



BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING
For the State of Andhra Pradesh (Goods and Service Tax)
Office of the Joint Commissioner of State Tax, Govt. of A.P. D NO 5-56, Block-B,
K.P. Jagan Mohan Reddy Apartment, Bunder Road, Durgam Cheruvu, Vijayawada,
Andhra Pradesh - 521044

Present:

Sri L. B. HARESH, (Member)(Central Tax)

Sri. J. SYAMALA RAO, (Member)(State Tax)

The 24th day of April 2019

Order No.AAR/AP/03/GST/2019

In

Application No.AAR/03/GST/2019

1	App/cont	M/s Vijal Electricals Ltd, GSTIN No.37AAACV7259B1Z3 DNO 4 70-1513, Lawsons Bay Colony, Visakhapatnam, AP 530017
2	Person for the Appeal	Sri A. Venkateswulu
3	Date of Personal Hearing	12 th April, 2019

ORDER

M/s Vijal Electricals Limited, GSTIN No.37AAACV7259B1Z3.D no: 4-70 1513, Lawsons Bay Colony, Visakhapatnam, AP 530017, (hereinafter referred to as appellant.) The appellant is engaged in electrification work to the APFNDCL for procurement of plan, design, supply, instal and commission certain facilities viz., providing under ground cable work in Visakhapatnam city, package-1 and package-3 (replacement of existing 33/11 KV substation of Zone 1 division Visakhapatnam) with underground power cable net work on turnkey basis.

The appellant had filed an application before the Appellate Authority for Advance Ruling in ARA-02 dated 19.02.2018, containing the Ruling passed by the AAR, A.P vide Ruling AAR NO.29 /AP/GST/2016, Dated: 19.12.2016.

Brief History of the Case:

The appellant in his plea to the AAR, A.P has raised following questions.

1. Whether the tax rate of 12 % [CGST - 6 % + SGST-6 %] is applicable to contract, in pursuance of Notification No. 20/2017 Central Tax

(Rate) dated: 22-08-2017 and No.24/2017- Central Tax (Rate)dated.21-10-2017

2. Whether the work contract services provided to Eastern Power Distribution Company of Andhra Pradesh Limited falls under the category of services provided to government or a government authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of work respecting works specified works services as notified in the notification no.20/2017 Central Tax (Rate) dated:22nd August 2017.

The Authority for Advance Ruling, A.P, had held that even though APEPDCL is covered under Government entity, the appellant is not entitled for the benefit of concessional rate of GST @ 12% (6% under Central tax and 6% State tax) in terms of Notification No. 24/2017 Central Tax (Rate) dated 27.10.2017 read with notification no 31/2017 Central Tax (Rate) dated:13.11.2017, as the works undertaken by APEPDCL are for business purpose. Moreover, the transaction of the appellant comes under the work contract and falls under entry no. (ii) of S. No. 3 of the table of notification no.11/2017 Central Tax (Rate), Dated:- 26th June 2017 as amended from time to time and corresponding notifications under APEST Act, 2017, and the applicable rate of tax is 18% (9% under Centre tax and 9 % State tax.)

Aggrieved by the Ruling passed by the AAR, A.P vide Ruling AAR NO.29 /AP/051/2018, Dated:13.12.2018, the appellant preferred the present Appeal before the Appellate Authority for Advance Ruling, in ARA-22, with the following contention.

Whether the works contract services rendered by M/s Viji Electricals Ltd to APEPDCL is eligible for concessional rate of GST? If so, whether entry no. (ii) (a) of notification No. 24/2017 (Central Tax Rate) dated: 27/10/2017 is applicable i.e., 12 %.

Grounds of appeal:

The appellant (M/s Viji Electricals) preferred appeal in light of the developments taken place relating to the Ruling in AAR NO.29 /AP/051/2018, Dated:13.12.2018, after the Order of Authority for Advance Ruling is stated to the service recipient (APEPDCL). The service recipient has raised some concerns and submitted some additional information for consideration regarding the applicability of rate notified in the notification No.24/2017, Central Tax (Rate) dt.20.10.2017. The appellant submitted that information as part of his appeal and requested to look into the case in light of the following developments / facts relating to the case

1) After the receipt of the order of SAR AP, the appellant addressed a letter to Executive Director, APEPDC, Visakhapatnam with a request to release the payments duly considering the Order of Authority for Advance Ruling.

2) The Executive Director, APEPDC, Visakhapatnam in response, stated that

they had received a clarification from the Project Management Unit (PMU), Revenue (TM) Department, Govt. of AP, dt. 30.10.2015 as below :

" As per notification No.11/2017, Central Tax (Rate) dt.28.6.2017 of Central Tax Rate and corresponding state tax notification vide GOMs No.259, dt.29.6.2017 / Revenue (CT:II) Dept., as amended from time to time, the rate of GST applicable to the works executed for the Central Government, State Government, Union Territory, a Local Authority or a Government entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of a civil structure or any other work meant predominantly for use other than for commerce, industry or any other business or profession, is 12%."

3) The Spl. Chief Secretary, Land & DM issued orders stating that their activity is public utility works, not commercial and the same may be informed to the concerned.

4) In support of the above clarification, the AP-PDCCL addressed a letter to the appellant with the clarification provided by the Commissioner for DM & HO Secretary to Government (FAC), Project Director, MCRMP / AP TRP as follows:

"As per Entry at Sl.No.3(v) of the table in notification No.11/2017 of Central Tax (Rate) dt.28.6.2017 and the corresponding state tax notification in GOMs No.259, dt.29.6.2017 / Revenue (CT:II) Dept., as amended from time to time, the rate of GST applicable to the works executed for the Central Government, State Government, Union Territory, a Local Authority or a Government entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of a civil structure or any other work meant predominantly for use other than for commerce, industry or any other business or profession, is 12% if the civil structure is meant for commercial or industrial or business purposes, the applicable GST rate is 14% as per Entry at Sl.No.3 (vii) of the table under the afore mentioned Central and State Notifications."

(5) Further, the appellant submitted the version of APEPDCCL that they are simply acting as project implementing unit (PIU) for implementing Resilient Electrical Network or Underground cabling component under the APDRP (Andhra

Pradesh Disaster Recovery Project) with funding assistance of the World Bank. Besides, they further claim that APEDCL works as PU, on behalf of AP Govt. and the project assets created out of this activity belongs to AP Govt alone and these works are public utility services, not in commercial nature, thereby it attracts concessional rate of GST i.e. 12%.

The appellant pleads that whether the tax rate of 12% (CGST 6% SGST 6%) is applicable to the contract, in pursuance of Notification No.20/2017 - Central Tax (Rate) dated 22nd August, 2017 and notification No.24/2017 Central Tax (Rate) dated 21.09.2017.

PERSONAL HEARING

The Personal Hearing was held on 12th April 2019, for which the authorized representative Sri. Venkateswarlu Bharathu attended and reiterated the written submission. The appellant made the following point at the time of Personal Hearing.

1. The works contract service availed by APEDCL from M/s Electricals Limited is meant for Government of Andhra Pradesh alone and squarely falls under the services to state government only.
2. The Project Monitoring Unit (PMU) of APDRP had identified the department (APEDCL) for implementing the project investments. APEDCL is responsible for actual execution of project works and further to maintain infrastructure created. In support of the claim, the explanation provided in notification no.17/2018 (Central Tax (Rate) dated 26th July 2018 is invoked and it is claimed that the transactions undertaken by APEDCL on behalf of Andhra Pradesh Government under APDRP are non-commercial in nature and does not amount to business."

Discussion & Findings:

We have gone through the written submission made by the appellant along with the Ruling pronounced by the Authority for Advance Ruling. On basis of the appeal and submission made by the appellant at the time of Personal Hearing, it is observed that the main issue of contention is whether APEDCL would fall in the definition of 'business' as per Notification no. 17/2018 dated 26.07.2018.

The explanation provided in Notification no. 17/2018 dated 26.07.2018, reads as,

"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."

When looked into the above explanation, the term "business" as defined above will not be applicable to the said transaction, as the transaction is not undertaken by the State Government in which it is engaged as public authority, but it is the activity undertaken by the APEPDCL, which is a company incorporated under the Companies Act, 1956 and having its registered office at Sai Shakti, Opp. Saraswati Park, Sabz Gardens, Vishakhapatnam - 530020, for carrying on the business of Distribution and Retail Supply of electrical energy within the Area of Supply (as defined in this license) and

with the powers and upon the terms and conditions specified therein. Moreover, APEPDCL is a Government entity and it does not fall under the explanation provided for 'business' vide notification 17/2015 (dated. 26-07-2015), which includes transaction undertaken by the Central Government, State Government or any Local Authority only.

As far as the plea made by the appellant is concerned, as per serial no. 3 of entry number (x) of notification no. 24/2017 Central Tax (Rate) dated 21-09-2017, the services provided by the appellant towards APEPDCL does not qualify "the category of services provided to Government Authority meant predominantly for use other than for commerce", as the services supplied by the appellant are purely commercial in nature even though the service recipient, i.e., APEPDCL is a Government entity.

With reference to the letters submitted by the appellant quoting various State Government Authorities such as, the Executive Director, APEPDCL, The Sr. Chief Secretary, Land & DM, and Commissioner for DM & HD Secretary to Government (FAC) Project Director, NCRMP / APDR stating that the activities of APEPDCL are non-commercial in nature attracting 12 % GST, we consider that these opinions had no legal validity as per the Act. In view of the classification of the services. Hence we do not find any merit in the above contention and rejecting the same due to the lack of legal or statutory support to the argument.

In view of the above discussion we find no valid ground to interfere with the Ruling given by the AAR, A.P.

ORDER

We uphold the decision of the Authority for Advance Ruling, A.R. confirming that the work contracts service rendered by M/s Vija Electricals (the appellant) to APEPDCL is not eligible for concessional rate of tax 12% as per serial no. 3 of entry no.1 (a) of notification no. 24/2017 Central Tax (Rate) dated 21.05.2017.

Sd/- J.Syamala Rao
Chief Commissioner (State Taxes)
Member

Sd/- B. Lakshmin
Chief Commissioner (Central Taxes)
Member



(In duplicate)

Assistant Commissioner (ST)
Assistant Commissioner (State Tax)
No. Chief Commissioner of State Tax,
Andhra Pradesh, Vijayawada

To:

1. M/s VIJA ELECTRICALS LIMITED, DNO 4/70/1313, Lowering Ray Colony, Visakhapatnam, A.P. *(By Regd Post)*

Copy to

1. The Assistant Commissioner (ST), China Waltair Circle, Visakhapatnam Division. *(By Regd Post)*
2. The Assistant Commissioner (CT) 10 & 22, Shiparam Circle, Berhampur Bajaj Showroom, Visakhapatnam., Andhra Pradesh, CEPDSD14-PSHC MAIL DATE, Visakhapatnam, Andhra Pradesh 530003 *(By Regd Post)*
3. The Authority for Advance Ruling, A.P. O/o the Chief Commissioner (ST), Bopugallu, Vijayawada