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|  | KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM |  |
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BEFORE THE AUTHORITY OF : Dr S. L. Sreeparvathy, IRS &
 : Shri Abraham Renn S., IRS

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| Legal Name of the applicant | M/s. KOOL HOME BUILDERS |
| GSTIN | 32AALFK8274F1Z6 |
| Address | 5/298-1, Firekool Building, Thottakkattukara, Aluva, Ernakulam, Kerala – 683108. |
| Advance Ruling sought for | <p>i) Whether the Kochi Water Metro Project comes under exclusion specified for the term 'business' as per the explanation to heading 9954 Item No. (vi) of Notification No.11/2017 dated 28th June 2017?</p> <p>ii) Whether the works contract awarded to Kool Home Builders qualifies to tax under CGST Act @ 6% as per Notification No.11/2017 – Central Tax (Rate) dated.28th June 2017 under clause (a) of item number (vi) of serial number 3, under Section 5 of Chapter 99 as amended by Notification No.24/2017 – Central Tax (Rate) dated.21st Sept 2017?</p> <p>iii) Whether the said works contract qualifies to tax under SGST Act @ 6% as per Notification SRO.No.370/2017 dated.30th June 2017 under clause (a) of item number (vi) of serial number 3 of heading 9954, section 5 Chapter 99 as amended by State Tax (Rate) Notification No.SRO. 718/2017 published on 30th June 2017?</p> |
| Date of Personal Hearing | 25.10.2021 |
| Authorized Representative | Mr. Razee Moideen |



ADVANCE RULING No.KER/133 /2021 Dt.18-02-2022

1. M/s. Kool Home Builders, (hereinafter referred to as the applicant) a partnership firm and a registered person under the GST laws has been awarded a works contract by Kochi Metro Rail Limited [KMRL] for “the Construction of Terminals for Phase 1 Stage 2” for the Kochi Water Metro Project, an integrated water transport project in Greater Kochi Region. The project includes providing modern and safe watercraft, boat terminals, access roads, lighting and other ancillary infrastructure developments, which has been initiated as part of urban planning and to improve amenities available to the public.

2. At the outset, it is clarified that the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act) and the Kerala State Goods and Services Tax Act, 2017 (hereinafter referred to as KSGST Act) are the same except for certain provisions. Accordingly, a reference hereinafter to the provisions of the CGST Act, Rules and the notifications issued thereunder shall include a reference to the corresponding provisions of the KSGST Act, Rules and the notifications issued thereunder.

3. The applicant had requested an advance ruling on the following

3.1. Whether the Kochi Water Metro Project comes under exclusion specified for the term ‘business’ as per the explanation to heading 9954; Item o.(vi) of Notification No.11/2017 dated 28th June 2017?

3.2. Whether the works contract awarded to Kool Home Builders qualifies to tax under CGST Act @ 6% as per Notification No.11/2017 – Central Tax (Rate) dated 28th June 2017 under clause (a) of item number (vi) of serial number 3, under Section 5 of Chapter 99 as amended by Notification No.24/2017 – Central Tax (Rate) dated 21st September 2017?

3.3. Whether the said works contract qualifies to tax under SGST Act @ 6% as per Notification SRO.No.370/2017 dated 30th June 2017 under clause (a) of item number (vi) of serial number 3 of heading 9954, section 5 Chapter 99 as amended by State Tax (Rate) Notification No.SRO. 718/2017 published on 30th June 2017?

4. Contentions of the applicant:

4.1. The applicant submits that KMRL is a special purpose vehicle formed for the implementation, operation and maintenance of the Kochi Metro Rail Project as per orders from the Planning Commission and the Union Government. KMRL is a joint venture company with equal equity contribution of the Government of India and the Government of Kerala. KMRL is entrusted with the task of implementation of the water metro



project, and after implementation, operate the water metro using the assets of the Government of Kerala on their behalf. The project is partly funded by the Government of Kerala and partly out of a loan taken by the Government of India from a German agency M/s.Kreditanstalt Fur Wiederaufbau (KfW). A tripartite project agreement has also been entered between KfW, Govt. of Kerala and KMRL. KMRL is the agency executing and operating the integrated water transport project on behalf of the Government of Kerala which will be the de-jure owner of the project.

4.2. The works contract awarded to the applicant includes the construction of eight passenger terminals including supply, delivery, installation and commissioning of MEP and HVAC Works, as described in the project document, bill of quantities and MOU between KMRL and the firm, at specified locations, in a phased manner for establishing the water metro infrastructure in Kochi. The applicant has also submitted the work requirements and appendices issued by KMRL describing the scope of work. The major scope of works for the eight terminals under the contract includes:

- i. Construction of terminal facilities which include a terminal building, walkway, fixed platform, landscaping and other associated utilities. Mechanical Electrical Plumbing (MEP) & High Voltage Air Conditioning (HVAC) works.
- ii. Construction of shore protection works – new shore protection works or demolition/removal of parts of existing shore protection works and strengthening the same with new material and/or remove materials.
- iii. Construction to Access Roads to Terminals.

4.3. The applicant submits that the application is filed to determine the classification of project, under heading 9954 – Construction services clause (a) of item number (vi) of serial number 3 of Notification 11/2017 – Central Tax (Rate) dated 28.06.2017 as amended by Notification No.24/2017 CGST (Rate) dated 21-09-2017 – which read as follows:-

“(vi) Composite supply of works contract as defined in clause (119) of Section 2 of the Central Goods and Services Tax Act, 2017, 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 –

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



- ii) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or
- iii) a residential complex meant predominantly for self-use or the use of their employees or other persons specified in paragraph 3 of schedule III of the CGST Act, 2017.

Explanation.- For the purpose 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.

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."

4.4. The applicant submitted that Kochi Water Metro is a project undertaken by the Government of Kerala as a part of its urban planning. The main objective of the project is to improve the entire public transportation system in Kochi. KMRL is entrusted with the task of implementation of the project, on behalf of the Government of Kerala, which acts as an executing agency for the project. As per the observations of the Kerala Authority for Advance Ruling in their Ruling No.KER/75/2019 dated 20-05-2020, KMRL is providing these services to the Government of Kerala, which is exempted under Sl. No.3 of Notification No.12/2017 Central Tax (Rate) dated 28.06.2017. The Government of Kerala is the de jure owner of the assets of the water metro project and the works contract are performed by contractors with whom agreements are entered into by KMRL on behalf of the Government of Kerala. The work allotted to the applicant is for the construction of terminals which consist of the terminal building, walkway, fixed platform, landscaping and other associated utilities along with shore protection works and construction of access roads to terminals. A civil structure is a series of connected, interrelated elements that form together with a system that can resist a series of external load effects applied to it, which includes its self foundations, columns, beams, walls etc. A terminal is a structure permanently attached to the earth and having all these attributes. Therefore, the said work qualifies the requirement of a civil structure or original work. Further, the functions entrusted to a municipality, under the Twelfth Schedule to Article 243W of the Constitution includes public amenities including street lighting, parking lots, bus stops and public conveniences. Moreover, the functions entrusted to a panchayat under the Eleventh Schedule to Article 243G of the constitution includes roads, culverts, bridges, ferries, waterways and other means of communication. Therefore, the predominant intention of the project is not business or commerce, but activity in relation to a work



entrusted to the Government under Article 234G and 234W of the Constitution of India.

4.5. The Applicant submits that this AAR in Ruling No. KER/75/2019 dated 20-05-2020 in the application submitted by KMRL for Kochi Water Metro Project, has held that:

"24. The applicant is an entity whose equity shares are fully held by the Government of India and Government of Kerala in equal proportion. It has been established as a Special Purpose Vehicle for the implementation, operation and maintenance of Kochi Metro Rail Project in the city of Kochi. Now, by G.O.(Ms)No.44/2016/Trans dated 13.06.2016 it has been entrusted with the task of executing and operating the Integrated Water Transport Project at Kochi on behalf of the Government of Kerala. The establishment, operation and maintenance of the metro rail project as well as the water metro by the Government of Kerala is part of its function of urban planning and providing public amenities which are functions entrusted to a Municipality under Article 243W of the Constitution which are listed in the Twelfth Schedule to the Constitution. Further, the functions entrusted to a Panchayat under the Eleventh Schedule to Article 243G of the Constitution includes Roads, culverts, bridges, ferries, waterways and other means of communication. From the above discussion it is evident that the applicant is established by government with 90 percent or more equity participation and is entrusted with the functions which are entrusted to Municipality under Article 243W of the Constitution or to a Panchayath under Article 243G of the Constitution. Hence, the applicant squarely falls under the definition of "Governmental Authority" under Para 2 (zf) of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017. In view of these observations, the following rulings were issued:

1. Since the Govt. of Kerala is the de jure owner of the assets of the water metro project and the works contracts are performed by contractors with whom agreements are entered into by KMRL on behalf of Government of Kerala;

(a) Whether KMRL has any liability to pay GST on the funds received from Govt. of Kerala for paying the cost of the water metro project?

No. The applicant being the agency for executing and operating the integrated water transport project in Kochi is rendering pure services to the Government of Kerala which is falling under the service classification code 998339. Hence, the services provided by the applicant to the Government of Kerala are exempted from payment of goods and services tax by virtue of the entry at



Sl.No.3 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017.

(b) Whether a GST invoice is to be raised on Government of Kerala for transferring the value of assets on a back to back basis after completion of the works?

No, in view of answer to (a) above.

(c) In the above cases, if liable, how will the ITC be claimed against (a) & (b)

In view of the answer to (a) and (b) above question of availing of ITC does not arise.

2. Notwithstanding the above, whether KMRL can be treated as a Governmental authority as per the IGST Act for the purpose of claiming exemption under item no.4 of Notification No.12/2017 Central Tax (Rate) dated 28.06.2017 since it is a body established by the Government with ninety percent or more participation by way of equity to carry out function entrusted to a municipality under Article 243W of the Constitution?

The applicant falls under the definition of "Governmental Authority" under Para 2 (zf) of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017."

4.6. Hence, the civil structure and related original works are for use by the Government for functions entrusted to it under Article 243W of the Constitution.

4.7. As per Section 7(2)(b) of the CGST Act, 2017 such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the council shall be treated neither as a supply of goods nor a supply of services. Further the Central Government by Notification No.14/2017 Central Tax (Rate) dated 28.06.2017 and Notification No.16/2018 Central Tax (Rate) dated 26.07.2018 notified that the following activities or transactions undertaken by the Central Government or State Government or Union territory or any local authority in which they are engaged as a public authority, shall be treated neither as a supply of goods nor a supply of service, namely;



“Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution or to a Municipality under article 243W of the constitution.”

4.8. Accordingly, the functions entrusted to the government under Article 243G and 243W are activities or transactions undertaken by the Central Government a State Government or any local authority in which they are engaged as public authorities.

4.9. As per the explanation given to heading 9954 – Construction services clause (a) of item number (vi) of serial number 3 of Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017 – item ‘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. As per Notification No.11/2017 – Central Tax(Rate) read with Notification No. 24/2017 Central Tax (Rate) dated 21.09.2017, composite supply of works contract provided to the Central Government, State Government, Union territory, a local authority, a Government authority or a Government entity by way of construction, erection, commissioning, installation etc of a civil structure or any other original works meant predominantly for use other than commerce, industry, any other business or profession shall be taxable at the rate of 12%. As per the explanation to the notification inserted by Notification No. 17/2018 Central Tax(Rate) dated 26.07.2018, 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 and as inserted by Notification No. 31/2017 Central Tax (Rate) dated 13.10.2017, 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.

4.10. Kochi Water Metro is a project undertaken by the Government of Kerala as a part of its urban planning. The main objective of the project is to improve the entire public transportation system in Kochi. The project envisages the development of 15 routes, connecting 10 islands, along with a network of 78 km with a fleet of 75 electrically-propelled hybrid ferries plying to 38 jetties and more than 100,000 islanders are expected to benefit from the project. Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution or to a Municipality under article 243W of the Constitution are activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities. The Kerala Authority for Advance Ruling had examined in detail the facts of the project and held in their Ruling No.KER/75/2019 dated 20-05-2020, that the Kochi Water Metro is a project that squarely qualifies the conditions to be classified under the functions or transactions entrusted to the



Government as public authorities. Accordingly, it can be concluded that the activity of Water Metro transportation undertaken by the Government of Kerala is for use predominantly other than commerce, industry, any other business or profession. KMRL is entrusted with the task of implementation of the project, on behalf of the Government of Kerala, which acts as an executing agency for the project. It is substantiated in the above advance ruling that KMRL falls under the definition of a Governmental Authority under Para 2(zf) of Notification No.12/2017 Central Tax (Rate) dated 28.06.2017. Therefore, on a combined reading of Section 7(2)(b) of the Act, the Advance Ruling of the Kerala AAR, Notification No. 11/2017 Central Tax(Rate), Notification No. 24/2017 Central Tax(Rate), Notification No. 31/2017 Central Tax (Rate) and Notification No.17/2018 Central Tax (Rate), it can be concluded that the works contract in the application is;

- a. Composite supply of works contract to be provided by them to the State Government through its executing agency KMRL, which is Governmental Authority as defined in the Notification No.12/2017 Central Tax (Rate) dated 28.06.2017. KMRL is procuring the service from them in relation to work entrusted to it by the State Government.
- b. The supply of works contract is by way of construction of a civil structure.
- c. The civil structure is meant for use by the State Government for the Kochi Water Metro Project, which is an activity entrusted to the Government under Article 243W of the Constitution.
- d. The activities entrusted to the Government under Article 243W of the constitution are activities or transactions which are carried by the Government as public authorities.
- e. As per the explanation inserted by Notification No.17/2018 Central Tax (Rate) dated 25.07.2018, any activity or transaction undertaken by the Central Government, a State Government or local authority in which they are engaged as public authorities is not a business.

4.11. Accordingly, the supply of works contract as explained above would qualify for tax under CGST / SGST Act @ 6% each as per Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017 under clause (a) of item number (vi), heading 9954 of serial number 3, under section 5 of Chapter 99 as amended by Notification No.24/2017 Central Tax (Rate) dated 21-09-2017 and corresponding State Tax Notification.



5. Remarks of the Jurisdictional officer

5.1. The application was forwarded to the jurisdictional officer as per provisions of Section 98(1) of the CGST Act. The jurisdictional officer has not offered any comments and hence it is presumed that the jurisdictional officer has no specific comments to offer. It is also construed that no proceedings are pending on the issue against the applicant.

6. Personal hearing

6.1. The applicant was afforded an opportunity for a personal hearing on 25.10.2021. Shri. M.A. Moideen authorised representative of the applicant attended the hearing and reiterated the contentions made in the application and requested to issue a ruling based on the submissions in the application.

7. Discussion and Findings

7.1. The matter was examined in detail. The application is admissible under subsection (2) of section 97 of the Act. The applicant has raised the following questions before the advance ruling authority.

1. The classification and tax rate applicable to the works contract awarded to the applicant by KMRL.
2. Whether the Kochi Water Metro Project comes under the term 'business' as per the explanation to heading 9954 item no. (vi) of Notification No.11/2017 Central Tax (Rate) dated 28th June 2017.

7.2. In order to decide these issues, it is to be examined whether the services rendered by the applicant qualify to be classified as works contract services. Section 2(119) of the CGST Act defines a works contract as 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. From this definition it reveals that the term works contract under GST has been restricted to any work undertaken for an "Immovable Property" wherein transfer of property in goods whether as goods or in some other form is involved.

7.3. From the description of the works submitted by the applicant it is revealed that the following works are awarded to the applicant;

1. Construction of terminal facilities which include a terminal building, walkway, fixed platform, landscaping and other associated utilities.



Mechanical Electrical Plumbing (MEP) & High Voltage Air Conditioning (HVAC) works.

2. Construction of shore protection works – new shore protection works or demolition/removal of parts of existing shore protection works and strengthening the same with new material and/or removed materials.
3. Construction of Access Roads to Terminals.

7.4. Therefore, the service rendered by the applicant squarely falls under the definition of works contract in Section 2 (119) of the CGST Act.

7.5. Now it is to be decided whether the works contract services rendered by the applicant attract GST at the rate of 12% under Sl No. 3 (vi) of Notification No.11/2017 Central Tax (Rate) dated 28.06.2017. Sl No. 3 (vi) of the Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended reads as follows:

“(vi) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above provided to the Central Government, State Government, Union Territory, 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.

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.”

7.6. As per the above entry, the composite supply of works contract as defined in Section 2 (119) of the CGST Act, 2017 provided to a Government



by way of construction of a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession attract GST at the rate of 12% [6% CGST + 6% SGST]

7.7. This Authority has in Ruling No. KER/75/2019 dated 20.05.2020 in the application of Kochi Metro Rail Ltd (the awarder of the contract to the applicant) has already held that KMRL is a governmental authority as defined in Para 2(zf) of Notification No.12/2017 Central Tax (Rate) dated 28.06.2017 and also held that the State of Kerala is the de jure owner of the waterways, the boat jetties, the boats and all other infrastructure created for the integrated water transport project, and the status of Kochi Metro Rail Ltd is that of an agency that is executing the integrated water transport project on behalf of Government of Kerala, and Kochi Metro Rail Ltd as the executing and operating agency of the integrated water transport project is providing services classifiable under the Service Classification Code 998339 – Project management services to the Government of Kerala.

7.8. Therefore, in the instant case though the contract of construction of the terminals and other infrastructural facilities for the integrated water transport project is awarded to the applicant by Kochi Metro Rail Ltd as the executing and operating agency [Project Management Consultants] the contract is awarded on behalf of the Government of Kerala and the transfer of property in goods in the work contract services rendered by the applicant takes place to the Government of Kerala; the de jure owner of the assets of the integrated water transport project, and hence the recipient of the work contract services rendered by the applicant is the Government of Kerala.

7.9. Kochi Water Metro is an integrated water transport project in the Greater Kochi region undertaken by the Government of Kerala. The applicant has raised a question that whether this project comes under the exclusion from the definition of the term “business” as per explanation to Sl.No.3 (vi) of the Notification No.11/2017 Central Tax (Rate) dated 28.06.2017. As per the explanation to entry at Sl No.3(vi) of the Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 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. Undoubtedly, the integrated water transport project is an activity undertaken by the Government of Kerala as a public authority and hence squarely covered by the explanation to entry at Sl No. 3 (vi) of the Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 and hence the activity is not a business for the purpose of the above-said entry.

7.10. Accordingly, we conclude that the works contract services performed by the applicant as per the above-mentioned contracts awarded by Kochi Metro Rail Ltd are liable to GST at the rate of 12% [6% CGST+ 6% SGST] as



per entry at Sl No.3 (vi) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017.

7.11. Given the observations stated above, the following rulings are issued;

RULING

1. Whether the Kochi Water Metro Project comes under exclusion specified for the term 'business' as per the explanation to heading 9954 item no. (vi) of Notification No.11/2017 dt.28th June 2017?

Ruling: The integrated water transport project namely; Kochi Water Metro Project is an activity undertaken by the Government of Kerala as a public authority and hence squarely covered by the explanation to entry at Sl No. 3 (vi) of the Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017.

2. Whether the works contract awarded to Kool Home Builders qualifies to tax under CGST Act at the rate of 6% as per Notification No.11/2017 – Central Tax (Rate) dated 28th June 2017 under clause (a) of the item number (vi) of serial number 3, under Section 5 of Chapter 99 as amended by Notification No.24/2017 – Central Tax (Rate) dated 21st September 2017?

Ruling: The works contract services performed by the applicant as per the above-mentioned contracts awarded by Kochi Metro Rail Ltd is exigible to 6% CGST as per entry at Sl.No.3 (vi) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended.

3. Whether the said works contract qualifies to tax under SGST Act at the rate of 6% as per Notification SRO.No.370/2017 dated 30th June 2017 under clause (a) of the item number (vi) of serial number 3 of heading 9954, section 5 Chapter 99 as amended by State Tax (Rate) Notification No.SRO. 718/2017 published on 30th June 2017?

Ruling: The works contract services performed by the applicant as per the above-mentioned contracts awarded by Kochi Metro Rail Ltd is exigible to 6% SGST as per entry at Sl.No.3 (vi) of Notification No. 370/2017 State Tax (Rate) dated 30.06.2017 as amended.

~~Sreeparvathy S. L.~~
Joint Commissioner
Member Central Tax



Abraham Renn S.
Additional Commissioner
Member State Tax

To

M/s. KOOL HOME BUILDERS
5/298-1, Firekool Building, Thottakkattukara, Aluva,
Ernakulam, Kerala – 683108.

Copy to

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682018. [E-mail ID: cccochin@nic.in; ccu-cexcok@nic.in]
2. The Commissioner of State Goods and Services Tax Department,
Tax Towers, Karamana, Thiruvananthapuram – 695002.
3. The State Tax Officer, Circle – I, Ernakulam. [E-mail
ID:ctoernakulam1@gmail.com]

