
 सत्यमेव जयते	RAJASTHAN APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX NCR BUILDING, STATUE CIRCLE, C-SCHEME JAIPUR – 302005 (RAJASTHAN)	 राष्ट्र कर बाजार
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PROCEEDINGS UNDER SECTION 101 OF THE CENTRAL GST ACT, 2017 AND
RAJASTHAN GST ACT, 2017

BEFORE THE BENCH OF

1. Ms. ARCHANA P TIWARI, MEMBER(CENTRAL TAX)
2. Mr. ALOK GUPTA, MEMBER(STATE TAX)

ORDER NO.RAJ/AAAR/4/2018-19 DATED २९.11.2018

Name and address of the applicant	:	RFE Solar Private Limited, D-43, Janpath, Shyam Nagar, Jaipur, Rajasthan, 302019
GSTIN of the applicant	:	08AAICR3819D1ZE
Issues under Appeal	:	(i) classification of goods and/or services or both (ii) determination of the liability to pay tax on any goods or services or both
Date of Personal Hearing	:	09.10.2018
Present for the applicant	:	CA Yash Dhadda, Counsel (Authorised Representative). CA Rajeev Tiwari
Details of Appeal	:	Appeal No.RAJ/AAAR/APP/04/2018-19 against Advance Ruling No. RAJ/ AAR/ 2018-19/08 Dt.1.7.2018/1.8.2018



Proceedings

(under Section 101 of the Central Goods and Services Tax Act, 2017 and the Rajasthan Goods and Services Tax Act, 2017)

1. At the outset, it is made clear that the provisions of both the CGST Act, 2017 and the RGST Act, 2017 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 RGST Act.

2. The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Rajasthan Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and RGST Act"] by RFE Solar Private Limited, (herein after also referred to as the "Appellant") against the Advance Ruling No. RAJ/AAR/2018-19/08 Dt.1.8.2018.

3. Brief Facts of the case

3.1. Appellant undertakes itself in executing 'Engineering Procurement, and Commissioning' – EPC contracts for Solar Power Generating Systems commonly known as 'Solar Power Plants'.

3.2. Typically a contract is entered into by the Appellant to do end to end setting up of a solar power plant which includes supply of various goods (such as modules, structures, inverter transformer etc.) as well as complete design, engineering and transportation, unloading, storage and site handling, installation and commissioning of all equipments and material, complete project management as well as civil works/construction related services for setting up of a functional Solar Power Plant.

Accordingly, the contract entered into by the Appellant includes end to end activities
3.3. supply of various goods and services and hence is for the supply of Solar Power Generating System.

3.3. The intent of the contract is that the entire contract would be undertaken by the Appellant for supply and setting up of the Solar Power Plant which includes supply of both goods and services as well as setting up of transmission lines for transmission of the electricity generated up to the storage or the GRID.

3.4. There may be a single lump sum price for the entire contract for supply of both goods and services and payment terms may be defined depending on agreed milestones.

3.5. The Appellant filed an application for Advance Ruling seeking clarification basis draft contracts of the Appellant, in view of the provisions of 'composite supply' and the



rate of tax provided for 'Solar Power Generating System' (hereinafter referred as 'SPGS') under GST, the Appellant sought clarification in respect of the following :

(I) Whether contract for Erection, Procurement and Commissioning of Solar Power Plant shall be classifiable as Supply of Goods or Supply of Services under the provisions of the Central Goods and Services Tax Act, 2017 and Rajasthan State Goods and Service Tax Act, 2017.

(II) If it is supply of Goods, then what will be its HSN classification and rate of tax in terms of the Notification No.1/2017 – Central Tax (Rate) Dt. 28.6.2017.

(III) If it is supply of Services, then what will be its HSN classification and rate of tax in terms of the Notification No.11/2017 – Central Tax (Rate) Dt. 28.6.2017.

3.6. The Authority for Advance Ruling, Rajasthan (hereinafter also referred to as 'the AAR') vide Advance Ruling No. RAJ/AAR/2018-19/08 Dt.1.7.2018 passed the following order :

3.6.1. As per the statement of facts submitted by the applicant, the scope of work in respect of "Turnkey EPC Contract" includes civil works, procurement of goods and erection and commissioning. Accordingly, "Turnkey EPC Contract" are not getting covered under supply of 'Solar Power Generating System' under Entry 234 of Schedule I of the Notification no. 1/2017 – Integrated Tax (Rate), Entry 234 of Schedule I of the Notification no. 1/2017 – Central Tax (Rate) both dated 28 June, 2017 and Entry 234 of Schedule I of the Notification no 1/2017 – State Tax (Rate) dated 29 June, 2017. EPC Contract for Solar Power plant comes under the purview of Works Contract as per Section 2(119) of GST Act.

3.6.2. The contract for Erection, Procurement and Commissioning of Solar Power Plant falls under the ambit " Works Contract Services" (SAC 9954) of Notification no. 11/2017 Central Tax (Rate) dated 28 June, 2017 and attracts 18% rate of tax under IGST Act, or 9% each under the CGST and SGST Acts, aggregating to 18%.



4. GROUNDS OF APPEAL :

4.1 SUPPLY OF GOODS

As per terms of the contract and definition of Composite and Mixed supply, the given work requires classification as composite supply only. Since the contract is in relation to Solar Plant (supply and installation) they are bundled in ordinary course of business.

The term “**goods**” has been defined under section 2(52) as “goods” means **every kind of movable property** other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

The term “**services**” has been defined under section 2(102) “services” means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Further, section 7(1)(d) of the CGST Act 2017 provides for the activities which shall be treated as either supply of goods or supply of services in accordance with Schedule II of the Act.

The Point No. 6 of the Schedule II reads as under:

The following composite supplies shall be treated as a supply of services, namely:— (a) works contract as defined in clause (119) of section 2.

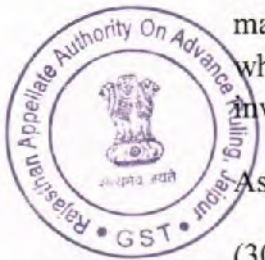
The term Works Contract has been defined under Section 2(119) as

(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.

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**;

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;

The term **Mixed Supply** is defined under Section 2(74) as

(74) “mixed supply” means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

For determination whether the Principal Supply is of goods or service, the concept of Works Contract can be explored first. 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 of property in goods.

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 only. Hence it means that aforesaid activities if they are undertaken for a movable property then it will not be works contract service.

That in the typical Erection and Supply of Solar Power Generating System, which is also proposed to be undertaken here , the process which is followed by the appellant is as under :

- The Appellant submits the implementation schedule which is reviewed and approved by the purchaser.
- The Solar panels and other related items are procured by the Appellant and delivered to the site.
- Post receiving the access to the project site, the appellant starts the assembling of items and also creating of foundations for erection of the Solar Panels. After this, other related equipment like inverters, wiring and other connections are completed.
- The Project Management is also part and parcel of the contract like Engineering services, Erection of the structure, Installation, Performance Tests and Defect rectification.
- The last step of the contract execution is the commencement of the production of electricity and successful connection of the power generating system with the GRID for transmission of electricity and the electricity being generated seamlessly as per the technical specifications (like voltage of the customers).



As also clear from the photographs of an erected and installed Solar Power Generating System, the Plant is fixed to the earth through screws, angles and platform which do not make them permanently fastened to the earth. Hence, it does not partake the character of the Immovable property.

Thus, in the given facts and circumstances, the supply can not be classified as Works Contract and be classified as Supply of Goods.

4.2 SOLAR POWER PLANT - WHETHER MOVABLE / IMMOVABLE PROPERTY

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.**

As per the definition the term permanently fastened or attached to earth can be treated as immovable property. Any attachment with earth which is temporary in nature or can be shifted from part of earth to another without causing substantial damage to it , cannot be treated as immovable property.

Further, on the given issue, CBEC has also clarified vide its **Order number 58/1/2002-CX dated 15/1/2002** where in Para 4 (v) it was clarified that

v) 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.

Reliance has further been placed on the judgments given by the Supreme Court in the case of **Sirpur Paper Mills Ltd. Vs Collector [1998 (97) E.L.T. 3 (S.C.)]** and **CCE Vs Solid and Correct Engg. Works & Others [2010(252 ELT 481(S.C.)]** holding the machineries fixed to the earth with nuts and bolts as not embedded to the earth permanently.

5. PERSONAL HEARING :

The appellant was heard on 09.10.2018 where the appellant reiterated the submissions made in the application filed before the Advance Ruling Appellate Authority. The appellant also submitted a copy of composite EPC contract by and between Kushtagi Solar Power Private Limited (as owner) and RFE Solar Private Limited (as contractor) during the personal hearing.



6. DISCUSSION & FINDINGS :

We have heard the appellant and have gone through the entire case records and written and oral submissions made by him. The issues to be decided are :

- (i) Whether contract for supply of/construction of a Solar Power Plant, wherein both goods and services are supplied, can be construed to be a composite supply in terms of Section 2(30) of the Central Goods and Services Tax Act, 2017 as claimed by the appellant or the same is Works Contract Services as per the Ruling made by the AAR.
- (ii) Whether 'Solar Power Generating System' is a movable or immovable property
- (iii) If the transaction is treated as a 'composite supply', whether the Principal Supply in such case can be said to be 'solar power generating system' which is taxable at 5% GST?

6.2. From the said copy of the composite EPC contract, it is seen that there is a single contract for supply of '15 MW_{AC} /21 MW_{DC} Solar Power Plant' in the State of Karnataka and Kushtagi Solar Power (P) Ltd., the owner, has appointed the RFE Solar (P) Ltd., the appellant, for supply of the 'Solar Power Plant' which includes 'Engineering, design, procurement, supply, development, testing and commissioning of the Plant'.

6.3. As per clause 4 of the said contract the Contractor shall supply all equipment as per the terms of the contract and in accordance with the execution schedule to the plant site and complete development, installation and commissioning of the Works in accordance with Technical Specification, Applicable law, Applicable terms and the terms of this contract, in addition to the detail drawings finalised during engineering.

6.4. As per the Appellant, since the Scope of work includes the provision of goods and services, the entire contract is one turnkey EPC contract and hence would qualify as a 'composite supply' within the definition of the term as given under Section 2(30) of the CGST Act. It is also his contention that the principal supply in such case is the provision of goods and hence the entire contract should be taxable @ 5%.



6.5. For better appreciation of the facts and legal position, it is preferred to refer to the clause (30) of section 2 of the CGST Act, 2017 defining the term ' Composite supply' as under :

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

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

6.6 It is important to see the definition of 'Principal supply'. "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;

6.7 A reading of the definition of 'Composite supply' shows that there should be-

- a. Two or more taxable supplies;
- b. Of goods or services or both;
- c. Or in combination thereof;
- d. Which are naturally bundled and supplied in conjunction with each other;
- e. In the ordinary course of business.
- f. One of which is a principal supply.

6.8. The contract fulfils the condition of composite supply. There is a supply of goods and services. They are naturally bundled in the sense that the goods and services may be required to fulfil the intention of the buyer in giving the contract. The supply of goods and services are provided as a package and the different elements are integral to flow of supply i.e. one or more is removed, the nature of the supply would be affected. Thus, from a reading of the entire contract as well as from the definition of composite supply what can be easily gathered is, that the buyer has given a contract for setting up Solar Power Generating System to the Appellant and therefore it is single composite supply of goods and services and installation thereof.

6.9. In order to understand the scope of a 'composite supply' and also to know what may be the criteria to judge a supply as a 'composite supply', the CBIC has published an e- flier on the subject. As per the e-filer, 'Composite supply' entails the concept of



'naturally bundled supply', and whether services are bundled in the ordinary course of business would depend upon the normal or frequent practice followed in the area of business. It also says that in order to qualify for a composite supply one of the characteristic would be that 'none of the individual constituents are able to provide the essential character of the service'. What is the normal frequent practice in the trade can be ascertained from the following indicators -

- The participation of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package, then such a package could be treated as naturally bundled in the ordinary course of business.
- Majority of service provider in a particular area of business provide similar bundled of services.
- The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service.
- The other instructive indicators can be the following -
 - a) There is a single price or the customers pay the same amount.
 - b) No matter how much of the package the actually received.
 - c) The elements are normally advertised as a package.
 - d) The different elements are not available separately.

6.10. From the application of the above indicators we hold that the contract for providing the design, procurement, supply, development, testing and commissioning of the Plant which includes the supply of both goods and services is a composite supply as per the definition in the Act. There are two taxable supplies- one of goods and the other of services and they both are naturally bundled and it is natural and also a practice to expect that the contractor who will supply the goods will also supply the services alongwith it. In the business of contracts for the Solar Power Generating System, it is a practice to provide a Plant as a whole along with the supply of services. We differ with the order of the Advance Ruling Authority in this respect.

6.11. **Whether 'Solar Power Generating System' is an immovable property**

Having concluded that the same is a composite supply, we now proceed to decide the issue what would be the principal supply, whether it is a supply of service or supply



of goods. The AAR has held that the impugned transaction for setting up and operation of a solar photovoltaic plant which is in the nature of a 'works contract' in terms of clause (119) of Section 2 of the GST Act, and hence, should be taxable at the rate of 18%. The moot question, therefore is whether the contract before us is a 'works contract' as defined in clause (119) of section 2 of the CGST Act.

6.12. The definition of works contract is reproduced below.

(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;

6.13. Clause 6 of the Schedule II lists the two composite supplies which shall be treated as supply of services. Clause 6(a) of Schedule II of the CGST Act states that Works Contract as defined in Clause (119) of Section 2 of the CGST Act shall be treated as 'supply of services'.

6.14. From the definition it is clear that it defines only those supplies as works contract which are contracts for building, construction, fabrication etc of any immovable property.

6.15. Whether the erection of the 'Solar Power Generating System' amounts to erection of immovable property? In order to answer this question, we have to go through the clauses given in the contract before us.

6.16. It can be seen from the definition that 'Works Contract' involves activities of 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. However, these activities should be in terms of immovable property. In order to decide whether the transaction is a works contract it is for us to decide whether it is in terms of immovable property. The term 'Immovable property' has not been defined under the GST Act. The appellant has submitted certain judgements in his favour and after going through them, we find that the following principles emerge –

- If a machine is attached for operational efficiency, it does not become immovable property.



- If the fixing of the plants to a foundation is meant only to give stability to the plant and keep its operation vibration free then it cannot be called as 'Immoveable property'.
- If the setting up of the plant itself is not intended to be permanent at a given place and if the plant can be moved and is indeed moved after the road construction or repair project for which it is set up is completed, then also it cannot be termed as 'Immoveable property'.

6.17. So, for deciding whether a property is movable property, it is to be seen what is the mode of necessary embedding in the earth and the object of embedding in the earth. If object is so embedded that it cannot be removed without causing damage to the land then it gives a reasonable ground for holding that it was intended to be embedded in perpetuity. Also whether the intention of the parties while erecting the system was that the plant has to be moved from place to place in the near future would also make a difference.

6.18. Let us first understand what is meant by a Solar Power Generating System. The main equipment which as a whole constitutes a solar power generating system are solar panel consisting of solar cells (known as solar PV module), strings (series of multiple PV modules), string inverters, inverter to convert from DC power to AC power, Switchgears, Transformers and transmission lines etc. The entire mechanism of a SPGS is that solar panels/PV modules are connected together to create a solar array. Multiple panels are connected together both in parallels and in series to achieve higher current and higher voltage. The electricity produced by solar array is direct current, and therefore, inverters are required to convert Direct Current into Alternating Current and connection to utility Grid is made through High Voltage Transformer.

6.19. As per the said contract, for setting up of a Solar Power Generation System, the following steps are involved :

- Soil Survey
- Plant coordinate fixing, Boundary fencing and Plant layout
- T/L Survey, Piling, Building Construction
- Structure erection, inverter erection, equipment foundation
- Charging transmission, DC system erection, module mounting
- DC cabling
- Commissioning of the solar power plant.

6.20. As part of the services contract, various services are provided including the following :



- Construction of complete buildings including control rooms and inverter rooms, roads and drainage system, boundary walls/ fencing, bore wells
- All civil and foundation works for switchyard, solar plant and all other equipment
- Site enabling facilities
- Levelling and grading
- Erection, commissioning and testing for solar modules, mounting structures, power transformers, inverters, , complete switchyard, inverter transformers, connectors, earthing lines etc.

6.21. There are generally two types of Solar Power Systems

- 1) Roof mounted
- 2) Ground mounted.

The Solar Polar Generating System in the present case is a ground mounted or ground based Solar Power system. A simple ground mounted system (**for a home**), requires a customized positioning at the perfect angles for absorbing sunlight. In a ground mounted system, good planning is a big part of placing solar panel ground mounts as the installer has to choose a location that receives the ideal amount of daily sunlight and uses space effectively. Installing ground-mounted solar panels always starts with building a stable base. **Traditional ground-mounted systems**, essentially all work the same—systems anchor to the ground and hold a large number of stacked panels, often two but sometimes three or four panels high. Two rails usually support each panel, whether oriented in landscape or portrait. The anchoring to the ground is the tough part of these installations, as there are many different **types of foundations**. If the soil is clear of debris, steel beams are driven into the ground and the racking system is attached to the beams. If ground conditions are not suited for smoothly driven beams, anchor systems may be used- helical piles, ground screws. These can take more time to install as they have to power through boulders and other large debris. It is usually a more complicated installation process than putting solar panels on a roof. When you have a roof installation, half of the structure is already built. All one has to do is to install racking and the solar array. However, with a ground mounted system, you essentially have to build the structure of the roof from scratch, so the solar panels have something to sit on. This means looking into or a deep examination of certain soil types, strict building codes, and earthquake risk. In that case, a soil engineer would look at the soil to determine its type and make adjustments to the foundation size and requirements of the design.

Once the foundation is ready, then one can start building pole mount systems and metal framing to hold the panels and other components. After building a frame and checking the foundation work, the panels are installed. The panels have to be carefully



positioned. Finally, panels are wired to the inverter, trenches are dug and connections between the system and the property's electrical panel or solar home battery is buried.

6.22. **What is described above is a solar power system for a home. What we have in the instance is a 'WHOLE SOLAR POWER GENERATION SYSTEM'. One look at the contract, gives an idea of the scope of the work.** The array of goods includes Solar PV Modules ,Inverters and Inverter Transformer, Tracker Components, Module Mounting Structure, Switchyard Supply, Transmission Line Supply, AC/DC Cables ,Chain Link Fencing ,Battery Charger, Power Transformer, LD Switchgear and complete switchyard, Inverter transformers and auxiliary transformers, Battery and battery charger, Module cleaning system, Illumination and ventilation system, Earthing system ,Site enabling facilities and Mandatory spares. The initial steps include the Drawings and Detailing of the system.

- As per contract, obligation of the Contractor amongst other things includes Plant information and 'Plant Information' in turn includes works relating to 'Plant land' which in turn includes identification of land, legal due diligence, registration of land, fencing of land, storage yard for storing the materials etc. and module mounting structure.
- The works relating to 'Module Mounting Structure' includes soil testing, contour survey, levelling of land, laying of foundation, drilling of holes for foundation and erection of the MMS i.e. Module Mounting Structure. It also includes erection and installation of solar side module and solar inverter which forms the core of the SPGS.
- As far as works relating to solar inverter is concerned, it is not only restricted to include the procurement of inverter but also entails construction of inverter room, selection of underground cables, laying of cables etc.
- The Scope of work includes fine detail regarding the electrical work involved. The electrical work is not only limited to the procurement of the equipment but also includes laying of cables, digging of trenches for laying of cables and earthing system. Further the Scope of work extends to laying down of the OHT line which includes line survey, procurement of materials and erection of poles.
- Contract shows that lot of approval and permissions are required not only for transportation of materials but also for payment of land related taxes, approval from local bodies, environmental clearance, NOC from utilities, final occupancy approval and commissioning certificate as well as their requisite approval from KPTCL and other government agencies. The above itself shows the huge work and detailing of the project.



6.23. All of the above go to show that the erection of the Solar Power Generating System is not as simple or movable as it is made out to be. It is an entire system comprising a variety of different structures which are installed after a lot of prior work which involves detailed designing, ground work and soil survey. As said earlier, the amount of drawings done indicates the magnitude of the work done. Solar systems tend to be tailored specifically to fit the dimensions and orientation of the needs of the project. It is not easy to move them from one place to the other. Rather moving them from one place to other would be imprudent. Moving them to a new location would mean retrofitting the system on to a property they simply weren't designed for, meaning that they would be much less efficient. It would not be in the interest of the buyer to move it from one place to the other. Thus, the project fulfils both the conditions of an immovable property - The mode of annexation shows that the groundwork, being the necessary foundation, is an important part of the project. The object of annexation, as said earlier, cannot be to make it movable from one place to the other. It simply cannot be equated to the Asphalt mix (the issue in Solid & Concrete Engg) which was intended to be moved from one place to another. In the present case, we have seen that the detailing of the system being what it is, it cannot be called a 'simple machine' by any stretch of imagination. The PV module may be an important part of the system but what is intended to be bought is not the PV module but an entire system. Thus, we affirm the conclusion drawn by the AAR that the contract entered into, lead to the erection of a **Solar Power Generating System**.

6.24. We shall refer to certain judgements in this regard. The Advance Ruling Authority has referred to the Supreme Court judgement in the case of M/S. T.T.G. Industries Ltd., Vs Collector Of Central Excise [2004(167) ELT 501 (SC)]. The contract here was for the design, supply, supervision of erection and commissioning of four sets of Hydraulic Mudguns and Tap Hole Drilling Machines required for blast furnace and the issue was whether the same is immovable property. The Apex Court observed :

“ Keeping in view the principles laid down in the judgments noticed above, and having regard to the facts of this case, we have no doubt in our mind that the mudguns and the drilling machines erected at site by the appellant on a specially made concrete platform at a level of 25 feet above the ground on a base plate secured to the concrete platform, brought into existence not excisable goods but immovable property which could not be shifted without first dismantling it and then re-erecting it at another site. We have earlier noticed the processes involved and the manner in which the equipments were assembled and erected. We have also noticed the volume of the machines concerned and their weight. Taking all these facts into consideration and having regard to the nature of structure erected for basing these machines, we are satisfied that the judicial member of the CEGAT



was right in reaching the conclusion that what ultimately emerged as a result of processes undertaken and erections done cannot be described as "goods" within the meaning of the Excise Act and exigible to excise duty”

In the above case, the Supreme Court took note of the fact that the various components of the Mudguns and the Drilling machines are mounted piece by piece on a metal frame, and the components are lifted by a crane and landed on a cast house floor 25 feet high. The volume and weight of these machines are such that there is nothing like assembling them at ground level and then lifting them to a height of 25 feet for taking to the case house floor and the to the platform over which it is mounted and erected. It observed that the machines cannot be lifted in an assembled condition and after taking note of these facts, it concluded that the same is immovable property. The Court further held that it cannot be disputed that such Drilling Machine and Mudguns are not equipment which are usually shifted one place to another nor it is practicable to shift them frequently. The court also referred to its own judgments in the case of Quality Steel Tubes (P) Ltd. 75 ELT 17 (SC) and Mittal Engineering Works (P) Ltd. 1996 (88) ELT 622 (SC).

6.25. Reference is also made to another Supreme Court decision in the case of Duncans Industries Ltd Vs State Of U.P. & Ors on 3 December, 1999 where the SC had to decide whether the 'plant and machinery' in the fertilizer is goods' or 'immovable property. The Apex Court held that the same is immovable property and observed :

“ The question whether a machinery which is embedded in the earth is movable property or an immovable property, depends upon the facts and circumstances of each case. Primarily, the court will have to take into consideration **the intention of the parties when it decided to embed the machinery whether such embedment was intended to be temporary or permanent.** A careful perusal of the agreement of sale and the conveyance deed along with the attendant circumstances and taking into consideration the nature of machineries involved clearly shows that **the machineries which have been embedded in the earth to constitute a fertiliser plant in the instant case, are definitely embedded permanently with a view to utilise the same as a fertiliser plant.** The description of the machines as seen in the Schedule attached to the deed of conveyance also shows without any doubt that they were set up permanently in the land in question with a view to operate a fertilizer plant and **the same was not embedded to dismantle and remove the same for the purpose of sale as machinery at any point of time.** The facts as could be found also show that the purpose for which these machines were embedded was to use the plant as a factory for the manufacture of fertiliser at various stages of its production. Hence, the contention that these machines should be treated as movables cannot be accepted.”



6.26. Thus what can be seen from the above is that when machines are embedded with no visible intention to dismantle them and they are intended to be used for a fairly long period of time, they are 'Immoveable property'.

6.27. The Appellant has claimed that the 'Solar Power Plant' is made of equipment which are largely moveable in nature, if required, the equipment can be moved without any substantial damage to them , from one land parcel to another. This may happen in cases where there is a requirement to shift the whole Solar Power Plant from one area to another area or is being sold to a party who intends to install/set it up in another area, the equipment installed can be dismantled and reassembled at the new land parcel with material. It may be true that the Solar power plant can be moved from one place to other but for the enjoyment of the equipment or for the smooth generation of electricity the panel is required to be affixed to the earth. Is there an intent to move the plant from one place to other ? Of course , not. There is no feasibility in moving the plant from one place to another. There can be no intention of both the parties to move the plant from one place to another. The fact that it can be moved is immaterial.

6.28. The appellant has also produced a letter from the 'Ministry of New and Renewable Energy' Dt 3.4.2018. However, the same denotes the understanding of the Ministry regarding the GST treatment for solar sector and cannot be taken as legal advice/opinion. The letter itself clarifies in the end that the same is not a legal advice or an opinion. The issue of classification or determination of the agreements have to be done with respect to the laws and relevant provisions.

6.29. The appellant has also produced order of the CBEC under Section 37B (Order No 58/1/2002 -CX Dt 15.1.2002). The order gives directions as to what would be excisable goods and what are not (immoveable property).The clarification says in Para 5 (i) that 'Turnkey projects like Steel plants, Cement Plants , Power plants etc involving supply of large number of components , machinery, equipment, pipes and tubes etc for their assembly /installation/ erection/integration/inter-connectivity on foundation/civil structure etc at site will not be considered as excisable goods for imposition of central excise duty - the components, however, would be dutiable in normal course."

The clarification therefore holds the erection of plants as immoveable property and not goods.

6.30. The appellant has submitted that the Government, as per S. No. 234 of Notification 1/2017, has chosen to tax solar products in a particular manner:

Devices and parts



Solar power generating system
Photo voltaic cells

all at 5%

Hence, the clear legislative intent is that at all levels, from part to system, GST will be payable at 5%. and not at a significantly higher rate of 18%. The said Notification is reproduced below:

Sl. No.	Chapter/ Heading / Subheading/ Tariff item	Description of goods
234.	84, 85 or 94	Following renewable energy devices & parts for their manufacture (a) Bio-gas plant (b) Solar power based devices (c) Solar power generating system (d) Wind mills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants / devices (f) Solar lantern /solar lamp (g) Ocean waves/tidal waves energy devices/plants (h) Photo voltaic cells, whether or not assembled in modules or made up into panels

6.31. The above description in the Notification shows the description of goods as 'Following renewable energy devices and parts for their manufacture'. The term 'devices' is very important here. A device means an object. The Oxford dictionary defines 'device' as 'an object or a piece of equipment that has been designed to do a particular job'. The 'Solar power generating system' described in the entry is used in the sense of a device. Also, we have decided the instant case on its facts and circumstances. After going through the entire contract, we have come to the conclusion that the contract leads to an erection of a 'Solar power generating system' which is immovable property. Therefore, merely because a schedule entry is provided for the same does not mean that the product would be classified in the same.



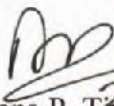
6.32. With reference to the question of GST rate of 5% on Principal supply of 'Solar Power Generating System', we have already treated the transaction as a 'Composite supply' and a 'Works contract' falling u/s. 2(119) of the CGST Act, 2017 . Para 6 of SCHEDULE II [ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES] treats 'Works contracts' u/s 2(119) as supply of 'services'. In view thereof, there arises no occasion to go into the issue of 'Principal supply'.


In view of the extensive deliberation as held above, we rule as under :-

RULING

1. The said Turnkey EPC contract is a 'composite supply' under section 2(30) of the CGST Act, 2017. The said composite supply falls within the definition of Works contract under section 2(119) of the CGST Act, 2017(SAC9954) and attracts 18% rate of tax (either 9% each under CGST Act and RGST Act or 18% under IGST Act)

2. In view of holding the transaction as a 'Works contract' and Para 6 of SCHEDULE II of CGST Act treating 'Works contracts' as supply of 'services', there arises no occasion to go into the issue of 'Principal supply'.


29/11/18
Archana P. Tiwari
Member (Central Tax)


Alok Gupta
Member (State Tax)

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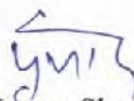


F.No. IV(16)AAAR/RAJ/04/2018-19
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Dated. 30.11.2018

1. The Chief Commissioner of CGST , Jaipur Zone , Jaipur .
2. The Commissioner of SGST & Commercial Taxes, Kar Bhawan, Ambedkar Circle, Rajasthan , Jaipur.
3. Deputy / Asstt. Commissioner, Central GST Division – G, Jaipur
4. STO, Ward-3, Circle-I , Jaipur Zone-III, Divisional Kar Bhawan, Jhalana Institutional Area , Jaipur
5. Guard File


(Pramod Kumar Sharma)
Superintendent