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**AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH
Goods and Service Tax**

D. No. 5-56, Block-B, R.K. Spring Valley Apartments,
Edupugallu, Vijayawada-521151

Present:

Sri.D. Ramesh, Additional Commissioner...Member (State Tax)
Sri.S.Narasimha Reddy, Additional Commissioner ...Member (Central tax)

AAR No.17/AP/GST/2019 dated 03.04.2019

1	Name and address of the applicant	R.Gangaiah & Co 108-B, Sri Nilaya Apartment Opp .Layola Auditorium, Venkateswara Nagar, Vijayawada
2	GSTIN	37AAFFR6157E1Z3
3	Date of filing of Form GST ARA-01	10.01.2019
4	Date of Personal Hearing	01.02.2019
5	Represented by	P. Anjaneyulu FCA
6	Jurisdictional Authority – State	Assistant Commissioner(ST) Benz Circle, Vijayawada-II Division
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	b) applicability of a notification issued under the provisions of this Act; and e) determination of the liability to pay tax on any goods or services or both;

ORDER

(Under sub-section (4) of section 98 of Central Goods and Service Tax Act, 2017 and under sub-section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)



1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to as CGST Act and APGST Act respectively) by M/s R. Gangaiah & Co., (hereinafter referred to as applicant), registered under the Goods & Services Tax.
2. The provisions of the CGST Act and APGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the APGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or APGST Act would be mentioned as being under the GST Act.

1. Brief Facts of the case:

M/s R Gangaiah & Co, (hereinafter referred to as the Applicant) having its office at 108-B, Sri Nilaya Apartment Opp .Layola Auditorium, Venkateswara Nagar, Vijayawada , is a registered partnership firm, under GSTIN 37AAFFR6157E1Z3 and engaged in civil construction activities. The applicant entered into an agreement i.e. APSFC /DGM (IDD-AD) AGT No.02/2016-17, dated 13.08.2016 and supplementary agreement APSFC, GM (IDD-AD) AGT No.01/2018-19, dated 06.08.2018 (hereinafter referred to as the Agreement) with Andhra Pradesh State Financial Corporation (hereinafter referred to as M/s APSFC) for construction of multi storied office building at OHT-2 Plot-LR3, Industrial Park, Jawahar Autonagar, Vijayawada.

The applicant in their application filed, while seeking GST rate payable on the activities covered under the said agreement, informed that their customer i.e. M/s APSFC is established under the SFCs Act, 1951 enacted by the parliament, and as per the Notification No.31/2017 - Central Tax (Rate), dated 13.10.2017 the corporation falls under the meaning of 'Government authority' and 'Government entity' as well.



On Verification of basic information of the applicant, it is observed that the applicant falls under state jurisdiction, i.e. Benz Circle, of Vijayawada-II Division. Accordingly, the application has been forwarded to the jurisdictional officer and a copy marked to the Central Tax authorities to offer their remarks as per the Section 98(1) of CGST /APGST Act 2017. In response the jurisdictional officer concerned stated that there are no pending proceedings relating to the applicant and no proceedings were passed on the issue, for which the advance ruling sought by the applicant.

2. QUESTION RAISED BEFORE THE AUTHORITY:

The applicant sought for Advance Ruling on applicable rate of tax under GST for construction of office building at Vijayawada for Andhra Pradesh State Financial Corporation.

3. APPLICANT'S INTERPRETATION OF LAW AND FACTS:

Andhra Pradesh State Financial Corporation is a state level Government Corporation (PSU) established under the SFCs Act, 1951 enacted by the parliament and carrying out the functions as entrusted under the Central Enactment i.e. SFCs Act, 1951. The applicant's plea is that the Corporation comes under the classification of Government Entity for the purpose of GST and the composite works for constructions of the Corporation's office buildings are original works. Besides, the office building agreed for construction is meant for governance of the corporation and is not a stock in trade. The various composite works that are being procured by APSFC through the said works contract agreements are covered under the definition of clause (119) of Section 2 of the Central Goods & Service Tax Act, 2017; and therefore the applicable rate of GST is 12% (6% CGST + 6% SGST) in terms of Notification No.24/2017 - Integrated Tax (Rate), dated 21.09.2017 read with notification Nos.31/2017 - Central Tax (Rate),dated 3.10.2017 and Notification No.39/2017 -Integrated Tax (Rate), dated 13.10.2017.



4. RECORD OF PERSONAL HEARING:

Sri P. Anjaneyulu FCA, Authorized Representative of the applicant appeared for Personal Hearing on 01.02.2019 and they reiterated the submission already made in the application.

5. DISCUSSION AND FINDINGS:

We have examined the specific issues raised in the application i.e. M/s APSFC is Government Entity or otherwise, classification of the service and applicable rate of tax thereon for the agreed works under the provisions of respective GST Acts.

Whether M/s APSFC is a Government Authority / Entity or otherwise.

The para 4 of clauses (ix) & (x) of Notification No.11/2017 – CT (Rate) dated 28.06.2017 as amended by Notification No.31/2017 – CT (Rate) dated 13.10.2017 is as hereunder;

(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% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243 W of the Constitution or to a Panchayat under article 243 G of the Constitution.

(x) "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% 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.

Andhra Pradesh State Financial Corporation [APSFC] is a term lending Institution established in 1956 for promoting small and medium scale industries in Andhra Pradesh under the provisions of the State Financial Corporations Act, 1951. The Corporation came into existence on 1-11-1956 by



merger of Andhra State Financial Corporation and Hyderabad State Financial Corporation. The functions of the corporation is to launch entrepreneur-friendly schemes to provide term loans, working capital term loans, special and seed capital assistance etc.,

As seen from the share holding ratios at page no.47 of the Annual Reports for the years 2015-16, 2016-17 and 2017-18 as made available by APSFC website <http://www.apsfc.com/pages/financials.aspx>, the A.P. State Government is having 85.85% of shares which is less than 90%. However, M/s APSFC is established by Government and the Government of Andhra Pradesh is having more than 90% of control over the APSFC, and thus it is covered under the definition of 'Government Entity' under the above said provisions. Therefore, we conclude that M/s APSFC is a "Government Entity" for the purpose of GST matters.

Classification of Service and rate of tax.

As seen from the Agreement, the applicant agreed for construction of multi-storied office building to M/s APSFC, which includes procurement and supply of goods and services, for agreed consideration. The activity of construction includes both supply of goods and also services.

The Section 2 (119) of CGST Act, 2017 / APGST Act, 2017 defines "works contract" as 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 composite supply of works contract under Section 2 (119) of CGST Act, 2017 / APGST Act, 2017 is treated as supply of service in terms of Serial No.6 (a) of Schedule II of CGST Act '2017 / APGST Act, 2017.



The Government of India, vide notification No. 11/2017 - Central Tax (Rate), dated - 28th June 2017 notified the rate of GST applicable on supply of services. Under this notification for heading 9954 the applicable rate of GST is 9%.

The said notification has been amended from time to time and the following notifications are issued by the Government of India and the said amendment Notifications are as follows -

- 1) Notification No- 20/2017 - Central Tax (Rate), Dated - 22/08/2017.
- 2) Notification No- 24/2017 - Central Tax (Rate), Dated - 21/09/2017.
- 3) Notification No- 31/2017 - Central Tax (Rate), Dated - 13/10/2017.
- 4) Notification No- 46/2017 - Central Tax (Rate), Dated - 14/11/2017.
- 5) Notification No- 01/2018 - Central Tax (Rate), Dated - 25/01/2018.

Vide notification No. 24/2017 - Central Tax (Rate), Dated - 21/09/2017, Government of India by inserting entry No. (vi) notified concessional GST rate of 6% for the construction services provided to Central Government, State Government, Union Territory, a local authority or a Governmental Authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

- a) a civil structure or any other original works **meant predominantly for use other than for commerce, industry, or any other business or profession;**
- b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or
- 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.



The applicant is engaged in Construction work of office building at Vijayawada for APSFC, which is meant for governance of their Corporation activities. The applicant is of the view that the use of the said construction (building) is not for any business or so. This issue is examined.

As seen from the Annual Reports for the years 2015-16, 2016-17 and 2017-18 as made available by APSFC in their website <http://www.apsfc.com/pages/financials.aspx>, they are engaged in providing financial services to industries and entrepreneurs. The income they are getting is from 'interest on loans and advances' and also service charges, upfront fee/ commitment fee, sale of application forms, profit on sale of assets, Commission on insurance, Rent received etc. Therefore, the activities of M/s APSFC are business activities and not otherwise. The applicant informed that the said building is for use as office by M/s APSFC and therefore, it appears that the said construction is for office use for conducting business activities of M/s APSFC. Moreover, the applicant did not provide any information or documentary proof evidencing that the construction/ building is for use other than for commerce, industry, or any other business or profession to be eligible for concessional rate of 12% (6% CGST + 6% SGST) available under Notification No.24/2017 - CT (Rate) dated 21.09.2017.

In this case, the contract entered by the applicant is classifiable under SAC heading No. 9954 under construction services, and it falls under entry no (ii) of serial No.3 of notification no. 11/2017 Central Tax (Rate) dated 28.06.2017 i.e., Composite Supply of Works Contract as defined in clause 119 of Section 2 of Central Goods and Services Act,2017 and the applicable rate of tax is 18% (9% under Central tax and 9% State tax).



RULING

(Under section 98 of Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017)

The activity of the applicant under the said agreement with M/s APSFC is a Composite Supply of Works Contract as defined in clause 119 of Section 2 of Central Goods and Services Act,2017.

M/s APSFC is a Government Entity within the meaning of para 4 of clause (x) of Notification No.11/2017 – CT (Rate) dated 28.06.2017 as amended by Notification No.31/2017 – CT (Rate) dated 13.10.2017.

As the use of the construction / building is for office purpose of M/s APSFC to conduct their activities which are not other than for commerce, industry, or any other business or profession, the concessional rate of 12% under Notification No.24/2017-Central Tax (Rate) dated 21.09.2017 read with Notification No.31/2017 - Central Tax (Rate) dated 13.10.2017 is not available to the applicant.

The activities under the agreement referred by the applicant are classifiable under SAC heading No. 9954 under construction services, they fall under entry no (ii) of serial No.3 of notification no. 11/2017 Central Tax (Rate) dated 28.06.2017 and the applicable rate of tax is 18% (9% Central Tax Plus 9% State Tax).

Sd/-Sri D. Ramesh
Member(State Tax)

Sd/-Sri S.Narsimha Reddy
Member (Central tax)

// t.c.f.b.o.//




Assistant Commissioner(ST)
Assistant Commissioner (State Tax)
O/o. Chief Commissioner of State Tax,
Andhra Pradesh, Vijayawada.

To

1. M/s R.Gangaiah & Co, 108-B, Sri Nilaya Apartment, Opp.. Layola Auditorium, Venkateswara Nagar, Vijayawada, A.P.(By Registered Post).

Copy to

2. The Assistant Commissioner, O/o the Assistant Commissioner, Central Tax, Central GST Division, D.No.55-17-3, 3rd Floor, near CGO Complex, Industrial Estate, Vijayawada - 520007.
3. The Assistant Commissioner (ST), Benz Circle, Vijayawada-II Division.

Copy submitted to

4. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Eedupugallu, Vijayawada.
5. The Chief Commissioner (Central Tax), O/o Chief Commissioner of Central tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035.

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

