

THE AUTHORITY FOR ADVANCE RULING
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009

Advance Ruling No. KAR ADRG 40 /2021

Dated : 30-07-2021

Present:

1. Dr. M.P. Ravi Prasad
Additional Commissioner of Commercial Taxes Member(State Tax)
2. Sri. Mashhood Ur Rehman Farooqui,
Joint Commissioner of Customs & Indirect Taxes Member(Central Tax)

1.	Name and address of the Applicant	M/s. BINDU PROJECTS & CO, No 22, Door No.5, Dynasty Layout, Mariyannapalya, Hebbal, Bengaluru 560024. Correspondence Address: Flat No.201, Aruna Enclave, II Phase, Defence Layout, Mariyannapalya, Hebbal, Bengaluru 560024
2.	GSTIN or User ID	29AAHFB2044C1ZW
3.	Date of filing of Form GST ARA-01	28.10.2020
4.	Represented by	Sri Madhusudan Reddy, Managing Partner
5.	Jurisdictional Authority - Centre	The Commissioner of Customs & Indirect Taxes, Bangalore North Division-5, Range -AND5
6.	Jurisdictional Authority - State	ACCT, LGSTO-150A, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.4,850-00 each under CGST Act and SGST Act vide CIN No.SBIN20102900322204, dated. 19.10.2020 and fee of Rs.300-00 each under CGST Act and SGST Act vide CIN SBIN20102900568343 dtd: 28.10.2020

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

M/s Bindu Projects & Co, No 22, Door No.5, Dynasty Layout, Mariyannapalya, Hebbal, Bengaluru 560024, (called as the 'applicant' hereinafter), having GSTIN number 29AAHFB2044C1ZW, have filed an application for Advance



Ruling under Section 97 of CGST Act, 2017, read with Rule 104 of the CGST Rules, 2017 and 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/- each under the CGST Act and the KGST Act.

2. The applicant is a registered person under the provisions of the Central Goods and Services Tax Act, 2017 as well as the Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act" and the "KGST Act/SGST Act" respectively) engaged in executing works contract services to South Western Railways.

3. The applicant has sought advance ruling in respect of the following question:

- i. *Applicability of GST rates for works contract services doing original works with South Western Railways.*

4. **Admissibility of the application:** The question is about the "applicability of a notification issued under the provisions of this Act" and hence is admissible under Section 97(2)(b) of the CGST Act 2017.

5. The applicant furnishes some facts relevant to the issue:

5.1 The applicant states that they are contractors with South Western Railway, Bangalore and they have been awarded contract with "KSR Bengaluru City Railway Station and Service Buildings at Bengaluru such as C&W Office, Loco Trip Shed, DRM Office, Supervisory Training Centre, ORHCM SRH, Railway Hospital, RPF Barracade, GRP Barracade, etc" as Zone-S vide LOA No. Bangalore Division ENGG/12SBC19OF11-4-19 ITEM12/00841250002528 dated 25.06.2019. The said work is a Zonal Agreement and –

- (a) It is a lumpsum contract based on Unified Schedule of Rates 2011 of South Western Railway.
- (b) It includes New Works, Repair Works, additions and alterations to existing structures.
- (c) The Work is carried out through Work Orders each restricted to a maximum of 5 lakh, where each work order is an individual tax invoice.
- (d) The Work is executed in Service building like stations, PWI Offices, RPF Barricades, etc., and in welfare buildings like Railway Hospitals, Colonies, etc.

5.2 The applicant states that the South Western Railway, Bangalore Division is interpreting the consolidated Notification No.11/2017 as below:

- (a) Considering all service buildings as business/commerce establishments and rate charged is 18% (even for original works),
- (b) Works related to all welfare buildings (i.e. only colonies) are charged is 12%

5.3 The applicant submitted that as per the Notification No.11/2017- Central Tax (Rate) – serial no. 3(v), the GST rate applicable is 12% if "composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services



Tax Act, 2017 is supplied by way of construction, erection, commissioning of original works pertaining to Railways (including monorail and metro).

5.4 The applicant has stated that as per Rule 2A of the Service Tax Rules 2006, "Original Works" has been defined as

- (a) all new constructions
- (b) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable
- (c) Erection, commissioning or installation of plant, machinery or equipment or structures whether prefabricated or otherwise.

5.5 As per the above notification and definition of original works, the applicant states that they are executing original works of Works Contract Services only.

PERSONAL HEARING/ PROCEEDINGS HELD ON 16.12.2020

6. Sri Madhusudan Reddy, Managing Partner of the applicant firm appeared for personal hearing proceedings held on 16.12.2020 and reiterated the facts narrated in their application.

FINDINGS & DISCUSSION

7. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in *pari-materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

8. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made by applicant during the hearing.

9. The transaction in question is examined and it is found that the applicant is executing two types of works wherein, in one set of work the applicant is executing works contract for construction of new buildings and in the second set of work, he is executing works contracts not involving new construction. The correspondence of the applicant with the Railways as produced by him, revealed that in Zonal Works, majority of the works they are executing are like provision of compound wall to Railway properties, laying of tiles for buildings, plumbing with new pipelines, provision of new GLR and OHT, Staff recreation like parks, new rain water harvesting structures, painting, renovation of old structures etc.. The applicant has claimed before the Railway Authorities that these are all original works as they involve new asset creation or bringing life to unused structures of Railways and these come under the works contract services as per CGST Act.

10. The issue is basically divided into two categories. One that results in the new buildings and the other repair and reconstruction of the old structures.



10.1 The entry 3(v) of the Notification No.11/2017- Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 20/2017 – Central Tax (Rate) dated 22.08.2017 reads as under:

“Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to, -

(a) Railways,

(b)”

The rate of tax applicable is 6% under CGST.

10.2 On examination of the above entry, it is clear that the above entry is related to works contract services supplied to Railways which is construction or erection or commissioning or installation of original works. The entire dispute is regarding what are “original works”.

10.3 The term “original works” has been defined in clause (zs) of para 2 of Notification No.12/2017 – Central Tax (Rate) dated 28.06.2017 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;”

Though this definition is given in relation to the Notification No.12/2017 – Central Tax (Rate), the same can be adopted in relation to Notification No.11/2017 – Central Tax (Rate) also.

10.4 On careful examination of the above definition, it is seen that only “additions or alterations made to abandoned or damaged structures on land that are made to make them workable” are treated as original works and not all repairs and maintenance services.

10.5 The works carried out by the applicant are analyzed and found that they involve two types of works – one being new construction and other being repairs of old structures. In as far as construction of new structures are concerned which are constructed where nothing existed before would definitely fall under the realm of “original works”.

10.6 But in case of constructions which are made where the structures already existed, the same can be classified as under:

(a) where the additions and alterations are made to the abandoned structures on land or damaged structures on land to make them workable

(b) repairs of already existing structures which are in working condition and

(c) construction services on structures not on land

It is pertinent to note that only those works contract services covered under (a) above are to be treated as “original works” and not those covered under related to (b) and (c). The meaning of the words “structures on land” needs to be



analysed as only these qualify for the reduced rate of tax.

11. According to Cambridge Dictionary, "structure" means "something that has been made or built from parts, especially a large building" or "something built, such as a building or a bridge". Both the contextual meaning in relation to railways is the structure should be something which is built from parts, i.e. a building, or other constructed ones. Secondly, these constructed structures should be on land to be covered under the scope of the entry. All these point to the scope of the entry that the structures which are directly on the land are included. Further, these structures must be damaged to the extent that the same cannot be used and the activity of works contract services, if executed to make these unusable structures reusable, would cover under this entry for reduced rate of tax.

12. The tender documents produced by the applicant gives the nature of the contract - 3

(a) Maintenance, repair/ replacement of

- (1) masonry works - brick work, concreting, grouting, plastering, pointing, flooring/dado work, roof leakages, etc.
- (2) carpentry works - wood work, doors and windows, cupboards, frames, shutters fitting and fastenings, rafters, reapers, wooden furnitures, roof sheeting etc.

13. To a question whether all repairs made to buildings constitute "original works", the answer is "no". It is only those services executed to make an unusable building usable again is covered under "original works".

14. Even those services which are provided in relation to the residential accommodation of staff, the matter is examined and found as under:

The entry 3(vi) reads as under:

*"(vi) Services provided to the Central Government, State Government, Union Territory, a local authority, a Governmental 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 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

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.

The Railways Department is a Central Government Department and hence it is



clear that the services provided to them if it is for a purpose other than for business, then the same would be covered under entry 3(vi). Since the Railways is undertaking the transportation services of goods and passenger, the services provided cannot be covered under entry 3(vi)(a). However, the services of repairs, maintenance, renovation and alterations of residential complex meant for use of the Railway employees are covered under entry 3(vi) of the Notification and hence eligible for tax at 6% CGST.

15. As far as the question of rate of tax, it is submitted by the applicant that the contract is a single contract and it consists of multiple works. On the question whether this contract amounts to a composite supply or mixed supply or a bunch of separate supplies, it is seen that the same cannot be a composite supply of works contracts as there is no principal supply and the works are not naturally bundled. It cannot be a mixed supply also because the valuations of each of the supply of works are valued separately and they would amount to separate contracts. Hence, there is no common price for all the contracts. Hence it can be safely decided that each of the works mentioned in a schedule is a separate contract in itself and this is bolstered by the fact that the works are not in the same place and also are different in nature.

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

RULING

1. The new constructions involved in the contract are liable to tax at 12% (6% CGST and 6% SGST) as per entry no.3(v) of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 20/2017 – Central Tax (Rate) dated 22.08.2017.
2. The services of repairs, maintenance, renovation and alterations of residential complex meant for use of the Railway employees are covered under entry 3(vi) of the Notification and hence eligible for tax at 6% CGST and 6% SGST.
3. Other repair works of old construction involved in the contract are liable to tax at 18% (9% CGST and 9% SGST) as per entry no.3 (xii) of Notification No. 11/2017 –Central Tax (Rate) dated 28.06.2017 as amended from time to time.



(Dr.M.P.Ravi Prasad.)

MEMBER

Karnataka Advance Ruling Authority

Bengaluru - 560 009
Place : Bengaluru,



(Mashhood Ur Rehman Farooqui)

Member

MEMBER

Karnataka Advance Ruling Authority

Bengaluru - 560 009



Date : 30-07-2021

To,

The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Central Tax, Bangalore North GST Commissionarate, North Division-05, Bengaluru.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-150A, Bengaluru.
5. Office Folder.