto successful commissioning of the project which includes planning, transportation of goods, loading and unloading etc for which separate invoices and consideration has been stipulated. For the purpose of transportation of goods applicant avails the services of Goods Transport Agency who transports the goods. Applicant also pays tax under reverse charge basis. Further applicant on back to back basis issues invoices and charges separate consideration for transportation services to PGCIL. It is this transportation charges/freight recovered by the applicant from PGCIL which is the subject matter of present application. Applicant submits that they do not issue any consignment note in the course of providing transport services to PGCIL. This being the case, the applicant is of the view, that it does not qualify as a 'Goods Transport Agency' and thus transportation services provided by them may not be liable to GST.

Thus applicants main contention is based on the premise that various services undertaken by them including transportation services as per second contract for which applicant issues separate invoice and separate consideration as has been decided in the contract shall be considered as stand alone service and should be taxed accordingly.

In order to examine this view of the applicant we examine the terms of the contract executed between the applicant and the PGCIL. The contract document reads as under:-

Contract agreement for-

Tower Package TW05 for + 800KV HVDC Raigarh- Pugalur Transmission Line Part-V associated with HVDC Bipole link between Western region (Raigarh, Chhattisgarh) and Southern region (Pugalur, Tamil Nadu)- North Trichur (Kerala).

Now we refer to relevant clauses of contract to understand the exact nature of works undertaken by the applicant.

1. Supply contract- THIS CONTRACT AGREEMENT No. CC-CS/651-SR1/TW-573/3/G10/CA-1/7292(also referred to as 'Ex-works Supply Contract/the First Contract') is made on the 8th June 2017;

2.0 Of the contract -AWARD OF CONTRACT AND ITS SCOPE



- 2.1 We confirm having accepted your Bid (referred to at para 1.3 & 1.5 above) read in conjunction with all the specifications, terms & conditions of the Bidding Documents (referred to at para 1.2, 1.2.1, 1.2.2, 1.2.3 & 1.2.4 above) and award on you the 'Ex-works Supply Contract (also referred to as the 'First Contract') covering inter-alia Ex-works supply of all equipment and materials including Type Testing to be conducted, for the complete execution of the Tower Package TW05 for +800KV HVDC Raigarh- Pugalur Transmission Line Part-V associated with HVDC Bipole link between Western region (Raigarh, Chhattisgarh) and Southern region (Pugalur, Tamil Nadu)- North Trichur (Kerala), as detailed in the Bidding Documents referred hereinabove.

The scope of work inter-alia includes the following:

- (i) Fabrication and supply of all type of transmission line towers, including River crossing towers (wherever applicable) as per Employer's design/drawings including fasteners, step bolts, hangers, D-shackles etc.;
- (ii) Supply of all types of tower accessories like phase plate, circuit plate (where ever applicable), number plate, danger plate, anti-climbing device, Bird guard(where ever applicable);
- (iii) Supply of Earthwire.
- (iv) Supply of Tower Earthing.

The scope of work under this Notification of Award (NOA) shall also include all such items which are not specifically mentioned in the Bidding Documents and/or your bid but are necessary for the successful completion of your scope under the Contract for the construction of Tower Package TW05 . +800kV HVDC Raigarh- Pugalur Transmission Line Part-V associated with HVDC Bipole link between Western region (Raigarh, Chhattisgarh) and Southern region (Pugalur, Tamil Nadu)- North Trichur (Kerala) unless otherwise specifically excluded in the Bidding Documents or in this NOA.

- 2.2 The Notification for Award of Contract for performance of all other activities, as set forth in the Bidding Documents, viz. inland transportation, insurance, delivery, unloading, handling, storage, erection of all equipment and material) including associated civil works, detailed survey including route alignment, profiling, tower spotting, optimization of tower locations, soil resistivity measurement & geotechnical investigation (including special foundation locations viz. pile/ well foundation locations, whenever applicable & covered under BPS), check survey, classification of foundation for different type of tower and casting of foundation for tower footings as per POWERGRID's foundations drawing, tack welding of bolts and nuts including supply and application of zinc rich paint, fixing of insulator strir stringing of conductors and earth wires/ OPGW along with all necessary accessories; Stringing of Power line crossing section under Live Line Condition (wherever applicable); Painting of towers & supply and erection of span markers, obstruction lights (wherever applicable) for aviation requirements (as required), testing and commissioning of all equipment and materials supplied under this Ex Works Supply Contract has been issued on you vide our NOA no. CC-CS/651-SR1/TW-3573/3/G10/NOA-11/7293 dated 17.05.2017 (hereinafter called the "Second Contract" or "Services Contract").



Notwithstanding the award of work under two separate Contracts in the aforesaid manner, you shall be overall responsible to ensure the execution of both the Contracts to achieve successful completion and taking over of the works under the package by the Employer as per the requirements stipulated in the Bidding Documents. It is expressly understood and agreed by you that any default or breach under the 'Second Contract' shall automatically be deemed as a default or breach of this 'First Contract' also and vice-versa, and any such default or breach or occurrence giving us a right to terminate the 'Second Contract' either in full or in part, and/or recover damages there under, shall give us an absolute right to terminate this Contract, at your risk, cost and responsibility, either in full or in part and/or recover damages under this 'First Contract' as well. However, such default or breach or occurrence in the 'Second Contract', shall not automatically relieve you of any of your obligations under this 'First Contract'. It is also expressly understood and agreed by you that the equipment/ materials supplied by you under this 'First Contract', when erected, installed & commissioned by you under the 'Second Contract' shall give satisfactory performance in accordance with the provisions of the Contract.

- 3.2 Notwithstanding the break-up of the Contract Price, the Contract shall, at all times, be construed as **a single source responsibility Contract** and any breach in any part of the Contract shall be treated as a breach of the entire Contract.

Second contract is for the supply of services -

THIS CONTRACT AGREEMENT No. CC-CS/651-SR1/TW-3573/3/G10/CAII/7293 (also referred to as Services Contract/ the Second Contract') is made on the - 8th June 2017

This Services contract for Tower Package Two5 for + 800RV/HVDC Raigarh- Pugalur Transmission Line Part-V associated with HYDC Bipole link between Western region (Raigarh, Chhattisgarh) and Southern region (Pugalur, Tamil Nadu)- North Trichur (Kerala) Contract Agreement No. CC-CS/651-SRI/TW-3573/3/GIO/CA-11/7293

Scope of work ---WHEREAS the Employer desires to engage the Contractor for providing all the services inter-alia including inland transportation, insurance, delivery, unloading, handling, storage, erection (of all equipment and material) including associated civil works, detailed survey including route alignment, profiling, tower spotting, optimization of tower locations, soil resistivity measurement & geotechnical investigation (including special foundation locations viz. pile/ well foundation locations, whenever applicable & covered under BPS), check survey, classification of foundation for different type of tower and casting of foundation for tower footings as per POWERGRID's foundations drawing, tack welding of bolts and nuts including supply and application of zinc rich paint, fixing of insulator strings, stringing of conductors and earth wires/ OPGW along with all necessary line accessories; Stringing of Power line crossing section under Live Line Condition (wherever applicable); Painting of towers & supply and erection of span markers, obstruction lights (wherever applicable) for aviation requirements as required), testing and commissioning of all equipment and materials, etc. for the complete execution of the Tower Package TW05 for 1800kV HVDC Raigarh- Pugalur Transmission Line Part-V associated with HVDC Bipole link between Western region (Raigarh, Chhattisgarh) and Southern region (Pugalur, Tamil Nadu)- North Trichur (Kerala) as detailed in the Contract Document ("the Facilities"), and



the Contractor has agreed to such engagement upon and subject to the terms and conditions hereinafter appearing,

Article 2. Contract Price and Terms of Payment for service contract:-

2.1 Contract Price (Reference GCC Clause 7)

The Employer hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. The Contract Price shall be the aggregate of INR 80, 43,90,567 / (Rupees Eighty Crores Forty Three Lakh Ninety Thousand Five Hundred Sixty Seven Only), or such other sums as may be determined in accordance with the terms and conditions of the Contract. The break-up of the Contract price is as under:

SI. No.	Price Component	Amount (in Rs.)
1.	Transportation, Insurance and other Incidental Services	5,95,56,644/-
2.	Installation Services	74,48,33,923/-
Total for Services Contract		80,43,90,567/-

Article 5:- Notwithstanding the award of work under two separate Contracts in the aforesaid manner, the contractor shall be overall responsible to ensure the execution of both the Contracts to achieve successful completion and taking over of the works under the package by the Employer as per the requirements stipulated in the Bidding Documents. It is expressly understood and agreed by you that any default or breach under the 'First Contract' shall automatically be deemed as a default or breach of this 'Second Contract' also and vice-versa, and any such default or breach or occurrence giving us a right to terminate the 'First Contract' either in full or in part, and/or recover damages there under, shall give us an absolute right to terminate this Contract, at your risk, cost and responsibility, either in full or in part, and/or recover damages under this 'Second Contract' as well. However, such default or breach or occurrence in the 'First Contract', shall not automatically relieve you of any of your obligations under this 'First Contract'. It is also expressly understood and agreed by you that the equipment/ materials supplied by you under this 'Second Contract', when installed & commissioned by the contractor under this 'Second Contract' shall give satisfactory performance in accordance with the provisions of the Contract.

From the conjoined and harmonious reading of various clauses of first contract and second contract, it can be safely concluded that the agreement for setting up Tower Package TWO5 for +800KV transmission Line Project is a single indivisible contract. As the contract consists of two or more taxable supplies of goods and services and their combination, is a composite supply as defined u/s 2(30) of the GST Act. For the proposition of law that the first contract and the second contract is one single individual contract, we may find support from the decision of Supreme Court of India in case of M/s. Indure Ltd. & Anr vs Commercial Tax Officer & Ors on 20 September, 2010 C.A. No. 1123 of 2003.

Wherein Court held as below:

9. The total contract was agreed to be divided into two separate contracts, (i) Supply Contract, and (ii) Erection Contract, with a cross fall breach clause wherein breach of either of the contracts would entitle the owner/ contractee (N.T.P.C) to cancel the other contract also.

10. In the said meeting itself, it was agreed between the Company and N.T.P.C that separate formulae shall be applicable in respect of calculation of price adjustment for indigenous supplies and imported supplies. It was, further, agreed that if Sales Tax on imported items is leviable due to future enactment of sale/interpretation of law/ interpretation of law by court, the same will be reimbursed by N.T.P.C to the Company at actuals against documentary evidence.

11. By way of Letter of Award dated 16.08.1988, N.T.P.C awarded two contracts to the Company for performing the work of erection of aforesaid plant on Turnkey Basis. Even though, two contracts were entered into between the parties but in nutshell it was only one contract for the simple reason that N.T.P.C kept a right with it with regard to cross fall breach clause meaning thereby that default in one contract would tantamount to default in another and whole contract was liable to be cancelled.

The next issue to be decided is whether this composite supplies constitute works contract as defined u/s 2(119) of the GST Act. We reproduce the section as below:

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;

As averted above, the contract executed between the parties is for complete execution of the Tower Package Tower Package Two5 for + 800RV/HVDC Raigarh- Pugalur Transmission Line Part-V' associated with HVDC Bipole link between Western region (Raigarh, Chhattisgarh) and Southern region (Pugalur, Tamil Nadu) - North Trichur (Kerala).

As such we do not find any difficulty to arrive at conclusion that the subject contracts are for commissioning of immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of said contracts. The contract before us thus are clearly covered by the definition of works contract as per section 2(119) of GST Act. We further find that composite supplies in the nature works of contract as defined u/s 2(119) is declared as supply of services as per section 7r/w entry 6(a) of Schedule II of the GST Act.

In view of above discussion we find that the impugned supply of transportation service is not supply of standalone service but integral component of composite supply in the nature of works contract as defined u/s 2 (119) and the entire contract is a supply of services as per entry 6(a) of schedule II of the GST Act and liable to pay GST as per entry at Sr. no. 3(ii) of the Notification No. 1/2017 of Central Tax (Rate) dt. 28/06/2017 and corresponding notification under the MGST Act.

6. In view of the deliberations as held hereinabove, we pass the order as under:

ORDER

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

NO.GST-ARA- 16/2018-19/B-

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Mumbai, dt. 25/7/2018

For reasons as discussed in the body of the order, the question is answered thus -

Question: - 1. The question/ issue is whether GST is leviable on the transportation charges Levied by the Applicant on PGCIL?

Answer: - Answered is in the affirmative.

Question: - 2 In case the GST is payable, what would be the rate of GST to be charged on such charges?

Answer: GST in the present case would be liable at 18% as per entry at Sr. no. 3(ii) of the Notification No. 1/2017 of Central Tax (Rate) dt. 28/06/2017 and corresponding notification under the MGST Act.



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B. V. BORHADE
(MEMBER)

sd
PANKAJ KUMAR
(MEMBER)

Copy to:-

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

CERTIFIED TRUE COPY
sd
MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

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