
 सत्यमेव जयते	RAJASTHAN AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX KAR BHAWAN, AMBEDKAR CIRCLE, C-SCHEME JAIPUR – 302005 (RAJASTHAN)	
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ADVANCE RULING NO. RAJ/AAR/2018-19/31



J.P.Meena Joint Commissioner	:	Member (Central Tax)
Hemant Jain Joint Commissioner	:	Member (State Tax)
Name and address of the applicant	:	Mr. Kailash Chandra (M/s Mali Construction) Mali Vas, Maandava, Mandwa, Sirohi, Rajasthan – 307001
GSTIN of the applicant	:	08ALVPC2862Q1ZA
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	a. classification of goods and/or services or both; e. determination of the liability to pay tax on any goods or services or both;
Date of Personal Hearing	:	11.01.2019
Present for the applicant	:	Mr. Mudit Jain, (Authorised Representative)
Date of Ruling	:	31.01.2019

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

The issue raised by Mr. Kailash Chandra, (M/s Mali Construction), situated at Mali Vas, Maandava, Mandwa, Sirohi, Rajasthan – 307001 (hereinafter the applicant) is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2)(a) and (e), given as under :

- a. classification of goods and/or services or both
- e. determination of the liability to pay tax on any goods or services or both

Further, the applicant being a registered person (GSTIN is 08ALVPC2862Q1ZA, as per the declaration given by him in Form ARA-01) the issue raised by the applicant is neither pending for proceedings nor proceedings were passed by any authority. Based on the above observations, the applicant is admitted to pronounce advance ruling.



1. SUBMISSION AND INTERPRETATION OF THE APPLICANT:

1.1. The applicant is engaged in providing the comprehensive water services to the clients by way of water conservation, water distribution, water purification, water supply management, etc. That currently the applicant is in the process of bidding for tender floated by P.H.E.D., a unit of Rajasthan Government for designing, providing, installation, commissioning, operation and maintenance of solar energy based bore well water pumping systems, Reverse Osmosis Plant and operation and maintenance of Fluoride Control Project on ESCO and O & M contract.

1.2. That in relation to such tender the applicant is required to quote a rate for undertaking all the aforesaid activities which shall be inclusive of all the costs of site visits on the part of the applicant, packaging, forwarding, spare parts, insurance and taxes & duties as may be applicable. Hence, in view of the same the applicant is desirous of knowing its liability of GST in relation to the said activity and therefore seeks the ruling of the advance ruling authority on the below mentioned transaction:

- i. The applicant is willing to bid for a tender supposed to be floated by P.H.E.D. for designing, providing, installation, commissioning, operation and maintenance of Reverse Osmosis Plants.
- ii. The above mentioned work shall comprise the following major activities:
 - a) Design, supply, install, test and commission Reverse Osmosis Plants to treat ground water and provide potable water of BIS standards, along with raw water and treated water storage tanks, construction of housing structure for RO plant and all the necessary works for operation for such work. Bidder may install containerized RO plants.
 - b) Providing, installation and commissioning of Solar/ Battery operated Cluster dispensers (a standalone Cement Ring Structure having storage water tank) and transporting water from mother Reverse Osmosis Plant to Cluster dispensers, wherever installed, through Water tankers.
 - c) Transporting water from mother Reverse Osmosis Plant to Cluster dispensers, wherever installed, through Water tanker suitable for the purpose of providing / storage drinking / potable water fitted with Submersible pump to transmit water from water tanker to Cluster dispenser.
 - d) A comprehensive operation and maintenance of the installations for a period of 7 years.
 - e) Delivering potable water from plant site that meets BIS norms at all times. Providing potable treated water to be supplied to the general public at the site of RO plant on charging prescribed rates.



1.3. Since composite supply of works contract has been explicitly classified as supply of service under Schedule II, tax liability on works contract service has been expressly prescribed. Therefore, the concept of works contract should to be discussed and settled first. However under GST, there is a monumental shift in concept of Works Contract which was prevalent under erstwhile VAT and Service Tax regime. In GST, as per definition of works contract service if *construction, fabrication, completion, erection, installation,*

fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning is for immovable property only, then it will classify as works contract. Hence it means that aforesaid activities, if they are undertaken for a movable property then it will not be works contract service.

1.4. On the given issue, CBEC has also clarified in its circular number 58/1/2002-CX dated 15/1/2002 where in para (e) it was clarified that

e) If items assembled or erected at site and attached by foundation to earth cannot be dismantled without substantial damage to its components and thus cannot be reassembled, then the items would not be considered as moveable and will, therefore, not be excisable goods.

1.5. The supply of Reverse Osmosis plant along with its installation, commissioning and operation and maintenance is a single supply owing to the following factors

A single tender shall be floated for the supply, installation and operation and maintenance of the RO plant.

- The contractor is required to provide an acceptable system to provide good hygienic conditions around the installed plant and to maintain this system during seven year comprehensive maintenance.
- Special conditions of the contract generally specify that the contractor shall be bound to carry out the O&M maintenance of the installed plants for seven years.
- The security deposit for the work shall be refunded after the expiry of O & M period of 7 years for all the installation made by the firm as successfully completed and certificates to this effect are obtained from the field officers.

1.6. Based on above, it is amply clear that the above transaction is a natural bundle of supply of both goods and services and therefore falls under the ambit of composite supply.

1.7. Further the following facts have been analysed to determine the principal supply of the contract :

- The object of the department behind floating the tender for the given work is installation of Community water purification plants based on Reverse Osmosis (RO) technology by treating the in-situ ground water for providing



potable water. Thus, the predominant element is supply of RO plant and its installation; commissioning, operation and maintenance are services availed for better functioning and operation of the RO plant supplied.

- The payment schedule for supply, erection, commissioning and O & M of RO unit also indicate that supply of RO plant is the predominant supply.

1.8. Since the predominant element of the supply shall be supply of RO plant, thus the proposed work should be treated as a supply of goods and not a supply of service. The installation, commissioning, operation and maintenance of the plant, construction of waste water disposal system shall be the ancillary services.



1.9. Since RO plant is a system consisting of various individual components such as pumps, filtration units, tanks, controllers etc. interconnected by various devices and cluster dispensers being a part of the system although separately placed, and the whole RO plant is intended to contribute for filtering or purification of water, thus it should be classified under the heading 8421 and further under tariff item 84212190 in the First Schedule to the Customs Tariff Act, 1975 under Entry 322 of the Notification No. 01/2017-CT(Rate).

1.10. Hence according to applicant, the proposed work should be treated as a supply of RO plant and taxable at the rate of 18%.

1.11. Without prejudice to submissions made earlier, alternatively if it is held that given activity undertaken by the applicant is a supply of works contract service, then in that case the applicant submits that the rate of tax in given service shall be determined in accordance with the Notification No 11/2017-CT (Rate) dated 28.06.2017, as amended from time to time.

1.12. Since the given activity undertaken by the applicant culminates into a plant for water supply or treatment and since work is undertaken for PWD which is Government Department, hence according to applicant the rate of tax applicable on given service (if it is a works contract service) shall fall under Entry 3(iii) with HSN Code 99544 and it should be 12%.

That in case of above transaction, the entire work to be awarded shall be composite supply wherein the principal supply shall be supply of goods i.e. RO Plants and the same shall be classified under HSN code 8421 and taxable at the rate of 18%.

Further, if it is considered as a works contract service then the aforesaid activity should be taxable under Entry No. 3(iii) of Notification No. 11/2017-CT (Rate) with HSN Code 99544 and should be taxable at the rate of 12%.

2. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT



Whether the activity of supply, design, installation, commissioning and testing of reverse osmosis plant supply of goods or supply of services and what shall be the rate of GST on it?

3. PERSONAL HEARING

In the matter personal hearing was given to the applicant on 11.01.2019 at Room no. 2.22 NCRB, Statue Circle, Jaipur. Mr. Mudit Jain (Authorised Representative) of applicant appeared for PH. During the PH, he reiterated the submissions made in the application. He further requested that the case may be decided at the earliest.

4. COMMENTS OF THE JURISDICTIONAL OFFICER

The jurisdiction officer has stated that on the basis of submissions submitted it is found that the activities undertaken by the applicant is a composite supply of goods and GST is as applicable to it.

5. FINDINGS, ANALYSIS & CONCLUSION:

a. According to Section 8 of Central Goods and Services Tax Act, 2017

8. 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)

b. As per Section 2(30) composite supply is defined as

(30) "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;

c. Further principal supply is defined under Section 2(90) as

(90) "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;

d. Further, clause 6 of the Schedule II is read as under

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

i. works contract as defined in clause (119) of section 2

e. The term works contract has been defined under Section 2(119) as

(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;

f. We observe that the supply is a composite supply which is ascertained from following:

a. 2 or more taxable supplies of goods or services or both;

b. The taxable supplies are naturally bundled;



- c. The taxable supplies are supplied in conjunction with each other;
 - d. One of the taxable supplies is a principal supply.
- g. However, since composite supply of works contract has been explicitly classified as supply of service under Schedule II, the concept of works contract follows that:-
1. Works contract in itself is a composite supply in which *construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning* etc are involved along with transfer or property in goods.
 2. In GST, as per definition of works contract service if *construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning* is for immovable property only, then it will classify as works contract. Hence it means that aforesaid activities if they are undertaken for a movable property then it will not be works contract service.
 3. Now whether a supply is a works contract or not is dependent on whether the plant or device or property is a movable or immovable property. To decide whether a property is movable or immovable, the given terms have not been defined under the Act and hence the reliance needs to be placed on other laws and judicial precedents.

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

4. On the given issue, CBEC has also clarified in its circular number 58/1/2002-CX dated 15/1/2002 where in para (e) it was clarified that

e) *If items assembled or erected at site and attached by foundation to earth cannot be dismantled without substantial damage to its components and thus cannot be reassembled, then the items*



would not be considered as moveable and will, therefore, not be excisable goods.

Though the concept of excisable is not applicable here but the inference can be drawn what is movable and what can be immovable from given clarification.

5. As mentioned in the facts above, that in brief, following activities are covered under the scope of works proposed to be undertaken by the applicant:



- Design, supply, install, test and commission Reverse Osmosis Plants to treat ground water and provide potable water of BIS standards, along with raw water and treated water storage tanks, construction of housing structure for RO plant and all the necessary works for operation for such work. Bidder may install containerized RO plants.
- Providing, installation and commissioning of Solar/ Battery operated Cluster dispensers (a standalone Cement Ring Structure having storage water tank) and transporting water from mother Reverse Osmosis Plant to Cluster dispensers, wherever installed, through Water tankers.
- A comprehensive operation and maintenance of the installations for a period of 7 years.
- Delivering potable water from plant site that meets BIS norms at all times. Providing potable treated water to be supplied to the general public at the site of RO plant on charging prescribed rates.

6. On the basis of concepts discussed above, the supply of Reverse Osmosis plant along with its installation, commissioning and operation and maintenance is a single supply owing to the following factors:-

- A single tender shall be floated for the supply, installation and operation and maintenance of the RO plant.
- The contractor is required to provide an acceptable system to provide good hygienic conditions around the installed plant and to maintain this system during seven year comprehensive maintenance.

- Special conditions of the contract generally specify that the contractor shall be bound to carry out the O & M maintenance of the installed plants for seven years.
- The security deposit for the work shall be refunded after the expiry of O & M period of 7 years for all the installation made by the firm as successfully completed and certificates to this effect are obtained from the field officers.
- As per tender, payment schedule for supply, erection, commissioning and O & M of RO unit will be made for individual installation of RO plants collectively.



- I. According to definition of works contract under GST regime, the supply of goods and services are done by the supplier simultaneously which is for immovable property. Hence in works contract supply of goods and services together is compulsory.

Thus, based on above facts and concept such contract shall be a single supply and cannot be treated as distinct supplies. Since all the conditions of composite supply are satisfied, it is a composite supply.

- J. We observe that the activity proposed to be undertaken is a composite supply of works contract, the rate of tax in given service shall be determined in accordance with the Notification No 11/2017-CT (Rate) dated 28.06.2017, as amended from time to time.

On perusal of said Notification under S. No. 3(iii), for schedule of rate of Tax on works contract Services, following is mentioned:-

Heading 9954 (Construction services)		CGST Rate %	SGST Rate %	IGST Rate %	Remarks
	<p>(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 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 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);</p> <p>(b) canal, dam or other irrigation works;</p> <p>(c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.</p>	6	6	12	<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>




K. It is therefore, the activity of supply, design, installation, commissioning and testing of reverse osmosis plant and O &M work by the applicant is a Works Contract of Composite Supply. This composite supply is a mixed of goods and services and predominant supply is supply of services. Since this supply is undertaken for a Government Department viz. PHED which is a Government of Rajasthan Department, hence the rate of tax applicable on given service (as it is a works contract service) shall fall

under Entry 3(iii) with HSN Code 99544 and it should be IGST@12%(CGST@6%, SGST@6%).


6. Based on above facts along with provision of law the ruling is as follows:-

RULING

The activity of supply, design, installation, commissioning and testing of reverse osmosis plant and O &M work by the applicant is a Works Contract of Composite Supply. This composite supply is a mixed of goods and services and predominant supply is supply of services. Since this supply is proposed to be undertaken for a Government Department, hence the rate of tax applicable on given service (as it is a works contract service) shall fall under Entry 3(iii) with HSN Code 99544 and it should be IGST@12%(CGST@6%, SGST@6%).


J.P. MEENA 31/1/19
Member
(Central Tax)




HEMANT JAIN
Member
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SPEED POST

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o/c

F.No. IV (4) 31/AAR/RAJ/2018-19/143-146

Dated: 31-01-2019

Copy to:-

1. Commissioner, SGST & Commercial Taxes, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005
2. Commissioner, CGST and Central Excise Commissionerate, Jodhpur G-105, New Jodhpur industrial Area, Basani, Jodhpur 342003.
3. Deputy Commissioner, Circle- Sirohi, Ward-3, Commercial Taxes Dept., Sirohi (Rajasthan) 307026.


Superintendent