



BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH

Goods and Service Tax

D. No. 5-56, Block-B, R.K. Spring Valley Apartments, Eedupugallu, Vijayawada-521151

Present

1. Sri. D. Ramesh, Commissioner of State Tax (Member)
2. Sri. A. Syam Sundar, Additional Commissioner of Central Tax (Member)

AAR No.22/AP/GST/2021 dated: 23.07.2021

1	Name and address of the applicant	M/s. KPC Projects Limited, Flat No.31-15-29, Katurivari Street, Macharam Down, Vijayawada -520004, Andhra Pradesh.
2	GSTIN	37AACCK7073N1ZZ
3	Date of filing of Form GST ARA-01	13.03.2021
4	Hearing (Virtual)	29.06.2021
5	Represented by	Sri Sai Makarandh. P, Advocate
6	Jurisdictional Authority - Centre	Superintendent of Central CGST Suryaraopet Range, Vijayawada Division.
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	(a) classification of any goods or services or both; (b) applicability of a notification issued under the provisions of this Act;

ORDER

(Under sub-section (4) of Section 98 of Central Goods and Services Tax Act, 2017 and sub-section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and SGST Act, 2017 are in pari materia and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the APGST Act.
2. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to CGST Act and APGST Act respectively) by M/s. KPC Projects Limited (hereinafter referred to as applicant), registered under the AP Goods & Services Tax Act, 2017.

3. Brief Facts of the case:

The applicant, M/s. KPC Projects Limited entered into a contract with Andhra Pradesh Industrial Infrastructure Corporation Ltd., (APIIC) for supply of works contract services. APIIC, a Government of Andhra Pradesh undertaking had floated online global open e-tenders for construction of ready built factory ("RBF") sheds 1, 2, 3 & 4 at YSR Electronic Manufacturing cluster, Koppaathy, YSR Kadapa District, Andhra

Pradesh. The applicant, being the successful bidder, had entered into a contract with APIIC vide agreement No.XXXXXXX dated 03.12.2020 with the Chief Engineer of APIIC for providing the following work,

"Construction of RBF 1, 2, 3 & 4 at YSR Electronic Manufacturing cluster at kopparthy, YSR Kadapa District, "Andhra Pradesh".

It is the applicant's interpretation that the rate of tax is 12% for the above works with reference to Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017, as amended by Notification No.24/2017- Central Tax (Rate) dated 21.09.2017.

The applicant had filed an application in form GST ARA-01 dated 13.03.2021 by paying required amount of fee for seeking Advance Ruling on the following issues, as mentioned below:

4. Questions raised before the authority:

The applicant seeks advance ruling on the following:

1. In view of the construction services provided by the applicant to APIIC, whether the applicant is eligible to avail the concessional rate of GST at 12% as prescribed in Sl.No.3(vi) of the Notification no. 11/2017- Central Tax (Rate) dated 28.06.2017, as amended by?
2. If not, what is the appropriate rate and classification of GST to be charged by the applicant?

On verification of basic information of the applicant, it is observed that the applicant falls under Centre jurisdiction, i.e. Superintendent, CGST Suryarao pet Range, Vijayawada Division. Accordingly, the application has been forwarded to the jurisdictional officer and a copy marked to the State Tax authorities to offer their remarks as per Sec. 98(1) of CGST /APGST Act 2017. But, no remarks were received from the jurisdictional officer concerned on the issue, for which the Advance Ruling was sought by the applicant.

5. Applicant's Interpretation of Law:

The applicant submits that the present work is awarded by APIIC for construction of RBF sheds. The applicant is providing works contract services in the form as defined under Section 2 (119) of the CGST Act, 2017.

"(119) "Works contract" means a contract for building, construction, fabrication completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (Whether as goods or in some other form) is involved in the execution of such contract;"

Further, as per Sl.No. 6(a) of Schedule II of the CGST Act, 2017, works contract services shall be treated as a supply of service. Therefore, in the present scenario, there is a supply by the applicant and it is in the form of works contract to APIIC.

The subject work of the present supply involves works contract services for the erection and installation of factory sheds, hence they are works contract services. Further, APIIC is a wholly owned company by the Government of Andhra Pradesh. In terms of Sl.No.3 (vi) of Notification 11/2017-Central Tax (Rate) dated 28.06.2017,

as amended, composite supply of works contract provided to the Central Government, State Government, Union Territory, Local authority, Governmental Authority or Governmental Entity is eligible for the concessional rate of 6%.

¹¹[(vi) ³⁶[Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, ⁸⁴[other than that covered by items (i), (ia) (ib) (ic) (id) (ie) and (if) above] provided] to the Central Government, State Government, Union Territory, ¹³[a local authority, a Governmental Authority or a Government Entity] by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –

a) A civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

b) A structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or

c) A residential complex predominantly meant for self- use or the use of their employees or other persons specified in paragraph 3 of the schedule III of the Central Goods and Services Tax Act, 2017

⁵⁹[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.

¹⁴[provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority as the case may be]"

The applicant stated that APIIC would satisfy the definition of Government Authority.

"[(ix) "Governmental Authority" means an authority or a board or any other body,-

(i) Set up by Act of parliament or a State Legislature; or

(ii) Established by any Government,

With 90per cent or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243W of the Constitution or a Panchayat under article 243G of the Constitution."

In this regard, APIIC exercises/performs the statutory powers/functions of the local bodies with effect from 01.10.1994 onwards in 287 Nos. Industrial Areas (phase wise)/ housing Complexes/Mini Industrial Estates/Commercial Complexes falling under Municipalities, Municipal Corporations and Gram Panchayats in the State, through its officers nominated as Executive Authority under the relevant Acts (AP Panchayati Raj Act, AP Municipality Act etc.,). Therefore, APIIC can be held as a Government Authority.

Assuming without admitting that APIIC does not fall under the definition of "Governmental Authority", it still qualifies as a "Government Entity" as APIIC is formed in 1973 by GO No.831 dated 10.09.1973 by the Government of Andhra Pradesh and the Government of Andhra Pradesh including its nominees wholly owns i.e., 100% of share-holding in APIIC. As per the definition of Government Entity, APIIC is established by Government with over 90% of equity and control held by the Andhra Pradesh State Government.

" 'Government Entity' means an authority or a board or any other body including a society, trust, Corporation,

(iii) Set up by Act of parliament or a State Legislature; or

(iv) Established by any Government,

With 90 per cent or more participation by way of equity or control, to carry out any function entrusted by the Central Government, State Government, Union Territory or a local authority."

Further, in it's ruling in AAR No.02/AP/GST/2020 dated 17.02.2020, the Advance Ruling Authority of Andhra Pradesh had also held that APIIC will qualify as a Governmental Entity.

In this regard, it is respectfully submitted that the reduced rate of 6% CGST under entry 3(vi) would apply only in respect of three types of works mentioned in sub clauses (a) (b) and (c) of clause (vi) of S.No.3, out of which clause (b) is not relevant for the present purpose. Sub clause (a) reads as,

"a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession".

The explanation to the Sl.No 3 (vi) to Notification No.11/2017 was added vide Notification No.17/2018- Central Tax (Rate) dated 26.07.2018 which is reproduced hereunder:

"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."

In view of the above, it is submitted that the activities undertaken by APIIC for the present projects are not in the form of business, rather, they are offices for development of trade and industry in Andhra Pradesh.

APIIC is vested with the objective of providing industrial infrastructure through the development of industrial areas and they have developed more than 300 industrial parks spreading over an extent of about 1,21,655 acres (including allotted area). Besides, APIIC is also developing sector focussed parks like apparel park/food processing parks/leather parks, special Economic Zones in the state. APIIC has also constructed 3500 industrial sheds, 4800 dormitory units, 466 commercial shops.

The applicant states that the present contract awarded to them is not a contract to develop industrial park etc., for APIIC but for RBF Sheds for use of APIIC, which as discussed *supra* is a Governmental Authority. Further, as per the explanation provided in Sl.No.3 (vi), this particular contract is not for the business interests or transactions of APIIC but for their own use. Further, the same cannot be treated as business since they function as a Governmental Authority and any activity or transaction entered into by them cannot be held as business. Therefore, there is no commercial activity or business or profession involved in it, but the present contract is for a governmental authority to run its offices. Therefore, the present contract must be allowed for the concessional rate of 12%.

In view of the above, it is submitted that the construction services provided by the applicant to APIIC are eligible for the concessional rate of 6% GST as provided in Sl.no.3(vi) of the Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017.

6. Virtual Hearing:

The proceedings of Hearing were conducted through video conference on 29th June, 2021, for which the authorized representative, Sri Sai Makarandh. P, Advocate attended and reiterated the submissions already made.

7. Discussion and Findings:

We have examined the issues raised in the application, in light of records submitted and submissions made by the applicant at the time of hearing.

As seen from the application, the applicant, M/s. KPC Projects Limited entered into a contract with Andhra Pradesh Industrial Infrastructure Corporation Ltd., (APIIC) for "Construction of RBF 1, 2, 3 & 4 at YSR Electronic Manufacturing cluster at kopparthy, YSR Kadapa District, Andhra Pradesh."

The issue to be decided is whether the applicant is eligible to avail the concessional rate of GST at 12% as prescribed in Sl.No.3(vi) of the Notification no. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended from time to time.

The Government of India, vide notification No. 11/2017 - Central Tax (Rate), dated - 28th June 2017 notified the rate of GST applicable on supply of services. The said notification has been amended from time to time.

Vide Notification No. 24/2017 - Central Tax (Rate), Dated: 21.09.2017, Government of India by inserting entry No. (vi) notified,

"Concessional GST rate of 6% for the construction services provided to 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."

This context necessitates the examination of two issues:

- a) Primarily, whether APIIC which awarded construction work to the applicant would qualify for a Governmental Authority/entity or not.
- b) Consequently whether the construction work taken up by the applicant is meant for business or otherwise.

Initially we examine whether M/s. APIIC is a Government Authority/Entity or otherwise.

The para 4 of clauses (ix) & (x) of Notification No.11/2017 - CT (Rate) dtd 28.06.2017 as amended by Notification No.31/2017 - CT (Rate) dated 13.10.2017 is as hereunder;

"(ix) "Governmental Authority" means an authority or a board or any other body, -

- (i) set up by an Act of Parliament or a State Legislature; or*
- (ii) established by any Government, with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under*

article 243 W of the Constitution or to a Panchayat under article 243 G of the Constitution.

(x) "Governmental Entity" means an authority or a board or any other body including a society, trust, corporation,

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with 90% or more participation by way of equity or control, to carry out any function entrusted by the Central Government, State Government, Union Territory or a local authority."

Andhra Pradesh Industrial Infrastructure Corporation Ltd. (APIIC) was formed in 1973 by GO No: 831 dated: 10.09.1973 issued by Government of Andhra Pradesh. As seen from the share holding ratios of the 41st Annual Report for the years 2013-2014 as made available by APIIC website <https://www.apiic.in>, the Government of Andhra Pradesh including its nominees have 100% of share holding and thus it is covered under the definition of 'Government Entity' under the above said provisions. Therefore, we conclude that M/s. APIIC is a "Government Entity" for the purpose of GST matters.

2) Now we examine whether the construction work in which the applicant is engaged in is meant for any business or otherwise.

As seen from the 41st Annual Report for the year 2013-2014 as made available in their website <https://www.apiic.in/Annualreports.html>, they are engaged in land acquisition and development and allotment of plots and sheds to various industrial ventures in the State making investments in joint venture, in associate companies, in related party companies, in subsidiary companies etc., and the income they are getting is revenue from operations like sale of land, houses, interest on hire purchase and long term borrowings etc.,

When we look into the activities of APIIC they are basically business activities and even a close observation of the modus operandi of the organisation prove the same. Even though APIIC is a Government entity, the sustenance of the organisation is derived from its activities of sale of sheds, land, houses on outright sale or hire purchase etc, as mentioned in pg. No.5 of *DIRECTORS' REPORT TO THE SHAREHOLDERS FOR THE YEAR 2013-2014*, as presented below:

"The difference between the sale price and cost price of the assets sold was taken to Profit & Loss Account. In certain Industrial Parks where substantial developmental works are to be taken up, the cost of constructive obligation was kept under the head of account "Provision for Contractual Obligations". During the year, Profit/Loss is recognized on sale of sheds, land, houses on outright sale or hire purchase and the difference between sale price and cost price of the assets sold is taken to Profit & Loss Account."

In this context, it is worthwhile to make a reference to an aspect in page no. 25 of the above mentioned Annual Report regarding "Land Conversion Charges".

"The State Investment Promotion Committee (SIPC) in its meeting held on 26.04.2013, decided not to provide exemption to the corporation from payment of land

conversion fee for non-agricultural purposes foregoing state revenues since APIIC would pass on any costs to the end client".

It is evident from the above excerpts, that the activities of M/s APIIC are business activities and not otherwise. The applicant claims that the works involved in the contract i.e., the RBF sheds are used by none other than the organisation (APIIC) itself. But a detailed examination of the activities of APIIC prove that the organisation runs on a business model as it would pass on any costs involved in its transactions to the end client. This would be sufficient enough to come to a conclusion that the said construction is for use of APIIC for conducting its activities, which are essentially business oriented and hence not eligible for concessional rate of 12% (6% CGST + 6% SGST) available under Notification No.24/2017 – CT (Rate) dated 21.09.2017.

Hence, the contract entered by the applicant is classifiable under SAC heading No. 9954 under construction services, with entry no (ii) of serial No.3 of notification no. 11/2017 Central Tax (Rate) dated 28.06.2017 i.e., Composite Supply of Works Contract as defined in clause 119 of Section 2 of Central Goods and Services Act, 2017 and the applicable rate of tax is 18% (9% under Central Tax and 9% State Tax).

RULING

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

Question: In view of the construction services provided by the applicant to APIIC, whether the applicant eligible to avail the concessional rate of GST at 12% as prescribed in of S.No.3(vi) the Notification no. 11/2017- Central Tax (Rate) dated 28.06.2017, as amended by?

Answer: Negative.

Question If not, what is the appropriate rate and classification of GST to be charged by the applicant?

Answer: Classifiable under SAC heading No. 9954 construction services, with entry no (ii) of serial No.3 of notification no. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended and the applicable rate of tax is 18% (9% Central Tax + 9% State Tax).

Sd/-D. Ramesh
Member

Sd/-A. Syam Sundar
Member



//t.c.f.b.o//


Deputy Commissioner (ST)
DEPUTY COMMISSIONER (ST)
O/o. Chief Commissioner of State Tax,
Government of A.P., Vijayawada

To

1. M/s. KPC Projects Limited, Flat No.31-15-29, Katurivari Street, Macharam Down, Vijayawada -520004, Andhra Pradesh-531019 **(By Registered Post)**

Copy to

1. The Assistant Commissioner of State Tax, Sithrampuram Circle, Vijayawada-II Division. **(By Registered Post)**
2. The Superintendent, Central Tax, CGST Suryaraopet Range, Vijayawada Division. **(By Registered Post)**

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Eedupugallu, Vijayawada, (A.P)
2. The Principal Chief Commissioner (Central Tax), O/o Principal Chief Commissioner of Central Tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035.A.P. **(By Registered Post)**

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act, 2017, with in a period of 30 days from the date of service of this order.

DEPUTY COMMISSIONER (ST)
O/o Chief Commissioner of State Tax
Government of A.P., Vijayawada

