

2537/CT/2022

ODISHA AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX (GST)
RAJASWAVIHAR, BHUBANESWAR-751007(ODISHA)
PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING
U/S.98 OF THE GOODS AND SERVICE TAX ACT, 2017

Members present :

1. Sri Gopal Krishna Pati, IRS, Additional Commissioner, Office of the Chief Commissioner, GST, Central Excise & Customs, Bhubaneswar
2. Sri Hrushikesh Mishra, OFS (SAG), Special Commissioner of CT&GST, Office of the Commissioner, CT&GST, Odisha Banijyakar Bhawan, Cantonment Road, Cuttack - 753001- Odisha.

1	Name and Address of the Applicant	M/s NBCC (INDIA) Limited, Plot No. G/1, NBCC Imperia, New Govt. Colony, Bhubaneswar, Odisha-751017
2	GSTIN or User ID	21AAACN3053B1ZC
3	Date of Filing of Form GST ARA-01	26.07.2021
4	Present for the Applicant	Tarun Kumar Agarwalla , CA Nupur Chopra, CS
5	Date of Personal Hearing	01.10.2021

ORDER NO.02/ODISHA-AAR/2021-22 DATED 12.11.21

Subject: M/s NBCC (INDIA) Limited, Plot No. G/1, NBCC Imperia, New Govt. Colony, Bhubaneswar, Odisha-751017 (herein after referred to as the 'Applicant') having a GSTIN: 21AAACN3053B1ZC, is a company filed an application for Advance Ruling under Section 97 of CGST Act, 2017 and Section 97 of the OGST Act, 2017 in FORM GST ARA-01 discharging the fee of Rs. 5,000/- each under the CGST Act and the SGST Act.

Note: The applicant or jurisdictional officer, if aggrieved by the ruling given above, may appeal to the Odisha State Appellate Authority for advance ruling under Section 100 of the CGST/OGST Act, 2017 within 30 days from the date of receipt of the advance ruling.

Done

1.0 The Applicant having assigned with GSTIN number 21AAACN3053B1ZC sought advance ruling in respect of the following questions.

- (a) Appellate authority for advance ruling in its order no 02/ODISHA-AAAR/Appcal/2020-21 dated 19.03.2021 while endorsing the findings of authority for advance ruling, have concluded that the nature of supply made by NBCC Ltd. (Applicant) to IIT, BBSR vide the agreement dated 02.05.2016 is a work contract services under Central Goods and Services Tax Act (Odisha State Goods and Services Tax Act) and entire contract is eligible for specific rate of tax at 12% of GST (State & centre combine) classifiable under Sr. No. 3 (vi) (b) (classification code 9954) of the table in the Notification No. 11/2017-Central Tax(Rate) dated the 28th June, 2017.
- (b) Therefore, as the ruling so pronounced governing to the specific works contract, whether the classification and rate of taxes so determined would be applicable to the entire value of the works contract vide agreement dated 02.05.2016?
- (c) Therefore, whether or not the specific rate of tax i.e., 12% vide the orders were made applicable throughout the life of the undergoing contract pertains to GST Regime? In other words, whether the value of supplies taxable under GST, on or after 01.07.2017 would liable to the tax rate of 12% vide clause 3(vi) (b) of the rate notification 11/2017 dated 28.06.2017 made effective from 01.07.2017 i.e., appointed date under GST laws?
- (d) As NBCC, prior to pronouncement of the ruling have paid 18% of tax on its invoices raised to IIT -Bhubaneswar pertains to the underlying subject contract, whether the taxes to the extent of 6 % (18% paid- 12% as per order) become taxes paid over and above the liability to pay within the four corners of law and can be regarded as tax in excess?
- (e) For that matter whether the excess tax to the extent of 6 % so paid would be eligible to be refunded under section 54?
- (f) What would be the proper procedure under GST provisions for claiming the excess amount so paid?

1.1 At the outset, we would like to make it clear that the provisions of both the CGST Act and the OGST 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 would also mean a reference to the same provision under the OGST Act.

2.0 Submission of the Applicant

- 2.1 The Applicant on 02.05.2016 entered into an Agreement with India Institute of Technology, Bhubaneswar for construction of the academic campus including all kinds of construction, erection, infrastructure development on a turnkey basis.
- 2.2 It shall carry out the work on turnkey basis which includes planning, designing, supervision/construction, furnishing, equipping and handing over the building(s) and other works to 'IIT BBS' in ready to use condition.
- 2.3 The project has been continuing since 2016 and is running as on date. From 01 July 2017 GST have been implemented replacing various state and central indirect taxes to which the applicant has complied fully. During implementation of new law, as per the advice of tax consultants, applicant has applied tax rate of 9% as central GST and 9% as State GST on its tax invoices starting from 01.07.2017. The same were considered as general rate of tax prescribed for services vide notification No. 11/ 2017(Rate) dated 28- 06-2017.
- 2.4 Thereafter, IIT- Bhubaneswar, advised us to seek clarity on the correct rate of tax on the ongoing projects. Therefore, the applicant has made an application for advance ruling before authority for advance ruling, Odisha dated 10-02-2020. The AAR, Odisha vide Order No. 01/ODISHA0AAR/2020-21 dated 01.10.2020 have considered that IIT- Bhubaneswar is a government entity and the value of services pertaining to the subject works contract is covered under clause (vi) (b) of Sl. no 3 (classification code 9954) of the table in the rate notification no 11/2017 dated 28th June 2017.
- 2.5 However, in the said order, honourable bench have denied the specific rate of tax, i.e., 12% on specific component of the entire project. To bring clarity on the subject and on the advice of IIT, the Applicant has filled appeal before the Appellate authority for advance ruling seeking clarity on the issue and emphasizing that the whole project is a single project.
- 2.6 Appellate authority for advance ruling, Odisha have passed the order no 02/ODISHA-AAAR/Appeal/2020-21 dated 19.03.2021. In the order Appellate

authority have agreed to the findings in the ruling appealed against, except the fact that the specific components of the single contract can be taxed at a rate other than the specific rate applicable to the project, i.e., 12%. Consequently, the value of works contract services vide agreement dated 02.05.2016 between NBCC and IIT-Bhubaneswar is regarded as single composite contract where the whole project is covered under clause (vi) (b) of Sl. no 3 (classification code 9954) of the table in the rate notification no 11/2017 dated 28th June 2017, i.e., specific rate of 12% (6% State GST and 6% Center GST).

- 2.7 With respect to the period starting from 01.07.2017 till the date of appellate order, the applicant has applied tax rate of 18 % on all its invoices to IIT- Bhubaneswar. Therefore, it appears the taxes to the extent of 6% so paid as tax is nothing but tax in excess and liable to be refunded under provision of section 54 of the Central GST Act, as well State GST Act.
- 2.8 In order to have a clarity on the date of applicability of the order of advance ruling so passed, the present advance ruling have been sought.
- 2.9 The applicant viewed that the rates of tax so pronounced vide notification no.11/2017 would be made applicable from the date of its first implementation, i.e., 01.07.2017. In other words, applicant believes that all the value of supplies made to IIT Bhubaneswar on or after 01.07.2017 during the GST regime under the subject contract were liable to tax at the rate of 12 % and not 18%.
- 2.10 The applicant has started invoicing all its future invoices at the specific rate of 12% as soon as the order of appellate authority for advance ruling is pronounced/ served. Applicant further submits that as the taxes with respect to supplies made prior to the date of order of appellate authority for advance ruling were made under natural believe the same de-facto became taxes in excess and over and above the prescribed rate of taxes. For that matter such excess taxes were not leviable under the provisions of GST and liable to be refunded.
- 2.11 The applicant humbly submits that the taxes levied under section 9(1) are always subject to the rate of taxes specified vide notification no 11/2017 as far as supply of service is concern. Further, the process of classification of services and rate of taxes so determined were on the notification no 11/2017 which is made effective

from 01.07.2017. Hence applicant have considered submission that the rate of taxes of 12% is made applicable since 01.07.2017, i.e., from that date of effect of the notification no 11/2017.

2.12 Applicant, to remain the right side of the law, it has to adhere to the order of the appellate authorities for advance ruling and for that matter it feels the excess taxes so paid is an eligible amount for refund of taxes under section 54(1).

2.13 In light of all the above, the applicant humbly submits that the classification and applicable rate of taxes on the entire value of services under the subject contract between applicant and IIT- Bhubaneswar is at the rate of 12% of taxes and amount already paid in excess of it during the period prior to the date of order of appellate authority for advance ruling is taxes in excess and eligible amount for application of refund. It is also being urged to provide guidance for proper procedure for application of refund before the appropriate authorities.

3.0 The personal hearing was held on 01.10.2021. The applicant appeared through its CA and Representatives. Sri T.K. Agarwalla, CA on behalf of the applicant reiterated the submissions already furnished in the annexure to the application. During personal hearing, the applicant has submitted fresh written submission which inter-alia read as under;

(a) Without prejudice to the submissions made, the Applicant further takes this opportunity to submit place that as per its understanding of the provision of GST Law as on date, the term advance ruling has been defined to mean a decision in relation to supplies of goods and services or both being undertaken or proposed to be undertaken. To support its understanding, the Applicant places on record the definition of "Advance Ruling" as provided in Section 95(a) of the CGST Act, 2017. The same is reproduced hereunder for Your Honour's kind reference:

"advance ruling" means a decision provided by the Authority or the Appellate Authority or the National Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 2 or of section 101C, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;

- (b) The words being used are "being *undertaken*", it can be very well be inferred that the legislative intent is to cover supplies which have been undertaken before the application of Advance Ruling is made. It is vehemently submitted that it is just a clarification and not a change in Law. In view of the above submission, as the Advance Ruling can legislatively be made applicable retrospectively.
- (c) It is submitted further that the order of Advance Ruling is of a binding nature. Accordingly, the Applicant has applied the tax rate of 12 % (CGST-6% and SGST-6%) from the date of the order of the Advance ruling and has started to collect and pay tax at the correct rate. In the instant case, due to ambiguity/confusion, regarding the correct rate of tax applicable on supplies, the Applicant taking abundant precaution has applied and deposited tax on supplies at higher rate (18% CGST and SGST together) in Government treasury. However, after the Advance ruling pronounced by Hon'ble AAAR, Odisha the Applicant came to know that it has paid taxes on such supplies at higher rate and consequently there was excess payment of tax.
- (d) In view of the above facts, the Applicant submits that its case gets squarely covered *U/s 54(8) of the CGST Act, 2017*. This section classifies refund into six categories (a) to (h) and category applicable in present case is (e). It is provided in sub section 54(8)(e) that refundable amount shall be paid, if such amount is *relatable to excess tax paid by applicant*.

Submitted for consideration

4.8 We have considered the submissions made by the applicant in their application for advance ruling as well as the arguments advanced by Sri Tarun Kumar Agarwalla, CA during the personal hearing. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts. The questions before us are as below;

- (a) Appellate authority for advance ruling in its order no 02/ODISHA-AAAR/Appeal/2020-21 dated 19.03.2021 while endorsing the findings of authority for advance ruling, have concluded that the nature of supply made by NBCC Ltd. (Applicant) to IIT, BBSR vide the agreement dated 02.05.2016 is a

work contract services under Central Goods and Service Tax Act (Odisha State Goods and Services Tax Act) and entire contract is eligible for specific rate of tax at 12% of GST (State & central combine) classifiable under Sr. No. 3 (vi) (b) (classification code 9954) of the table in the Notification No. 11/2017-Central Tax(Rate) dated the 28th June, 2017.

- (b) Therefore, as the ruling so pronounced governing to the specific works contract, whether the classification and rate of taxes so determined would be applicable to the entire value of the works contract vide agreement dated 02.05.2016?
- (c) Therefore, whether or not the specific rate of tax i.e., 12% vide the orders were made applicable throughout the life of the undergoing contract pertains to GST Regime? In other words, whether the value of supplies taxable under GST, on or after 01.07.2017 would liable to the tax rate of 12% vide clause 3(vi) (b) of the rate notification 11/2017 dated 28.06.2017 made effective from 01.07.2017 i.e., appointed date under GST laws?
- (d) As NBCC, prior to pronouncement of the ruling have paid 18% of tax on its invoices raised to IIT -Bhubaneswar pertains to the underlying subject contract, whether the taxes to the extent of 6 % (18% paid- 12% as per order) become taxes paid over and above the liability to pay within the four corners of law and can be regarded as tax in excess?
- (e) For that matter whether the excess tax to the extent of 6 % so paid would be eligible to be refunded under section 54?
- (f) What would be the proper procedure under GST provisions for claiming the excess amount so paid?

4.1 Before proceeding to arrive a conclusion, we would like to discuss the relevant provision of section 97 of the GST Act, 2017. Sub-section 2 of Section 97 provides an exhaustive list of issues on which an Advance Ruling may be sought under the GST Act. The questions shall be in respect of -

- (i) classification of any goods or services or both
- (ii) applicability of a notification issued under the GST Law
- (iii) determination of time of supply of goods or services or both

- (iv) determination of value of supply of goods or services or both
- (v) admissibility of input tax credit
- (vi) determination of the liability to pay tax on any goods or services or both
- (vii) whether applicant is required to be registered
- (viii) whether any transaction amounts to or results in a supply of goods or services or both.

Thus, the questions for which an advance ruling may be obtained are categorically prescribed and no queries other than these would be entertained for advance rulings.

- 4.2 The applicant in clause (a) [as above] has discussed the findings of the Appellate Authority for advance Ruling in its order no. 02/ODISHA-AAAR/Appeal/2020-21 dated 19.03.2021. In question no. (b), the applicant has sought clarification i.e.whether the classification and rate of taxes so determined by the Appellate Authority for advance Ruling in its order no. 02/ODISHA-AAAR/Appeal/2020-21 dated 19.03.2021 would be applicable to the entire value of the works contract vide agreement dated 02.05.2016? The applicant in Question No.(c) has also sought clarification whether or not the specific rate of tax i.e., 12% vide the appellate authority order was made applicable throughout the life of the undergoing contract pertains to GST Regime? We see that questions/clarifications sought for by the applicant from the Appellate Authority's order are not coming within the purview of Section 97(2) under the Act. The Authority for Advance Ruling is not in a position to provide clarifications or to give comments on the order passed by Appellate Authority under GST Act. Therefore, the subject application with regard to these questions cannot be admitted and thus not eligible for advance ruling. Hence we do not discuss the merits of the case.
- 4.3 The next question that is being asked in the subject case is whether the taxes to the extent of 6 % (18% - 12%) so paid prior to pronouncement of Appellate Authority's order become taxes paid over and above the liability to pay within the four corners of law and can be regarded as tax in excess? It is seen that the question raised does not fall under any of the provisions of Section 97 (2) of the CGST Act, 2017.

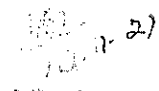
4.4 The applicant has asked about the procedure under GST provisions for claiming the excess amount so paid? In this regard, it is stated that Section 54 of the CGST Act, 2017 deals with refund of taxes. Applicant may go through the procedure/provision of said GST Section.

RULING

5.0 The subject application cannot be admitted. The questions raised do not fall under any of the provisions of Section 97 (2) of the CGST Act, 2017. Therefore, the present application seeking ruling on questions stated here in above is not maintainable and liable for rejection.

6.0 The applicant or jurisdictional officer, if aggrieved by the ruling given above, may appeal to the Odisha State Appellate Authority for advance ruling under Section 100 of the CGST/OGST Act, 2017 within 30 days from the date of receipt of the advance ruling.


(G. K. Pati)
Member, CGST


(Hrushikesh Mishra)
Member SGST

C. No. V (01) ARA/ODISHA/BBSR/2021/2

To

M/s NBCC (INDIA) Limited, Plot No. G/1, NBCC Imperia, New Govt Colony, Bhubaneswar, Odisha-751017.

Copy forwarded to:

1. The Principal Commissioner, CGST & Central Excise, Bhubaneswar Commissionerate, C R Building, Rajaswa Vihar, Bhubaneswar-751007 (Odisha)
2. The Commissioner, SGST Odisha, Baniyakar Bhawan, Old Secretariat Compound, Cuttack-753001, Odisha.
3. Office copy.