

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

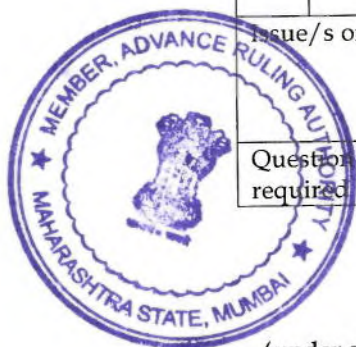
(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

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 | | 27AAACL4054EIZT |
| Legal Name of Applicant | | LEENA POWER TECH ENGINEERS PVT LTD |
| Registered Address/Address provided while obtaining user id | | Shop No. 13,14,15 Sai Chambers, Sector -11 Ground Floor Sarovar Vihar Road, CBD Belapur Maharashtra Thane 400614 |
| Details of application | | GST-ARA, Application No. 51 Dated 06.07.2018 |
| Concerned officer | | Division - I, Belapur |
| Nature of activity(s) (proposed / present) in respect of which advance ruling sought | | |
| A | Category | Works Contract |
| B | Description (in brief) | M/s Leena Powertech Engineers Private Limited is a company engaged in the business of Electrification projects, undertaking development of power supply infrastructure with various Government Entities. |
| Issue/s on which advance ruling required | | (ii) Applicability of a notification issued under the provisions of this Act (v) Determination of the liability to pay tax on any goods or services or both |
| Question(s) on which advance ruling is required | | |



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 LEENA POWER TECH ENGINEERS PVT LTD, the applicant, seeking an advance ruling in respect of the following ISSUE. .

1. Whether CIDCO is covered under the definition of the term 'Government Entity' as per Notification No. 31/2017 - Central Tax (Rate) dated 13 October 2017?

2. If CIDCO falls under the definition of Government Entity, Then Kindly also Clarify Whether the tax rate of 12% (CGST 6% + SGST 6%) is applicable to the contract entered into by the Applicant with CIDCO, in pursuance of Notification No. 24/2017 - Central Tax (Rate) dated 21 September 2017 read with Notification No. 31/2017 - Central Tax (Rate) dated 13 October 2017?

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) raised

1. The Applicant, M/s Leena Powertech Engineers Private Limited (hereinafter referred to as the 'Applicant' or 'Company') is a company engaged in the business of Electrification projects, undertaking development of power supply infrastructure with various Government Entities.
2. City and Industrial Development Corporation of Maharashtra Limited ('CIDCO'), a 100% Government of Maharashtra owned Public sector Undertaking, is incorporated on 17th March 1970 under company's act 1956 as a Company having CIN - U9999MH1970SGC014574, registered Company limited by shares and as a State Government Company. Copy of the document from the Ministry of Corporate Affairs mentioning details about CIDCO is attached herewith for your reference.
3. CIDCO had invited a bid / tender for Power Supply Infrastructure Development work at various places in Navi Mumbai, including Ulwe. The contract involves composite activities of supply of material, laying of power cables, erection of the equipments and civil constructions associated with such erection.
4. The Applicant upon successful bid have been awarded the following contracts
 - a. Power supply Infrastructure Development work at R & R (Rehabilitation & Resettlement) Pockets under NMIA(Navi Mumbai International Airport) Projects, Navi Mumbai (Work Order No. CIDCO/EE(Elect-AP)/ AP-001/2017/172 dated 21 June 2017] - for the Project Affected People of the Navi Mumbai International Airport Project.
 - b. Development of power supply infrastructure distribution network including construction of 33KV substation equipment & construction of 11/0.4 KV HT substation & allied electrical works in Ulwe Node, Navi Mumbai (Phase - 1) Priority - I & II [Work order No. CIDCO/EE(Elect-11)/E-1419/2013/109 dated 11 January 2013
5. The work envisages supply and laying of power cables, erection of Transformers, essentially leading to setting up of power supply networks in the Residential area demarcated by CIDCO.

16. Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s) (i.e. applicant's view point and submissions on issues on which the advance ruling is sought).

Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s) (i.e. applicant's view point and submissions on issues on which the advance ruling is sought).

A. CIDCO is covered under the definition of "Government Entity" vide Notification No.31/2017 - Central Tax (Rate) dated 13 October 2017

1. Without prejudice to the facts of the case, it is submitted that CIDCO shall be covered under the definition of the term Government Entity.

2. The term Government Entity is defined in the Notification No. 31/2017 - Central Tax (Rate) dated 13 October 2017. The relevant portion of the definition is reproduced below:

"Government Entity" means an authority or a board or any other body including a society, trust, corporation, V set up by an Act of Parliament or State Legislature; or i) 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. CIDCO is -

- a. Established by Govt. OF Maharashtra
- b. With 100% Participation by way of equity and control
- c. CIDCO is carrying out the function entrusted by Govt. of Maharashtra

4. The relevant extract of resolutions by the State Government of Maharashtra for establishing CIDCO is reproduced below:

a. **Govt. of Maharashtra Resolution dt. 18.3.1970, reproduced verbatim :**

"Government has had under consideration the development of the trans-Thana and trans-Harbour areas in Uran, Panvel and Thana Tehsils as a new township or new Metro centre with a view to decongesting industrial and other concentrations in Bombay and with a view generally to resolve the problems of urban congestion in Bombay City. The development of these areas will also have to be integrated with the development of an industrial base in Maharashtra for exporting industries. With the growing support that the Central Government is giving to export oriented industries, the contemplated new town development in the above area will not only provide relief to Bombay City but will also accelerate the promotion of industries in the State and open out and speed up industrial development of the Konkan Region. Decongestion of industrial and office concentration in Bombay has now become an urgent problem and the proposed development of the above new township, if undertaken quickly, could save the situation even now from getting out of control. The projects is of such a character that involves planning and development of all sectors including commerce, trade, housing, etc. to combine into a well-balanced and well-planned township.

After careful consideration of the relevant factors, and particularly, in view of the tremendous impact this project will have on the industrial development of Maharashtra, Government has come to the conclusion that a subsidiary company of the State Industrial and Investment Corporation of Maharashtra, Bombay, would be a appropriate agency which would be entrusted with the present project. Government is accordingly pleased to allow the State Industrial and Investment Corporation of Maharashtra Limited, as required under Article 75 of the its Memorandum and Articles of Association, with the object of developing the trans-Thana and capital of Rs. 5 crores, with object of developing the trans-Thana and trans-Harbour areas in the Thana and Kolaba districts as a twin city to provide relief to Bombay City and also to ensure its integrated development with the industrial development of this region and the State. The Land proposed to be acquired by Government in trans-Thana and trans-Harbour areas should be entrusted to the subsidiary company, which would act as an agent of Government for the development of the areas with a view to secure the above objectives.



The subsidiary company will in due course be notified as New Town Development Authority under the Maharashtra Regional and Town Planning Act.

The subsidiary company will work under the control and supervision of the State Government in the General Administration Department.

By and order and in the name of the Governor of Maharashtra."

b. **Govt. of Maharashtra Notification dt. 20.3.1971, reproduced verbatim :**

URBAN DEVELOPMENT, PUBLIC HEALTH AND HOUSING DEPARTMENT Sachivalaya, Bombay, 20th March, 1971

Maharashtra Regional Planning and Town Planning Act, 1966

No. RPB. 1171-18124-1-VV -

Whereas, the State Government is satisfied that it is expedient in public interest that the said area should be developed as a site for the proposed new town:

Now, therefore, in exercise of the powers conferred by sub-section(1) of section 113 of the said Act, the Government of Maharashtra hereby designates the said area as the site for the proposed new town, which shall be known by the name of "New Bombay".

And, whereas, having regard to the complexity and magnitude of the work involved in developing the area comprised in the site of the new town aforesaid the time which may be required for setting up new machinery for undertaking and completing such work of development and the comparative speed with which such work can be undertaken and completed in the public interest, if the work is done through the agency of a corporation or a company owned or controlled by the State or a subsidiary company thereof; the State Government is of opinion that such work of development of the area comprised in the site of New Bombay should be entrusted to subsidiary company mentioned hereinafter:

And whereas, the City and Industrial Development Corporation of Maharashtra Limited, registered under the Companies Act, 1956 (1 of 1956), a subsidiary company of the State Industrial and Investment Corporation of Maharashtra, a company owned and controlled by the State is at present equipped with the machinery for undertaking and completing the work involved speedily in developing any area as a new town.

Now, therefore in exercise of the power conferred by the sub-section(3A) of section 113of Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966), the Government of Maharashtra hereby declares the said subsidiary company to be the New Town Development Authority for the area comprised in the site of New Bombay.

By order and in the name of the Governor of Maharashtra."

Govt. of Maharashtra Resolution dt. 24.1.1972, reproduced verbatim :

General Administration Department

Sachivalaya, Bombay, 24th January, 1972

Resolution No. CID-2072-U

Read: Government Resolution, Industries and Labour Department No. IDL-5770/IND-I, Dated 18th March, 1970

RESOLUTION:

Government has decided to entrust to the City and Industrial Development Corporation of Maharashtra Limited, as New Town Development Authority, the task of development of the New City in Thana, Parwel and Uran tahsils of Thana and Kolaba districts, and to acquire the privately owned land in that area for that project. The question of financing the development work of City and Industrial Development Corporation of Maharashtra Limited has been under consideration for some time. Government is now pleased to issue the following instructions:

- 1) The Corporation should undertake all the development work, provide the social and physical infrastructure to attain the objectives laid down in the Government resolution, Industries and Labour Department No. IDL-5770/IND-I, dated 18th March, 1970, on behalf of the Government and to dispose of land to the extent appropriate. It should also rehabilitate the persons displace from the land acquired for the Project.
- 2) From the proceeds collected out of such disposals, the Corporation should recoup the expenditure it incurs on the items referred to in sub-para(1) above, inclusive of administrative expenses thereon, plus agency remuneration at Rs. 3.00 lacs, for the year ended 31st March, 1971 to be increased each year by Rs. 1.00 lacs, subject to a maximum of Rs.5.00 lacs for any one year, before remitting the remained to the Government.
- 3) The expenditure incurred by the Government on the acquisition of such lands should be treated as Governments' s own capital outlay and debited to the appropriate head of account and such lands on acquisition shall vest in the Corporation eastablishing New Bombay.
- 4) The Corporation may make "On Account Advance Payment" to Government from the proceeds of land disposal to meet Government expenditure on capital outlayon account of payment of compensation for land acquisition for New Bombay.
- 5) Such "On Account Advance Payment" made by the Corporation should be adjusted in due course.

This Resolution issues with concurrence of the Finance Department vide its unofficial reference No.; 145/72/F-12 dated 24th January, 1972.

5. Further, the Company is fully controlled by the State Government of Maharashtra with 100% shareholding by the State Government by way of equity and control. The list of shareholders of CIDCO are as follows:

| Sr. No. | Name of the Shareholder |
|---------|--|
| 1 | Shri. Shriram Yadav, Deputy Secretary, Urban Development Department, Govt. of Maharashtra. (Representative of Governor of Maharashtra - holding 394993 shares) |
| 2 | Shri. Siddharam Salimath, Jt. Secretary, Urban Development Department, Government of Maharashtra (holding 1 share) |
| 3 | Shri. G.A. Lokhande, Deputy Secretary, Urban Development Department, Government of Maharashtra (holding 1 share) |



| | |
|---|---|
| 4 | Shri. Milind Kulkarni, Under Secretary, Urban Development Department, Government of Maharashtra (holding 1 share) |
| 5 | Shri. Sanjay Banait, Under Secretary, Urban Development Department, Government of Maharashtra (holding 1 share) |
| 6 | Shri. M. M. Patil, Under Secretary, Urban Development Department, Government of Maharashtra (holding 1 share) |
| 7 | Shri. Samadhan Khatkale, Desk Officer, Urban Development Department, Government of Maharashtra (holding 1 share) |
| 8 | Shri. Vinayak S. Chavan, Desk Officer, Urban Development Department, Government of Maharashtra (holding 1 share) |

6. Further the broad objects of CIDCO are enumerated below:
- To resolve the problems of urban congestion in Bombay city.; to attract some of Bombay's population and absorb immigrants who would otherwise come to Bombay;
 - To reduce traffic congestion and burden on Bombay's physical infrastructure such as road transport, mass rapid transportation system
 - To provide physical and social services which would raise living standards and reduce disparities in the amenities available to different sections of the society;
 - To provide an environment which permits the citizens of the proposed new city to live fuller and richer life, free of physical and social tensions commonly associated with urban living;
 - To facilitate efficient and rational distribution of industries over the State, balancing development of urban centres in the hinterland;
 - To provide training and all possible facilities to the existing local people in the project area, to enable them to adapt to the new urban setting and actively participate in the economic and social life of the new city.

It is evident from the above resolutions and the functioning of CIDCO that CIDCO is entirely owned and established by the State Government and performs the functions entrusted to it by the State Government. Accordingly, CIDCO is covered by the definition of Government Entity as per Notification No. 31/2017 - Central Tax (Rate) dated 13 October 2017.

B. The contract undertaken by the Applicant is eligible for 12% GST rate as per Notification No. 24/2017 - Central Tax (Rate) dated 21 September 2017 read with Notification No. 31/2017 - Central Tax (Rate) dated 13 October 2017.

- Without prejudice to the facts of the case, it is submitted that the contract undertaken by the applicant for CIDCO is eligible for 12% GST (CGST 6% + SGST 6%).
- The relevant extract of the notification no.31/2017 is reproduced below:

| Particulars | Rate of Tax | Conditions |
|---|-------------|------------|
| vi) Services provided to the Central Government, State Government, Union Territory, 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 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 | 6 | |

The contract undertaken by the applicant is Original Works

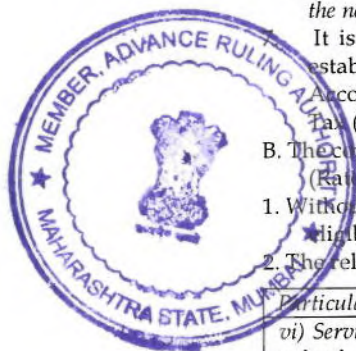
- The term original works have not been defined under GST Act. However, the definition under the erstwhile Finance Act, 1994 is reproduced below:

Original work means -

- All new constructions;
 - All types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
 - Erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise
- It is submitted that the Applicant is awarded a contract by CIDCO for construction, erection, commissioning and installation of a power supply system in the designated area. The work envisages supply and construction of power lines, erection of Transmission Towers and transformers. The supply, construction and erection of the transmission towers shall be covered by the definition of Original Works as above. Copy of the work order issued by CIDCO highlighting the nature of works to be undertaken is attached herewith for your reference.
 - Given this, the contract undertaken by the Applicant is covered by the term 'Original Works' to qualify for the impugned notification.

The Original Works are meant predominantly for use other than Commerce, Industry, Business or Profession

- It is submitted that the original works established and constructed by the Applicant are meant predominantly for use other than Commerce, Industry, Business or Profession.



7. It is reiterated and emphasized that CIDCO is a Public Sector Undertaking incorporated as a Company to undertake functions entrusted by the State Government. Further, the basic function of CIDCO is to undertake town planning and development of areas so designated.
8. The supply of electricity to any human settlement township, city or district is a basic infrastructure essential for creation of such township. Given this such activity of establishing power supply networks by CIDCO is for creation of a new town for rehabilitation and resettlement of project affected people.
9. The Hon'ble Income Tax Appellate Tribunal in case of ACIT vs. CIDCO (ITA No. 1234/Mum/2016] has recently held that CIDCO is an agent of the State Government of Maharashtra and that the income earned by CIDCO belongs to the State and thus is not taxable. The relevant portion of the judgement is reproduced below:

This observation read together with section 113(3A) of MR&TP Act, 1966, shall emerge that the activity so performed by the assessee is nothing but an act of State without any profit or commercial motive attached with it. The only clause left for our consideration then would be clause (3), which shall come into play once clause (2) is disbanded and as soon as it become disbanded, clause (3) come to life, which operates only if, "Parliament may by Law declare to be incidental to the ordinary functions of Government". Here, in the instant case, we have to read "Parliament" as "State Government" because in the instant case, it is the State Government which has authorized the assessee to perform the development projects at Navi Mumbai, Vasai, Virar, Waluj and such other places.

40. We cannot agree with the argument of the DR that there is no document which has drawn out the Agent-Principal relationship, because the very first Resolution dated 18th March, 1970 mention in para no. 2 that "..... which would act as an "agent" of Government for the development of the areas with a view to secure the above objective", and in para no. 3 of this Resolution clearly say, "The subsidiary company will work under the control and supervision of the State Government in the General Administrative Department". In our opinion, the first Resolution itself makes it clear that the assessee is to be an agent, but functions as an arm of the State Government, because, if the assessee can only work under the control and supervision of the State Government, meaning thereby that the assessee cannot make / take any decisions suo moto, then, in such a case authority for performance of all activities lie somewhere else. In any case, as per this Resolution, it clearly makes the assessee an "agent" of the State.

41. When we look into the financial functions of the assessee, we find that all dealings have to be through authorizations by the Government and all funds receivable shall be in compliance and with intimations to :

- The Managing Director,
- State Industrial and Investment Corporation of Maharashtra Ltd. Bombay.
- The Industries Commissioner, Bombay
- The Accountant General, Maharashtra, Bombay
- The Pay & Accounts Officer, Bombay
- The Resident Audit Officer, Pay and Accounts Officer, Bombay
- The Senior Deputy Accountant General, Nagpur
- All Departments of Secretariat
- The Divisional Commissioner, Bombay Division, Bombay
- The Budget Branch, Industries & Labour Department, Bombay
- The Director of Publicity, Bombay

We find that according to MR&TP Act, 1966, the machinery sections, i.e. sections 113 & 113A talk of appointment of Development Authority and Local Authority and accordingly, through various Resolutions, in compliance of these sections, MR&TP Act has appointed the assessee as the Development Authority for development to new townships and Local Authorities for streamlining the functions of already existing towns like Aurangabad, Nashik, Nagpur etc. This, itself shows that the assessee is acting totally on behalf of the Government. Another distinguishing feature that can be seen in that as soon as the "Project" is complete, the project gets handed back to the State, i.e. when there is a development project, as per phases, and in the case of local authority, as and when the authorizing committee is satisfied, the reins are transferred to the municipal boards, from whom, the project was taken over, as we have seen from Resolution no. 10375 dated 06/08/2010.

43. In tune with these observations, read with sections 113 & 113A of MR&TP Act along with Articles 289(1) & 289(3) and holding that the assessee corporation is not doing any trade activity on its own accord, we hold, relying on the decision of the Hon'ble Bombay High Court in the assessee's own case, in the Writ Petition, following the decision Percival case (supra), wherein it has been held, that CIDCO, the assessee herein, is an agent of the State Government of Maharashtra. We, therefore, respectfully follow the Hon'ble jurisdictional High Court of Bombay, as held in the case of Percival (supra), and hold, the assessee to be the "agent" of the State Government of Maharashtra, read with the entire overwhelming documents, suggesting that there is no income to the assessee as such, and whatever is, generated, it gets deposited in the Consolidated Fund of the State.

10. It is evident from the above that CIDCO is a non-commercial entity and thus the original works constructed by the Applicant is meant predominantly for use other than commerce, Industry, Business or profession so as to qualify for 12% GST rate as per Notification No. 24/2017 - Central Tax (Rate) dated 21 September 2017 read with Notification No. 31/2017 - Central Tax (Rate) dated 13 October 2017.
11. Alternatively, it is also submitted that the impugned contracts undertaken by the Applicant for CIDCO are meant for the residential location demarcated by CIDCO. For instance, the Power Supply Infrastructure Development work at R & R (Resettlement & Rehabilitation) Pockets under NMIA (Navi Mumbai International Airport) Projects, Navi Mumbai (Work Order No. CIDCO/EE(ElectAP)/AP-001/2017/172 dated 21 June 2017] is for the Project Affected People of the Navi Mumbai International Airport Project.
12. Similarly, the following projects are also undertaken for the residential locations of the respective nodes viz.,



- a. Development of power supply infrastructure distribution network including construction of 33KV substation equipment & construction of 11/0.4 KV HT substation & allied electrical works in Ulwe Node, Navi Mumbai (Phase - 1) Priority - I & II [Work order No. CIDCO/EE(Elect-11)/E-1419/2013/109 dated 11 January 2013

Copies of the work order for the above contracts are attached herewith for your reference.

13. Given this, the original works constructed by the Applicant are meant predominantly for use other than commerce, industry, business or profession, insofar as the same are directed towards the residential locations of the respective nodes.
14. Accordingly, the applicant's interpretation and understanding of the impugned notifications and on the basis of the facts the applicant's response to the queries are as follows:

Query

1. Whether CIDCO is covered under the definition of the term 'Government Entity' as per Notification No. 31/2017 - Central Tax (Rate) dated 13 October 2017?

Response

Yes, CIDCO is covered by the definition of the term 'Government Entity' as per Notification No. 31/2017 - Central Tax (Rate) dated 13 October 2017

Query

2. If CIDCO falls under the definition of Government Entity, Then Kindly also Clarify Whether the tax rate of 12% (CGST 6% + SGST 6%) is applicable to the contract entered into by the Applicant with CIDCO, in pursuance of Notification No. 24/2017 - Central Tax (Rate) dated 21 September 2017 read with Notification No. 31/2017 - Central Tax (Rate) dated 13 October 2017?

Response

Yes, the contracts undertaken by the Applicant shall be covered by the notification no.31/2017 for reasons elaborated above.

CONTENTION - AS PER THE CONCERNED OFFICER

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

As required the details with respect to applicant M/s Leena Powertech Engineers Pvt. Ltd. (the appellant) and comments on the application filed by them for advance ruling are submitted as under:

1.

(a) Classification of Service/Services as applicable.

- i. Works contract service.
- ii. Election Commissioning and Installation Service.
- iii. Rent a Cab service (Under RCM)
- iv. Security / detective agency service (Under RCM)
- v. Legal Consultancy Service (Under RCM)
- vi. Manpower Supply Agency (Under RCM)

(b) Rate/rates of Service Tax as applicable to Services provided

- i) 15% after abatement as per law (on above services except Sr. no.
- ii) 15% on Sr. no. li above,

(c) Details of benefits of notification of Central Excise if any availed.

- i. 30/2012 - Reverse Charge Mechanism
- ii. 26/2012 - Abatement
- iii. 25/2012 - Mega Exemption.
- iv. 24/2012 -- Rule 2 A Works Contract.

PARAWISE COMMENTS

Paras 1 to 15.- No Comments,

Para 16:

- (i) The appellant has raised the following questions for advance ruling

Question 1:- Whether CIDCO is covered under the definition of the term "Government Entity" as per Notification No.31/2017 - Central Tax (Rate) dated 13th October 2017?

Question 2:- If CIDCO falls under the definition of Government Entity, then Kindly also clarify where the tax rate of 12% (CGST 6% + SGST 6%) is applicable to the contract entered into by the applicant with CIDCO, in pursuance of Notification No.24/2017 - Central Tax (Rate) dated 21st September, 2017 read with Notification No.31/2017 - Central Tax (Rate) dated 13th October, 2017?

(ii) The appellant is a registered company, carrying out the business works contracts which involves supply, erection, commissioning, installation and laying of power cables, transformers, RMU panels & other related civil work essentially leading to setting up of power supply networks with various government authority & entities..

(iii) The applicant has been awarded following work contracts by CIDCO:

a. Power supply infrastructure Development work at R & R (Rehabilitation & Resettlement) Pockets under NMIA (Navi Mumbai International Airport) Projects, Navi Mumbai (Work Order No CIDCO/EE (Elect-AP)/AP-001/2017/172 dtd.21.06.2017) for the project affected people of the Navi Mumbai International Airport Project.

b. Development of power supply infrastructure distribution network including construction of 33KV substation equipment & construction of 11/0.4 KV HT substation & allied electrical works in Ulwe Node, Navi Mumbai (Phase -1) Priority - & 11 (Work order No. CIDCO/EE(Elect-111419/2013/109 dated 11.01.2013 With effect from 22.08.2017, their services were covered by item (vi) attracting Central. Tax @9%.



(lv) Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 as amended vide Notification No.24/2017-Central Tax (Rate) dated 21.09.2017 reads as under:

| Sl. No. | Chapter, Section or Heading. | Description of Service | Rate (per cent.) | Condition |
|---------|--------------------------------------|---|------------------|-----------|
| 1 | 2 | 3 | 4 | 5 |
| | Chapter 99 | All Services | | |
| | Section 5 | Construction Services | | |
| | 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 Central Goods and Services Tax Act, 2017. | 9 | - |
| | | (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. | 6 | - |
| | | (iv) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of - (a) a road, bridge, tunnel, or terminal for road transportation for use by general public; (b) a civil structure- or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana; (c) a civil structure or any other original works pertaining to the "in-situ rehabilitation of existing slum dwellers using land as a resource through private participation" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana, only for existing slum dwellers; (d) a civil structure or any other original works pertaining to the "Beneficiary led individual house construction /enhancement" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana; (e) a pollution control or effluent treatment plant, except located as a part of a factory; or) a structure meant for funeral, burial or cremation of deceased | 6 | |
| | | (v) Composite supply of works contract as defined in clause. (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to, (a) railways, excluding monorail and metro (b) a single residential unit otherwise than as a part of a residential complex;(c) low-cost houses up to a carpet area of 60 square meters per house in a housing project approved by competent authority empowered under the Scheme of Affordable Housing in Partnership framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India; (d) low cost houses up to a carpet area of 60 square meters per house in a housing project approved by the competent authority under(1) the "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana; (2) any housing scheme of a State Government; (e) post-harvest infrastructure for agricultural produce including a cold storage for such purposes; or (f) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages. | 6 | |
| | | (vi)Services provided to the Central Government, State Government, Union Territory, 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 civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession; (b) a | 6 | |



| | | | | |
|--|--|---|--|--|
| | | <i>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</i> <i>(vii) Construction services other than (i), (ii), (iii), (iv), (v) and (vi) above.</i> | | |
|--|--|---|--|--|

- (v) Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 was further amended vide Notification No.31/2017-Central Tax (Rate) dated 13.10.2017:
- (a) to insert "Government Entity" in items (iii) & (vi)
 - (b) to insert condition in column No 5 in items (iii) & (vi)
 - (c) to substitute item No. (vii)
 - (d) to insert Explanation (ix) & (x) in para 4
- (vi) Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 was further amended vide Notification No.46/2017-Central Tax (Rate) dated 14.11.2017 to substitute the words "Service the words "Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, provided". Therefore; Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 as amended vide Notification No. 46/2017 reads as under:

| Sl. No. | Chapter, Section or Heading. | Description of Service | Rate (per cent.) | Condition |
|---------|--------------------------------------|---|------------------|---|
| 1 | 2 | 3 | 4 | 5 |
| 1 | Chapter 99 | All Services | | |
| 2 | Section 5 | Construction Services | | |
| 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 Central Goods and Services Tax Act, 2017. | 9 | |
| | | (iii) Composite supply of works contract as 6 defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied to the Central Government, State Government, Union territory, a local authority or 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 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 (1) water supply(ii) water treatment, or (iii) sewerage treatment or disposal | 6 | Provided that where the services are supplied to 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 |
| | | (iv) Composite supply of works contract as 6 defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of; (a) a road, bridge, tunnel, or terminal for road transportation for use by general public; (b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana; (c) a civil structure or any other original works pertaining to the "in-situ rehabilitation of existing slum dwellers using land as a resource through private articipation" under the Housing for All (Urban) | 6 | |



| | | | | |
|--|--|--|-----|--|
| | | <p>Mission/Pradhan Mantri Awas Yojana, only for existing slum dwellers;</p> <p>(d) a civil structure or any other original works pertaining to the "Beneficiary led individual house construction / enhancement" under the Housing for All (Urban) Mission Pradhan Mantri Awas Yojana;</p> <p>(e) a pollution control or effluent treatment plant, except located as a part of a factory; or</p> <p>(f) a structure meant for funeral, burial or cremation of deceased</p> | | |
| | | <p>(v) composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to,</p> <p>(a) railways, excluding monorail and metro;</p> <p>(b) a single residential unit otherwise than as a part of a residential complex;</p> <p>(c) low-cost houses up to a carpet area of 60 square meters per house in a housing project approved by competent authority empowered under the Scheme of Affordable Housing in Partnership framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;</p> <p>(d) low cost houses up to a carpet area of 60 square meters per house in a housing project approved by the competent authority under-</p> <p>(1) the "Affordable Housing in Partnership component of the Housing for All (Urban) Mission Pradhan Mantri Awas Yojana;</p> <p>(2) any housing scheme of a State Government;</p> <p>(e) post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes; or</p> <p>(f) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.</p> | 6 | |
| | | <p>(vi) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax 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 -</p> <p>(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;</p> <p>(b) a structure meant predominantly for use as (i) an educational; (ii) a clinical, or (iii) an art or cultural establishment; or</p> <p>(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</p> | 6 | <p>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</p> |
| | | <p>(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 work contract) provided to the Central Government, State Government, Union territory, local authority; a Governmental Authority or a Government Entity.</p> | 2.5 | <p>Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a</p> |
| | | <p>(ix) Construction services other than (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii) above.</p> | 9 | |

Explanation

(ix) "Governmental Authority means an authority or a board or any other body, -

(i) set up by an Act of Parliament or a State Legislature; or



(ii) established by any Government, with 90 per cent. or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243 W of the Constitution or to a Panchayat under article 243 G of the Constitution.

(x) "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 90per 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

(vii) The applicant has now claimed that with effect from 13.10.2017 their services are covered by item (vi) in view of amendment to No.11/2017-Central Tax (Rate) dated 28.06.2017 attracting Central Tax @6% on the following grounds:

- (a) CIDCO is covered by definition of "Government Entity" as per Explanation (x) in para 4 of Notification No. No.11/2017-Central Tax (Rate) dated 28.06.2017 as amended.
- (b) Their services are covered by item (vi) of Sr. No. 3 of No.11/2017-Central Tax (Rate) dated 28.06.2017 as amended attracting Central Tax @6%

(viii) The matter has been examined in the light of Govt. of Maharashtra's resolutions/Notifications as below whether CIDCO is covered under the definition of the term "Government Entity" as per Notification No. 31/2017 - Central Tax (Rate) dated 13.10.2017.

a. Govt. of Maharashtra Resolution dt.18.3.1970 :

Government has come to the conclusion that a subsidiary company of the State Industrial and Investment Corporation of Maharashtra, Bombay, would be a appropriate agency which would be entrusted with the present project. Government is accordingly pleased to allow the State Industrial and Investment Corporation of Maharashtra Limited, as required under Article 75 of the its Memorandum and Articles of Association, with the object of developing the trans-Thana and capital of Rs. 5 crores, with object of developing the transThana and trans-Harbour areas in the Thana and Kolaba districts as a twin city to provide relief to Bombay City and also to ensure its integrated development with the industrial development of this region and the State. The Land proposed to be acquired by Government in trans-Thana and trans-Harbour areas should be entrusted to the subsidiary company, which would act as an agent of Government for the development of the areas with a view to secure the above objectives. The subsidiary company will in due course be notified as New Town Development Authority under the Maharashtra Regional and Town Planning Act. The subsidiary company will work under the control and supervision of the State Government in the General Administration Department.

b. Govt. of Maharashtra Notification dt. 20.3.1971 :

And whereas, the City and Industrial Development Corporation of Maharashtra Limited, registered under the Companies Act, 1956 (1 of 1956), a subsidiary company of the State Industrial and Investment Corporation of Maharashtra, a company owned and controlled by the State is at present equipped with the machinery for undertaking and completing the work involved speedily in developing any area as a new town.

Now, therefore in exercise of the power conferred by the sub-section (3A) of section 113 of Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966), the Government of Maharashtra hereby declares the said subsidiary company to be the New Town Development Authority for the area comprised in the site of New Bombay.

c. Govt. of Maharashtra Resolution dt.24.1.1972 :

Government has decided to entrust to the City and Industrial Development Corporation of Maharashtra Limited, as New Town Development Authority, the task of development of the New City in Thana, Panvel and Uran tahsils of Thana and Kolaba districts, and to acquire the privately owned land in that area for that project. The question of financing the development work of City and Industrial Development Corporation of Maharashtra Limited has been under consideration for some time. Government is now pleased to issue the following instructions:

- 1) The Corporation should undertake all the development work, provide the social and physical infrastructure to attain the objectives laid down in the Government resolution, Industries and Labour Department No. IDL-5770/IND-1, dated 18th March, 1970, on behalf of the Government and to dispose of land to the extent appropriate. It should also rehabilitate the persons displace from the land acquired for the Project.
- 2) From the proceeds collected out of such disposals, the Corporation should recoup the expenditure it incurs on the items referred to in sub-para(1) above, inclusive of administrative expenses thereon, plus agency remuneration at Rs. 3.00 lacs, for the year ended 31st March, 1971 to be increased each year by Rs. 1.00 lacs, subject to a maximum of Rs.5.00 lacs for any one year, before remitting the remained to the Government
- 3) The expenditure incurred by the Government on the acquisition of such lands should be treated as Government's own capital outlay and debited to the appropriate head of account and such lands on acquisition shall vest in the Corporation establishing New Bombay.
- 4) The Corporation may make "On Account Advance Payment" to Government from the proceeds of land disposal to meet Government expenditure on capital out layon account of payment of compensation for land acquisition for New Bombay.
- 5) Such "On Account Advance Payment" made by the Corporation should be adjusted in due course.

(ix) In view of the foregoing, it is observed that CIDCO is established by State Government who holds 100% control. Therefore CIDCO appears to be a 'Government Entity' in terms of Explanation (x) to Notification No. 11/2017-Central Tax (Rate)as amended.

(x) The other question is as to whether the tax rate of 12% (CGST 6% + SGST 6%) is applicable to the contract entered into by the assessee with CIDCO, in terms of Notification No. 11/2017-Central Tax (Rate) as amended by Notification No. 24/2017 - Central Tax (Rate) dated 21.09.2017 read with Notification No.31/2017 - Central Tax (Rate) dated 13.10. 2017. The assessee in the application for advance ruling has stated that their services



are covered by item (vi) (a) at Sr. No. 3 of Table to Notification No. 11/2017-Central Tax (Rate) as amended by Notification No. 24/2017 - Central Tax (Rate) attracting Central Tax @6% as below:

| Sl. No. | Chapter, Section or Heading. | Description of Service | Rate (per cent.) | Condition |
|---------|--|---|------------------|---|
| 1 | 2 | 3 | 4 | 5 |
| 1 | Chapter 99 | All Services | | |
| 2 | Section 5 | Construction Services | | |
| | Section 5 Heading 9954 (Construction services) | (vi) Services provided to the Central Government, 6 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 | 6 | 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 |

(xi) The applicant in their application for advance ruling has stated that the contracts undertaken by them are original works, that the term original works has not been defined in GST Act, that as per the definition under the erstwhile Finance Act, 1991 i) All new constructions, ii) All types of additions and alterations to abandoned or damaged structures on land that are required to make them workable; iii) Erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise. Taking into consideration the nature of contracts.

(xii) As per para 1.3.1 of CPWD Manual, 2014, "original works" means (i) all new constructions, (ii) all types of additions, alterations and/or special repairs to newly acquired assets, abandoned or damaged assets that are required to make them workable. (iii) major replacements or remodeling of a portion of an existing structure or installation of other works, which results in a genuine increase in the life and value of the property. Taking into consideration the nature of works contracts allotted to the applicant, it is found that the works to be undertaken by them can be considered as "original work".

(xiii) The appellant, however, has not mentioned the condition at column No. 5 of the table in their application for advance ruling. For availing concessional rate of Central Tax @6% in terms of Notification No. 11/2017-Central Tax (Rate) as amended by Notification No. 24/2017 - Central Tax (Rate), the condition is 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. The application does not have any explanation/evidence to substantiate the fulfillment of this condition. However in terms of paras 3 & 4 of Govt. of Maharashtra Resolution dated 25.06.2014, the work of rehabilitation and resettlement with respect to Navi Mumbai International Airport has been given to M/s CIDCO. As such condition in Column 5 of the Table is fulfilled as far as the first contract (work order) dated 21.06.2017 is concerned. As regards other contract (work order) dated 11.01.2013, the same is to be completed in Ulwe Node. As per Notification dated 20.03.1971 issued by Government of Maharashtra Ulwe is notified as a site for development. In this case also, the condition in Column 5 of the Table is fulfilled.

(xiv) Therefore applicant is eligible for benefit of Sr. No. 3 of item no (vi)(a) of Notification No. 11/2017 - Central Tax read as amended. It is also mentioned that with effect from 14.11.2017 only such activity that is composite supply of works contract as defined in clause 119 of Section 2 of the Central Goods and Service Tax Act, 2017 would be eligible for benefit of the Notification against aforesaid Sr. No. and item No. in view of Notification No. 46/2017 - Central Tax (Rate) dtd. 14.11.2017.

04. HEARING

The case was taken up for Preliminary hearing on dt. 07.08.2018 when Sh. S. V. Apte Advocate along with Sh. Amit Tekchandani, C. & M.D, and Sh. Ashish Singh Advocate appeared and made written and oral submissions for admission of application as per contentions in their ARA. Jurisdictional Officer,

Sh. U. S. Rananaware, Suptt., CGST, Belapur appeared and made written submissions and stated that they do not have any objection with respect to admission of applicaiton. .

The application was admitted and called for final hearing on 29.08.2018, Sh. S. V. Apte Advocate along with Sh. Amit Tekchandani, C. & M.D, and Sh. Ashish Singh Advocate appeared and made oral and written submissions. Jurisdictional Officer, Sh. U. S. Rananaware, Suptt., CGST, Belapur appeared and stated that they have already made written submissions.

05. OBSERVATIONS

We have gone through the detailed submissions and contentions made by the applicant and the department which have been reproduced in verbatim above.

First of all we take up the first question raised by the applicant which reads as under:-

Question 1:- Whether CIDCO is covered under the definition of the term 'Government Entity' as per Notification No. 31/2017 - Central Tax (Rate) dated 13 October 2017?

With respect to the above question we need to have a look at Notification No. 31/2017 Central Tax (Rate) dated 13th October, 2017. From the questions raised by the applicant we find that the applicant does not have any doubt in respect of his tax liabilities prior to this Notification No. 31/2017 Central Tax (Rate) dated 13th October, 2017.

The portion relevant for the present case in respect of Notification No. 31/2017 Central Tax (Rate) dated 13th October, 2017 is reproduced as under:-

Notification No. 31/2017-Central Tax (Rate) dated the 13th October, 2017

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 9, sub-section (1) of section 11, sub-section (5) of section 15 and sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No.11/2017-Central Tax (Rate), dated the 28thJune, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 690(E), dated the 28thJune, 2017, namely:-

In the said notification,

(i) in the Table, -

(a) against serial number 3, -

- A. in item (iii), in column (3), for the words "Government, a local authority or a Governmental authority", the words "Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity" shall be substituted;
- B. in item (vi), in column (3), for the words "a local authority or a Governmental authority" the words "a local authority, a Governmental Authority or a Government Entity" shall be substituted;
- C. in items (iii) and (vi), in column (5), for the existing entry, the following entry shall be substituted, namely: -

"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"

.....



(iii) in paragraph 4, after clause (viii), the following clause shall be inserted, namely: -

“(ix) “Governmental Authority” means an authority or a board or any other body, -

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with 90 per cent. or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243 W of the Constitution or to a Panchayat under article 243 G of the Constitution.

(x) “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”.

We find that prior to the amendments as effected by the above Notification No 31/2017, the original Notification No. 11/2017-CT(Rate) dated 28.06.2017 was amended last by Notification No. 24/2017-CT (Rate) dated 21.09.2017 and the relevant portion of the same for the present case is as under:-

Notification No. 24/2017-Central Tax (Rate)

G.S.R. 690(E).- In exercise of the powers conferred by sub-section (1) of section 9, sub-section (1) of section 11, sub-section (5) of section 15 and sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby makes the following amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.11/2017- Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 690(E), dated the 28th June, 2017, namely:-

In the said notification, in the Table, against serial number 3, for item (vi) in column (3) and the entries relating thereto, in columns (3), (4) and (5), the following shall be substituted, namely:-

| (3) | (4) | (5) |
|--|-----|-----|
| “(vi) Services provided to the Central Government, State Government, Union Territory, 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 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. | 6 | |
| (vii) Construction services other than (i), (ii), (iii), (iv), (v) and (vi) above | 9 | |

Now with the amendment as brought out by Notification 31/2017 mentioned above, the relevant entry in the original Notification 11/2017 dated 28th June, 2017 reads as under:-



| Sl. No. | Chapter, Section or Heading. | Description of Service | Rate (per cent.) | Condition |
|---------|--------------------------------------|--|------------------|---|
| 1 | 2 | 3 | 4 | 5 |
| 1 | Chapter 99 | All Services | | |
| 2 | Section 5 | Construction Services | | |
| 3 | Heading 9954 (Construction services) | (i) | 9 | |
| | | (ii) | 9 | |
| | | (iii) | 6 | Provided |
| | | (iv) | 6 | |
| | | (v) | 6 | |
| | | (vi) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax 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 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 | 6 | 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 |
| | | (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 work contract) provided to the Central Government, State Government, Union territory, local authority; a Governmental Authority or a Government Entity. | 2.5 | Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a |
| | | (ix) Construction services other than (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii) above. | 9 | |



In view of the above factual position, we are required to ascertain whether 'CIDCO' would be covered under the definition of 'Government Entity' as given in Notification No. 31/2017 dated 13.10.2017 referred above.

We find that the definition of 'Government Entity' as given in this Notification is 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 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."

From the detailed submissions in respect of the constitution and coming into existence of CIDCO as submitted by the applicant and also considered by the jurisdictional officer in his submission, we find as under:-

(I) **Govt. of Maharashtra Resolution dt. 18.3.1970 as reproduced in Applicant's submissions above proposed for constitution of New Company as under:-**

"Government has had under consideration the development of the trans-Thana and trans-Harbour areas in Uran, Panvel and Thana Tehsils as a new township or new Metro centre with a view to decongesting industrial and other concentrations in Bombay and with a view generally to resolve the problems of urban congestion in Bombay City. The development of these areas will also have to be integrated with the development of an industrial base in Maharashtra for exporting industries. With the growing support that the Central Government is giving to export oriented industries, the contemplated new town development in the above area will not only provide relief to Bombay City but will also accelerate the promotion of industries in the State and open out and speed up industrial development of the Konkan Region. Decongestion of industrial and office concentration in Bombay has now become an urgent problem and the proposed development of the above new township, if undertaken quickly, could save the situation even now from getting out of control. The projects is of such a character that involves planning and development of all sectors including commerce, trade, housing, etc. to combine into a well-balanced and well-planned township.

After careful consideration of the relevant factors, and particularly, in view of the tremendous impact this project will have on the industrial development of Maharashtra, Government has come to the conclusion that a subsidiary company of the State Industrial and Investment Corporation of Maharashtra, Bombay, would be an appropriate agency which would be entrusted with the present project. Government is accordingly pleased to allow the State Industrial and Investment Corporation of Maharashtra Limited, as required under Article 75 of the its Memorandum and Articles of Association, with the object of developing the trans-Thana and capital of Rs. 5 crores, with object of developing the trans-Thana and trans-Harbour areas in the Thana and Kolaba districts as a twin city to provide relief to Bombay City and also to ensure its integrated development with the industrial development of this region and the State. The Land proposed to be acquired by Government in trans-Thana and trans-Harbour areas should be entrusted to the subsidiary company, which would act as an agent of Government for the development of the areas with a view to secure the above objectives. The subsidiary company will in due course be notified as New Town Development Authority under the Maharashtra Regional and Town Planning Act.

The subsidiary company will work under the control and supervision of the State Government in the General Administration Department.

(II) Thereafter we find that the Government of Maharashtra vide Notification dated 20.03.1971 and vide Resolution dated 24.01.1972 constituted CIDCO as a company fully controlled by the State Government of Maharashtra with 100% shareholding by the State Government by was of Equity and Control which would be clear from the Notification and Resolution as under:-

Govt. of Maharashtra Notification dt. 20.3.1971, reproduced verbatim :

URBAN DEVELOPMENT, PUBLIC HEALTH AND HOUSING DEPARTMENT Sachivalaya, Bombay,
20th March, 1971

Maharashtra Regional Planning and Town Planning Act, 1966

No. RPB. 1171-18124-1-W -



Whereas, the State Government is satisfied that it is expedient in public interest that the said area should be developed as a site for the proposed new town:

Now, therefore, in exercise of the powers conferred by sub-section(1) of section 113 of the said Act, the Government of Maharashtra hereby designates the said area as the site for the proposed new town, which shall be known by the name of "New Bombay".

And, whereas, having regard to the complexity and magnitude of the work involved in developing the area comprised in the site of the new town aforesaid the time which may be required for setting up new machinery for undertaking and completing such work of development and the comparative speed with which such work can be undertaken and completed in the public interest, if the work is done through the agency of a corporation or a company owned or controlled by the State or a subsidiary company thereof; the State Government is of opinion that such work of development of the area comprised in the site of New Bombay should be entrusted to subsidiary company mentioned hereinafter:

And whereas, the City and Industrial Development Corporation of Maharashtra Limited, registered under the Companies Act, 1956 (1 of 1956), a subsidiary company of the State Industrial and Investment Corporation of Maharashtra, a company owned and controlled by the State is at present equipped with the machinery for undertaking and completing the work involved speedily in developing any area as a new town.

Now, therefore in exercise of the power conferred by the sub-section(3A) of section 113 of Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966), the Government of Maharashtra hereby declares the said subsidiary company to be the New Town Development Authority for the area comprised in the site of New Bombay. By order and in the name of the Governor of Maharashtra."

Govt. of Maharashtra Resolution dt. 24.1.1972, reproduced verbatim :

General Administration Department
Secy, Maharashtra State, Mumbai
Secy, Maharashtra State, Mumbai

Resolution No. CID-2072-U

Read: Government Resolution, Industries and Labour Department No. IDL-5770/IND-I, Dated 18th March, 1970

RESOLUTION:

Government has decided to entrust to the City and Industrial Development Corporation of Maharashtra Limited, as New Town Development Authority, the task of development of the New City in Thana, Panvel and Uran tahsils of Thana and Kolaba districts, and to acquire the privately owned land in that area for that project. The question of financing the development work of City and Industrial Development Corporation of Maharashtra Limited has been under consideration for some time. Government is now pleased to issue the following instructions:

- 1) The Corporation should undertake all the development work, provide the social and physical infrastructure to attain the objectives laid down in the Government resolution, Industries and Labour Department No. IDL-5770/IND-I, dated 18th March, 1970, on behalf of the Government and to dispose of land to the extent appropriate. It should also rehabilitate the persons displaced from the land acquired for the Project.
- 2) From the proceeds collected out of such disposals, the Corporation should recoup the expenditure it incurs on the items referred to in sub-para(1) above, inclusive of administrative expenses thereon, plus agency remuneration at Rs. 3.00 lacs, for the year ended 31st March, 1971 to be increased each year by Rs. 1.00 lacs, subject to a maximum of Rs.5.00 lacs for any one year, before remitting the remained to the Government.

3) The expenditure incurred by the Government on the acquisition of such lands should be treated as Governments's own capital outlay and debited to the appropriate head of account and such lands on acquisition shall vest in the Corporation establishing New Bombay.

4) The Corporation may make "On Account Advance Payment" to Government from the proceeds of land disposal to meet Government expenditure on capital outlay on account of payment of compensation for land acquisition for New Bombay.

5) Such "On Account Advance Payment" made by the Corporation should be adjusted in due course.

This Resolution issues with concurrence of the Finance Department vide its unofficial reference No.; 145/72/F-12 dated 24th January, 1972.

Thus from the details as above, we clearly find that CIDCO is constituted and established by the State Government of Maharashtra with 100% participation by way of Equity or Control to carry out the function of development of new township of New Bombay and therefore CIDCO is clearly covered under the definition of 'Government Entity'.

Now we proceed to the second question raised by the applicant which is as under:-

Question 2:- If CIDCO falls under the definition of Government Entity, Then Kindly also Clarify Whether the tax rate of 12% (CGST 6% + SGST 6%) is applicable to the contract entered into by the Applicant with CIDCO, in pursuance of Notification No. 24/2017 - Central Tax (Rate) dated 21 September 2017 read with Notification No. 31/2017 - Central Tax (Rate) dated 13 October 2017?

In view of the detailed discussions above, we find that CIDCO is covered under the definition of 'Government Entity' inserted as an amendment in the original Notification No 11/2017-CT(Rate) dated 28.06.2017 vide Notification No. 31/2017-CT(Rate) dated 13.10.2017.

Thus now we would examine the claim of the applicant for concessional rate of GST @ 12%, with effect from 13.10.2017, as effected by the amendment in Notification No. 11/2017 as amended and updated through present amendment made by Notification 31/2017.

We find that the applicant is claiming that they:-

- i. Are providing services to a Government Entity which is CIDCO in this case.
- ii. Are providing services by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintainance, renovation or alteration of
 - (a) any other original works meant predominantly for use other than for commerce, industry, or any other business or profession

Further they are claiming that they are fulfilling this condition also which 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"

From the detailed submissions made by the applicant as well as the jurisdictional officer we find that there is no doubt that CIDCO is a Government Entity.

Now we examine their second claim if they are providing services by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintainance, renovation or alteration

of any other original works, apart from a civil structure, meant predominantly for use other than for commerce, industry, or any other business or profession.

With regard to the above we find that:-

- (a) applicant in their application for advance ruling has stated that the contracts undertaken by them are original works, that the term original works has not been defined in GST Act, that as per the definition under the erstwhile Finance Act, 1994, i) *All new constructions*, ii) *All types of additions and alterations to abandoned or damaged structures on land that are required to make them workable*; iii) *Erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise. Taking into consideration the nature of contracts.*
- (b) As per para 1.3.1 of CPWD Manual, 2014, "original works" means (i) all new constructions, (ii) all types of additions, alterations and/or special repairs to newly acquired assets, abandoned or damaged assets that are required to make them workable. (iii) major replacements or remodeling of a portion of an existing structure or installation or other works, which results in a genuine increase in the life and value of the property. Taking into consideration the nature of works contracts allotted to the applicant, it is found that the works to be undertaken by them can be considered as "original work".

We find from the contracts that they are undertaking works as under:-

"Power Supply Infrastructure Development work at R&R Pockets under NMI

A Projects, Navi Mumbai. Development of power supply infrastructure distribution network including 33KV substation equipments & construction of 11/0.4 KV HT substations and allied electrical works in Ulwe Node, Navi Mumbai.

Thus their works undertaken by them are in the nature of original works.

Now we proceed to ascertain whether they are fulfilling the conditions in respect of Government Entity as inserted vide Notification No. 31/2017 dated 13.10.2017 as referred above. In this respect we find that :-

- (i) Appellant has not mentioned the condition at column No. 5 of the table in their application for advance ruling. For availing concessional rate of Central Tax @6% in terms of Notfn. No. 11/2017-Central Tax (Rate) as amended by Notfn. No. 24/2017 - Central Tax (Rate), the condition is 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. The application does not have any explanation/evidence to substantiate the fulfillment of this condition. However in terms of paras 3 & 4 of Govt. of Maharashtra Resolution dated 25.06.2014, the work of rehabilitation and resettlement with respect to Navi Mumbai International Airport has been given to M/s CIDCO. As such condition in Column 5 of the Table is fulfilled as far as the first contract (work order) dated 21.06.2017 is concerned. As regards other contract (work order) dated 11.01.2013, the same is to be completed in Ulwe Node. As per Notification dated 20.03.1971 issued by Government of

Maharashtra Ulwe is notified as a site for development. In this case also, the condition in Column 5 of the Table is fulfilled.

- (ii) Therefore applicant is eligible for benefit of Sr. No. 3 of item no (vi)(a) of Notification No. 11/2017 - Central Tax read as amended. We find that with effect from 14.11.2017 only such activity that is composite supply of works contract as defined in clause 119 of Section 2 of the Central Goods and Service Tax Act, 2017 would be eligible for benefit of the Notification against aforesaid Sr. No. and item No. in view of Notification No. 46/2017 - Central Tax (Rate) dtd. 14.11.2017.

05. In view of the extensive deliberations as held hereinabove, we pass an order as follows :

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- 51/2018-19/B- 124 Mumbai, dt. 3/10/2018

For reasons as discussed in the body of the order, the questions are answered thus -


Question 1:- Whether CIDCO is covered under the definition of the term 'Government Entity' as per Notification No. 31/2017 - Central Tax (Rate) dated 13 October 2017?


Answer :- Answered in the affirmative.

Question 2:- If CIDCO falls under the definition of Government Entity, Then Kindly also Clarify Whether the tax rate of 12% (CGST 6% + SGST 6%) is applicable to the contract entered into by the Applicant with CIDCO, in pursuance of Notification No. 24/2017 - Central Tax (Rate) dated 21 September 2017 read with Notification No. 31/2017 - Central Tax (Rate) dated 13 October 2017?

Answer :- Concessional rate of tax @ 12% would be applicable in respect of supply of goods/services, after coming into effect of notification No. 31/2017 CT (Rate) dated 13.10.2017.




B. V. BORHADE
(MEMBER)


PANKAJ KUMAR
(MEMBER)

CERTIFIED TRUE COPY

MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

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.

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