

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICE TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Advance Ruling No. KAR ADRG 108/2019

Dated: 30th September, 2019

Present:

1. Sri. Harish Dharnia,
Addl. Commissioner of Central Tax Member (Central Tax)
2. Dr. Ravi Prasad M.P.
Joint Commissioner of Commercial Taxes Member (State Tax)

1.	Name and address of the applicant	M/s BRIGHTSTONE DEVELOPERS PRIVATE LIMITED Shop No.9-1-16, Mohan Market KEB Road, Bidar Karnataka 585401
2.	GSTIN or User ID	29AAGCB6259H1ZC
3.	Date of filing of Form GST ARA-01	22.06.2018
4.	Represented by	Sri Rajesh Kumar T.R. Chartered Accountant, M/s Hiregange & Associates, Chartered Accountants
5.	Jurisdictional Authority - Centre	Commissioner of Central Tax, Belagavi
6.	Jurisdictional Authority - State	LGSTO-540, Bidar
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of 1. Rs.5,000-00 under CGST Act vide CIN CORP18062900322706 dated 22.06.2018 2. Rs.5,000-00 under KGST Act vide CIN CORP18062900249432 dated 20.06.2018

ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICE TAX ACT, 2017 AND UNDER SECTION 98(4) OF THE KARNATAKA GOODS AND SERVICES TAX ACT, 2017

1. M/s Brightstone Developers Private (called as the 'applicant' hereinafter), having GSTIN number 29AAGCB6259H1ZC, has filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules 2017, under Section 97 of the KGST Act, 2017 read with Rule 104 of KGST Rules 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000-00 each under the CGST Act and the KGST Act.



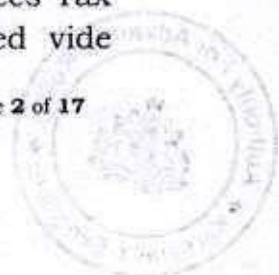
2. The Applicant is a Private Limited Company and is registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following question:

- a) Whether the supply of turn-key Engineering, Procurement & Construction (EPC) Contract for construction of 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 CGST Act, 2017?
- b) Whether the supply of 'Solar Power Generating System' is taxable at 5% GST?

3. The applicant furnishes some facts relevant to the stated activity:

- a. The applicant states that he wishes to engage in EPC Contract for supply of Solar Power Generating System and the operation and maintenance of the installed solar power plants.
- b. The applicant wishes to enter into contract with various developers who desire to set up and operate solar photovoltaic plants for supply of power generated. The applicant also wishes to be project developer wherein they would be engaged in operation of renewable energy power plant projects.
- c. Typically a turnkey contract would be entered by the applicant to do end to end setting up of a solar power plant which includes supply of various goods (such as modules junction boxes, module supporting structures, transformers, switchgears, etc.) as well as complete design, engineering and studies transportation unloading, storage and site handling, installation and commissioning of all equipments and material, complete project maintenance as well as supply and construction related in various other packages for complete PV plants.
- d. Accordingly, the applicant submits, the contract which would be entered into by him includes end to end activities, i.e. supply of various goods and services intended for setting up, operation and maintenance of a solar power plant.
- e. The intent of the contract would be that the entire contract would be undertaken by the applicant for supply of both goods and services and setting up of the solar power plant as well as transmission line for transmission of the electricity generated upto the storage or the GRID.
- f. The contract would be for a single price for the entire contract for supply of both goods and services in payment terms many be defined depending on various milestones.

4. The applicant submits that on introduction of Goods and Services Tax (GST) wherein the rate of tax on goods and services are notified vide



generating system to the clients and accordingly the rate of tax applicable is that of 5%.

7.2 The applicant submits further that once the notification itself considers the entire solar power generating system as goods, the service which is 10-15% of the contract should be incidental to supply of goods. Accordingly, the applicant understands that the supply of solar power generating system attracts 5% of GST.

8. The applicant submits that the CGST Act defines composite supply, principal supply and mixed supply and the definitions are as under:

2(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;

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.

2(90) "principal supply" means the supply of goods or services which constitute the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;

2(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.

Illustration.- A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately."

9. The applicant submits that the tax liability to be discharged in case of composite or mixed supply is provided in Section 8 of CGST Act, 2017 and the same is as under:

Notification No.1/2017 – Central Tax (Rate) dated 28th June 2017 and Notification No.11/2017 – Central Tax (Rate) dated 28th June 2017 respectively. In case of goods, as the Notification No.1/2017 – Central Tax (Rate) dated 28th June 2017, the rate of goods classifiable under 84 or 85 or 94 for solar power generating systems is 5% (2.5% of CGST + 2.5% of SGST) and the relevant entry is provided below:

84 or 85 or 94	Following renewable energy devices and parts for their a. Biogas plant b. Solar power based devices c. Solar power generating system d. Wind mills and wind operated electricity generator e. Waste to energy plants / devices f. Solar lantern / solar lamp g. Ocean waves / tidal waves energy devices/ plants h. Photovoltaic cells, whether or not assembled in modules or made up into panels
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5. The applicant further submits that the concept of composite supply is defined in section 2(30) of CGST Act and Section 8 prescribes rate in case of composite supply. According to the said sections, in case of composite supply, the rate of principal supply is required to be adopted for the entire contract. Further, the principal supply is also defined under section 2(90) of CGST Act, 2017.

6. The applicant states that the nature of work undertaken by him involves supply of goods around 80%-85% and balance is supply of services. Hence applicant understands that the principal supply is that of supply of goods and supply of services is merely incidental to supply of goods. Further, the solar power generation plant is movable goods and supply of goods being the principal supply and hence the applicant understands that the entire contract shall be taxed as supply of goods at 5% as stated above.

7. The applicant submits that as per the Notification No.1/2017 – Central Tax (rate) referred to above, concessional rate of 5% has been provided to the goods when covered under heading 84, 85 and 94. In the said entry, there is no restriction provided on what would qualify as parts and in such cases all goods which qualify as parts of solar power generating system should be eligible for concessional rate of tax.

7.1 The applicant submits that the above said notification provides rate of tax for Solar Power Generating System as 5% by considering the entire solar power generating system as goods. Hence the applicant is of the understanding that they also would be providing entire solar power



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

10. From the above legal provisions, the conditions for any supply to qualify as composite supply are as below:

- a. Two or more taxable supplies of goods and/ or services;
- b. The taxable supply should be naturally bundled in ordinary course of business
- c. The taxable supply should be supplied in conjunction with each other; and
- d. One of the taxable supply should be a principal supply

In case the supply is construed to be a composite supply, the supply which is the principal supply is treated as the main supply and the entire transaction is taxed as per the principal supply.

11. The applicant submits that in the present case, the nature of work undertaken by the applicant involves supply of goods around 80-85% and balance is supply of services. Hence the applicant understands that the principal supply is that of supply of goods and supply of services is merely incidental to supply of goods. Further, as per the legal provisions, the applicant understands that in the present case, since the scope of work of the applicant includes provision of both goods and services, the entire contract is one turn-key EPC contract and hence would qualify as a composite supply. The principal supply is of supply of goods for 'solar power generating system' and hence the entire contract including service portion should be taxable at 5%.

12. The applicant further submits that Ministry of New and Renewable Energy (MNRE) in various instances has also approved the entire BOQ consisting of various parts eg. Cables, Module mounting structure, spares, transmission lines, etc., as essential to solar power generating system and hence the concessions applicable have been extended to all goods to be used in solar power plant. Drawing of corollary, concessional rate pf 5% should be applicable on all goods approved under BOQ by MNRE as well. Further, as highlighted above, services being incidental to such supply should also get covered as composite supply and taxable at the rate applicable to principal



supply of solar power generating system. i.e. 5% (2.5% of CGST + 2.5% of SGST).

14. The applicant submits that the "works contract" is defined in CGST Act, 2017 in section 2(119) which is as follows:

"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;"

The works contract is deemed to be service under schedule II of the CGST Act, 2017. The applicant submits that the definition of works contract covers activities of construction on any immovable property and therefore, it is clear that the works contract would be applicable only for immovable property and not to movable property.

14.1 The applicant submits that the solar power generating system plant is movable property and this is supported by the nature of work undertaken by the applicant and this cannot be considered as works contract.

14.2 The applicant submits that no major component of the solar plant is attached to the earth. The solar panels which comprise 60% of the cost of the solar plant are merely bolted to metal frames called "purlins" by means of 4 nuts of 10mm dia (which is smaller than a shirt button) and can easily be removed within 20 seconds. The solar inverters which are the next most expensive item (4%) are also not attached to the earth. They are simply mounted on concrete foundations and can be moved to any other location within less than an hour. Therefore, it is clear that the movement of the solar plant can be done and only cost would be transportation and packing. Accordingly, the applicant understands that Solar Plant is movable goods.

14.3 The applicant submits that the words "moveable property" and "immovable property" are not defined in GST. Accordingly, the definition provided in the General Clauses Act would be applicable and the same is reproduced below:

"Section 3(36) – "movable property" shall mean property of every description, except immovable property".

Section 3(26) – "immovable property" shall include land, benefits to arise out of land and things attached to earth, or permanently fastened to anything attached to the earth."

14.4 The word "attached to earth" is not defined in the General Clauses Act, however the same is defined in Transfer of Property Act and the same is as under:

"Section 3 – "attached to the earth" –

- (a) Rooted in the earth, as in the case of trees and shrubs;*
- (b) Imbedded in the earth, as in the case of walls and buildings;*
- (c) Attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached"*

14.5 The applicant submits that, the major components of the solar plant are attached with purlins i.e. metal frames to provide stability to the working of the plant and prevent vibration/ wobble free operation. This cannot be qualified as "attached to the earth" as defined in Transfer of Property Act, under any one of the three clauses extracted above.

14.6 Further, the applicant attach the plant to the foundation which against cannot be comparable or synonymous to trees and shrubs rooted in earth. It is also not identical to imbedding in earth of the plant as in the case of walls and buildings, for the obvious reason that a building imbedded in the earth is permanent and cannot be detached without demolition. Imbedding of a wall in the earth is also in no way comparable to attachment of a plant to a foundation meant only to provide stability to the plant especially because the attachment is not permanent and what is attached can be easily detached from the foundation.

14.7 Hence, the applicant states that the attachment of the plant to the foundation at which it rests cannot fall in the third category (supra), for an attachment to fall in that category it must be for permanent beneficial enjoyment of that to which the plant is attached. Hence, the Solar Power Plant cannot be considered as immovable property; accordingly the applicant understands that their activity cannot be works contract.

14.8 The applicant submits that, the English Law has evolved the twin tests of degree or mode of annexation and the object of annexation in Wake v. Halt (1883) 8 App Cas 195 Lord Blackburn speaking for the Court of Appeal observed:

"The degree and nature of annexation is an important element for consideration; for where a chattel is so annexed that it cannot be removed without great damage to the land, it affords a strong ground



for thinking that it was intended to be annexed in perpetuity to the land.”

The English Law attaches greater importance to the object of annexation which is determined by the circumstances of each case. One of the important considerations is founded on the interest in the land wherein the person who causes the annexation possesses articles merely resting on their own weight are fixtures only if they are attached with the intention of permanently improving the premises. Attachment to the earth must be as defined in Section 3 of the Transfer of Property Act.

14.9 Further the applicant submits that the machinery for metal shaping and electroplating which was attached by bolts to special concrete bases and could not be easily removed, was not treated to be a part of structure or the soil beneath it, as the attachment was not for more beneficial enjoyment of either the soil or concrete. Accordingly the same cannot be considered as attached to the earth to treat it as immovable property. Accordingly as per the applicant understands the solar plant is movable property.

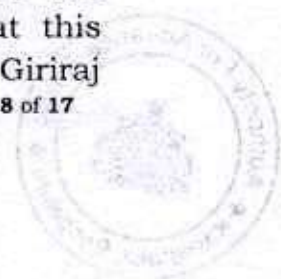
14.10 From the above, the applicant submits that,

- a. the solar power plant in the present case is not as per se immovable property.
- b. The plant cannot be said to be ‘attached to earth’ as per section 3 of Transfer of Property Act.
- c. The fixing of plant to the foundation is meant only to give stability to the plant to keep its operation vibration free.
- d. The setting up of the solar plant is not intended to be permanent at a given place.
- e. The plant can be moved.

From the above, the applicant understands that the solar plant cannot be a immovable property and accordingly, the activity of the applicant cannot be considered as works contract.

14.11 From the above submissions made, the applicant understands that the activity cannot be a works contract and it should be considered as composite supply wherein supply of goods is principal supply and supply of service is merely incidental to supply of goods.

15. Sri Rajesh Kumar T.R., Chartered Accountant and duly authorised representative of the applicant concern appeared and reiterated the submissions already made in writing. Further, he has stated that this Authority has passed an advance ruling in the case of M/s Giriraj Brightstone Developers



Renewable Private limited treating the parts of Solar Power Plant and supply of services of erection, installation and commissioning of the Solar Power Plant as "composite supply" as the supply of goods and services are naturally bundled. Further, he has also submitted a copy of the Advance Ruling issued by the Authority for Advance Ruling, Uttarakhand dated 28.08.2018 in the case of M/s Eapro Global Ltd. Roorkee, in it was ruled as under:

- "(a) Supply of solar inverter, controller, battery and panels would be covered under "Solar Power Generating System" as a whole in terms of serial no. 234 of schedule I of the Notification No.01/2017- Central Tax (Rate) dated 28.06.2017 when supplied for said purpose and the applicable rate of GST on such supply will be 5% as on today (2.5% CGST + 2.5% SGST) and such supply will be treated as "composite supply".*
- (b) Supply of solar inverter and solar panels together will fall under the definition of "Solar Power Generating System" (if the same are used for the said specified purpose) in terms of serial no. 234 of Schedule I of the Notification No.01/2017 - Central Tax (Rate) dated 28.06.2017 and the applicable rate of GST on such supply will be 5% as on today (2.5% CGST + 2.5% SGST) and such supply will be treated as "composite supply"*
- (c) The aforesaid findings are applicable for both manufacturers and traders engaged in said supply."*

DISCUSSION AND FINDINGS

16. We have considered the submissions made by the applicant in their application for advance ruling as well as the additional submissions made by Sri Rajesh Kumar, CA, during the personal hearing. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts. At the outset, we would like to state that the provisions of both the CGST Act and the KGST 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 KGST Act.

16.1 The contract is for the establishment of a solar power generating system on turn-key basis and also for the operation and maintenance of the installed power plants. The draft sample agreement provided by the applicant reveals that what is required by the clients of the applicant is the services in relation to designing, engineering, procurement, construction, fabrication, installation, commissioning and testing of materials and



equipment for the implementation and development of the Project and the applicant agrees to provide such services in accordance with the specifications and the draft agreement.

16.2 Clause (yy) of para 1.1 of Definitions section of the model draft agreement defines "work" as under:

"Work" means all the work (other than the Scope of Work of Developer) that is required to be carried out for implementation of the Project at the Project site and performance of all the obligations undertaken by the contractor under this Agreement in accordance with the Project Requirements and includes all the work involved in relation to

- (i) Designing, engineering, procurement and supply of equipment, machinery, material, supplies, tools, strategic spares, other spare parts lists, an initial fill of greases, lubricants and other consumables, operating and maintenance manuals, equipment manuals, and the transportation, importation, handling, security and storage of all such items;*
- (ii) Construction, including the furnishing of all supervision, labour and construction tools, consumables and equipment;*
- (iii) Site security, management, supervision and control of all construction, start-up and testing activities;*
- (iv) The performance of the Contractor's obligations during the Defects Liability Period, in accordance with the terms of this Agreement; and*
- (v) Such other services as may be mutually agreed between the parties.*

All equipment, machinery, material, supplies, tools, strategic spares, other spare parts to be supplied by the Contractor for the Project shall be new."

16.3 The scope of the work in para 3 of the draft model agreement in para 3.1 titled "Work to be Performed by the Contractor" states as under:

"3.1 Work to be Performed by the Contractor

- (a) The Contractor shall be responsible for the working design and drawings, engineering, construction and commissioning of the Project and other Project facilities associated with it. The Contractor shall be solely responsible for procuring, providing or arranging for**
 - a. The skilled, semi-skilled and unskilled services and personnel;**
 - b. All materials and tools;**

- c. Construction of workshops and site/work offices, whether of a permanent or temporary nature; and
d. All other resources and things as may be required to perform the Work.”

The Schedule I to the agreement gives the Bill of Quantities and includes Control Rooms, construction of security posts and entry gate, Chain link fencing, Bill of Materials (other than modules) includes Module Mounting Structure, Distribution Transformer 0.400v/ 33 KV and 33kV Outdoor Breaker, Roads etc.

The Schedule 2 which gives the scope of work (contractor) states the following

Sl.No.	Sl.No.	PARTICULARS
A		Design, Engineering, Supply, Installation, Testing and Commissioning
I		PV & Electrical Items - Design, Engineering & Supply
	1	Solar Photovoltaic Modules
	2	Fixed Module Mounting Structures
	3	String Combiner Box
	4	Inverters
	5	Weather Station
	6	Data Logger System
	7	Sensor Boxes for connecting to data logger
	8	Transformer
	9	HT panel
	10	Switch yard
	11	Metering Panel and two pole structure with isolator
	12	Plant lighting protection for yard and control room
	13	Complete plant earthing system
	14	Cables - DC & AC
	15	Cable support, Cable trays etc
	16	Battery Bank with Charger
II		Installation and Commissioning
	1	Interconnection of solar PV Modules on MMS
	2	Fixing the modules on MMS
	3	Cabling from array to string combiner box
	4	Cabling from SCB to Inverters
	5	Cabling from Inverter to Transformer
	6	Cabling from Transformer to HT Panel / Switch Yard
	7	Control Room wiring and associated cabling
	8	Laying the cables in the inverter control room
III		Guarantees and Warrantees
	1	Warranty of the system in accordance with Clause 8.9
IV		Taxes
	1	Duties and Taxes as applicable
V		Civil Works related to I & C
	1	Erection and fixing of Module Mounting Structures (including mounting legs)
	2	Foundation (Rebarring / Ramming) for inverters or



		construction of inverter rooms
	3	Foundation (Rebarring / Ramming) for transformer
	4	Switchyard platforms
	5	Preparation of cable trenches / tray as required by layout
	6	Pits and earthwork for plant earthing
	7	Soil testing and contour surveying
	8	Borewell, water cleaning provision for panels
B		Transmission line and Sub-station Works
	1	33 kV T/L as per ESCOM norms
	2	Sub-station interconnection works including metering and bay extension
C		Operation and Maintenance Support – Optional
	1	Monitoring and logging of the data - after plant commissioning
	2	Technical operation and maintenance of the plant
D		Miscellaneous Project Activities – in our scope
	1	Temporary Power for site office and work
	2	Construction of security post and entry gate
	3	Construction of control room building with SCADA room and store room
	4	Switchyard lighting
	5	All risk site insurance cover for location during project execution
	6	Fire fighting and alarm systems
	7	Insurance as per schedule 3
	8	Transport
	9	Freight
	10	Packing and forwarding
E		List of spares
	1	Spares list required to be maintained at site will be provided by the Contractor and shall be bought by the developer
F		Post design drawings to be submitted to owner
	1	As built drawings-2 soft copies and 2 hardcopies
	2	O & M Manual – 2 soft copies and 2 hard copies
G		Permissions and approvals to be obtained by contractor
	1	MNRE Excise Duty Exemption
	2	MNRE Customs Duty Concession
	3	Evacuation Clearance
	4	Interconnection clearance / Bay construction approval
	5	Metering scheme. CT/PT and Testing Approval
	6	CEIG Approval
	7	Electrical Inspector Approval for Transmission Line and Bay
	8	Right of way for Tx
	9	Inspection of Factories
	10	Village Panchayat Clearance
	11	Pollution Control Board

Schedule -3 of the Model Agreement –

1. Contractor's erection all risk insurance for replacement value including
 - a. Extended warranty covering Defects Liability Period
 - b. Malicious damage
 - c. Terrorism cover
 - d. Debris removal
 - e. Off-site storage
 - f. Acts of God
 - g. Earthquake cover
 - h. Testing and commissioning during the implementation periodshall be in the contractor's scope of work. Insured Value shall be equal to 100% of Contract Value.

2. Transit Insurance shall be in the contractor's scope of work. Transit insured value shall be equal to 100% of equipment value.

Schedule 4 which is related to Contract Price reads as under:

The agreement shall follow the contract price and conditions as stated in paragraphs below:

- (a) Contract Value: Rs., inclusive of all taxes, for MW (AC)
- (b) Modules. Of the above Contract Value, approx. 55% shall be the cost of solar modules
- (c) Balance of Materials. Of the above Contract Value, approx. 45% shall be the cost of Balance of Material.

All the above point to the fact that what is contracted is a project in itself and this involves the supply of both goods and services for a common price.

17. The issue is whether this contract is a "composite contract" or not is verified and found the following:

17.1 Sub-section (30) of section 2 of the CGST Act, 2017 defines the "composite supply" as under:

"(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;"



In the pertinent case, it is clear that the applicant is making a supply which consists of supplies of goods and supplies of services which are naturally bundled and supplied in conjunction with each other in the ordinary course of business and one of which is a principal supply. Hence this is a composite supply.

17.2 Sub-section (119) of section 2 of the CGST Act 2017 defines “works contract” as under:

“(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;”

In the pertinent case, the contract is for the engineering, procurement and commissioning of the solar power generating system and what is transferred is the entire power generating system including the civil works involved in the project. The project after completion at the time of transfer is an immovable property as there are no separate considerations for the individual components of the project. Further, the maintenance and other related services are also part of the contract and involve the maintenance of the project as a whole.

17.3 Regarding the issue of taxability of EPC contract of “Solar Power Generating System” it is seen that Serial No. 38 of Notification No.11/2017 - Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 27/2018 - Central Tax (Rate) dated 31.12.2018 reads as under:

Sl.No.	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
38	9954 or 9983 or 9987	Service by way of construction or engineering or installation or other technical services, provided in relation of setting up of following, - (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) Ocean waves/tidal waves energy devices/plants <i>Explanation:- This entry shall be read in conjunction with serial number 234 of</i>	9	-



		Schedule I of the notification No. 1/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 673(E) dated 28th June, 2017.		
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The entry in Serial No.234 of Schedule I of Notification No.1/2017 – Central Tax (Rate) dated 28.06.2017 reads as under:

Sl.No.	Chapter/ Heading/ Sub- Heading/ Tariff item	Description of Goods
234	84 or 85	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

It is clear from the above, that Solar Power Generating System is goods and if it is supplied as goods would attract the tax at the rate of 5% (2.5% CGST and 2.5% SGST) as per entry no. 234 of Schedule I of Notification No.1/2017 – Central Tax (Rate) dated 28.06.2017. But in the pertinent case, what is supplied is not goods as such. It is a composite supply involving a creation of an immovable property which is part of the contract of setting up of a Solar Power Generating System and hence would be covered under Works Contract. This is distinguished in the above two entries and hence the work proposed to be done by the applicant is squarely covered under serial no. 38 of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 as amended by as amended by Notification No. 27/2018 – Central Tax (Rate) dated 31.12.2018 and attracts tax as per that entry and not under Serial No.234 of Schedule I of Notification No.1/2017 – Central Tax (Rate) dated 28.06.2017.

This entry in serial no. 38 of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 as amended by as amended by Notification No. 27/2018 – Central Tax (Rate) dated 31.12.2018 has come into effect from January 1st, 2019 and hence the contract of the applicant is covered under this entry after 01.01.2019. However for the period earlier to this date, the contract of the applicant would be covered under works contract under the description “composite supply of works contract as defined in clause 119 of Section 2 of CGST Act, 2017” in entry no.3 of the Notification No.11/2017 -



Central Tax (Rate) dated 28.06.2017 and is liable to tax at 9% under CGST Act and 9% under KGST Act, 2017.

Further, an explanation has been inserted to the entry no.234 of Schedule I of the Notification No. 01/2017 – Central Tax (Rate) dated 28.06.2017 by Notification No. 24/2018 – Central Tax (Rate)

18. The contention of the applicant that the solar power plant is not an immovable property is not acceptable for the reason that all the components cannot be recovered on retrieval of the plant and without those elements the solar power plant cannot be stated to work properly. What can be retrieved without cannibalization is only the solar panels and certain other elements which are only part of the entire project and hence the contention of the applicant cannot be accepted. The reliance the applicant has placed on the Orders of this Authority in the case of M.s Giriraj Renewable Energy Private Limited is misplaced as the terms of contract were different from the contract of the applicant.

19. In view of the foregoing, we rule as follows

R U L I N G

1. The supply of turnkey Engineering, Procurement and Construction (EPC) Contract for construction of 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 CGST Act, 2017.
2. The contract of the applicant is covered under works contract under section 2(119) of the CGST Act and by item (ii) of entry no. 3 of the Notification No.11/2019 – Central Tax (Rate) dated 28.06.2017 upto 31.12.2018. From 01.01.2019, the same is taxable on the values worked out separately for goods and services under both entry no. 38 of Notification No.11/2019 – Central Tax (Rate) dated 28.06.2017 (as amended by Notification No.27/2018-Central Tax (rate) dated 31.12.2018) and Entry No.234 of Schedule I of Notification No.1/2017 – Central Tax (Rate) dated 28.06.2017 as amended by Notification No.24/2018



- Central Tax (Rate) dated 31.12.2018, and the values must be as per the explanation provided therein.


30.09.2019
(Harish Dharnia)
Member

Place: Bengaluru,
Date: 30.09.2019

To,


(Dr. Ravi Prasad.M.P.)
Member

The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. Commissioner of Central Tax, Belagavi
4. The Asst. Commissioner, LGSTO-540, Bidar
5. Office Folder