

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560009**

**Advance Ruling No. KAR ADRG 111/2019
Date: 30-09-2019**

Present:

1. Sri. Harish Dharnia,
Additional 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 Manipal Energy & Infratech Ltd., Udayavani Building, Udayavani Road, Manipal - 576 104.
2.	GSTIN or User ID	29AAHCM0173A1ZT
3.	Date of filing of Form GST ARA-01	30.07.2019
4.	Represented by	Sri.Ravi Raghavan , Advocate.
5.	Jurisdictional Authority - Centre	The Commissioner of Central Tax, Mangalore Commissionerate.
6.	Jurisdictional Authority - State	LGSTO 280-Mangalore
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000-00 each under CGST Act and KGST Act vide CIN No HDFC19072900069825 dated 09.07.2019 and vide CIN HDFC19072900069740 dated 09-07-2019.

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER 98(4) OF THE KGST ACT, 2017**

1. M/s Manipal Energy and Infratech Limited., (called as the 'Applicant' Company hereinafter), having GSTIN number 29AAHCM0173A1ZT, have filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 & Section 97 of the KGST Act 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act & the KGST Act.

the applicant company has sought advance ruling in respect of the following

question:
Manipal Energy and Infratech



Whether entry 3(vi)(a) to Notification No.8/2017 –Integrated Tax (Rate) is applicable for services provided to Electricity Supply Companies (wholly owned Government of Karnataka undertakings) by way of construction, erection, commissioning, installation, completion, etc., which attracts levy of 12%.

3. The applicant furnishes relevant informations related to the activity as under.

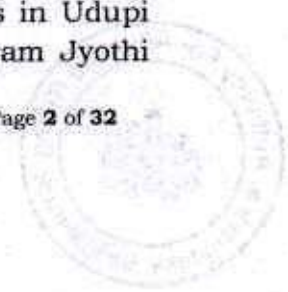
3.1 The Applicant, is a Company, registered under the Goods and Services Act, 2017, engaged in the activity of undertaking civil construction, mechanical structural work, erection of equipment, electrical infrastructure including substations, etc. The applicant also undertakes operation & maintenance of Waste Water Treatment Plants, Flocculation systems, Reverse Osmosis, Effluent Treatment Plants, Drinking water facilities, Zero Liquid Discharge Plants.

3.2 The Applicant (MEIL) is engaged in civil construction, mechanical structural work, erection of equipment, electrical infrastructure including substations etc. MEIL also undertakes operation and maintenance of Waste Water Treatment Plants, Flocculation Systems Reverse Osmosis, Effluent Treatment Plants, Drinking Water Facilities, Zero Liquid Discharge Plants, etc.

3.3 The Applicant regularly bids for the tenders floated by various electricity companies. In the instant case, the applicant participated in the tenders floated by some of the electricity distribution companies based in Karnataka i.e., Hubli Electricity Supply Company Limited (hereinafter referred to as "HESCOM"), Mangalore Electricity Supply company Limited (hereinafter referred to as "MESCOM") and Bangalore Electricity supply company Limited (hereinafter referred to as "BESCOM").

3.4 The Applicant, upon participating in the tender, has been awarded the following contracts by MESCOM:

- a. Contracts for "Strengthening of Distribution Networks in Udupi Circle of MESCOM, Karnataka under Integrated Power Development Scheme (IPDS) on turnkey basis" vide letter number SE(T)/EEE(APR)/IPDS-SS/2017-18/CYS-3 dated 28.04.2017 and vide letter number SE(T)/EEE(APR)/IPDS-SS/2017-18CYS-4 dated 28.04.2017.
- b. Contract for the work of providing infrastructure to regularized unauthorized IP sets by extending 11KV HT Lines, LT 3 phase 4 wire lines, erection of BEE 3 Star Rated 25/63KVA distribution transformers on total turnkey basis under rate contract for a period of one year in urban section of Shikaripura O&M Sub-division vide letter number MESCOM/SEE(P)/EE9W) 2017-18/2823-33 dated 11.05.2017.
- c. Contract for "Rural Electrification and System Strengthening works in Udupi District of MESCOM, Karnataka under Deen Dayal Upadhyaya Gram Jyothi



Yojana (DDUGY) on turkey basis" vide letter number SE(T)EEE(APR)/DDUGY-RE/2017-18/CYS-11 dated 28.04.2017.

Similarly, the applicant, upon participation in the tender, has been awarded the contract by BESCOM for the work of providing infrastructure to regularized unauthorized IP sets by extending 11KV HT Lines, erection of 25KVA 3 star rated distribution transformers and extension of LT line 3 phase 4 wire on Total Turnkey basis under rate contract for a period two year in Kolar division on percentage basis.

Also, the applicant upon participating in the tender has been awarded the contract by HESCOM for strengthening works in 8 Nos. of towns in Belagavi circle of Belagavi District in HESCOM of Karnataka State under integrated power development scheme (IPDS).

4. Contracts with MESOM

4.1 Strengthening of Destitution Network in Udupi Circle of MESCOM, Karnataka under Integrated Power Development Scheme (IPDS)

4.1.1 The contract for 'detailed work award' comprises of two parts: First part being the supply of goods and second part the supply of services. Para 4 of Schedule-IV of the 'detailed work award' deals with 'scope of works'. As per para 4.1 of the 'detailed work award' the 'scope of work' has been defined in Section -VII of Volume-I of the tender document. The relevant paras of the scope of work as per the tender document is extracted below:

2.0 *The following works are proposed for improvement of Distribution Network under IPDS on Total Turnkey basis in following towns of Udupi Circle. Viz Udupi Town, Saligrama Town, Kundapura Town and Karkala Town.*

3.0 *The scope of work under the subject package includes site survey, planning, design, engineering, assembly manufacturing, testing, supply, loading, transportation unloading, insurance, delivery at site, handing, storage, installation, testing, commissioning and documentation, of all items/material required to complete the Electrification works.*

5.0 *Any other items not specially mentioned but which are essentially required for satisfactory performance and completeness of work, shall be deemed to be included in the scope of specifications and works and the same shall be executed/carried out by the bidder at no extra cost to the MESCOM.*

6.0 *The works in each division are handled by concerned engineer in-charge of the O & M Division/ Authorized assistants, The measurements of the works executed by the contractor should be certified by the Engineer In-charge.*



7.0 Successful bidder has to carry out the works as per the directions of Engineer In-charge of concerned division duly following MESCOM norms and regular practice being adopted for **construction of HT/LT Lines, Erection of Distribution Transformers, Re-conducting, Augmentation of Line/Transformers and other proposed works using detailed approved estimate available in O&M divisions of respective Towns.**

8.0 **Entire works shall be executed in strict conformity with the contract documents and such explanatory detailed or modified drawings and directions as may be furnished from time to time by the Engineer in charge for the guidance of the contractors.**

All equipment/material to be supplied and under this contract shall be procured exclusively for this particular project only.

9.0 Engraving of 'IPDS' should be done in materials viz, Poles, Transforms (all Rating), Cables. Energy Meter, etc Procured for this works.

10.0 All Materials Released from the existing system/lines of the proposed project, has to be corresponding MESCOM Divisional Stores. The Payment in this regard will be admitted only after receipt of store acknowledgment.

4.1.2 A brief scope of work provided under this contract requires MEIL to undertake 'Inland transportation (specified equipment and material) to final destination at site, insurance, taking delivery, unloading, handling storing and supply including associated civil work, testing and commissioning of all equipment and materials supplied by the contractor and documentation of all items/material required to complete strengthening of distribution network in the towns of Udupi Circle viz., Udupi, Karkala, Saligrama, Kundapura towns'.

4.2 Providing infrastructure to regularized un-authorized IP sets in urban and rural section of Shikaripura O&M Sub-division.

4.2.1 Para 3 of the proposal letter number MESCOM/SEE(P)/EE(W) 2017-18/2823-33 dated 11.05.2017 issued by MESCOM to MEIL deals with 'scope of work'. The relevant paras of the 'scope of work' reads as follows:

- i. *The scope of the works covered under this package is strictly for the work of providing infrastructure to the regularized un-authorized IP involving the works like Drawing & Commissioning of 11 kV Lines, Installing & Commissioning of 25/63 KVA DTCs, Drawing Z& Commissioning of LT 3 phase lines on total turnkey basis under Rate contract for the period of one year in Urban & Rural Sections of Shikaripura O&M Sub-division, Shikaripura O&M division as specified on the bid documents.*

- ii. *The Scope of this Proposal is on 'TOTAL TURNKEY BASIS' wherein all the materials/equipment to be supplied shall be as per IS & MESCOM specification and the services required for the completeness of the works as per specifications come under the scope of the contractor. This shall completely cover packing, forwarding, supply of Materials on FOR Site basis including Insurance and Transportation. Erection, Testing at Site and Commissioning.*

4.2.2 From the above it is clear that the work under consideration is a turnkey infrastructure work.

4.3 Rural Electrification and System Strengthening works in Udupi District of MESCOM, Karnataka under Deen Dayal Upadhyaya Gram Jyothi Yojana (DDUGY).

4.3.1 The contract for 'detailed work award' comprises of two parts. First part being the supply of goods and second part the supply of services. Para 4 of Schedule-IV of the 'detailed work award' deals with 'scope of works'. As per para 4.1 of the 'detailed work award' the 'scope of work' has been defined in Section -VII of the Volume-I of the tender document. The relevant paras of the scope of work as per the tender document is given below:

1.0 *The scope of work under the subject package includes site survey, planning, design, engineering, assembly manufacturing, testing, supply, loading, transportation, unloading, insurance, delivery at site, handling, storage, installation, testing commissioning and documentation of all items/materials required to complete the Electrification works.*

2.0 *The details of the Equipments to be supplied, transported, erected, assembled, tested & Commissioned are indicated in Price Schedule. (Refer, Vol-II, Price Schedule). The quantities indicated in the price schedule are only approximate and may increase or decrease and prices quoted by the bidder are deemed to be valid in spite of such variations in the quantities at the time of award of contract.*

3.0 *Any other items not specially mentioned but which are essentially required for satisfactory performance and completeness of work. Shall be deemed to be included in the scope of specifications and works and the same shall be executed/carried out by the bidder at no extra cost to the MESCOM.*

4.0 *The works in each division are handled by concerned engineer in-charge of the O & M Division/ Authorized assistants. The measurements of the works executed by the contractor should be certified by the Engineer In-charge.*

5.0 *Successful bidder has to carry out the works as per the directions of Engineer In-charge of concerned division duly following MESCOM norms and regular practice being adopted for construction of HT/LT Lines, Erection of Distribution Transformers. Re-Conductoring, Augmentation of*



Line/Transformers and other proposed works using detailed approved estimate available in O&M divisions of respective Blocks.

6.0 *Entire works shall be executed in strict conformity with the contract documents and such explanatory detailed or modified drawings and directions as may be furnished from time to time by the Engineer in charge for the guidance of the contractors. All equipment/material to be supplied and used under this contract shall be procured exclusively for this particular project only.*

9.0 *Engraving of 'DDUGLY' should be done in materials viz, Poles, Transformers (all Rating), Cables, Energy Meter, etc procured for this works*

10.0 *All materials Released from the existing system /line of the proposed project, has to be returned to corresponding MESCOM Divisional Stores. The Payment In this regard will be admitted only after receipt of store acknowledgement.*

4.3.2 A brief scope of work provide under this contract, again, requires MEIL to undertake Inland transportation (specified equipment and material) to final destination at site, insurance, taking delivery, unloading, handling, storing and supply including associated civil work, testing and commissioning of all equipment and materials supplied by the contractor and documentation of all items/material required to complete Rural Electrification & System Strengthening works in Udupi District.

5 Contracts with BESCO

5.1 Contract for the work of providing infrastructure to regularize unauthorized Irrigation Pump (IP) sets in Kolar division.

5.1.1 The contract for providing infrastructure comprises of two parts. First part being the supply of goods and second part the supply of services.

5.1.2 Supply of Goods

In terms of para 1 of the proposal number BESCO/CGM(Proj)/DGM-4/BC-14/17-18/3740-49 dated 16.11.2017, the description of work includes "**supply of materials for providing electrical infrastructure to regularize Un-authorized IP sets**" by extending 11KV High Tension (HT) lines, erection of 25KVA, 3 star rated Distribution Transformers and extension of Low Tension (LT) line, 3 phase, 4 wire, on total turnkey basis under rate contract for a period of two years in Kolar division.

5.1.3 Supply of Services

In terms of para 1 of the proposal number BESCOM/CGM(Proj)/DGM-4/BC-14/17-18/3750-59 dated 16.11.2017 the description of work includes "**erection, testing and commissioning of materials for providing electrical infrastructure to regularize Un-authorized IP sets**" by extending 11KV HT lines, erection of 25KVA 3 star rated Distribution Transformers and extension of LT line , 3 phase, 4 wire, on total turnkey basis under rate contract for a period of two years in Kolar division.

6. Contracts with HESCOM

6.1 Strengthening works in 8 Nos, of towns in Belagavi Circle of Belagavi District in HESCOM of Karnataka State under integrated power development scheme (IPDS)

6.1.1 In terms of para 8 and para 6 of the "Detailed Work Award" for supply and erection portion the 'scope of work' has been defined in Section-VII of Volume-I of the tender document. The relevant parts of the scope of work as per the tender document is given below:

1. **Supply, Erection, Testing & Commissioning of all materials as per tender document.**
2. Execution of all other works as per tender document. All Steel structure shall be hot dip galvanized as per relevant Indian Standard.
3. The Distribution Transformers must be BIS certified in line with Electrical Transformers (*Quality Control*) order, 2015 (*along with its latest amendments*).
4. *A set of drawings are enclosed with this bid document, These are tender drawing and are to be approved by the Project Manager. These drawings are indicative in nature and therefore, must be referred while preparing drawings for approval.*

RELEVANT PROVISION OF LAW TO BE CONSIDERED

7. In the facts of the present case, the issue under consideration is the rate of tax applicable on supply of services to Electricity supply Companies (wholly owned Government of Karnataka undertakings) by way of construction, erection, commissioning, installation services in the nature of original works.

8. It is submitted that the relevant entry in the Rate Notification which covers the services by way of construction, erection, commissioning, under Chapter Heading 9954 being 'services provided to Electricity Supply Companies (wholly owned

Mangal Energy and Infratech



Government of Karnataka undertaking) by way of construction, erection, commissioning, installation, etc'. is entry 3(vi)(a), which provides for the rate of GST at 12%. The relevant portion of the entry reads as follows:

SL. No	Heading	Description of Services	Rate	Condition
(1)	(2)	(3)	(4)	(5)
	Heading 9954	<p>(vi) Composite supply of works contract as defined in clause (119) if section 2 of the Central Goods and Services Tax Act, 2017, provided to the Central Government, State Government, Union Territory, a local authority or a government, authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of-</p> <p>(a) A civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;</p> <p>(b) A structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or</p> <p>(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.</p> <p>Explanation. - For the purposes of this item, the term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.</p>	12%	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.

9. In the alternative, entry 3(ii) to the Notification, provides applicable rate of GST @ 18% on works contract service. The relevant entry reads as follows:

Sl. No	Heading	Description of Services	Rate	Condition
(1)	(2)	(3)	(4)	(5)
3	Heading 9954	(ii) Composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017	18%	-

10. In the above factual matrix, the applicant seeks a ruling on whether service provided to various Electricity Supply Companies (wholly owned Government of Karnataka undertakings) shall be covered under entry 3(vi)(a) to the Notification NO. 08/2017- Integrated Tax (Rate) dated 28.06.2017, which covers the services provided to Government by way of by way of construction, erection, commissioning, installation etc. of civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession and thus subject to 12% rate of Integrated Tax. This application is being filed under the apprehension that the services provided to electricity supply companies by the Applicant could be treated by the GST authorities as an entry falling under SL.NO. 3(ii) no Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017 (as amended) which provides applicable rate of GST @ 18% on works contract and consequentially subject to higher rate of tax at 18%.

11. Grounds to support the understanding of the Applicant that the transaction is subject to tax under Entry No. 3(vi)(a) to Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017 (as amended) which provides for applicable rate of Integrated Tax at the rate of 12%.

A. THE SERVICES UNDER CONSIDERATION CONSTRUCTION SERVICES COVERED UNDER SAC 9954

A.1. The Central Board of Indirect Taxes and Customs (CBIC) has released Explanatory Notes to the Scheme of Classification of Services on 11.06.2018. The Scheme of Classification of Services adopted for the purposes of GST is a modified version of the United Nations Central Product Classification (UNPCPC). The Explanatory notes for the said Scheme of Classification of Service is based on the explanatory notes to the UNPCPC, and as recommended by the committee constituted for the purpose. The explanatory notes indicate the scope and coverage of the heading, groups and service codes of the Scheme of Classification of Services. These are used by the assessee and the tax administration as a guiding tool for classification of services.

A.2. Heading 9954 covers construction services. Sub-heading 995425 covers general construction services of local pipelines and electricity & communication cables and related works such as local electricity

Manipal Energy and Infrotech



transmission cables and ancillary works such as transformer stations and substations for distribution within local boundaries. Sub heading 995461 covers electrical installation services including electrical wiring & fitting services, fire alarm installation services burglar alarm installation services, which includes installation services of heavy electrical equipment; and other electrical installation services not elsewhere classified.

A.3. In the facts of the present case, the Applicant undertakes the following work for various electricity distribution companies:

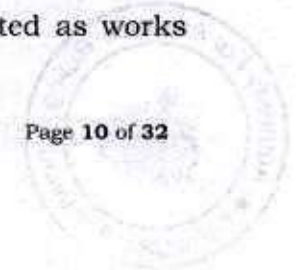
- Strengthening of Distributions Networks which includes site survey, planning, design, engineering, assembly manufacturing, testing, supply, loading, transportation, unloading, insurance, delivery at site, handling, storage, installation, testing, commissioning;
- Providing infrastructure to regularized unauthorized IP sets by extending 11KV HT, involving the works like Drawing & Commissioning of Electrical Lines, Installing & Commissioning of 25/63 KVA DTCs, Drawing & Commissioning of LT 3 phase lines, LT 3 phase 4 wire lines, erection of BEE 3 Star Rated 25/63KVA distribution transformers;
- Rural Electrification and System Strengthening works includes construction of HT/LT Lines, Erection of Distribution Transformers, RE-Conductoring, Augmentation of Line/Transformers, etc.

A.4. The above services are covered under the sub-headings 995461 and 995461, which are in-turn covered under the broad heading 9954. It is therefore submitted that the services provided by the Applicant are covered under heading 9954 and hence the tax for supply of services by the Applicant to the electricity distribution companies must be determined based on the rate of tax applicable for supplies under such heading.

B. SERVICES PROVIDED BY THE APPLICANT TO ELECTRICITY DISTRIBUTION COMPANIES ARE COMPOSITE SUPPLY OF WORKS CONTRACT AS DEFINED UNDER CLAUSE (119) OF SECTION 2 OF THE CGST ACT, 2017

B.1. In terms of Section 2(119) of the GST Act, 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.

B.2. In terms of the above provision, an activity of supply is treated as works contract only if the following conditions are fulfilled:



Sl. No.	Criteria	Answer	Remark
1	Whether the supply is under a contract?	Yes	If the answer for all the questions is "Yes", then such contracts Works Contracts
2	Whether there is transfer of property in goods involved while executing such contract?		
	Whether the contract is for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property ?		

B.3. It is submitted that as per the factual matrix, the supply of services is under a contract entered into between MEIL and the electricity distribution companies. It is established from the work orders that there is a transfer of property in goods involved while executing the contracts.

B.4. In terms of the above, the third questions needs to be examined critically, as to whether the work undertaken by the applicant results in emergence of an immovable property. There is no definition to the term 'immovable property' under GST legislations. Hence, we need to understand the expression immovable property to the context of taxation laws.

B.5. In this regard reference is made to Section 3(26) of the General Clauses Act, 1897, which provides definition of immovable property. It reads:

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

B.6. Section 3(26) of the General Clauses Act includes within the definition of the term "immovable property" things attached to the earth or permanently fastened to anything attached to the earth. The term "attached to the earth" has not been defined in the General Clauses Act, 1897. Section 3 of the Transfer of Property Act, however, gives the following meaning to the expression "attached to the earth" as:

- 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; and
- c. attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.



B.7. In the instant case, the construction, erection, commissioning installation, etc. of civil structure for supply of power qualifies all the attributes of immovable of property.

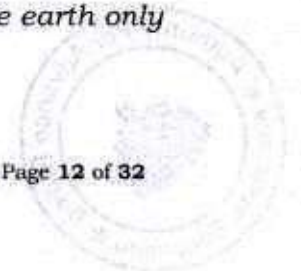
B.8. The Hon'ble Supreme Court while dealing with the matter in the case of **Commissioner of Central Excise v. Solid and Correct Engineering Works [2010 (252) E.L.T. 481 (S.C.)]**, prescribed the following parameters/ tests that may be considered while identifying if a property is immovable or movable:

- i. Test of permanency is whether the chattel is movable to another place of use in the same position or is liable to be dismantled and re-erected at the latter place. If the answer to the latter is yes, it is attached to the earth and is an immovable property.
- ii. Whether the machine erected at the site could be shifted as such without dismantling and then re-erecting it at another site, If the entire structure as a whole cannot be moved without dismantling and that the very act of dismantling will cause damage to the various components, then the structure is an immoveable property.
- iii. When the components of a machinery are fixed, embedded or assimilated in a permanent structure, the movable character of the same becomes extinct, Where a plant has to be assembled, erected and attached to the earth by a foundation and it is not capable of being sold as it is, without anything more, the same does not constitute "goods" and becomes immovable property.

B.9. In **Commissioner of Central Excise, Indore v. Viridi Brothers - 2007 (207) E.L.T. 321 (S.C.)** Hon'ble Supreme Court has referred to **Circular No. 58/1/2001-CX., dated 15.01.2002**, wherein it was clarified as follows:

" ...

(d) Integrated plants/machines, as a whole, may or may not be 'goods'. For example, plants for transportation of material (such as handling plants) are actually a system or a network of machines, The system comes into being upon assembly of its component. In such a situation there is no manufacture of 'goods' as it is only a case of assembly of manufactured goods into a system. This cannot be compared to a fabrication where a group of machines themselves may be combined to constitute a new machine which has its own identity/ marketability and is dutiable (e.g. a paper making machine assembled a site and fixed to the earth only for the purpose of ensuring vibration free movement).



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

B.10 In T.T.G. Industries Ltd., v. Collector of /Central Excise, Raipur [2001 (167) E.L.T. 501 (S.C.)] Hon'ble Supreme Court noted that the machinery was erected at the site by the assessee on a specially made concrete platform at level of 25 feet height. Considering the weight and volume of the machine and the processes involved in its erection and installation, the Court held that the same was immovable property which could not be shifted without dismantling the same.

B.11. English law imparts higher importance on the aspect of annexation which is dependent on the circumstances of each case, One important of considerations is on the fact whether the articles that are attached to earth or structure, that may be removed without structural damage and even articles merely resting on their own weight are fixtures only if they are attached with the intention of permanently improving the premises, In **Wake v. Holt (1883) 8 App Cas 195** Lord Blackburn of the Court of Appeal observed as follows:

"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."

B.12. In the light of the above discussions, we submit that we can adopt the following two prong test to consider whether the goods are movable property or immovable property:

- i. If the goods are intended to be permanently attached to earth without the intention of removing or such removal is not possible without causing substantial damage to the goods - **Immovable Property.**
- ii. If the machinery can be detached, as such which are installed on the basis of a concrete bed for vibration handling and stability, with least damage- **Movable Property.**

B.13. As discussed supra in the factual matrix, applicant's contract of work can be broadly categorized under the following:

- Rural Electrification and setting up of electricity distribution work on turnkey basis.
- Laying of high tension wires and erection of distribution transformers on turkey basis.



B.14. By applying the ratio of the above decisions into facts of the present case it can be said that the instant work has following ingredients:

- **The works of electrification** has a permanent location therefore, have an inherent element of permanency.
- Electrification works are not feasible to be shifted from one place to another,
- **The works are entrusted by the Government Projects** constitute the element of permanency.
- It would involve **construction of civil structure** which cannot be moved and has to be demolished.

B.15. In view of the above, it is submitted that the current work is intended to be permanently attached to earth without the intention of removing or such removal is not possible without causing substantial damage to the goods. Therefore, work undertaken by the applicant squarely fails under the category of works contract.

B.16. In this regard the applicant also would like to refer to In this regard applicant places reliance on the GST Advance Ruling pronounced by Authority in the State of Maharashtra, in the case of **Giriraj Renewables Private Limited [2018-VII20-AAR]**, wherein on the issue of supply under a turnkey Engineering, Procurement and Construction [‘EPC’] contract for construction of solar power plant, Authority inter alia held that supply of solar power plant qualifies to be a works contract services as the plant results in emergence of an immovable property in terms of Section 2(119) of CGST Act, 2017. The contract involved supply of various goods such as modules, structures, inverter, transformer etc. *as well as supply of service such as designing, engineering, transportation, unloading, storage and site handling, installation, commissioning, construction, etc.* The Authority inter alia held that the following criteria were taken into consideration to determine whether solar power project is immovable:

- **Big project** has a permanent location and such plant would, therefore, have an inherent element of permanency.
- It would not be feasible to shift base from time to time or locate the plant elsewhere at **frequent intervals**.
- **Government projects** will constitute the element of permanency.
- **Obtaining approvals and permits** for commissioning of plant involves element of permanency.
- The plant **intended** to be given a permanent location.
- It involves the **construction of civil structure** which cannot be moved and has to be demolished.

B.17. The principles of the above Ruling would squarely applicable in the present case as far the decision whether work undertaken by the Applicant would fall under setting up of immovable property.

C. MESCOM, BESCOM AND HESCOM ARE GOVERNMENT ENTITIES

C.1 Explanation (x) to Notification No.8/2017- Integrated Tax (Rate) dated 28.06.2018, as amended from time to time (hereinafter referred to as 'Rate Notification') defines 'Government Entity'. The relevant portion of the definition is reproduced below:

(x) "Government Entity" means an authority or a board or any other body including a society, trust, corporation,-

- i. Set up by an Act of Parliament or State Legislature; or
- ii. Established by any Government, with 90 per cent, or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.

C.2. As can be seen, the definition of Government Entity means an authority or a board or any other body which is established by any Government, with 90 percent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.

C.3. In this regard, it is submitted that the electricity distribution companies HESCOM, MESCOM and BESCOM are established by the Government of Karnataka, with shareholding of more than 90 percent. The annual reports of HESCOM, MESCOM and BESCOM are enclosed.

C.4 It is submitted that in the Annual Report for the year 2016-17 of BESCOM, Note 2.16 provides the details of shareholder holding more than 5% shares in the Company. In terms of the said Note, the Hon'ble Governor of State of Karnataka holds 54.69 Crores of shares in BESCOM, which constitutes 99.99% of total equity shares of total shares of Rs. 10 each fully paid equity shares as at 31.03.2017.

C.5 Similarly, it is submitted that in the Annual Report for the year 2017-18 of HESCOM, Note 3 of the said annual report provides the details of shareholder holding more than 5% shares in the Company. In terms of the said details, the Hon'ble Governor of State of Karnataka holds 121.11 Crores of shares in HESCOM, which constitutes 99.99% of total equity shares of total shares of Rs.10 each fully paid equity shares as at 31.3.2018.

C.6 It is also submitted that in the Annual Report for the year 2016-17 of MESCOM, Note IV of the said annual report provides the details of shareholder holding more than 5% shares in the Company. In terms of the said details the Hon'ble Governor of State of Karnataka holds 26.64 Crores of shares in MESCOM, which constitutes 99.99% of total equity shares of total shares of Rs. 10 each fully paid equity shares as at 41.03.2017.

In view of the above submissions, it is clear that the State Government holds more than 90 per cent, shares by way of equity in all the three entities, BESCOM, HESCOM and MESCOM.



C.8 It is also submitted that the Karnataka Electricity Regulatory Commission (KERC) was established in 1999 as per the provisions of the Karnataka Electricity Reforms Act, 1999 and began functioning from 15.11.1999, KERC has granted License for Distribution and retail supply of electricity to four distribution licensees in Karnataka viz., BESCOM, MESCOM, HESCOM and Gulbarga Electricity Supply Company (CESCOM) for carrying out the distribution of electricity. These licenses were granted under the Karnataka Electricity Reforms Act,1999.

C.9 The Government of India has notified 10.06.2003 as the date on which the Electricity Act, 2003 has come into force. According to the first proviso to Section 14 of the Electricity Act,2003 any person engaged in the business of transmission or supply of electricity on or before the appointed date, under the provisions interalia, of the Karnataka Electricity Reform Act 1999, shall be deemed to be a Licensee under the Electricity Act, 2003. The fifth proviso to Section 14 also provides that the Companies created in pursuance of the Acts specified in the Schedule (which include the Karnataka Electricity Reforms Act, 1999, (KERA) also shall be deemed to be Licensees under the Electricity Act,2003.

C.10 Consequent to the enactment of the Electricity Act, 2003, the KERC continued to function under the provisions of the Central Act.

C.11 As per Section 86 of the Electricity Act,2003, the State Electricity Regulatory Commissions are required to discharge the following functions:

- a) Determine the tariff for generation, supply, transmission and wheeling of electricity; wholesale, bulk or retail, as the case may be, within the State;
- b) Regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;
- c) Facilitate intra-state transmission and wheeling of electricity;
- d) Issue licenses to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State;
- e) Promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;
- f) Adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;
- g) Levy fee for the purposes of the Electricity Act;
- h) Specify State Grid Code consistent with the Grid Code specified under clause (h) of sub section (1) of section 79;
- i) Specify or enforce standards with respect to quality, continuity and reliability of service by licensees;



- j) Fix the trading margin in the intra-State trading of electricity, if considered necessary; and
- k) Discharge such other functions as may be assigned to it under this Act.

C.12 Considering the above functions to be entrusted upon the State Electricity Regulatory Commissions under the Electricity Act,2003, it is submitted that all the electricity distribution companies viz; BESCO, MESCOM and HESCO are formed by the Government of Karnataka for carrying out the business of distribution of electricity. These licenses were granted under the Karnataka Electricity Reforms Act,1999. Consequent to the enactment of the Electricity Act, 2003, the KERC continued to function under the provisions of the Central Act.

C.13 In this regard, the Applicant places reliance on the recent GST Advance Ruling given by Authority in the State of Uttarakhand, in the case of **NHPC Limited [2018 (19) G.S.T.L.349 (A.A.R.-GST)]**, regarding the requirement of payment of GST under reverse charge in terms of Notification No.13/2017, dated 28.06.2017 while making payment of PWD by NHPC Ltd., (a Government of India undertaking). The Authority observed that the NGPC Ltd. is covered under the definition of "Government entity" inasmuch as promoter is Hon'ble President of India, which confirm the fact that it is established by the Central Government and it is under the administrative control of Ministry of Power, Government of India.

C.14 The Applicant further places reliance on the decision of Punjab and Haryana High Court, in the case of **Bharat Bhushan Gupta & Company v. State of Haryana [2016 (44) S.T.R.195 (P & H)]**, wherein it was held Haryana Housing Board is a government authority as it was set up under State Act, Haryana that Housing Board Act,1971 and it was wholly controlled by State Government. Hence, service provided by contractors was within exemption clause 12 of Notification No.25/2012-S.T., dated 20-06-2012, effective from 1-7-2012. The relevant portion of the judgment is extracted hereunder:

"The Board has been constituted in terms of the provisions of Section 3 of the Act, as was enacted by the State Legislature. It is a body corporate which consists of a Chairman, a Chief Administrator and such other members, as the State Government may, from time to time, appoint by a notification. The Chief Administrator shall be a person from amongst the officers of the rank of Head of the Department or Joint Secretary of the State Government. It is termed to be a local authority for the purposes of Land Acquisition Act, 1894. Section 20 of the Act provides that subject to control of the State Government in Board may incur expenditure on framing and execution of such housing schemes as may be considered necessary from time to time or as may be entrusted to it by the State Government. Every year, the Board is to prepare a budget in advance for the next year and place it before the State Government for its approval. After sanction is granted by the State Government, the same is published in the Official Gazettee. The Board authorized to barrow money for implementation of the projects, as approved with prior approval of the State Government. Section 72 of the Act provides that the State Government shall



exercise superintendence and control over the Board and its officers. The aforesaid provisions of the Act clearly show that the Board is a governmental authority, as it is fully under the control of the State Governments.”

[Emphasis supplied]

C.15 In this regard, the Applicant also places reliance on the recent GST Advance Ruling by Authority in the State of Maharashtra, in the case of **Leena Power Tech Engineers Pvt. Ltd. [2019] (20) G.S.T.L 309 (A.A.R.-GST)**, where it was held that City and Industrial Development Corporation of Maharashtra Limited (CIDCO) is constituted and established by the State Government of Maharashtra with 100% participation by way of equity or control to carry out the function of development of new township of New Bombay and therefore CIDCO is clearly covered under the definition of ‘Government Entity’.

C.16 The Applicant also refers on the recent GST Advance Ruling given by Authority in the State of Rajasthan, in the case of **Tate Projects Ltd., [2018 (14) G.S.T.L.129 (A.A.R.-GST)**, wherein it was held that Jaipur Development Authority established under Jaipur Development Authority Act,1982 is covered under “Government Authority” and services provided by applicant consortium covered under services mentioned at Serial No.3(vi)(a) of Notification No.11/2017-C.T.(Rate) as amended with Notification No.24/2017-C.T.(Rate) and further amended vide Notification No.31/2017-C.T. (Rate) and GST @ 12% (i.e., CGST 6% + SGST 6%) applicable on services provided under said contract.

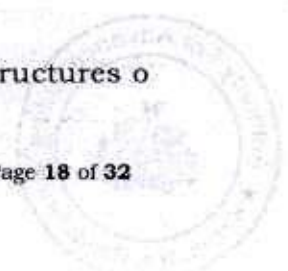
C.17 In view of the aforesaid, it is submitted that the electricity distributing companies viz, BESCO, MESCOM and HESCO are formed and established by the State Government of Karnataka with 99.99% participation by way of equity or control to carry out distribution of electricity under the Electricity Act, 2013 would squarely falls under the meaning of “Government Entity” as contemplated under Explanation (x) to the Rate Notification.

D. THE SERVICES SUPPLIED BY THE APPLICANT ARE ORIGINAL WORKS

D.1 It is submitted that contracts undertaken by the applicant are in the nature of original works as defined under the relevant Notification issued under the Act. It is submitted that the term original works has not been defined in GST Act. Therefore, reliance is placed on the definition as provided under clause 2(zs) to the Notification NO.12/2017-Central Tax (Rate) dated 28-06-2017 as amended from time to time.

D.2 In types of addition “original works means”-all new constructions-

- i. All type of additions and alterations to abandoned or damaged structures on land that are required to make them workable; and



- ii. Erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise.

D.3 Taking into consideration the nature of contacts it is submitted that the Rural Electrification and setting up of electricity distribution work on turnkey basis and laying of high tension wires and erection of distribution transformers on turnkey basis are original works as it is new additions and installation work.

D.4 In this regard, the Applicant refers to the recent GST Advance Ruling given by Authority in the State of Maharashtra, in the case of Leena Power Tech Engineers Pvt. Ltd.[2019 (20) G.S.T.L.309 (A.A.R.-GST)], where in the work of "development of power supply infrastructure distribution network including 33KV sub-station equipment's & construction of 11/0.4 KV HT sub-stations are allied electrical works on UI we Node, Navi Mumbai" was held to be "original work".

E. THE WORKS CONTRACT SERVICES PROCURED BY THE ELECTRICITY DISTRIBUTION COMPANIES ARE IN RELATION TO WORK ENTRUSTED BY THE CENTRAL GOVERNMENT AND STATE GOVERNMENT

E.1 It is submitted that the works contract services are procured by the electricity distribution companies in relation to work entrusted by the Central Government and Government of Karnataka.

E.2 It submitted that MESCOM is undertaking project which are entrusted to the Government of India and Government of Karnataka. The relevant details of the project in brief, are as follows:

a) Projects entrusted by Central Government:

- Strengthening of Distribution Networks in Udupi Circle of MESCOM, Karnataka under Integrated Power Development Scheme (IRDS) on turnkey basis.
- Karnataka under Deendayal Upadhyaya Gram Jyoti Yojana (DDUGY) on turnkey basis.

b) Projects entrusted by State Government

- Rural Electrification and system strengthening works in Udupi District of MESCOM.

E.3 It is further submitted that BESCO is providing infrastructure to, regularized un-authorized IP sets by extending 11KV HT Lines, erection of 25KVA 3 star rated distribution transformers and extension of LT line 3 phase 4 wire on total turnkey basis undertaking project which are entrusted by the Government of Karnataka.

It is also submitted that HESCO is undertaking work of strengthening Distribution Networks in Belagavi Circle under integrated power development scheme (IPDS) entrusted by the Central Government.



Integrated Power Development Scheme (IPDS)

E.5 It is submitted that Ministry of Power, Government of India in terms of Notification Number 26/01/2014 dated 03.12.2014 has notified Integrated Power Development Scheme (IPDS), with the following components.

- i. Strengthening of sub-transmission and distribution networks in the urban areas.
- ii. Metering of distribution transformers/feeders/consumers in the urban areas.
- iii. IT enablement of distribution sector and strengthening of distribution network under R-ADRP to IPDS.
- iv. Scheme for Enterprise Resource Planning (ERP) and IT enablement of balance urban towns are also included under KPDS Scope of IT enablement has been extended to all 4041 towns as per Census 2011.

E.6 The Monitoring Committee of the Ministry of Power has approved the projects under IPDS for the State of Karnataka amounting to Rs. 1,197.66 crores. The details of cost approved for the electricity companies viz., BESCOM, MESCOM and HESCOM are given thereunder:

Sl.No	Name of Company	No.of towns	DPR Cost Approved by MoP (Amount in Rs. Crores)
1	BESCOM	45	459.45
2	MESCOM	29	168.44
3	HESCOM	73	206.38
	Total	147	834.27

E.7 The Ministry of Power, Government of India has launched the Deendayal Upadhyaya Gram Jyoti Yojana (DDUGJY) on 20.11.2014. The main component of the scheme are as follows:

- i. Separation of agriculture and non-agriculture feeders facilitating judicious rostering of supply to agricultural and non-agricultural consumers in the rural area; and
- ii. Strengthening of augmentation of sub-transmission & distribution infrastructure in Rural areas, including metering of distribution transformers/feeders/consumers.
- iii. Rural electrification, as per CCEA approval dated 01.08.2013 for completion of the targets laid down under RGGVY for 12th and 13th plans by carrying forward the approved outlay for RGGVY to DDUGJY.



E.8 The Monitoring Committee of Ministry of Power has approved the projects under DDUGJY for the State of Karnataka amounting to Rs. 1754.32 Crores. Out of this, the details of cost approved for the electricity viz, BESCOM, MESCOM and HESCOM are given hereunder:

Sl.No	Name of ESCOM	DDUGJY Sanctioned Cost (Amount in Rs. Crores)
1	BESCOM	235.36
2	MESCOM	395.67
3	HESCOM	331.85
	Total	962.88

E.9 It is clear from the above that the IPDS and DDUGJY schemes are implemented by Ministry of Power, Government of India and therefore, it is submitted that the projects undertaken by HESCOM, BESCOM and MESCOM are entrusted by Government of India.

E.10 It is submitted that in **Circular No.89/7/2006, dated 18.12.2006**, it was clarified that "the activities performed by the sovereign/public authorities under the provision of law are in the nature of statutory obligations which are to be fulfilled in accordance with law. "Para 2 and 3 of the said circular read thus:

" 2. The issue has been examined. The Board is of the view that the activities performed by the sovereign/public authorities under the provision of law are in the nature of statutory obligations which are to be fulfilled in accordance with law. The fee collected by them for performing such activities is in the nature of compulsory levy as per the provisions of the relevant statute, and it is deposited into the Government Treasury. Such activity is purely in public interest and it is undertaken as mandatory and statutory function. These are not in the nature of service to any particular individual for any consideration. Therefore, such as activity performed by a sovereign/ public authority under the provisions of law does not constitute provision of Taxable Service to a person and therefore, no Service Tax is leviable on such activities.

3. However, if such authority performs a service, which is not in the nature of statutory activity and the same is undertaken for a consideration not in the nature of statutory fee/levy then in such cases, Service Tax would be leviable, if the activity undertaken falls within the ambit of a Taxable Service."

E.11 In **Commr. of C. Ex., Nashik v. Maharashtra Industrial Devl.Corpn. [2018 (9) G.S.T.L. 372 (Bom.)]**, the Hon'ble High Court inter alia held that the activities performed by sovereign or public authorities under the provisions of law upon the above Circular dated 18.12.2006 o hold that only if the authority



performs service which is not in the nature of statutory fee, Service Tax would be leviable if the activity undertaken otherwise falls within the ambit of Taxable Service.

E.12. It is submitted that the electrically distribution companies viz. VESCOM, MESCOM and HESCOM are performing the statutory function entrusted to them under the Electricity Act,20013. It is further submitted that the electricity distribution companies are formed and established by the State Government of Karnataka with 99.99% participation by way of equity or control to carry out function of distribution of electricity under the Electricity Act,20013. Therefore, the other works undertaken by MESCOM, BESCOM and HESCOM are entrusted by the Government of Karnataka.

F. THE WORKS CONTRACT SERVICES PROVIDED TO ELECTRICITY COMPANIES BY MEIL ARE MEANT PREDOMINATLY FOR USE OTHER THAN FOR COMMERCE, INDUSTRY, OR ANY OTHER BUSINESS OR PROFESSION

F.1 It is submitted that the works contract services provided to electricity distribution companies by MEIL are meant predominantly for use other than for commerce, industry or any other business or profession. The relevant definitions have been discussed infra to substantiate the submissions.

F.2 The meaning of "commerce" as given by the Concise Oxford Dictionary is "exchange of merchandise, specially on large scale". In ordinary parlance, trade and commerce carry with them the idea of purchase and sale with a view to make profit.

F.3 The definition of 'Industry' as provided in Section 2(j) of the Industrial Disputes Act, 1947 read as under,

"Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen."

F.4 Section 2(17) of the GST Act defines the term 'Business' as under:

"(17) "business" includes—

a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit:

....."

F.5 It is submitted that the definitions of commerce, trade or business, in an ordinary sense, is meant for making of profit. It is further submitted that through the definition of business is very wide to include the activity which are not motive of profit.



F.6 It is also submitted that electricity distribution companies are not formed with an objective making profit. In this regard reference can be made to the object clause of the Electricity Act,2003, which reads as follows:

“ An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity. Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto.”

F.7 In this regard, reference is made to Section 2(67) of the Electricity Act, in terms of which, “State Transmission Utility” means the Board or the Government Company specified as such by the State Government under sub-section (1) of Section 39. In terms of Section 39(1) the State Government may notify the Board or a Government Company as the State Transmission Utility.

F.8 In terms of second proviso to Section 39(1) of the Electricity Act, the State Government may transfer, and vest any property, interest in property, rights and liability connected with, and personnel involved in transmission of electricity, of such State Transmission Utility, to a company or companies to be incorporated under the Companies Act,1956 to function as transmission licensee through a transfer scheme to be effected in the manner specified under Part XIII and such company or companies shall be deemed to be transmission licensees under this Act.

F.9 In terms of Section 39(2) of the Electricity Act, the functions of the State Transmission Utility shall be-

- a) to undertake transmission of electricity through intra-State transmission system;
- b) to discharge all functions of planning and co-ordination relating to intra-State transmission system with-
 - i. Central Transmission Utility;
 - ii. State Governments;
 - iii. Generating companies;
 - iv. Regional Power Committees;
 - v. Authority;
 - vi. Licensees;
 - vii. Any other person notified by the State Government in this behalf;
- c) To ensure development of an efficient, co-ordinated and economical system of intra-State transmission lines for smooth flow of electricity from a generating station to the load centres;

d) To provide non-discriminatory open access to its transmission system for

use by-
Renewable Energy and Infratech



F.6 It is also submitted that electricity distribution companies are not formed with an objective making profit. In this regard reference can be made to the object clause of the Electricity Act,2003, which reads as follows:

“ An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity. Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto.”

F.7 In this regard, reference is made to Section 2(67) of the Electricity Act, in terms of which, “State Transmission Utility” means the Board or the Government Company specified as such by the State Government under sub-section (1) of Section 39. In terms of Section 39(1) the State Government may notify the Board or a Government Company as the State Transmission Utility.

F.8 In terms of second proviso to Section 39(1) of the Electricity Act, the State Government may transfer, and vest any property, interest in property, rights and liability connected with, and personnel involved in transmission of electricity, of such State Transmission Utility, to a company or companies to be incorporated under the Companies Act,1956 to function as transmission licensee through a transfer scheme to be effected in the manner specified under Part XIII and such company or companies shall be deemed to be transmission licensees under this Act.

F.9 In terms of Section 39(2) of the Electricity Act, the functions of the State Transmission Utility shall be-

- a) to undertake transmission of electricity through intra-State transmission system;
- b) to discharge all functions of planning and co-ordination relating to intra-State transmission system with-
 - i. Central Transmission Utility;
 - ii. State Governments;
 - iii. Generating companies;
 - iv. Regional Power Committees;
 - v. Authority;
 - vi. Licensees;
 - vii. Any other person notified by the State Government in this behalf;
- c) To ensure development of an efficient, co-ordinated and economical system of intra-State transmission lines for smooth flow of electricity from a generating station to the load centres;

d) To provide non-discriminatory open access to its transmission system for

use by-
Renewable Energy and Infratech



Government and therefore held that corporations to be State under Article 12 of the Constitution.

F.17 Reliance is also placed on the decision of Hon'ble Supreme Court in the case of **Som Prakash Rekhi v. Union of India and Ors., MANU/SC/0582/1980**, wherein the Court observed that, "if only fundamental rights were forbidden access to corporations, companies, bureaus, institutes, councils and kindred bodies which act as agencies of the administration there may be breakdown of the rule of law and the constitutional order in a large sector of governmental activity carried on under the guise of jural persons" and held that a public corporation (Bharat Petroleum Corporation) would fall under the definition of Article 12.

F.18 Reliance is also placed on the decision of Hon'ble Himachal Pradesh High Court in the case of **Chanana Steel Tubes Pvt.Ltd. v.H.P.S.I.D.C., AIR 2003 HP 36**, wherein on the issue of cancellation of recovery process, it was discussed that when 'company' is a wholly State Government owned company incorporated under the Companies Act,1956, the Government has got pervasive control over this company. Its managing Director is appointed by the State Government, as also other officials are also appointed as Directors. Thus, it is an "other authority", within the meaning of Article 12.

F.19 It is submitted that Article 74 of Articles of Association of MESCOM confers that as long as entire paid up share capital in the Company is held by the Government of Karnataka or by the Central Govt. or by the Govt. of Karnataka and Central Govt. or by a subsidiary of a wholly owned Govt. Company, the Govt. of Karnataka shall have the right to nominate and appoint all the Directors of the Board of the Company and shall have also the right to remove the Director(s) from Office and appoint one or more of the Directors to the Office of the Chairman of the Board of Directors or Managing Director or Whole Time Directors of the Company for such term and on such remuneration and/or allowance as it may think fit and may at any time remove him/them from office and appoint another/others in his/their place(s). Similar powers with regard to appointment are provided in the Articles of Association of BESCO and HESCO. The Article of Association of MESCOM, HESCO and BESCO are enclosed respectively.

F.20 In view of the above, it is submitted that MESCOM and other companies are State in terms of Article 12 of the Constitution.

F.21 It also submitted that as per Section 2(h) of the Right to Information Act,2005 (hereinafter, the "RTI Act") a "public authority" means any authority or body or institution of self-government established or constituted:

- a) by or under the Constitution;
- b) by any other law made by Parliament;
- c) by any other law made by State Legislature;
- d) by notification issued or order made by the appropriate Government, and includes any-
 - i. **body owned, controlled or substantially financed;**



- ii. non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government.

F.22 It is submitted that the electricity distribution companies are body owned, controlled and financed by Government of Karnataka and therefore, they squarely fall under the meaning of public authority as provided under the RTI Act.

F.23 In this regard reliance is placed on the decision of the Central Information Commission in the case of **Shri Nisar Ahmed Shaikh & Ors. V. LIC Housing Finance Limited MANU/CI/0069/2009**, wherein it was held that the LIC Housing Finance Limited and LIC Mutual Fund Asset Management Co. Ltd. would qualify as "Public authorities" under the RTI

Act. It was held that LIC is a body established, constituted, owned and controlled by Central Government. LIC is a public authority having been constituted by an Act of Parliament, And ,since the Chairman and Managing Director for both LIC and LICHFL is the same, and since LIC has 40.497% of the LIC Housing Finance Limited and LIC Mutual Fund Asset Management Co. Ltd. would be regarded as a "public authority" for the purpose of the RTI Act.

F.24 In view of the above, it is also submitted that the electricity distribution companies are State in which they are engaged as Public Authority.

G. MEIL IS THEREFORE ELIGIBLE FOR REDUCED RATE OF GST FOR WORKS CONTRACT SERVICES PROVIDED TO ELECTRICITY DISTRIBUTION COMPANIES UNDER ENTRY 3(vi)(a) TO NOTIFICATION NO.8/2017- INTEGRATED TAX (RATE)DATED 28.06.2017

G.1 It is submitted as stated above that the services supplied by the Applicant to the electricity distribution companies are in the nature of construction services falling under heading 9954 of the scheme of classification of service under GST regime.

G.2 It is also submitted that the service supplied by the Applicant to the electricity distribution companies are in the nature of works contract as defined under Section 2(119) of the GST Act. It is also submitted that the services are provided by the Applicant to the electricity distribution companies which are covered under the purview of 'government entities' in view of their shareholding pattern.

G.3 It is also submitted that the services supplied by the Applicant to the electricity distribution companies are in the nature of original work of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure. It is also submitted that the services under consideration are meant predominantly for use other than for commerce, industry, or any other business or profession for the reason that the activity or transaction is undertaken by the Government in which they are engaged a public authorities provided under the RTI Act.

G.4 It is also submitted that the services under consideration are supplied by the Applicant to the electricity distribution companies being Government entities, are procured by them in relation to a work entrusted to them by the Central Government, State Government, Union territory or local authority.

G.5 In view of the above, it is submitted that the Applicant is eligible to for reduced rate of GST @ 12% for works contract services provided to electrically distribution companies under entry 3 (vi)(a) to Notification No.8/2017,-Integrated Tax (Rate) dated 28.06.2017

PERSONAL HEARING: / PROCEEDINGS HELD ON 27.03.2019

10. Sri Ravi Raghavan, Advocate, authorized representatives of the applicant appeared for personal hearing proceedings held on 27.03.2019 & reiterated the facts narrated in their application.

11. FINDINGS & DISCUSSION:

11.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri Ravi Raghavan, Advocate and authorized representative, during personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

11.2 The issue for consideration is whether the five contracts in question are covered under entry no. 3(vi)(a) of the Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017 as amended from time to time liable to tax at 12% (CGST + SGST together) or not.

11.3 The entry no. 3(vi)(a) of the Notification No.11/2017- Central Tax (Rate) dated 28.06.2017 as amended reads as under:

SL. No	Heading	Description of Services	Rate	Condition
(1)	(2)	(3)	(4)	(5)
	Heading 9954	(vi) Composite supply of works contract as defined in clause (119) if section 2 of the Central Goods and Services Tax Act, 2017, provided to the Central Government, State Government, Union Territory, a local authority or a Government Authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of- (a) A civil structure or any other	12%	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted



		<p>original works meant predominantly for use other than for commerce, industry, or any other business or profession;</p> <p>(b) A structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or</p> <p>(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.</p> <p>Explanation. - For the purposes of this item, the term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.</p>	<p>to it by the Central Government, State Government, Union territory or local authority, as the case may be.</p>
--	--	---	---

Further the terms "Governmental Authority" and "Government Entity" have been defined in paragraph 4 of the same notification as amended from time to time and the same reads as under:

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

- (i) set up by an Act of Parliament or a State Legislature; or
- (ii) established by any Government,

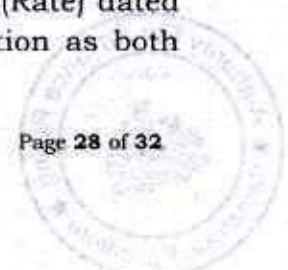
with 90 per cent. or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243G of the Constitution or to a Panchayat under article 243G of the Constitution."

"(ix) "Governmental Entity" means an authority or a board or any other body including a society, trust, corporation, -

- (i) set up by an Act of Parliament or a State Legislature; or
- (ii) established by any Government,

with 90 per cent. or more participation by way of equity or control, to carry out any function entrusted by the Central Government, State Government, Union Territory or a local authority."

The term "original works" has not been defined under the said Notification, but it is defined in the context of Notification No.12/2017- Central Tax (Rate) dated 28.06.2017 which also can be used in the context of this Notification as both deals with taxation of services and the same reads as under:



“(zs) “original works” means all new constructions:

- (i) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
- (ii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;”

11.4 The conditions to be satisfied are as under:

- (a) It must be a composite supply of works contract as defined in section 2(119) of the CGST Act, 2017
- (b) It must be provided to the Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity
- (c) The contract should be by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of a civil structure or any other original works.
- (d) The civil structure or original works must be meant predominantly for use other than for commerce, industry, or any other business or profession
- (e) Where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union Territory or a local authority, as the case may be.

11.5 The works contract has been defined in clause (119) of section 2 of the CGST Act, 2017 and the same reads 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;”

The contracts the applicant is executing are covered under the definition of works contract for the reasons as under:

(a) They are in relation to the completion, erection, installation and commissioning of an immovable property as all projects are turnkey projects and the property in goods cannot be removed without dismantling the same.

(b) there is transfer of property in goods involved in the execution of such contract.

Hence the first condition is satisfied.

11.6 The Electricity Distribution Companies to whom the applicant is executing works i.e. HESCOM, BESCO, MESCOM, etc. are Government Entities for the following reasons:

Manjal Energy and Infratech



(a) they are established by the Government with 90 per cent. or more participation by way of equity or control

(b) they carry out a function entrusted by the Government.

Since the applicant is executing works for Electricity Distribution Companies which are Government Entities, the second condition is also satisfied.

11.7 The Electricity Distribution Companies are procuring these services from the applicant in relation to a work entrusted to it by the State Government, which is supply of electricity to consumers and the fifth condition is also satisfied.

11.8 The contract is for construction, erection, commissioning, installation, completion of original works. The contract is a new construction involving erection, commissioning or installation of plant, machinery or equipment or structures and hence the third condition is also satisfied.

11.9 The issue under detailed discussion is whether the works are meant predominantly for use other than for commerce, industry, or any other business or profession. The Electricity Distribution Companies are involved in selling of electricity to the consumers and are collecting consideration and electrical energy is considered as "goods". Hence the Electricity Distribution Companies are involved in the sale of goods or in general, supply of goods to the consumers for consideration. The Explanation clause inserted which reads as under:

"For the purposes of this item, the term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities."

does not apply as they are not activities undertaken by the Central Government or State Government or a local authority.

11.10 Further, the term "business" is defined in clause (17) of section 2 of the CGST Act and it reads as under:

"(17) 'business' includes—

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

- (e);
- (f);
- (g);
- (h); and
- (i);

11.11 From the definition of business, it is clear that any activity of trade, commerce, manufacture, etc or any other similar activity is included in the definition of business and it is immaterial whether it is done for a pecuniary benefit, and any activity done in connection with or incidental or ancillary to such activity is also included in the scope of "business".

11.12 The Electricity Distribution Companies are involved in the supply of goods as already explained and hence they are involved in the business of supplying goods. They also receive consideration for the supply of electricity. The predominant activity of the Electricity Distribution Companies is to supply Electricity and the works executed by the applicant are used for this only predominant activity and hence are original works meant predominantly for use for commerce, industry, or any other business or profession.

Hence the contracts in question do not satisfy the fourth condition required for them to be covered under the Entry No.3(vi)(a) of Notification No.11/2017 – Central Tax (Rate) as amended from time to time.

12. In view of the foregoing, we pass the following

RULING

The services provided by the applicant to the Electricity Supply Companies (wholly owned Government of Karnataka Undertakings) by way of construction erection, commissioning, installation, completion, etc. are not covered under entry 3(vi)(a) of the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 or under entry 3(vi)(a) of the Notification No.8/2017-Integrated Tax (Rate) dated 28.06.2017 as amended from time to time and consequentially are not eligible to be taxed at a lower rate of 12% GST and hence are liable to be taxed at 18% GST.


30.09.2019
(Harish Dharnia)
Member


(Dr. Ravi Prasad M.P.)
Member

Place : Bengaluru,

Date : 30-09-2019

Manipal Energy and Infratech

To,

The Applicant

Copy to:

The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Commissioner of Central Tax, Mangalore Commissionerate, Mangaluru.

The Asst. Commissioner, LGSTO - 280, Udipi.

Office Folder