

THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX

(constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO.MAH/AAAR/SS-RJ/15/2018-19

Date- 03.01.2019

BEFORE THE BENCH OF

(1) Smt. Sungita Sharma, MEMBER

(2) Shri Rajiv Jalota, MEMBER

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| Appellant | Assistant Commissioner, Central Tax, Dn-I (Talegaon), Pune-I Commissionerate |
| Details of appeal | Appeal No. MAH/GST-AAAR-15/2018-19 dated 09.10.2018 against Advance Ruling No. GST-ARA-09/2018-19/B-65 Mumbai Dt. 11.07.2018 |
| Name and address of respondent | M/s. SHREE CONSTRUCTION, 4 th floor, 403, Jai Ganesh Vision, Akurdi, Pune-411014 |

PROCEEDINGS

(under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 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 provisions under the MGST Act.

The present appeal has been filed under Section 100 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 the Assistant Commissioner, Central Tax, Division-I (Talegaon), Pune-I Commissionerate (herein after referred to as the "Appellant") against the Advance Ruling No. GST-ARA-09/2018-19/B-65 Mumbai, Dt. 11.07.2018

BRIEF FACTS OF THE CASE

- A. M/s. Shree Construction (hereinafter referred to as 'the party') are providing works contract service as sub-contractor to main contractor for original contract work pertaining to Railways. They execute and undertake composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017.



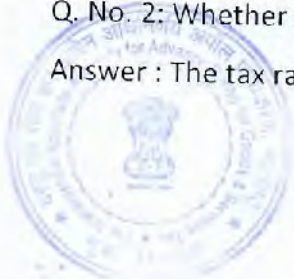
- B. It is the opinion of the party that as per Notification No-20/2017- Central Tax (Rate) dated 22-08-2017 the rate of GST is 12% for composite supply of works contract supplied by way of construction, erection, commissioning or installation of original works pertaining to railways. As per Sr.No-12 in press release of 25th meeting of GST council held at New Delhi on 18-01-2018, the rate of GST applicable to main contractor should be levied by sub-contractor.
- C. Further, it is stated by the party that as per Notification No-01/2018- Central Tax(Rate) dated 25-01-2018 the service provided by sub- contractor to main contractor for railway original works contract services is not specified in the notification. The party say that they are sub-contractor providing service to main contractor for original contract work pertaining to railways, and they should charge 12% GST only and not 18% as applicable in other cases. The contract for original works pertaining to railways remains the same works contract. As there is difference of opinion after reading of press release of 25th meeting of GST council dated 18-01-2018 and notification No 1/2018 dated 25-01 -2018, the party are not in position to levy correct rate of GST on original sub-contracting work pertaining to railways carried on by them for their main contractor. Accordingly, Advance Ruling was sought for clarification for rate of tax to be levied by the sub-contractor to main contractor for original contract work pertaining to railways.
- D. The Advance Ruling Authority passed an order under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 and the questions were answered as under -

Q. No. 1 : What Tax rate to be charged by the sub contractor to main contractor on Works Contract Services (WCS) pertaining to railways original works contract?

Answer: The tax rate to be charged by the sub-contractor to the main contractor would be @ 6% of CGST and 6% of SGST , in the present case.

Q. No. 2: Whether to charge tax rate of 12% GST or 18% GST?

Answer : The tax rate to be charged would be 12% in the present case.



E. Aggrieved by the said ruling of Authority for Advance Ruling, the department has preferred the present appeal.

Grounds of Appeal

Upon examination of the aforesaid Advance Ruling Order No. **GST-ARA-09/2018-19/B-65** dated 11.07.2018, it is observed that the same is legally not proper and correct, on the following grounds: -

(1) In Notification No.20/2017-Central Tax (Rate) dated 22.08.2017 serial number (v) of Table prescribed rate of tax at 12% for Composite supply of works contract as defined in clause (119) of Section 2 of CGST Act, 2017, supplied by way of construction, erection, commissioning or installation of original works pertaining to – (a) railways, excluding monorail and metro; inter-alia.

Other than these services, rate of tax is prescribed at the rate of 18% as shown in serial number (vi).

(2) However, there is no specific inclusion of WCS services provided by sub contractor to main contractor. Therefore, it appears from the said Notification No.20/2017-Central Tax (Rate) dated 22.08.17 that the category of WCS services provided by sub-contractor to main contractor is not covered by the said notification.

(3) As per amending Notification No.01/2018-Central Tax (Rate) dated 25.01.2018, in para (C), it is substituted that in serial number (ix) and (x) that for Composite supply of WCS provided by sub- contractor to main contractor specified in item (iii) or item (iv) to the Government Entity, rate of tax prescribed is 12%.

However, for construction services other than (v), rate of tax is prescribed as 18%. Therefore, in terms of Notification No.01/2018-Central Tax (Rate) dated 25.01.2018, the services provided by sub- contractor to main contractor for railway original works contract services are excluded from the main entry (ix) and (x) of the said notification.

All other construction services other than specified services will therefore attract rate of 18% tax which includes services provided by sub-contractor to main contractor for railway original works contract.



- (4) Therefore, the ARA Order stating that the applicants' services are covered by the original works contract specified in para (ix) and (x) of amended Notfn.No.01/2018-CT(Rate) dated 25.01.2018, is not correct in as much as the said Notification has classified all other Works Contracts relating to Construction services in head (xii) prescribing rate of 18%.
- (5) The minutes of meeting dated 18.01.2018 para-12 quoted by the Applicant has mention of Government Entity but doesn't specifically include WCS provided by sub contractor to main contractor in relation to Railways.
- (6) In view of the aforesaid grounds, the impugned Advance Ruling Order No. **GST-ARA-09/2018-19/B-65** dated 11.07.2018, is not legal and proper, and hence, it is prayed to:
- (a) Set aside the **Order No. GST-ARA-09/2018-19/B-65 Mumbai dated 11.07.2018**,
- (b) Specify the rate of GST at 18% in terms of Notfn.No.01/2018-CT(Rate) dated 25.01.2018, wherein these services are classifiable as all other Works Contracts relating to Construction services in head (xii).
- (c) Pass any other order, as deemed fit, in the facts and circumstances of the case.

Personal Hearing

A personal hearing in the matter was conducted on 13.12.2018, when Shri Yogendra Yadav, Inspector, appearing on behalf of the Appellant, reiterated their written submissions. Shri Nitin S. Shah, Advocate appearing on behalf of the respondent vehemently countered the arguments made by the Appellant by reiterating the submissions, which were earlier made before the Advance Ruling Authority and by furnishing the additional submission at the time of the personal hearing.

Discussions and Findings

- (7) We have gone through the entire submissions made by the appellant, and the respondent along with the ruling pronounced by the Advance Ruling Authority. On perusal of the appeal and submissions made by the appellant during the time of personal hearing, it is observed that there is no dispute that the services provided by the sub-contractor to its main contractor are composite supply of works contract. The main issue, before us to decide, is that the works contract services provided by the party i.e. Shree Construction is covered under the item (v) of Sr. 3 describing the Construction services under the Notification No. 11/2017 dated 28.06.2017 as amended by the Notification No. 1/2018 dated 25.01.2018 or otherwise.



- (8) The Advance Ruling Authority has decided that the works contract services provided by M/s Shree Construction as sub-contractor to its main contractor are squarely covered under the item (v) of Sr. 3, describing the Construction services, under the Notification No. 11/2017 dated 28.06.2017 as amended by the Notification No. 1/2018 dated 25.01.2018, which provides for the concessional rate of 12% GST on the composite supply of works contract as defined in clause (119) of Section 2 of the CGST Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to railways, including monorail and metro. They had agreed to the applicant's contention that since the works contract services provided by them is same, or part of the works contract entered between the main contractor and Railways because the services performed by them as well as property in goods i.e. material used by them in the execution of the works contract are directly getting transferred to the railways in its entirety without any change, modification or alteration therein. Thus, the composite supply of any works contract undertaken by the sub-contractor as per the agreement entered between the main contractor is pertaining exclusively to railways. Therefore, by virtue of this clause "pertaining to the railways" of the item (v) of Sr. 3 describing the Construction services under the Notification No. 11/2017 dated 28.06.2017 as amended by the Notification No. 1/2018 dated 25.01.2018, the composite supply of the sub- contractor i.e. M/s. Shree Construction to its main contractor is squarely covered under this item which provides for concessional rate of 12 % GST to such services.
- (9) The appellant, in the instant case, the Jurisdictional officer, have challenged the ruling given by the Advance Ruling Authority by contending that the activities carried out by the sub- contractor will not fall under item (v) of Sr. 3 of the Notification No. 11/2017 dated 28.06.2017 as amended by the Notification No. 1/2018 dated 25.01.2018, since there is no specific inclusion of WCS services provided by sub- contractor to main contractor. The Appellant further submitted that serial number (ix) and (x) inserted in the amending Notification No.01/2018-Central Tax (Rate) dated 25.01.2018, provides for the concessional rates of 12 % and 5% GST to those sub- contractors, who are providing works contract services to the main contractor providing services, specified in item (iii), (vi) ,and (vii) of the Sr. No. 3 of the above said notification (11/2017 –C.T. (Rate) as amended by the Notification No. 1/2018-C.T. (Rate)), to the Central



Government, State Government, Union territory, a local authority; a Governmental Authority or a Government Entity- thus the amendment carried out in the Notification 11/2017-C.T. (Rate) does not provide the concessional rate of GST to the sub-contractor providing composite supply of the works contract to the main contractor who are given works contract by railways. They further argued that the works contract services provided by the sub-contractor to the main contractor should be covered under the residuary entry (xii) of the above said notification. The respondent, during the course of personal hearing, vehemently countered this argument by deposing that the description of the activities covered under the item (v) of Sr. No. 3 of the Notification 11/2017 as amended by the Notification 1/2018 dated 25.01.2018 are services specific due to the presence of the clause “**pertaining to**”. Thus, there is no relevance for the provider or recipient of the services in this case. If the services fulfil the criteria of the activities/services having description contained the above item (v), then it is immaterial that who is providing services to whom.

- (10) We do not find any merit in the above mentioned contention of the Jurisdictional Officer as from the plain reading of the item (v) of the Sr. 3 of the Notification, it is very much clear that any supply of works contract pertaining to the railways including monorail and metro is subject to concessional rate of 12% GST. In the instant case, though the respondent i.e. M/s. Shree Construction is providing works contract services to its main contractor who has entered into works contract agreement with railways, the composite supply of works contract being carried out by M/s. Shree Construction is ultimately going to the use of railways without being subjected to any change or modification, thus the said works contracts, though undertaken by the subcontractor, is undoubtedly **pertaining to the railways** and no one else. Thus, the condition specified under item (v) of the Sr. 3 of the said notification is completely fulfilled **and** therefore the services provided by the sub- contractor would attract concessional rate of 12% GST.
- (11) As regards the appellant’s contention that there is no specific mention of subcontractor providing services in Sr. (v) as provided in item (ix) and (x) which were incorporated into the Notification 11/2017-C.T. by the amending notification 1/2018 dated 25.01.2018 ,we are of the opinion that there was no need to include such subcontractors in the item (v) of the Notification as there was no confusion whether the sub-contractor will be eligible to such concessional rate of GST, since the activities described under item (v) of Sr. 3 of the notification are services specific. The service provider and the service recipient are immaterial for the determination of beneficiary of this concessional rate of



GST. That is, if the works contract services provided by the main contractor or sub-contractor are pertaining to the railways, the concessional rate of 12% GST is allowed to the person who carries out the such works contract pertaining to railways. The only condition in (a) of item (v) is that

- (a) There should be a composite supply of works contract as defined in clause (119) of section (2) of the CGST Act
- (b) It should be by way of construction, erection, commissioning, or installation of original works pertaining to railways

If the above conditions are fulfilled then works contract services provided by the sub-contractor would be covered by item (v).

In view of the above discussion, we find no reason to interfere with the ruling given by the Advance Ruling Authority.

ORDER

We uphold the ruling pronounced by the Advance Ruling Authority vide their Order No. GST-ARA-09/2018-19/B-65 Mumbai dated 11.07.2018.


(RAJIV JALOTA)
MEMBER




(SUNGITA SHARMA)
MEMBER

Copy to- 1. The Appellant

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