



सत्यमेव जयते

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. RV Pradhamesh Bhanu, Joint Commissioner of Central Tax (Member)

AAR No.03/AP/GST/2022 dated: 24.01.2022

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|---|--------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Name and address of the applicant | M/s. Siddartha Constructions H.No.4-24-44-4, Kadapa Main Road, Pulivendula, YSR Kadapa District-516390 |
| 2 | GSTIN | 37AAXFS8120Q1Z4 |
| 3 | Date of filing of Form GST ARA-01 | 19.07.2021 |
| 4 | Personal Hearing | 21.10.2021 |
| 5 | Represented by | Sai Makarandh P, Advocate |
| 6 | Jurisdictional Authority - Centre | Superintendent of Central Tax (CT) Yerraguntla Range, Kadapa 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. Siddartha Constructions (hereinafter referred to as applicant), registered under the AP Goods & Services Tax Act, 2017.

3. Brief Facts of case:

- Andhra Pradesh High Grade Steels Ltd., ("APHSL"), presently the YSR Steel Corporation Limited, a Government of Andhra Pradesh undertaking was incorporated on 21.11.2019 as a fully owned undertaking of the Government of Andhra Pradesh for

formation of a 3 million tonnes per annum steel plant in YSR kadapa District. YSR Steel Corporation Limited is registered under the companies Act 2013 with an authorized capital of Rs. 10 lakhs with full participation by Government of Andhra Pradesh.

- APHSL had floated online global open e-tenders for construction of APHSL Project Office, cafeteria and residential quarters with BUA of 16,000 Sq.ft with foundation, super structure with structural steel columns (PEB Structure), Architectural finishes, Internal electrical, Internal plumbing, HVAC works and IT works at aPHSL, Kadapa, Andhra Pradesh.
- The applicant, M/s. Siddartha Constructions is one of the successful bidders and entered into a contract with APHSL for providing the following works:

" Construction of APHSL project Office, cafeteria and residential quarters with BUA of 16,000 sq. ft with foundation, super structure with structural steel columns (PEB structure), Architectural finishes, Internal Electrical, internal plumbing, HVAC works and IT works at APHSL, Kadapa, Andhra Pradesh."
- The scope of present work order requires the applicant to construct the project office, cafeteria and residential campus with super structure, finishes, internal electrical and plumbing, HVAC systems along with IT works. They had entered into an agreement in bond no. 01/CE/APHSL/2020-21 dt: 23.11.2020 with the Chief Engineer of APHSL for the above works.
- In view of the above facts, the applicant had filed an application in form GST ARA-01 dated 19.07.2021 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 services provided by the applicant to APHSL., is the applicant eligible to avail the concessional rate of GST at 12% as prescribed in S.No.3(vi) of the Notification No.11/2017- Central Tax (Rate) dt: 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 of Central Tax (CT) Yerraguntla Range, Kadapa Division. Accordingly, the application has been forwarded to the jurisdictional officer and a copy marked to the Centre Tax authorities to offer their remarks as per Sec. 98(1) of CGST /APGST Act 2017.

In response, remarks are received from the State tax authorities that no issues stand pending on the subject concerned for which the Advance Ruling sought by the applicant.

5 Applicant's Interpretation of Law:

- The applicant states that the present work is awarded by APHSL for construction of the project office, cafeteria and residential campus with super structure, finishes, internal electrical and plumbing, HVAC systems along with IT works. 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 APHSL to construct the project office, cafeteria and residential campus with super structure, finishes, internal electrical and plumbing, HVAC systems along with IT works and hence are works contract services are supply of services. Further, APHSL 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) dt: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 submits that APHSL qualifies as a "Government Entity". The erstwhile state of Andhra Pradesh was reorganized into two successor states viz. Andhra Pradesh and Telangana in 2014 as per the Andhra Pradesh Reorganization Act 2014. The establishment of Integrated Steel Plant (ISP) in YSR kadapa district of the

successor state of Andhra Pradesh is one of the provisions pertaining to Infrastructure mentioned under the thirteenth schedule of the said act to promote industrial growth in AP.

- AP High Grades Steels Limited (APHSL), a special purposes vehicle, was incorporated on November 21, 2019 as a wholly owned company of Government of AP with a mandate to establish an integrated steel plant at YSR Kadapa District. The Government of Andhra Pradesh including its nominees wholly own 100% of shareholding in APHSL. As per the definition of Government Entity, APHSL is established by Government with over 90% of equity and control was held by the Andhra Pradesh State Government.

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

(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 by the Central Government, State Government, Union Territory or a local authority".

- In this regard, it is submitted that 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 clauses (a) and (b) are not relevant for the present purpose. Whereas, sub clause (c) reads as,

"(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".

It is submitted that the works provided by the applicant with respect to construction of residential quarters for the employees of APHSL clearly fall under sl.no 3(vi)(c) of the instant notification.

- APHSL commits itself to the mandate given by the Government of AP to set-up a world -class steel plant in kadapa and intends to achieve the best standards in the industry by partnering with renowned steel makers/companies of the world to add value to the project.
- Further, with respect to the construction of APHSL project office and cafeteria, the applicant submits that the present contract awarded to them is not a contract to develop industrial park etc., but for the office of APHSL. Further, as per the explanation provided in Sl.No.3(vi), this particular contract is not for the business interests or transactions of APHSL but for propagating the industry and trade in the state of Andhra Pradesh and formulating the industrial plans of the state. Further, the same cannot be treated as a commercial business since they functioning 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 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, the applicant submits that the construction services provided to APHSL 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 21.10.2021, 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 and the submissions made by the authorised representative of the applicant as well, regarding the tax liability of the transaction involved.

- As seen from the application, the applicant, M/s. Siddhartha Constructions entered into a contract with APHSL(Andhra Pradesh High Grade Steels Ltd.) for providing the following works:

" Construction of APHSL project Office, cafeteria and residential quarters with BUA of 16,000 sq. ft with foundation, super structure with structural steel columns (PEB structure), Architectural finishes, Internal Electrical, internal plumbing, HVAC works and IT works at APHSL, Kadapa, 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) 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

This context necessitates the examination of two issues:

- a) Primarily, whether APHSL, 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 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, 201

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

The para 4 of clauses (ix) & (x) of Notification No.11/2017 – CT (Rate) dted 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,

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(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."

The erstwhile "AP High Grade Steels Limited" now renamed as "YSR Steel Corporation Limited" was incorporated on 21st November 2019 as a fully owned undertaking of the Government of Andhra Pradesh. It is registered under the Companies Act 2013 with an authorized capital of Rs.10 Lakhs with full participation by Government of Andhra Pradesh. Thus, APHSL is undoubtedly a 'Government Entity' as it is set up by the State Government, with more than 90% of control and equity to carry out the function entrusted by the state government.

b) Now we examine the nature of the work taken up by the applicant, as entrusted by the APHSL. It is the construction of project Office, cafeteria and residential quarters of APHSL. The applicant sought concessional rate for project office and cafeteria under Sl.No.3(vi)(a) of the Notification no. 11/2017-Central Tax (Rate) dated 28.06.2017, citing that APHSL is meant to be functioning for the propagation of industry and trade in the state of Andhra Pradesh, and not for business interests. But, as a matter of fact , APHSL is classified as State Government company, and it's registered with Registrar of Companies, Vijayawada with an authorized share capital of Rs 100,00,000 and a paid up capital of Rs 100,00,000 and is involved in the manufacture of Iron and Steel. It is an undeniable fact that APHSL is by all means run as a company with business interests , making it ineligible for the claim of concessional rate under 3 (vi) (a) of of the Notification no. 11/2017-Central Tax (Rate) dated 28.06.2017.

Now we examine the claim of the applicant for concessional rate with respect to construction of 'residential quarters' for the employees of APHSL under sl.no 3(vi)(c) of the instant notification.

"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"

The persons specified in paragraph 3 of the schedule III of CGST ACT,2017 are:

"(a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;

(b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

(c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause."

The residential complex under discussion is meant for the employees of APHSL and not for the use of the persons like Members of Parliament, State Legislature, Panchayats, Municipalities or other local authorities. Neither they belong to the persons holding any constitutional post nor are they the employees of Members or Directors as specified above in the para 3 of Schedule III. Hence the concessional rate as claimed is not applicable in the instant case.

In view of the discussion held above, 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 services provided by the applicant to APIIC, is the applicant eligible to avail the concessional rate of GST at 12% as prescribed in S.No.3(vi) of the Notification No.11/2017- Central Tax (Rate) dt: 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 : 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).

Sd/- D. Ramesh
Member

Sd/- RV Pradhamesh Bhanu
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. Siddartha Constructions, H.no.4-24-44-4, KAdapa Main Road, Pulivendula, YSR KAdapa District-516390, Andhra Pradesh **(By Registered Post)**

Copy to

1. The Assistant Commissioner of State Tax, Kadapa-1 Circle, Kadapa Division. **(By Registered Post)**
2. The Superintendent, Central Tax, CGST Yerraguntla Range, Kadapa 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 Chief Commissioner (Central Tax), O/o 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.