


<b>GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING</b> <b>GOODS AND SERVICES TAX</b> <b>D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,</b> <b>AHMEDABAD – 380 009.</b>	
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ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2021/18  
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/12)

Date: 28.06.2021

Name and address of the appellant	:	M/s. SKG-JK-NMC Associates(JV), G-303, Kanam Resi., Kudasan, Gandhinagar, Gujarat-382421(Earlier located at Shaligram, C-201, Lake View, Near Vaishno Devi Circle, S.P.Road, Khoraj, Gandhinagar, Gujarat-382735).
GSTIN of the appellant	:	24ABIFM9433G1Z5
Advance Ruling No. and Date	:	GUJ/GAAR/R/36/2020 dated 03.07.2020
Date of appeal	:	18.08.2020
Date of Personal Hearing	:	20.10.2020
Present for the appellant	:	CA SURESHKUMAR GOYAL

The appellant M/s. SKG-JK-NMC Associates(JV), G-303, Kanam Resi., Kudasan, Gandhinagar, Gujarat-382421(Earlier located at Shaligram, C-201, Lake View, Near Vaishno Devi Circle, S.P.Road, Khoraj, Gandhinagar, Gujarat-382735)(hereinafter referred to as the appellant) is a Joint Venture engaged in 'Construction of pavement, Track work, Warehouses, Admin Building, E&M Works and other miscellaneous works' at Khodiyar, Gandhinagar, Gujarat and is registered under the CGST Act, 2017.

**2.** The appellant has submitted that India is going to have its first high speed rail line i.e. bullet train in times to come and for this Mumbai-Ahmedabad High Speed Rail Corridor is under construction connecting the cities of Ahmedabad and Mumbai; that the corridor is 508.09 km. long and traverses the states of Maharashtra and Gujarat and the union territory of Dadra and Nagar Haveli; that in the 2014 budget, Railway Minister Shri D.V.Sadananda Gowda announced the first bullet train and 9 High-Speed Rail routes'; that in 2016, the Ministry of Railways fast tracked the project and set up a Special Purpose Vehicle(SPV), named the National High Speed Rail Corporation limited(hereinafter referred to as NHSRCL) to build and operate the corridor; that the company was registered in January, 2016 in the name of Indian Railways and was registered under the Companies Act, 2013 on February 12, 2016 ; that a copy of the Memorandum, Articles of Association and Certificate of Incorporation has been enclosed as **Annexure-1(Colly.)**; that NHSRCL, which is a special purpose vehicle responsible only for the implementation of the Mumbai-Ahmedabad high-speed rail project has divided the total construction work for the project into 27 packages for which it has to award contracts separately; that NHSCRL issued a 'Letter of Acceptance'(LOA) in favour of RITES limited, RITES Bhawan No.1, Sector-29, Gurgaon-122001(hereinafter referred to as 'main

contractor' or 'RITES', as the case may be) for 'shifting of existing railway infrastructure and other utilities in connection with construction of High Speed Rail Projects', the copy of which is attached as **Annexure-2**.

**3.** The appellant submitted that on 09.03.2018, the main contractor further sub-contracted the work and invited tenders from eligible sub-contractors for 'Construction of pavement, Track work, Warehouses, Admin Building, E&M works and other miscellaneous works' at Khodiyar, Gandhinagar, Gujarat and copy of relevant part of tender is attached as **Annexure-3**; that on 13.06.2018, main contractor issued LOA in favour of the appellant for 'Construction of pavement, Track work, Warehouses, Admin Building, E&M works and other miscellaneous works' at Khodiyar, Gandhinagar, Gujarat in connection with the work related to 'shifting of existing railway infrastructure and other utilities in connection with construction of High Speed Rail Projects' and copy of LOA is attached as **Annexure-4**. The appellant has further submitted that the scope of work as envisaged under the tender includes:

*Brief scope of work:*

*The brief scope of works as per clause 1.4 of the Tender Document (copy enclosed as Annexure-VII) reads as under:*

*Phase-I works*

- a. Track work complete as per Layout Plan.*
- b. Pavement along the track as per layout plan (Approx. 30500 sqm).*
- c. High mast lighting in the pavement along the track.*
- d. Admin Building (G+1, Approx. 475 sqm per floor) including all civil, electrical, water supply, sanitary and fire-fighting works.*
- e. Electrical sub-station(ESS).*
- f. Main entry gate and security cabin.*
- g. Electrical installations in admin building, ESS, entry gate, security gate etc.*

*Phase-II works*

- a. Warehouse – 3 nos. of 140x30 m each (3x4200 sqm = 12600 sqm).*
- b. Balance Pavement area like area around warehouse and connecting road between pavement near track and pavement around warehouse.*
- c. EIMWB and EIMWB room.*
- d. Electrical and fire-fighting works.*
- e. Other miscellaneous works as per requirement.*

**4.** The appellant has submitted that they asked the following question seeking Advance Ruling on the same:

*'Whether the said work can be covered under clause 3(v)(a) of Notification No.11/2017-Central Tax(Rate) dated 28.06.2017 i.e. works contract by way of construction, erection, commissioning or installation of original works pertaining to railways so as to entitle it for charging of reduced rate of GST@12% instead of 18%.'*

**5.** The appellant has submitted that during the course of personal hearing, it was desired by GAAR that any documentary evidence from the main contractor or any other Railways agency to the effect that the said work pertains to Railways may be produced for further consideration of the application and accordingly, the appellant had submitted relevant documents for the same vide letter dated 24.06.2020, a copy of which is attached as **Annexure-5**; that GAAR disposed off the application vide order No.GUJ/GAAR/R/36/2020 dated 03.07.2020(copy attached as **Annexure-6**) (hereinafter referred to as the 'impugned order') wherein it was ruled that the aforementioned contract work is not covered under

clause 3(v)(a) 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; that while deciding the application, GAAR segregated the discussion in three parts as mentioned in column(2) of the table below and answered as mentioned in column(3) below:

S. No	Issue	Decision	Para Number of impugned order
(1)	(2)	(3)	(4)
1.	Whether the contract is a composite supply of Works Contract?	Yes.	14.2
2.	Whether the work is a construction, erection, commissioning or installation by way of construction, erection, commissioning or installation of original works?	Yes.	14.1
3.	Whether it pertains to railways?	No, in the absence of documentary proof to establish the same.	14.3.3

6. The appellant has submitted that the basis for pronouncing the aforesaid order is completely wrong, bad in law and arbitrary and has therefore filed this present appeal on the following grounds of appeal:

**A.The expression ‘pertaining to’ is an expression of expansion and not of contraction, a composite works contract for original works shall be pertaining to railways and the status of supplier and the recipient is immaterial. Further, the word ‘Railways’ has to be construed in its popular sense. The present contract is a part of main contract of construction of high speed rail line and therefore, pertains to railways.**

- (i) The issue under dispute in the present matter is restricted to establishing that whether the present works contract ‘pertains to railways’ or not. Therefore, relevant clause of Notification No.11/2017-Central Tax(Rate) dated 28.06.2017 and Notification No.11/2017-State Tax(Rate) dated 30.06.2017 as applicable during the impugned period, is reproduced as under:

S. No	Chapter, Section or Heading	Description of Service	Rate(per cent)	Condition
(1)	(2)	(3)	(4)	(5)
2	Section 5	Construction services.		
3.	Heading 9954 (Construction services)	-----		
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		(v) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act,	6	

		2017, [other than that covered by items(i)(ia)(ib)(ic)(id),(ie) and (if), supplied by way of construction, erection, commissioning, or installation of original works pertaining to,- (a) railways, including monorail and metro;		
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- (ii) The appellant has stated that the reduced rate of 12%(6% CGST + 6% SGST) is applicable if the composite works contract is supplied for original works pertaining to railways; that the word ‘pertaining to’ is the word of expansion and this word came for consideration of Hon’ble Supreme Court in M/s. Doypack Systems pvt.ltd. vs. Union of India & Others (1988) 2SCC 299=1988(2)TMI 61, where the Court held that the above expression is an expression of expansion and not of contraction and the following has been laid down in paragraph 47 and 48:-

*“47.-----We are of the opinion that the words ‘pertaining to’ and ‘in relation to’ have the same wide meaning and have been used interchangeably for among other reasons, which may include avoidance of repetition of the same phrase in the same clause or sentence, a method followed in good drafting. The word ‘pertain’ is synonymous with the word ‘relate’, see Corpus Juris Secundum, Volume 17, page 693.*

*48.The expression ‘in relation to’ (so also ‘pertaining to’) is a very broad expression which pre-supposes another subject matter. These are words of comprehensiveness which might both have a direct significance as well as an indirect significance depending on the context, see State Wakf Board v. Abdul Aziz (A.I.R.1933 All.649) and 76 Corpus Juris Secundum 621. Assuming that the investments in shares and in lands do not form part of the undertakings but are different subject matters, even then these would be brought within the purview of the vesting by reason of the above expressions. In this connection reference may be made to 76 Corpus Juris Secundum at pages 620 and 621 where it is stated that the term ‘relate’ is also defined as meaning to bring into association or connection with. It has been clearly mentioned that ‘relating to’ has been held to be equivalent to or synonymous with as to ‘concerning with’ and ‘pertaining to’. The expression ‘pertaining to’ is an expression of expansion and not of contraction.”*

- (iii) The expansion of expression ‘pertaining to’ has also been appreciated by the Hon’ble Authority for Advance Ruling, Karnataka in the case of M/s. Quatro Rail Tech Solutions limited reported as 2019(10)TMI 1134 in paragraphs 4.8 and 4.9:

*“4.8 Since this involves the works related to railway network, the contract can be said to be pertaining to Railways. The term ‘pertaining to Railways is more expansive and includes other establishments other than Indian Railways. Hence the contract is pertaining to Indian Railways.*

*4.9 There is no stipulation in the said entry that this contract must be executed to the Railways but it is sufficient, that it must be pertaining to Railways and the supplier and the recipient in each of the contract is immaterial.”*

- (iv) As per Black Law Dictionary, the word ‘pertain’ means ‘to belong or relate to, whether by nature, appointment or custom’ and the word ‘relate’ means ‘to pertain; refer; to bring into association with or connection with’.
- (v) In order to be covered under the clause(v) of S.No.3 of notification 11(supra), the composite works contract for original work must pertain to the railways wherein the use of expression ‘pertaining to’ pre-supposes another subject matter. Therefore, if the main contract is ultimately related to the railways, then all works performed in relation to that contract would fall under clause(v) of S.no.3 of the notification 11(supra).
- (vi) The status of supplier and recipient is immaterial to this taxation and sub-contractor i.e. appellant is also liable to be taxed at the same rate at which main contractor has taxed his contract. In this regard, reliance is placed on the decision given by Appellate Authority for Advance Ruling, Maharashtra in the case of M/s. Shree Construction reported as 2019(3)TMI 1567 wherein Hon’ble authority held as under:

*“(10)We do not find any merit in the above mentioned contention of the Jurisdictional Officer as from the plain reading of the item(v) of the Sr.No.3 of the Notification, it is very much clear that any supply of works contract pertaining to the railways including monorail and metro is subject to concessional rate of 12% GST. In the instant case, though the GAAR i.e. M/s. Shree Construction is providing works contract services to its main contractor who has entered into works contract agreement with railways, the composite supply of works contract being carried out by M/s. Shree Construction is ultimately going to the use of railways without being subjected to any change or modification, thus the said works contracts, though undertaken by the subcontractor, is undoubtedly pertaining to the railways and no one else. Thus, the condition specified under item (v) of the Sr.No.3 of the said notification is completely fulfilled and therefore the services provided by the sub-contractor would attract concessional rate of 12% GST.*

*(11)As regards the appellant’s contention that there is no specific mention of subcontractor providing services in Sr.No.(v) as provided in item(ix) and (x) which were incorporated into the Notification 11/2017-C.T. by the amending notification 1/2018 dated 25.01.2018, we are of the opinion that there was no need to include such sub-contractors in the item(v) of the Notification as there was no confusion whether the sub-contractor will be eligible to such concessional rate of GST, since the activities described under item(v) of Sr.No.3 of the notification are services specific. The service provider and the service recipient are immaterial for the determination of beneficiary of this concessional rate of GST. That is, if the works contract services provided by the main contractor or sub-contractor are pertaining to the railways, the concessional rate of 12% GST is allowed to the person who carries out the such works contract pertaining to railways,,,,,,,,,”*

- (vii) The expression ‘railways’ has also not been defined in the GST Act. Therefore, this word has to be interpreted in its popular sense. In this regard, the Hon’ble Supreme Court in the case of M/s. MSCO Pvt.Ltd. vs. Union of India, 1985 AIR 76 = 1984(10) TMI 44, held as under:

*“But while construing a word which occurs in a statute or a statutory*



*instrument in the absence of any definition in that very document it must be given the same meaning which it receives in ordinary parlance or understood in the sense in which people conversant with the subject matter of the statute or statutory instrument understand it. It is hazardous to interpret a word in accordance with its definition in another statute or statutory instrument and more so when such statute is statutory instrument is not dealing with any cognate subject.*

- (viii) Resorting to the meaning of 'Railways' in its popular sense, the main contract of 'construction of Mumbai-Ahmedabad High Speed Rail Corridor' i.e. high speed rail line, falls under the ambit of word 'Railways' and therefore, the present work, being a part of entire main works contract, also pertains to railway and hence, exigible to the 12% rate of tax under clause(v) of S.No.3 of the notification 11(supra).
- (ix) Without prejudice to the above, definition of 'railway' given under section 2(31) of Railway Act, 1989 is given below:

***"31. 'railway' means a railway, or any other portion of a railway, for the public carriage of passengers, or goods, and includes-***

- (a) All lands within the fences or other boundary, marks indicating the limits of the land appurtenant to a railway;*
- (b) All lines of rails, sidings or yards, or branches used for the purpose of, or in connection with a railway;***
- (c) All electric traction equipments, power supply and distribution installations used for the purpose of, or in connection with, a railway.***
- (d) All rolling stock, stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, road and streets, running rooms and rest houses, institute, hospitals, water works and water supply installations, staff dwellings and any other work constructed for the purpose of, or in connection with the railway;***
- (e) All vehicles which are used on any road for the purpose of traffic of a railway and owned, hired or worked by railway; and*
- (f) All ferries, ships, boats and rafts which are used on any canal, river, lake or other navigable inland waters for the purpose of the traffic or a railway and owned, hired or worked by a railway administration. but does not include*
- (i) A tramway wholly within a municipal area; and*
- (ii) Lines of rails built in any exhibition ground, fair, park, or any other places solely for the purpose of recreation.'*

- (x) The definition given above is so extensive so as to cover all gamut of activities where the ownership pertains to the Railway and it necessarily obviate the requirement to have elaborative discussion of expression 'pertaining to' as done above.
- (xi) In the present case, contract awarded to appellant is pertaining to railways because of the following reasons:
- a) NHRCL has been incorporated with the sole objective of 'High Speed Rail Lines' and is owned by the Ministry of Railways which makes it a 'Railway'.
- b) NHRCL has given the works contract to main contractor who in turn has sub-contracted a part of contract to the appellant.
- c) Present works contract is related to 'public carriage of passengers'. Elaborative discussion in relation to this submission is done in ground

'C' below:

- (xii) It is further to be noted that the expression in notification number 11(supra) is 'Railways' and the expression defined in Railway Act, 1989 is 'Railway'. Even if the definition of 'railway' is taken from the Railways Act, 1989 for interpreting said notification, the benefit of Notification would be available to 'railways' including 'railway' used for the purposes other than for public carriage of passengers or goods.
- (xiii) Appellant also draws attention towards ruling pronounced by Authority for Advance Ruling, West Bengal in case of RITES limited reported in 2018(12)TMI 1226 wherein an elaborative discussion of the definition of 'Railways' given under 'Railway Act, 1989' is done. This discussion adds weight to the submission of appellant that the expression 'Railways' has to be understood in its popular sense. In this ruling, Hon'ble authority has upheld that construction of private railway siding for carriage of coal and oil fuel is also covered under the expression 'Railway' despite definition thereof specifically provides for 'public carriage of passengers, or goods'.
- (xiv) The submissions in para (xii) and (xiii) are made for the restricted purpose of discussion on scope of term 'railways' and is not relevant for present case. This is because of the reason that contract awarded to appellant pertains to public carriage of passengers.

**B.Documentary evidence to substantiate the fact that contract granted to main contractor and that granted by main contractor pertains to railways, i.e. NHSRCL, a Special Purpose Vehicle created for the sole purpose of construction of Mumbai-Ahmedabad High Speed Rail Corridor, was submitted by appellant on 24.06.2020 which has been considered but not evaluated by the GAAR for their evidentiary value, therefore, impugned order is not supported by the reasons of rationality and liable to be set aside.**

- (i) GAAR has answered the question asked by the appellant in negative on the basis of the following reasoning:  
"14.3.3 The applicant has produced no evidence that the work was allotted to M/s.RITES ltd. was pertaining to Railways as defined at section 2(31) of the Railway Act, 1989. There is also no evidence on record whether the work has been awarded in respect of 'Government Railway' or 'Non-Government Railway'. Although the applicant has sought to infer that the said work was in respect of railways owned by Ministry of Railways, but he has not provided any supporting evidence in the form of agreement between M/s. RITES limited and Ministry of Railways to establish the same. Therefore, in the absence of any such conclusive proof that the work pertains to railways, we hold that the third condition is not satisfied.'
- (ii) In para 10 of the impugned order, GAAR has taken a note of submissions made on 24.06.2020(Ann-5). However, from the perusal of body of order, it appears that GAAR has not appreciated these submissions for perusing their evidentiary value. The relevant portion of the order reads as under:  
  
*'10. We have considered the submissions made by the applicant in their application for advance ruling as well as at the time of personal hearing and in subsequent submission dated 24.06.2020.....'*
- (iii) In the submissions dated 24.06.2020, appellant has submitted the evidences establishing that the contract awarded to RITES limited was

pertaining to Railways and work is in respect of railways owned by Ministry of Railways. However, in para 14.3.3 of the impugned order, GAAR has mentioned that no evidence has been produced by the appellant. Therefore, there is a breach of principles of natural justice as given reasons in support of conclusions arrived at is an ingredient of principles of natural justice. The reasons must show proper application of mind. In CCT v. Shukla & Bros.(2010)4SCC 785, the Supreme Court held thus:

*'14.The principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to the administrative authorities certainly requires that the judgement of the court should meet with this requirement with higher degree of satisfaction. The order of an administrative authority may not provide reasons like a judgement but the order must be supported by the reasons of rationality. The distinction between passing of an order by an administrative or quasi-judicial authority has practically extinguished and both are required to pass reasoned orders'.*

- (iv) *In Tata Engineering & Locomotive Co.ltd. vs. Collector of Central Excise, Pune, 2006(203)ELT360(SC), the Supreme Court held that it is not sufficient in a judgement to give conclusions alone but it is necessary to give reasons in support of the conclusions arrived at. The court, set aside the order of the Tribunal as the findings recorded by the Tribunal were cryptic and non-speaking, and remitted the matter back to the Tribunal for taking a fresh decision by a speaking order in accordance with law after affording due opportunity to both the sides.*
- (v) Impugned order shall be set aside and quashed being irrational because the evidentiary value of the submission dated 24.06.2020 has not been evaluated by the GAAR and no reasons in support of conclusion arrived in para 14.3.3 of the impugned order has been afforded.

**C.NHSRCL is incorporated with the sole objective of 'High Speed Rail Services' and is owned by the Ministry of Railways. Therefore, it is a 'Government Railway' and work allotted to the main contractor is pertaining to Railways, The 'Letter of Acceptance' issued by NHSRCL establishes that work is in respect of Railways.**

- (i) As mentioned in facts of the case, in 2016, the Ministry of Railways fast tracked the project and set up a Special Purpose Vehicle (SPV), named the NHSRCL to build and operate the corridor. The company was registered in January, 2016 in the name of Indian Railways and was registered under the Companies Act, 2013 on February 12, 2016. Copy of the Memorandum and Articles of Association along with Certificate of Incorporation has been enclosed herewith as Annexure-I(Colly.). The object clause of NHSRCL reads as under:  
"1.To plan, design, develop, build, commission, maintain, operate and finance High Speed Rail Services between the State of Maharashtra and State of Gujarat and/or for any other area either on its own or by taking over or leasing or otherwise on any other model and build new transit



routes of any mode or a combination of modes with all attendant infrastructural facilities including but not limited to:

- i) Providing and/or facilitating provision of said rail infrastructure and other services including owning/licensing and operating rail, bus routes, passengers and goods carriers, other road vehicles and other modes of transport and providing seamless transportation services.
- ii) Upgradation, strengthening, doubling or conversion or any or all components of existing systems.
- iii) Electrification of systems including but not limited to traction and general power supply systems and public utility systems.

.....”

- (ii) NHSRCL is created for construction of Mumbai-Ahmedabad High Speed Rail Project and is owned by the Ministry of Railways. As per annual report of NHSRCL for FY 2018-19, 95.72% equity share capital is owned by the Ministry of Railways, Government of India and remaining 4.28% equity is owned by Government of Gujarat. Appellant has attached copy of the relevant abstract of annual report as Annexure-7.
- (iii) NHSRCL is covered under definition of ‘Government railway’ as per Section 2(20) of the Railways Act, 1989 which is reproduced hereinbelow for reference:  
2.Definition  
*(20)Government railway means a railway owned by the Central Government.*
- (iv) The documentary evidences submitted in annexure-1 and 7 of the appeal paperbook establishes that work has been awarded in respect of ‘Government Railway’. Also, it is substantiated from the agreement between main contractor and NHSRCL, attached as Annexure-2 to the appeal paperbook. As per letter No.NHSRCL/MA/CE01/RITES-STN/40.1/405 dated 04.10.2017, ‘Letter of Acceptance’ was issued by NHSRCL to the main contractor for shifting of existing Railway Infrastructure and other utilities in connection with Construction of Mumbai-Ahmedabad High Speed Rail Project.
- (v) For execution of the same work, main contractor had awarded the work of ‘Construction of Pavement, Track work, Warehouse, Admin Building, E&M works and other miscellaneous works at Khodiyar, Gandhinagar, Gujarat’ to the appellant vide work order no.Rites/RPO-ADI/NHSRCL/CONCOR/DCT-KHD/2018 dated 13.06.2018,copy of which is attached as Annexure-4.
- (vi) In order to further substantiate the fact that present work pertains to railways, appellant wrote a letter to the main contractor asking for clarification in relation to work given to them and taxability of works by the main contractor. The main contractor has replied vide letter dated 23.06.2020 as under:
  - a) NHSRCL have given the work to main contractor for the shifting of existing Railway Infrastructure and Other Utilities at Sabarmati, Ahmedabad and Vadodara in connection with construction of High Speed Rail Projects.
  - b) Main contractor raises the invoice to NHSRCL at the rate of 12%. A copy of this letter was submitted before GAAR on 24.06.2020 and attached with this appeal paperbook as Annexure-5.
- (vii) For the purpose of taking license from the Licensing Officer to employ contract labour at the work site, authorization of the contractor is

issued by the Principal Employer in Form III of Contract Labour(Regulation & Abolition) Central Rules, 1971 for submission to the Licensing Officer and on the basis of the same, the License in Form VI is issued by the Licensing Officer. In said License issued in Form VI, name of the works contractor as well as Principal Employer is mentioned specifically. In the instant case, authorization by Principal Employer in Form III has been issued to the appellant by 'The Chief Project Manager, National High Speed Rail Corporation limited(NHSRCL), Ahmedabad and the License issued in Form VI by 'The Licensing Officer' indicates name of the appellant as 'contractor' and name of Chief Project Manager, NHSRCL as 'Principal Employer'. Copy is attached as Annexure-5.

- (viii) Above documents prove beyond doubt that impugned contract has been allotted with reference to NHSRCL and is pertaining to railways.

7. The appellant has submitted that the present appeal is lodged manually before the Hon'ble authority on account of non-availability of functionality to file it electronically and in terms of Rule 107A of the GST Rules reproduced hereinbelow:

**107A. Manual filing and processing.**- *Notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules.*

8. The appellant has concluded his submission with a request to set aside/modify the impugned advance ruling passed by the Authority of Advance Ruling or pass any such further or other order as may be deemed fit and proper in facts and circumstances of the case.

9. The appellant vide their additional submission dated 19.10.2020 has submitted copies of a few case laws relied by them in their application for records:

- (i) Decision made by the Hon'ble Authority for Advance Ruling, Karnataka in the case of M/s. Quatro Rail Tech Solutions limited reported as 2019(10)TMI 1134 as referred in Para A(iii) of the application on page no.13 of the paper book (attached as Annexure-I).
- (ii) Decision made by the Hon'ble Appellate Authority for Advance Ruling, Maharashtra in the case of M/s. Shree Constructions reported as 2019(3)TMI 1567 as referred in Para A(vi) of the application on Page no.14 of the paper book(attached as Annexure II).
- (iii) Decision made by the Hon'ble Authority for Advance Ruling, West Bengal in the case of M/s. RITES limited reported as 2018(12)TMI 1226 as referred in Para A(xiii) of the application on Page no.16 of the paper book(attached as Annexure III).
- (iv) As mentioned in Para 'C' of Grounds of Appeal on Page No.17 of the paper book 'NHSRCL' is incorporated with the sole objective of 'High Speed Rail Services' and is owned by the Ministry of Railways. Therefore, it is a 'government Railway' and work allotted to the main contractor is pertaining to Railways. The 'Letter of Acceptance' issued by NHSRCL establishes that work is in respect of Railways.'

**10.** The appellant has further submitted that Section 2(20) and 2(25) of the Railways Act, 1989 defines 'Government railway' and 'Non Government Railway' as reproduced below:

*Section 2(20) 'Government railway' means a railway owned by the Central Government:*

*Section 2(25) 'Non-Government railway' means a railway other than a Government railway.*

**11.** The appellant has submitted that though as per their understanding (as already mentioned in C.(ii) and (iii) on page no.18 of the paper book), as NHSRCL is created for construction of Mumbai-Ahmedabad High Speed Rail Project and is owned by Ministry of Railways by way of ownership of 95.72% equity share capital, NHSRCL is covered under definition of 'Government railway' under section 2(20) of the Railways Act, 1989 as referred above; that even if it is considered that NHSRCL is not a 'Government Railway', then the same will be covered as 'Non-Government Railway'; that the documentary evidence as already submitted in Annexure-1, 2, 4 and 5 clearly establishes that the impugned contract has been allotted with reference to the NHSRCL and is pertaining to Railways as defined under Section 2(31) of Railway Act, 1989. The appellant has also stated that they had sought copies of invoices by M/s RITES ltd.(the main contractor) to NHSRCL in respect of the said works contract and M/s. RITES ltd. had shared a few copies of invoices being issued to NHSRCL against the said work and has charged GST@ 12% and has submitted copies of the same.

**FINDINGS :-**

**12.** There has been change in one of the two Members of the authority consequent upon the transfer and posting of the Chief Commissioner, Central Goods and Services Tax, Ahmedabad Zone after personal hearing has been held in this case. However, the appellant has specifically requested vide letter dated 03.12.2020 to decide the appeal on the basis of their submissions and the discussion held at the time of personal hearing.

**13.** We have considered the submissions made by the appellant in the appeal filed by them, their contentions during the course of personal hearing, the additional submissions given by them as well as evidences available on record. We have also gone through the Ruling given by the GAAR. The Advance Ruling was sought for by the appellant to know '*whether the work done by them can be covered under clause 3(v)(a) of the Notification No.11/2017-Central Tax(Rate) dated 28.06.2017 i.e. Works Contract by way of construction, erection, commissioning or installation of original works pertaining to railways so as to entitle it for charging rate of GST@12% instead of 18%?*' GAAR vide Advance Ruling No.GUJ/GAAR/R/36/2020 dated 03.07.2020 ruled that the said contract work is not covered under clause 3(v)(a) 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 on the grounds that the 'Works Contract' does not pertain to Railways. The appellant has challenged the aforementioned order of the Advance Ruling authority. The issue in the present appeal filed by the appellant is restricted to establishing whether the present 'Works Contract' pertains to Railways or otherwise for which a reference is required to be made to clause 3(v)(a) of the Notification No.11/2017-Central Tax(Rate) dated 28.06.2017.

**14.** Entry No.3(v)(a) 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 and further amended vide Notification No.03/2019-Central Tax(Rate) dated 29.03.2019 reads as under:

S. No.	Chapter, Section or Heading	Description of Service	Rate(per cent)	Condition
(1)	(2)	(3)	(4)	(5)
2	Section 5	Construction services.		
3.	Heading 9954 (Construction services)	-----		
		-----		
		(v) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, [other than that covered by items(i) (ia)(ib)(ic)(id),(ie) and (if), supplied by way of construction, erection, commissioning, or installation of original works pertaining to,- (a) railways, including monorail and metro;	6	

**14.1** In view of the above, the contract of the appellant should satisfy all the following 3 conditions to get covered under the above entry:

- (i) The Contract must be a composite supply of Works Contract;
- (ii) The Work must be supplied by way of construction, erection, commissioning, or installation of original works.
- (iii) It must pertain to Railways.

**14.2** The GAAR vide their Advance Ruling order dated 03.07.2020 has found that these works are in the nature of new works executed and also gets covered under the definition of 'original works' as defined in clause (zs) of Notification No.12/2017-Central Tax(Rate) dated 28.06.2017. They also found that since the work is relating to an immovable property wherein transfer of property in goods is involved, the entire contract is covered under the definition of 'Works Contract' as defined under Section 2(119) of the CGST Act, 2017 and accordingly found that the conditions mentioned at (i) and (ii) in para above were fulfilled/satisfied. However, they found that the appellant had not produced any evidence that the work allotted to M/s. RITES ltd. was pertaining to railways as defined in Section 2(31) of the Railways Act, 1989; that no supporting evidence in the form of agreement between M/s. RITES ltd. and Ministry of Railways was produced to establish the same; that there was no evidence on record whether the work has been awarded in respect of 'Government Railway' or 'Non-Governmental Railway'. Since there was no conclusive proof that the work pertains to railways, they found that the third condition above was not satisfied and accordingly ruled that the said contract work is not covered under clause 3(v)(a) of Notification No.11/2017-Central Tax(Rates) dated 28.06.2017 as amended by Notification No.20/2017-Central Tax(Rate) dated 22.08.2017.



**15.** We find that the appellant has submitted the following documents with regard to the work done by them:

- (i) Copy of Memorandum and Articles of Association of National High Speed Rail Corporation Ltd.
- (ii) Letter of Acceptance No.NHSRCL/MA/CE01/RITES-STN/40.1/405 dated 03/04.10.2017 issued by NHSRCL to M/s. RITES ltd. regarding shifting of Existing Railway Infrastructure and Other Utilities in connection with construction of High Speed Rail Projects.
- (iii) Pages 1 to 4 of the Tender and Contract document issued by M/s. RITES ltd. regarding Construction of Pavement, Track work, Warehouses, Admin Building, E&M works and other miscellaneous works at Khodiyar, Gandhinagar, Gujarat.
- (iv) Letter of acceptance No.RITES/RPO-ADI/NHSRCL/CONCOR/DCT-KHD/2018 dated 13.06.2018 issued by M/s. RITES ltd. to M/s. J.K.Associates, M/s.Sanjeev Kumar Goyal Contractor & M/s. NMC Industries pvt.ltd. JV (the appellant) with regard to the work of Construction of Pavement, Track work, Warehouses, Admin Building, E&M works and other miscellaneous works at Khodiyar, Gandhinagar, Gujarat.
- (v) Letter dated 24.06.2020 addressed to the Registrar, GAAR, Ahmedabad vide which they have given additional submission to GAAR.
- (vi) Copy of letter dated 23.06.2020 issued by M/s. RITES ltd. to the appellant in response to their letter dated 16.06.2020.
- (vii) Copy of letter dated 16.06.2020 issued by the appellant to M/s. RITES ltd.

**16.** As per the submission of the appellant, the appellant was awarded the aforementioned 'Works Contract' from M/s. RITES ltd. The chain of events that resulted in the Works Contract' being awarded to the appellant is as under:

- (i) M/s.National High Speed Rail Corporation Ltd. (M/s.NHSRCL) has issued Letter of Acceptance No.NHSRCL/MA/CE01/RITES-STN/40.1/405 dated 03/04.10.2017 to M/s. RITES ltd. regarding the work of shifting of Existing Railway Infrastructure and Other Utilities in connection with construction of High Speed Rail Projects worth Rs.700 crores.
- (ii) Based on this, RITES ltd. has issued Notice inviting tenders for the work regarding 'Construction of Pavement, Track work, Warehouses, Admin Building, E&M works and other miscellaneous works at Khodiyar, Gandhinagar, Gujarat.
- (iii) M/s.RITES ltd. has awarded the contract worth Rs.49.27 crores (approx.) to the appellant vide Letter of acceptance No. RITES/RPO-ADI/NHSRCL/ CONCOR/DCT-KHD/2018 dated 13.06.2018 for the above work.

**17.** From the details submitted by the appellant, we find that M/s. NHSRCL is a Government Body wherein the Ministry of Railways holds equity shares of 95.72% and Government of Gujarat holds 4.28% of the remaining equity shares. As per Wikipedia, the National High Speed Rail Corporation Limited (NHSRCL) has been incorporated in 2016 with an object to finance, construct, maintain and manage the High Speed Rail Corridor in India. National High Speed Rail Corporation Limited (NHSRCL) has been formed under the Ministry of Railways, Government of India, for the development and implementation of the high speed rail projects in India. As per the Memorandum and Articles of

Association of National High Speed Rail Corporation ltd., the object clause of NHSRCL reads as under:

“1.To plan, design, develop, build, commission, maintain, operate and finance High Speed Rail Services between the State of Maharashtra and State of Gujarat and/or for any other area either on its own or by taking over or leasing or otherwise on any other model and build new transit routes of any mode or a combination of modes with all attendant infrastructural facilities including but not limited to:

- i) Providing and/or facilitating provision of said rail infrastructure and other services including owning/licensing and operating rail, bus routes, passengers and goods carriers, other road vehicles and other modes of transport and providing seamless transportation services.
- ii) Upgradation, strengthening, doubling or conversion or any or all components of existing systems.
- iii) Electrification of systems including but not limited to traction and general power supply systems and public utility systems.

.....”

**17.1** Thus, it is very much apparent from a plain reading of the above that the objective/work of NHSRCL is related to railways. Further, as per the details of M/s. RITES ltd online, we find that Rail India Technical and Economical Services limited (RITES ltd.)is a Public Sector Undertaking wherein ownership of the Government of India(72.02% in equity shares). As per Wikipedia, RITES Ltd, is an engineering consultancy company, specializing in the field of transport infrastructure. Established in 1974 by the Government of India, the company's initial charter was to provide consultancy services in rail transport management to operators in India and abroad. RITES has since diversified into planning and consulting services for other infrastructure, including airports, ports, highways and urban planning.

**18.** The appellant, vide their letter dated 16.06.2020 issued to M/s. RITES ltd. had asked them as to: (i) which Railway Agency/Corporation had awarded the Works Contract (in the instant case) to M/s. RITES ltd. which in turn was awarded to the appellant and (ii) What rate of GST was being charged by RITES ltd. while raising invoice to M/s.NHSRCL in respect of the impugned contract. In response, M/s. RITES ltd. vide their letter dated 23.06.2020 had replied that National High Speed Rail Corporation ltd. had given the work to M/s.RITES ltd. as per Letter No.NHSRCL/MA/CE01/RITES-STN/40.1/405 dated 03/04.10.2017 of NHSRCL and that RITES ltd. raised the invoices to NHSRCL at the rate of 12%. We have also gone through the above letters as well as copies of two sample invoices issued by M/s. RITES ltd. to M/s. NHSRCL (submitted by the appellant in their additional submission) and find that M/s.RITES ltd has charged 12% GST in the said invoices. From the above, we find that the ‘Work Contract’ in the instant case, has been awarded to M/s. RITES ltd. by M/s.NHSRCL which has been formed under the Ministry of Railways, Government of India and is a Government Body engaged primarily in the work related to Railways only. Further, as per the letter of acceptance dated 03/04.10.2017 issued by M/s.NHSRCL to M/s.RITES ltd., the work pertains to shifting of Existing Railway Infrastructure and Other Utilities in connection with construction of High Speed Rail Projects and therefore, it appears that the work allotted is with regard to railways only. Also, since M/s.RITES ltd. has issued the Letter of Acceptance to the appellant based on the above contract only, it is very much apparent that the work allotted to the appellant also pertains to Railways only. Further, the appellant has also submitted a copy of certificate issued by

the Principal Employer i.e. M/s.NHSRCL [under Rule-21(2) of the Contract Labour (Regulation & Abolition) Central Rules, 1971] under Form-III wherein it is mentioned that they have engaged M/s. J K Associates, M/s. Sanjeev Kumar Goyal Contractor & M/s. NMC Industries pvt.ltd.(JV) (the appellant) for work of construction of pavement, track work, warehouse, admin building, E&M work and other misc.works at Khodiyar, Gandhinagar, Gujarat to be carried out from 28.06.2018 to 27.04.2019. Also, as per the scope of work given as per the submission of the appellant as well as copy of Tender issued by M/s. RITES ltd., it appears that the work is pertaining to 'Railways'. Further, the term 'Railways' is defined under the section 2(31) of the Railway Act, 1989 and reads as under:

*“31. ‘railway’ means a railway, or any other portion of a railway, for the public carriage of passengers, or goods, and includes-*

- (a) All lands within the fences or other boundary, marks indicating the limits of the land appurtenant to a railway;*
- (b) All lines of rails, sidings or yards, or branches used for the purpose of, or in connection with a railway;*
- (c) All electric traction equipments, power supply and distribution installations used for the purpose of, or in connection with, a railway.*
- (d) All rolling stock, stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, road and streets, running rooms and rest houses, institute, hospitals, water works and water supply installations, staff dwellings and any other work constructed for the purpose of, or in connection with the railway;*
- (e) All vehicles which are used on any road for the purpose of traffic of a railway and owned, hired or worked by railway; and*
- (f) All ferries, ships, boats and rafts which are used on any canal, river, lake or other navigable inland waters for the purpose of the traffic or a railway and owned, hired or worked by a railway administration.*  
*but does not include*
  - (iii) A tramway wholly within a municipal area; and*
  - (iv) Lines of rails built in any exhibition ground, fair, park, or any other places solely for the purpose of recreation.’*

**18.1** As per the submission of the appellant as well as copy of Tender issued by M/s. RITES ltd., the scope of work as envisaged under the tender includes:

*‘Brief scope of work:*

*The brief scope of works as per clause 1.4 of the Tender Document (copy enclosed as Annexure-VII) reads as under:*

*Phase-I works*

- 1. Track work complete as per Layout Plan.*
- 2. Pavement along the track as per layout plan (Approx. 30500 sqm).*
- 3. High mast lighting in the pavement along the track.*
- 4. Admin Building (G+1, Approx. 475 sqm per floor) including all civil, electrical, water supply, sanitary and fire-fighting works.*
- 5. Electrical sub-station(ESS).*
- 6. Main entry gate and security cabin.*
- 7. Electrical installations in admin building, ESS, entry gate, security gate etc.*

*Phase-II works*

- 1. Warehouse – 3 nos. of 140x30 m each (3x4200 sqm = 12600 sqm).*
- 2. Balance Pavement area like area around warehouse and connecting road between pavement near track and pavement around warehouse.*

3. *EIMWB and EIMWB room.*
4. *Electrical and fire-fighting works.*
5. *Other miscellaneous works as per requirement.'*

**18.2** On going through the above, we feel it prudent to refer to the meanings of some of the terms mentioned hereinabove, to find out their relation to Railways. However, since we do not find the definitions of any of the terms in the CGST Act, 2017, the CGST Rules, 2017 or the Railway Act, 1989, the same will have to be derived in generic terms or based on the Dictionary. To begin with, we will refer to the dictionary meaning of 'Trackwork'. As per Wordnik Dictionary, the meaning of 'Trackwork', is **'Construction or maintenance of railroad tracks'**, Further, as per Wikipedia, Track is explained as under:

*'The track on a railway or railroad, also known as the permanent way, is the structure consisting of the rails, fasteners, railroad ties (sleepers, British English) and ballast (or slab track), plus the underlying subgrade. It enables trains to move by providing a dependable surface for their wheels to roll upon. For clarity it is often referred to as railway track (British English and UIC terminology) or railroad track (predominantly in the United States). Tracks where electric trains or electric trams run are equipped with an electrification system such as an overhead electrical power line or an additional electrified rail.'*

Therefore, on going through the work mentioned at Sr.No.1,2 and 3 (of Phase-I works), it appears that the same pertains to construction of the railway track, pavements alongside it as well as and high mass lighting on the pavement along the track. Similarly, Sr.No.1 and 2 (of Phase-II works) appears to pertain to construction of warehouse as well as construction of Balance Pavement area like area around warehouse and connecting road between pavement **near the track and pavement around warehouse**. Further, 'EIMWB' mentioned at Sr.No.3 of Phase-II works above, stands for **'Electronic Inmotion weighment Bridge** and pertains to Railways only. Similarly all the other works enlisted in para 18.1. above also appear to pertain to Railways only. On comparing the details of the scope of work provided in para 18.1 above to the definition of 'Railways' as mentioned in para-18 above, we find as under:

- (i) Work mentioned at Sr.No.1 and 2 (in Phase-I works above) appears to pertain to Section 2(31)(b) of the definition of 'Railways'.
- (ii) Work mentioned at Sr.No.3, 5 and 7 (in Phase-I works above) appears to pertain to Section 2(31)(c) of the definition of 'Railways'.
- (iii) Work mentioned at Sr.No.4 and 6(in Phase-I works above) appears to pertain to Section 2(31)(d) of the definition of 'Railways'.
- (iv) Work covered under Sr.No.1, 2 and 5 (in Phase-II works above) appears to pertain to Section 2(31)(d) of the definition of 'Railways'.
- (v) Work covered under Sr.Nos.3 & 4 (in Phase-II works above) appears to pertain to Section 2(31)(d) of the definition of 'Railways'.

**18.3** Therefore, as discussed above, we find that the 'Work Contract' allotted to the appellant by M/s.RITES ltd. undoubtedly pertains to Railways only. We therefore find and conclude that the 'Work Contract' allotted to the appellant by M/s. RITES ltd. is covered under Clause 3(v)(a) of Notification No.11/2017-Central Tax(Rate) dated 28.06.2017 as amended from time to time as it fulfills all the conditions therein i.e. it is 'Work Contract' involving 'Original work' pertaining to 'Railways'

**19.** We also find that the appellant has relied upon decisions made by the Authorities of Advance Ruling/Appellate Authorities of Advance Rulings such as



(i) Decision made by the Hon'ble Authority for Advance Ruling, Karnataka in the case of M/s. Quatro Rail Tech Solutions limited reported as 2019(10)TMI 1134.  
(ii) Decision made by the Hon'ble Appellate Authority for Advance Ruling, Maharashtra in the case of M/s. Shree Constructions reported as 2019(3)TMI 1567(iii) Decision made by the Hon'ble Authority for Advance Ruling, West Bengal in the case of M/s. RITES limited reported as 2018(12)TMI 1226, to support their contention. We would like to emphasize here that decisions of Advance Ruling Authorities cannot be relied upon by the appellant, since, as per the provisions of Section 103 of the CGST Act, 2017, the Advance Ruling pronounced by the Advance Ruling Authority or the Appellate Authority shall be binding only on the applicant who had sought it in respect of any matter referred to in sub-section(2) of Section 97 for Advance Ruling and the concerned officer or the jurisdictional officer in respect of the applicant.

**20.** In view of the foregoing, we, allow the appeal filed by the appellant M/s.SKG-JK-NMC Associates(JV), Gandhinagar and modify the Advance Ruling No. GUJ/GAAR/R/36/2020 dated 03.07.2020 issued by the GAAR, by holding that the Work Contract of the appellant is covered under Clause3(v)(a) of the Notification No.11/2017-Central Tax(Rate) dated 28.06.2017 as amended from time to time for the reasons discussed hereinabove.

**(J. P. Gupta)**  
Member

**(Seema Arora)**  
Member

Place : Ahmedabad  
Date :28.06.2021.