

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)

(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

ARN No.	AD271220007631P	
GSTIN Number, if any/ User-id	27AAHCA8165A1ZT	
Legal Name of Applicant	M/s. ARYAN CONTRACTOR PVT LTD	
Registered Address/Address provided while obtaining user id	5, Aditi Apartment, Left Bhusari Colony, Pune- 411038	
Details of application	GST-ARA, Application No.62 Dated 28.12.2020	
Concerned officer	PUNE-VAT-C-314	
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Works Contract
B	Description (in brief)	M/s Aryan Contractor Pvt. Ltd. Is providing work contract service to Main contractor and providing services in relation to work order of Main Contractor who has taken contract from State Govt.
Issue/s on which advance ruling required		<ul style="list-style-type: none"> Determination of the liability to pay tax on any goods or services or both
Questions on which advance ruling is required		As reproduced in para 01 of the Proceedings below

NO. GST-ARA- 62/2020-21/B- 55

Mumbai, dt. 27/04/2022

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and MGST Act” respectively] by M/s. ARYAN CONTRACTOR PVT LTD the applicant, seeking an advance ruling in respect of the following questions.

- How much GST Rate Applicable to Aryan Contractor Private Ltd (Subcontractor), 12% or 8%?
- Which Tariff Head applicable to Aryan Contractor Private Ltd (Subcontractor)?

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

provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. **FACTS AND CONTENTION – AS PER THE APPLICANT**

The submissions made by the applicant are as under:-

2.1 *M/s Aryan Contractor Pvt. Ltd. Is providing work contract service to Main contractor for providing services in relation to work order of Main Contractor who has taken contract from State Govt. and main contractor charged GST @ 12%. Scope of work include clearing & grubbing of existing ground removal of stumps and removal of unsuitable black cotton soil to the required depth and its disposal, earth work excavation, construction of embankment and also responsible for deployment of manpower, their safety and compliance to statutory obligation. Mining/ Quarrying stone quarry of NMSCEW at Aurangabad, Maharashtra State and operation of the stone crusher for production of stone aggregate for GSB and stone aggregate thought VSL. Further trimming of the side slips of hillock and ground surface to the required level as per the FRL to the surface of Top of sub-grade and further disposal of overburden, stone boulder to a designated place.*

2.2 *Applicant provides service of contractor for supply of labour, worker, employee, Material, Machinery and other staff for mining activity, carrying production in crushing unit and operation of crushing plants for manufacturing of finished product for Nagpur-Mumbai expressway package-09 from 390.445 to 448.845 in Aurangabad.*

2.3 *Blasting Mining/Quarrying Site is some time away from the actual work allotted to main contractor for Highway Development. Applicant agreed to provide such services for supply for labour, Material and machinery and machinery etc leading to production of finished product for a tentative quantity. The contractor shall provide its services at the plant and quarry owned by MEIL as per the terms and conditions.*

Applicant's Scope of Work are as under:-

1. *Hard rock quarrying by drilling and Blasting Activities at mine site.*
2. *Loading, transporting and unloading of blasted rock.*
3. *Transportation of blasted material from quarry area to plant area.*
4. *Curing –Sizing of rock in blasting plant as per the specification given by MEIL.*
5. *Operation of crusher including HSD, Lubricants & oils and any other equipment that are required, staff workers and electricity charges.*



6. Produce adequate insurance policies to meet all the risk and liabilities during the operation of quarry and crusher, its operators, driver's workers employees and other staff developed at mining, operation of plants.
 7. Produce adequate required for drilling & blasting, loading, Transportation of spalls to hoper and crushing operation.
 8. Bear cost/ Charges of diesel, consumables and spares to the D.G set (Diesel/electricity generating set installed by MEIL at crusher plants.
 9. Provide canteen/ Boarding/travelling and any other expenses to staff.
 10. Do the mining with the location showed by MEIL as per the road profile b/w mentioned chainage.
- 2.4 Applicant is providing works contract service to main contractor providing services in relation to work order of Main contractor who had taken contract from State Government and Main Contractor Charged @ 12% to Government.

B. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW AND/OR FACTS

- 2.5 If main contractor is awarded works contract of construction then subcontractor (Aryan Contractor Private Limited) comes under 12% slab.

03. CONTENTION – AS PER THE CONCERNED OFFICER:

The jurisdictional officer has not made any submissions in the matter.

04. HEARING

- 4.1 Preliminary e-hearing in the matter was held on 08.03.2022. The Authorized representative of the applicant, Shri. Ajay Rander, C A, was present. The Jurisdictional officer Shri. V. K. Kadam, STO, PUN-VAT-C-314 was also present. The authorized representative made submissions with respect to admission of the application. The jurisdictional officer was asked to file written submission within a weeks' time. Further the applicant was directed to produce relevant documents in support of contentions made and to produce copies of work orders and its details and the agreement between the main contractor and the government plus the copy of the agreement between the contractor and the subcontractor together with related work orders.
- 4.2 The application was admitted and called for final hearing on 29.03.2022. The Authorized representative of the applicant, Shri. Ajay Rander, CA, was present. The Jurisdictional officer



Shri. V.K. Kadam, STO, PUNE-VAT-C-314, was also present. Application was heard. The jurisdictional officer was again asked to file their written submissions within a weeks' time.

05. OBSERVATIONS AND FINDINGS:

5.1 We have perused the documents on records and considered the submissions made by the applicant. The jurisdictional officer has not made any submissions in the said matter in spite of having been directed, during the course of the hearings, to file written submissions.

5.2 Applicant has submitted that they provide service of contractor for supply of labour, worker, employee, Material, Machinery and other staff for mining activity, carrying production in crushing unit and operation of crushing plants for manufacturing of finished product for Nagpur-Mumbai expressway in Aurangabad and shall provide their services at the plant and quarry owned by Megha Engineering & Infrastructures Limited (MEIL) as per the terms and conditions.

5.3 The applicant has submitted WORK ORDER No. MEIL/3134/NME-P9/W.O./Excavation-Filing/2018-19/02 dated 31.10.2018 as a relevant document in support of its impugned activity.

We have perused the copy of the said agreement dated 31.10.2018 and observe as under:

As per clause 10.2 of the said Work Order dated 31.10.2018, the effective date of the impugned Work Order shall commence from 31.10.2018 and such commencement date of execution of Works shall be reckoned as the effective date.

b) Clause 10.1 of the said Work Order dated 31.10.2018 states that : **“The Contractor (applicant) has thoroughly understood the scope of work and shall complete the works by 31.12.2019 as directed by the Project Manager of MEIL. However, the Contractor shall endeavor to complete the works within the shortest possible time keeping in view of the project requirements”.**

c) As per clause 16.4 of the said Work Order, “Any delay beyond contractual completion date (mentioned in the work order) shall be liable to be levied Liquidated damages for delay or for shortfall in performance or progress or achieving the said targets.

5.5 From the above it is seen that the due date for completion of the impugned contract is 31.12.2019 and in case of delay, Liquidated Damages to be levied on the applicant.

5.6 The applicant has not brought anything on record to show that they have not completed the impugned works on or before 31.12.2019 which is a part of the subject Work Order. Further,



a reading of the clause 10.1 mentioned above, reveals that the date 31.12.2019 appears to be important in this case, in as much as, the applicant is required to perform the works as per the contract on or before 31.12.2019. In fact, the said clause clearly mentions that **the Contractor shall endeavor to complete the works within the shortest possible time**. Thus, there appears to be no scope for extension in the subject Work Order, after 31.12.2019.

5.7 Further, the copy of two Tax Invoices submitted by the applicant, are pertaining to Work Order No. MEIL/MSRDC/-P28/SOB-CONTRACT/2017-18/WO-1357 which is not the same as the impugned Work Order Number which is MEIL/3134/NME-P9/W.O./Excavation-Filing/2018-19/02.

5.8 In view of the above, we find that while the impugned contract was stipulated to end on 31.12.2019, the subject application in respect of the said contract has been filed only on 28.12.2020 i.e approximately one year after the impugned work/activity/supply was scheduled to be completed and was completed because nothing has been brought on record by the applicant to show that there was any extension of time granted to it after 31.12.2019 by MEIL to prove that the impugned activity was not completed.

We therefore refer to Section 95 of the CGST Act, 2017 and reproduce the relevant provisions as under:-

95. In this Chapter, unless the context otherwise requires,—

(b) "advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both **being undertaken or proposed to be undertaken** by the applicant

5.10 The above underlined words are very clear. The questions for obtaining an Advance Ruling can be asked by a supplier of goods or services or both, only in relation to the supply **being undertaken or proposed to be undertaken** and not in relation to any supply of goods or services or both which has already been undertaken and completed before.

5.11. Since provisions of Sec 95 (a) are very clear and unambiguous that a supplier can file application for advance ruling only in relation to the supply **being undertaken or proposed to be undertaken** and in the subject case the supply is supposed to have been completed on 31.12.2019 as per the impugned Work Order, the questions raised by the applicant cannot be answered, in terms of Section 95 mentioned above.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:



ORDER

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

For reasons as discussed in the body of the order, the questions are answered thus –

Question1: How much GST Rate Applicable to Aryan Contractor Private Ltd (Subcontractor), 12% or 18%?

Answer: - Not answered in view of discussions made above.

Question2: Which Tariff Head applicable to Aryan Contractor Private Ltd (Subcontractor)?

Answer: - Not answered in view of discussions made above.




RAJIV MAGOO
(MEMBER)


T. R. RAMNANI
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. The Joint Commissioner of State Tax, Mahavikas for Website.

Note:-An Appeal against this advance ruling order shall be made before, The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.