

(Constituted under Section 99 of the Uttar Pradesh Goods and Service Tax Act, 2017)

Appeal Order No. 02/AAAR/ 15 /07 /2022

Date: 15.07.2022

Before the Bench of:-

- 1. Shri S. Kannan,**
Member, Central Tax
- 2. Smt. Ministhy S.,**
Member, State Tax

Legal name of the Appellant	HYT ENGINEERING COMPANY PRIVATE LIMITED
Trade Name of the Appellant	HYT ENGINEERING COMPANY PRIVATE LIMITED
GSTIN Number (of Appellant)	09AAACH5158H1ZI
Registered address/Address provided while obtaining user ID (Of Appellant)	New Electric Loco Shed, Opp Saiyedpur Railway Station, Chochakpur Saidpur Road Saiyedpur Bhitri, Ghazipur, 233304
Order of Advance Ruling Against which the appeal is filed	ORDER NO. UP ADRG 92/2022 dated 24.01.2022 issued by the Authority for Advance Ruling, Uttar Pradesh

(Proceedings under Section 101 of the Central Goods and Service Tax Act, 2017 and Uttar Pradesh Goods and Service Tax Act, 2017)

The present appeal has been filed under Section 100 of the Central Goods and Service Tax Act, 2017 and Uttar Pradesh Goods and Service Tax Act, 2017 (hereinafter referred to as “the CGST Act and UPGST Act”) by M/s HYT Engineering Company Private Limited, New Electric Loco Shed, Opp Saiyedpur Railway Station, Chochakpur Saidpur Road Saiyedpur Bhitri, Ghazipur (hereinafter referred to as the “Appellant”) against the Advance Ruling Order No. UP ADRG 92/2022 dated 24.01.2022 issued by the Authority for Advance Ruling, Uttar Pradesh.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST 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, 2017 would also mean a reference to the same provisions under the UPGST Act, 2017 and vice versa.

Brief Facts of the Case

1. The Appellant has entered into a joint venture with M/s Indwell Constructions Private Limited and constituted M/s Indwell- HYT JV. The Joint Venture (JV in short) was allocated work related to “Construction of PEB Shed, structure, water supply, drainage, sewerage, road work, track work, power supply, general electric work, OHE works, signal & Telecommunication work, commissioning of machinery and plant in connection with setting up of electric loco shed at Saiyedpur Bhitri U.P. by Rail Vikas Nigam Limited (RVNL).
2. As per Appellant, the JV had awarded the contract to the JV partners on a back to back basis vide the JV agreement dated 10.10.2018 with the specific execution of the works contract between the partners. Appellant was allocated with the work of supply, installation and commissioning of the plant and machinery, mechanical engineering works, electrical works etc. as per the J.V. Agreement between the J.V. Partners
3. Accordingly, the party has sought the advance ruling on the following questions:-
 - a. Whether the work awarded to the applicant is a composite supply of works contract service.
 - b. Whether the benefit of Sl No. 3(v)(a) of the Notification No. 11/2017-Central Tax (Rate), as amended vide Notification No. 20/2017-Central Tax (Rate) is applicable to the subject works.
4. The Authority for Advance Ruling, vide Order UP ADGR 92/2022 dated 24.01.2022 has ruled that:
 - a. As regard to the question “Whether the work awarded to the applicant is a composite supply of works contract service”, the same is replied in negative.
 - b. As regard to the question “Whether the benefit of Sl No. 3(v)(a) of the Notification No. 11/2017-Central Tax (Rate), as amended vide

Notification No. 20/2017-Central Tax (Rate) is applicable to the subject works” the same is also replied in negative.

Grounds of appeal submitted by the Appellant:-

5). Aggrieved with the Order the Appellant filed an appeal against it on following grounds:

- 5.1) The Appellant has been awarded a contract by the JV of not only supplying of Plant and Machinery but also its installation and commissioning including Overhead Head Electrical works, in connection with setting up of Electric Loco Shed, including electrification work required to operationalise the plant as a whole.
- 5.2) The AAR failed to appreciate the fact that the items of plant and machinery supplied, installed and commissioned by the Appellant were of permanent nature and that the Indian Railways have no intention to move them from the site in foreseeable future which is apparent from the definition of terms “Permanent Works” and “Plant” as contained in the General Terms of the Contract Agreement entered into by the JV with RVNL.
- 5.3) Some of the machines supplied, installed and commissioned by the Appellants under the contract like;
 - a. “Under Floor Wheel Lathes” are required to be installed in specially constructed concrete walled pits admeasuring approx. 20 Feet by 20 Feet which are almost ten feet deep in the ground and are connected with site specific designed hydraulic pipes, bur conveyors etc;
 - b. EOT Cranes of 65-Tons and 25-Tons lifting capacities are specifically designed for the particular plant sites;
- 5.4) Such machines cannot be uprooted from their positions without causing substantial damage to their basic characteristics. Apart from these machines, there is long list of machineries, assemblies and structures which together constitute the one homogeneous plant called Electric Loco Shed.
- 5.5) Electric Loco Shed for maintenance, repair and overhauling of electric locomotives requires Overhead Electric Supply to draw power through a pantograph for seamless movement of locomotives into and out of the shed. The Appellants have been sub contracted by the JV

of the work of constructing Overhead Electric Supply. Upon installation of this overhead electric supply assembly it becomes one with the general electrical supply mechanism of the plant and cannot be moved without causing substantial damage not only to itself but the Entire Loco Shed itself. It has been held by the AAR of West Bengal in the matter of ABB INDIA LTD that Construction, erection, commissioning, or installation of original work - Attaching cables and other electrical equipment to earth with no intention of removing or shifting them in foreseeable future - Parts so interlinked to constitute functioning Supervisory Control and Data Acquisition (SCADA) system that none can be moved separately or without causing substantial damage to goods attached to earth - Moveable character of goods like cables and other equipment, therefore, becomes extinct. Supply amounted to erection and commissioning of immovable property involving transfer of property in goods in its execution and, therefore, works contract.

5.6) There may be some items supplied by the Appellant in pursuit of constructing the plant which are movable in nature but these items should not be considered in isolation as they are the part and parcel of the plant as a whole and are not intended to be moved outside the plant.

5.7) Even the Central Board of Indirect Taxes and Customs, vide Flyer No. 28, dated 1-1-2018 on "Works Contract", has also envisaged a situation that supply, installation and commissioning of plant and machinery in certain circumstances can acquire a status of an immovable property. Further the Appellant also relied upon certain case laws to bolster their claim.

6) The Appellant was granted personal hearing on 13th July 2022. Sh. Uday Patwardhan, Company Secretary/Authorized representative, appeared in personal hearing on behalf of the appellant. During the course of personal hearing he submitted some photographs to vindicate his stand and reiterated the submission already made vide appeal application dated 14.04.2022. He has nothing more to add.

DISCUSSION AND FINDING

7) We have gone through the submissions made by the Appellant and examined the detailed explanation submitted by them. We observe that as per the appellant the work performed by them is a composite supply under

work contract whereas the Authority for Advance Ruling, in its order dated 24.01.2022, has observed that *“For the goods / services supplied by the applicant to be covered in the works contract, it is necessary that the contracts enumerated therein should relate to immovable property. If the contract is otherwise or if the same results in movable, then it may be a composite supply but not the work contract. We are of the view that the activities of installation, commissioning, testing, supplying mechanical work and electrical work are not in respect of immovable property as the machinery and plant is attached to concrete base to prevent vibration/wobble free operation and preventing vibration/wobble free operation does not qualify for being described as attached to earth”*. Accordingly, they had observed that the said supply of goods/services by the applicant to JV is not work contract. Here we observe that the main thrust of the Authority for Advance Ruling was that since the service provided by the appellant are not in respect of immovable property, accordingly not qualified for works contract.

8). As per Section 2(119) of the CGST Act 2017 “Works Contract” has been defined as :

“(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;

Whereas, in terms of Section 2(30) of the CGST Act, 2017 the “Composite supply” has been defined as:

“(30) “composite supply” means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;”

Accordingly, For a transaction to qualify as composite supply, it needs to satisfy the following conditions :

- (a) There must be two or more taxable supplies of goods or services or any combination thereof.
- (b) Such supplies of goods or services are naturally bundled;
- (c) Such supplies of goods or services are made in conjunction with each other; and
- (d) One of the supplies of goods or services is principal / predominant.

9). We observe that for classifying any contract under works contract the property involved in the same has to be of any immovable nature. Further, Immovable property has not been defined under the provisions of GST. However Immovable property stands defined under Section 3(26) of the General Clauses Act, 1897 to include land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth. Section 3 of the Transfer of Property Act, 1882 stipulates that unless there is something repugnant in the subject or context “immovable property” does not include standing timber, growing crops or grass. The Section however, defines the term “attached to the earth” to mean (a) rooted in the earth, as in the case of trees and shrubs. (b) embedded to earth, as in the case of walls or buildings and (c) attached to what is so embedded for permanent beneficial enjoyment of that to which it is attached. Thus the essential character of “immovable property”, as emerges from the above discussion, relevant to the present context is that it is attached to the earth, or permanently fastened to anything attached to the earth, or forming part of the land and not agreed to be severed before supply or under a contract of supply.

10). Regarding, nature of the property whether movable or immovable, we observe that some of the machines supplied / installed by the Appellant are as under:

- a. *“Under Floor Wheel Lathes”- are required to be installed in specially constructed concrete walled pits admeasuring approx. 20 Feet by 20 Feet which are almost ten feet deep in the ground and are connected with site specific designed hydraulic pipes, bur conveyors etc;*
- b. *EOT Cranes of 65-Tons and 25-Tons lifting capacities are specifically designed for the particular plant sites. Apart from these machines, there is long list of machineries, assemblies and structures which together constitute the one homogeneous plant called Electric Loco Shed.*
- c. *Electric Loco Shed for maintenance, repair and overhauling of electric locomotives requires Overhead Electric Supply to draw power through a Pantograph for seamless movement of locomotives into and out of the shed.*

11). The Appellants have been sub contracted by the JV for the work of constructing Overhead Electric Supply. Upon installation of these overhead electric supply assembly it becomes one with the general electrical supply mechanism of the plant and cannot be moved without causing substantial damage not only to itself but the Entire Loco Shed itself. The appellant has also submitted that machinery installed at the Electric Loco Shed was not

to be moved and transported as it is to any other place in foreseeable future and the Indian Railways also have no intention of moving the machinery in foreseeable future or selling it as it is in the open market. Thus, these are permanent fixtures to the embedded structure like wall, floor etc. This is as per Section 3(c) defining immovable property in the Transfer of Property Act, 1882.

12). Now coming to the question whether the property involved in the question is of movable nature or immovable nature, we also observe that, in the case of *Duncans Industries Ltd. v. State of U.P. & Ors.* (Order dated 03.12.1999 of Supreme Court), Hon'ble Supreme Court had observed that :-

"The question whether a machinery which is embedded in the earth is movable property or an immovable property, depends upon the facts and circumstances of each case. Primarily, the Court will have to take into consideration the intention of the parties when it decided to embed the machinery whether such embedment was intended to be temporary or permanent. A careful perusal of the agreement of sale and the conveyance deed along with the attendant circumstances and taking into consideration the nature of machineries involved clearly shows that the machineries which have been embedded in the earth to constitute a fertiliser plant in the instant case, are definitely embedded permanently with a view to utilise the same as a fertiliser plant. The description of the machines as seen in the Schedule attached to the deed of conveyance also shows without any doubt that they were set up permanently in the land in question with a view to operate a fertilizer plant and the same was not embedded to dismantle and remove the same for the purpose of sale as machinery at any point of time. The facts as could be found also show that the purpose for which these machines were embedded was to use the plant as a factory for the manufacture of fertiliser at various stages of its production. Hence, the contention that these machines should be treated as movables cannot be accepted."

13). In this context, Hon'ble Supreme Court Judgment in the case of *M/s. T.T.G. Industries Ltd. v. Collector of Central Excise* [2004(167)ELT.501(SC)], wherein the contract was for the design, supply, supervision of erection and commissioning of four sets of Hydraulic Mudguns and Tap Hole Drilling Machines required for blast furnace and

the issue was whether the same is immovable property, observed as under :-

“Keeping in view the principles laid down in the judgments noticed above, and having regard to the facts of this case, we have no doubt in our mind that the mudguns and the drilling machines erected at site by the appellant on a specially made concrete platform at a level of 25 feet above the ground on a base plate secured to the concrete platform, brought into existence not excisable goods but immovable property which could not be shifted without first dismantling it and then re-erecting it at another site. We have earlier noticed the processes involved and the manner in which the equipments were assembled and erected. We have also noticed the volume of the machines concerned and their weight. Taking all these facts into consideration and having regard to the nature of structure erected for basing these machines, we are satisfied that the judicial member of the CEGAT was right in reaching the conclusion that what ultimately emerged as a result of processes undertaken and erections done cannot be described as “goods” within the meaning of the Excise Act and exigible to excise duty.”

14). In the case of CCE, Ahmedabad vs. Solid and Correct Engineering Works and Others [2010(252)ELT.481(SC)], the Hon'ble Supreme Court has observed that 'attachment to earth' is a key factor for determining immovable nature of a property. Further, such attachment should be for permanent beneficial enjoyment of land to which it is attached. Moreover, in the case of Quality Steel Tubes (P) Limited v. CCE, UP [1995(75)ELT(17)SC], the Hon'ble Supreme Court has held that goods are those which can be bought to the market to be sold. The goods attached to earth become immovable and do not satisfy the test of goods. A tube mill was immovable since it was not transferable or transportable.

15). We also observe that in the Flyer No. 28, dated 1-1-2018 on “Works Contract” , issued by the Central Board of Indirect Taxes & Customs, it has been clarified that *“Plant and Machinery in certain cases when affixed permanently to the earth would constitute immovable property. When a works contract is for the construction of plant and machinery, the ITC of the tax paid to the works contractor would be available to the recipient, whatever is the business of the recipient. This is because works contract in respect of plant and machinery comes within the exclusion clause of the negative list*

and ITC would be available when used in the course or furtherance of business.”

16). As regard to the nature of work being undertaken by the Appellant, we observe that as per the Letter of Acceptance (LOA) issued by the Rail Vikas Nigam limited (RVNL for short) the said scope of the work was “Construction of PEB shed, structure, building water supply arrangement, drainage, sewerage, road work, track work, power supply and general electrical work, OHE work, signal & telecommunication works and supply, installation and commissioning of machinery and plant in connection with setting up of electric loco shed at Saiyedpur Bhitri, Uttar Pradesh.” The JV, in turn, further allocated the work related to supply and commissioning of plant and machinery, mechanical engineering work, electrical work etc.

17). In this context we observe that, In M.O.H. Uduman and Ors. vs. M.O.H. Aslum (AIR 1991 SC 1020), the Hon’ble Apex Court had held that it is settled canon of construction that a contract of partnership must be read as a whole and the intention of the parties must be gathered from the language used in the contract by adopting harmonious construction of all the clauses contained therein. The cardinal principle is to ascertain the intention of the parties to the contract through the words they have used, which are key to open the mind of the makers. Applying the analogy in the instant case we observe that the work allotted to the JV is for the entire work relating to setting up of a Electric Loco Shed at Saiyedpur Bhitri and it should be read as whole and not in isolation. Thus, it is settled law that clauses in the agreement should be read as a whole and not in isolation to understand the tenor and intention of the contracting parties.

18). From the above discussion it gets established that the instant contract consists of transfer of property in goods, coupled with supply of services which leads to the inevitable conclusion that this is a case of Works contract, covered under the definition of “Works contract” defined under Section 2(119) of the CGST Act, 2017 supra. The details of works as enumerated above and as forthcoming from the contract, goes to show that the said project awarded to the Appellant by the JV is not as simple or movable. The work consists of an entire system comprising of a variety of different structures which are installed after a lot of prior work which involves Civil work, Civil engineering, Ground work, supply, Foundation work, Fabrication, various mechanical and electrical works etc. The magnitude of project covers a large area of about 40 thousand sq meter tailored specifically to fit the dimensions and orientation of the needs of the

project. It is no one's case that these items will ever be removed from their position. Therefore, they qualify under clause (c) of Section 3 of the Transfer of Property Act, 1882. Thus, the project of setting up of Electric Loco Shed at Saiyedpur Bhitri, Uttar Pradesh, fulfills the conditions of it being an immovable property. Accordingly, we in affirmation with the Appellant that the said project of construction for Railways, on the basis of the scope of work as can be seen from the documents submitted by the Appellant, we come to the conclusion that the said project are immovable in nature.

RULING

1. Whether the work awarded to the appellant is a composite supply of works contract service.

Ans:- Yes, it is a composite supply of works contract service.

2. Whether the benefit of Sl No. 3(v)(a) of the Notification No. 11/2017-Central Tax (Rate), as amended vide Notification No. 20/2017-Central Tax (Rate) is applicable to the subject works.

Ans. They are eligible to take the benefit of Sl. No. 3(v)(a) of the Notification No. 11/2017-Central Tax (Rate), as amended vide Notification No. 20/2017-Central Tax (Rate) for the subject work.



(S. Kannan)
Member AAAR
CGST



(Ministhy S)
Member AAAR
SGST

To,

M/s HYT Engineering Company Private Limited
New Electric Loco Shed, Opp Saiyedpur Railway Station,
Chochakpur Saidpur Road
Saiyedpur Bhitri, Ghazipur, 233304

APPELLATE AUTHORITY FOR ADVANCE RULING
GOODS & SERVICE TAX
UTTAR PRADESH

Copy to –

1. The Additional Commissioner, CGST & Central Excise, Audit Commissionerate, Lucknow, Member, Authority for Advance Ruling.

2. The Joint Commissioner (Law), Commercial Tax, Uttar Pradesh, Member, Authority for Advance Ruling.

3. The Commissioner, CGST & CX, Allahabad Commissionerate, Uttar Pradesh.

4. Through the Additional Commissioner, Commercial Tax,

Gr-1, Zone-Prayagraj (B), Prayagraj, Uttar Pradesh to jurisdictional tax assessing officers.