

THE CHATTISHGARH APPELLATE AUTHORITY FOR ADVANCE RULING

GOODS AND SERVICES TAX

(Constituted under Section 99 of the Chattishgarh Goods and Services Tax Act, 2017)

ORDER NO. CG/AAAR/01/2018-19

Date-14.11.2018

BEFORE THE BENCH OF

(1) Ashok Kumar Pandey , Member, (2) Sangeetha P., Member,

GSTIN Number	22AAECA1203A1ZX
Legal Name of Appellant	A2Z INFRA ENGINEERING LIMITED
Registered Address/Address provided while obtaining user id	B-18,AMRAPALI SOCIETY,RAIPUR CHATTISHGARH
Details of appeal	Appeal No.01 /GST-AAAR- /2018-19 dated 12.11.2018 against Advance Ruling No. STC/AAR/03/2018 Raipur dated 19.07.2018

PROCEEDINGS

(under section 101 of the Central Goods and Services Tax Act, 2017 and the Chattishgarh Goods and Services Tax Act, 2017)

At the outset, we would like to make it clear that the provisions of both the CGST Act and the CGGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the CGGST Act.

The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Chattishgarh Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and CGSGST Act”] by A2Z INFRA ENGINEERING LIMITED(hereinafter referred to as the “Appellant”) against the Advance Ruling No. STC/AAR/03/2018 dated 19.07.2018 .



BRIEF FACTS OF THE CASE

1. M/s A2Z Infra Engineeringz Ltd., Raipur (hereinafter referred to as “Appellant”) is fully integrated Electrical Business Group in India engaged in providing maintenance and engineering services.

2. Government of India has launched Integrated Power Development Scheme (IPDS) for the urban/Semi-urban areas for Strengthening of Quality distribution of power, installation of solar panels etc.

3. That, Chhattisgarh State Power Distribution Company Limited(hereinafter referred to as "CSPDCL") have been entrusted to execute the project i.e. implementation of IPDS Scheme of Government of India for:

(i) Strengthening and augmentation for Sub-transmission & Distribution Infrastructure and

(ii) Electrification Work in 15 Circles (through eight packages) in Chhattisgarh State on behalf of Government of Chhattisgarh.

4. CSPDCL had floated a tender to award the aforesaid specified work and after successful bidding, the Appellant has been awarded the works contract service by CSPDCL.

5. The appellant believes that its supply should be treated as supply of services which attracts Notification No 11/2017 dated 28.06.2017 as amended by 24/2017 dated 21.09.2017 State Tax(Rate) as a result of which the rate of tax on its supply to (CSPDCL) would be 6% CGST and 6% CCGST. Consequently, the Appellant has sought an Advance Ruling for seeking clarification as to which rate of tax should be levied on services rendered by it.

6. The bench of Authority for Advance Ruling vide its order no. STC/AAR/03/2018 dated 19.07.2018 negated the grounds raised by Appellant and held that applicable rate of tax for such supply shall be 9% CGST & 9% CCGST.

7. Aggrieved by this ruling of AAR, the appellant has filed an appeal against the said ruling under section 100(1) of the CGST Act 2017.



Grounds of Appeal

The appellant has stated following grounds of appeal in his application:

(i) It can be seen that only contention of the AAR While holding that 9% tax rate will be applicable is that the activities of the CSPDCL, as per their Memorandum of Association ("MOA"), are commercial in nature but according to the Appellant, the work undertaken by CSPDCL as per IPDS Scheme is non-commercial.

(ii) That, it is undisputedly mentioned by the Advance Ruling Authority that CSPDCL is Government Entity (refer Para 6.3 of AAR order dated 19 July 2018).

(iii) However, with respect to the condition as per notification 24/2017 dated 21/09/2017, the said work done must be meant predominantly for use other than for commerce, industry, or any other business or profession. It is held by AAR that the MOA of CSPDCL contains commercial objectives and thus, the aim of CSPDCL is commercial in nature and benefits of IPDS project would extend to all commercial users.

(iv) It is submitted that the IPDS Scheme has been formulated to keep pace with the increased demand of electricity as electricity is the most important factor in economic growth of any country and the most critical segment of Power Sector Chain including Generation, Transmission and Distribution, is the Distribution Sector. To ensure that electricity generated is effectively distributed, IPDS scheme has been implemented by Government of India.

(v) Further, an understanding can be drawn that even after completion of this project, no recovery will be made from the consumers. This IPDS Scheme is not for earning any profit or gain but for the benefit of India as a whole so that electricity reaches each and every corner of the state. (refer page no. 10 para 11 of the appeal)

(vi) Since the motive is development of electricity infrastructure, the same must be construed as non-commercial in nature and the work allotted to the Appellant as per the IPDS Scheme does not qualify to be either business, profession, commerce or industry. AAR while holding that benefit of IPDS project would extend to commercial user, failed to take into consideration the foremost reason why this project was launched in the first place as mentioned supra.

(vii) That, it could be inferred that the IPDS work to be implemented by CSPDCL is not for any business or commercial activity. This Scheme as envisaged by Government of India and implemented through State Government is for the benefit of community as a whole. Thus, it cannot be said that work undertaken by the Appellant for CSPDCL is commercial in nature and accordingly, such transaction must be chargeable to GST at reduced rate of 6% CGST and SGST each.

(viii) It is submitted that AAR has taken into consideration the objectives of work undertaken by CSPDCL through its MOA and held that the same amounts to be commercial in nature; however, for applicability of amended notification no. 24/2017 dated 21.09.2017, the nature of activity under dispute/question must be looked into. General work undertaken by the entity in its regular course of business cannot be a basis for denying the benefit of reduced rate of tax; what must be looked into is the nature of transaction/activity in question being undertaken by the Appellant.



(ix) That, nowhere in the order dated 19 July 2017 AAR has discussed the project allotted to Appellant, to hold the same as commercial except in para(vii) wherein the AAR has merely ruled that such project is commercial without providing any concrete grounds as to why the project of setting up better infrastructure for power in order to provide maximum reach and uninterrupted supply in semi-urban areas amounts to be commercial project in nature.

(x) Thus, the ground that CSPDCL undertakes commercial projects as per its MOA on which tax rate of 9% CGST and SGST has been ruled is wrong. Accordingly in the opinion of Appellant, the activity under consideration must be chargeable @ 6% CGST and SGST each.

PRAYER

In view of the foregoing, the prayer made by the appellant is as under:-

- a. To set aside the order in the Original Advance Ruling Application;
- b. Grant an opportunity for a personal hearing and make further submission of documents if any;
- c. Pass any such further or other order as may be deemed fit and proper in the facts and circumstances of the case.

Personal Hearing

8. Personal hearing in the matter was conducted on 14.11.2018, wherein the appellant was represented by Shri Anoop Gupta, CA, Shri M.S. Bhatia, Advocate and Shri Opendar Kumar, Sr. Taxation Manager, M/s A2Z Infra Engineering Ltd., Raipur(C.G.) who reiterated the written submissions made at the time of filing appeal as well as the additional submissions dated 14.11.2018 as stated below.

Additional Submission

9.(i) AAR has grossly erred in passing their order on the sole ground that the services provided by the CSPDCL are commercial in nature as per their MOA. However, the rate of tax needs to be determined looking at the actual use of structure which has been formed under consideration. Hon'ble AAR without going into such facts or observing the activity under consideration passed an order which is completely baseless and needs to be set aside.

(ii) That the Government of India has introduced this scheme so that the infrastructure of power can be improved in the backward areas and there can be seamless power supply to such areas. Therefore, the structures which were erected by the Appellant or the cables which were laid underground were done in order to



ensure that power distribution is improved which will ultimately help in economic development of the country.

Discussions and findings

10. Heard the appellant's arguments, wherein they have contested the ruling pronounced by the Advance Ruling Authority in respect of the prime objective of CSPDCL as well as the rate of tax applicable on the supply being made to it. Hence, the moot issue before us is to decide whether the activities undertaken or proposed to be undertaken of the appellant by way of supply of goods and services fall "within the scope and limits of Notification no. 24/2017 Central Tax (Rate) Dated 21 Sep 2017" and consequently determine the rate of tax of such supply. The said Notification reads as follows:-

[TO BE PUBLISHED IN THE GAZZETE OF INDIA, EXTRAORDINARY, PART II

SECTION 3, SUB-SECTION (i)]

**Government of India
Ministry of Finance
(Department of Revenue)**

Notification No. 24/2017-Central Tax (Rate)

New Delhi, the 21st September, 2017

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 9, subsection (1) of section 11, sub-section (5) of section 15 and sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby makes the following amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.11/2017- Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 690(E), dated the 28th June, 2017, namely:-

In the said notification, in the Table, against serial number 3, for item (vi) in column (3) and the entries relating thereto, in columns (3), (4) and (5), the following shall be substituted, namely:-

(3)	(4)	(5)
<p>“(vi) Services provided to the 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 meant for self-use or the use of their employees or other persons specified in paragraph 3 of</p>	<p>6</p>	<p>-</p>



the Schedule III of the Central Goods and Services Tax Act, 2017.		
(vii) Construction services other than (i), (ii), (iii), (iv), (v) and (vi) above.	9	-".

[F. No.354/173/2017 -TRU]
(Ruchi Bisht)

Under Secretary to the Government of India

Note:-The principal notification was published in the Gazette of India, Extraordinary, vide notification No. 11/2017 - Central Tax(Rate), dated the 28th June, 2017, vide number G.S.R. 690 (E), dated the 28th June, 2017 and was last amended by notification No. 20/2017-Central Tax (Rate) dated the 22nd August, 2017 vide number G.S.R. 1045(E), dated the 22nd August, 2017.

11. A bare reading of this Notification suggests that prime condition to avail the concessional rate of tax, is that services provided to the Central Government, State Government, Union Territory, a local authority or a governmental authority should predominantly for use other than for commerce, industry, or any other business or profession. The Advance Ruling Authority in their decision have elaborated at length that the Case of Appellant does not fulfill the conditions laid down in Clause (a) of the said notification for availing concessional rate of tax. The Appellant in his application stated that AAR has grossly erred in passing their order on the sole ground that the services provided by the CSPDCL are commercial in nature as per their MoA. However, the rate of tax needs to be determined looking at the actual use of structure. They further stressed that the objective of the work done under question is to be looked into and not the objectives of the entity undertaking the work. The whole argument of the Appellant revolves around the contention that objective of IDPS (Integrated Distribution of Power Scheme) not the objective of CSPDCL should be looked at for determining rate of tax.

12. It is well settled position of law that statute or notification relating to concessional rate of tax should be strictly interpreted i.e. literal rule of interpretation should be followed. In notification no. 24/2017-Central Tax (Rate), dated 21st September, 2017 in clause (a), emphasis has been given on the words "**meant for use other than for commerce, industry, or any other business**". The infrastructure intended to be provided by the Appellant under contract to CSPDCL will ultimately be used for distribution of electricity and it is undeniable fact that CSPDCL collects charges as per the tariff decided for distribution of electricity which undisputedly falls within the ambit of 'Commerce' or 'business'. Therefore appellant's argument that nobody is bearing the cost of IPDS scheme does not hold water as there is no stipulation to this effect in the notification. It is also nobody's case that the cost of IPDS will not be considered while fixing the tariff of electricity to be supplied in future.



Hence, this bench finds no anomaly in the decision and grounds relied upon by AAR.

Order

In the light of above discussion the Order of Advance Ruling Authority is hereby upheld.

-SD/-

(Ashok Kumar Pandey)
MEMBER

-SD/-

(Sangeetha P.)
MEMBER

TRUE COPY

MEMBER
APPELLATE AUTHORITY FOR
ADVANCE RULING, CHHATTISGARH