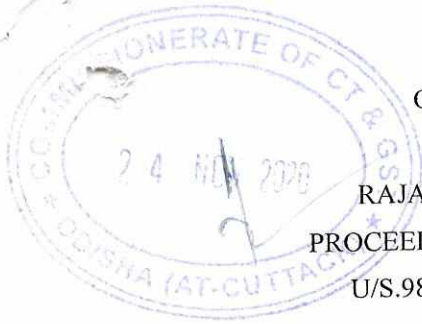




ODISHA AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX (GST)
RAJASWAVIHAR, BHUBANESWAR-751007(ODISHA)
PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING
U/S.98 OF THE GOODS AND SERVICE TAX ACT, 2017



Members present :

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

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1	Name and Address of the Applicant	M/s NBCC (INDIA) Limited, Plot No. G/1, NBCC Imperia, New Govt Colony, Press Chhak, Bhubaneswar, Odisha-751017
2	GSTIN or User ID	21AAACN3053B1ZC
3	Date of Filing of Form GST ARA-01	17.01.2020
4	Present for the Applicant	Amrit Aaron Mohanty, CA Tarun Kumar Agarwalla, CA
5	Date of Personal Hearing	17.09.2020

ORDER NO.01/ODISHA-AAR/2020-21/DATED

Subject: M/s NBCC (INDIA) Limited, Plot No. G/1, NBCC Imperia, New Govt Colony, Press Chhak, 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.

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

- A. Whether on the basis of the facts 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) relying on clause 119 to section 2 read with item no. 6(a) to the schedule -II of the said Act. For that matter, the applicable rate of tax would be governed by Sr. No. 3 (classification code 9954) of the table in the Notification No. 11/2017-Central Tax (Rate) dated the 28th June, 2017.

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- B. Whether on the basis of law as well as fact, IIT, Bhubaneswar is a 'Governmental Authority' or a 'Government Entity' as defined at clause no (ix) and (x) in the explanation at serial no. 4 to Notification No. 11/2017 Central Tax (rate) dated 28.06.2017 under Central GST Act.
- C. If yes, whether the works contract service of construction of IIT Bhubaneswar Campus allotted to the Applicant company, covered under clause (vi)(b) of Sr. No. 3 (classification code 9954) of the table in the Notification No. 11/2017-Central Tax(Rate) dated the 28th June, 2017. For that matter the applicable rate of tax is 12% (including State GST rate).
- D. Alternatively, if the works contract service could not be fully/ partially covered under entry 3(vi)(b), in the facts and circumstances of the Applicant company, then whether it would be covered under 3(vi)(a) of the said notification as the construction work is predominantly for use other than for commerce, industry or any other business of profession.
- E. Alternatively, whether the construction services related to sewerage project falls under clause (iii) of serial no 3 (classification code 9954) of the table in the Notification No. 11/2017-Central Tax(Rate) dated the 28th June, 2017.
- F. Or otherwise if the works contract service is not covered under clause (vi) or clause (iii) of entry 3 of the aforesaid notification, in the facts and circumstances of the Applicant company, then what will be applicable clause under entry no. 3 and what would be the rate of GST?

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 The applicant, while filing the application for seeking advance ruling, explained the facts, cited various judicial pronouncements in support of its submission. It was submitted that the applicant has entered into Agreement with Indian Institute of Technology, Bhubaneswar for Project Management Consultancy (PMC) works. The scope of the work as per the agreement includes ;
“(not limited to) providing and laying Sewerage & STP for residential cum academic campus, 800 seater boys hostel, 200 seater girls hostel, Construction of lecture hall complex, Construction of Student Activity Centre, Dispensary, Construction of 1000 capacity Auditorium, Construction of Directors Bungalow, 40 nos. staff Quarters, 84 nos Faculty Quarters, Construction of Central Research & Instrumentation facilities, Construction of Central Workshop, Landscaping and allied works for academic area, construction of water works, Roof top solar PV power plants, Play grounds, Electricity, Substation DG set and fire safety measures etc”.

2.1 It was also submitted that the applicant shall carry out surveying and soil investigation of the plot of IIT BBS. The applicant shall finalize the Architectural Plans with the approval of IIT BBS. The applicant shall prepare tender documents required for execution of the Project after giving

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technical sanction of the concerned work. The work shall be executed as per architectural drawings and specifications approved by 'IIT BBS' and to the full satisfaction of 'IIT BBS' through contractors(s) to be engaged by the applicant. Further the applicant 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. Further, the applicant shall follow competitive tendering process for selection of agencies for planning, designing and execution of works of the project, as per their procedure. The applicant shall be paid the actual cost of work plus the agency charges of 5.5% plus service tax and other taxes as applicable from time to time.

- 2.2 Further, it was also submitted that the applicant have appointed various agencies/ contractors to carry out the project towards its desire completion. In this regard the applicant has awarded work for construction of various buildings, infra facilities, educational blocks to various parties/sub-contractors as per the tender/ BOQ specifications, based on the CPWD Code and practices.
- 3.0 The personal hearing was fixed on 17.09.2020 under due intimation to the applicant, the jurisdictional officer of State GST & jurisdictional officer of Central GST (intimated through their respective commissioner ate along with a copy of application and the written submission of the applicant). The applicant appeared through its CA and Representatives. The jurisdictional officer of State GST also appeared for personal hearing. Sri Amrit Aaron Mohanty, CA on behalf of the applicant re-iterated the submissions already furnished in the annexure to the application. During personal hearing, the applicant was asked to submit sample copies of invoices/bills raised by the sub-contractors as well as invoices/bills raised by the applicant to IIT, Bhubaneswar. The applicant through its Authorised Representatives submitted the said invoices/bills.
- 4.0 We find that the questions before us essentially pertain to classification of the service and the rate of GST applicable on supply of such service, particularly the applicability of concessional rate of tax in terms of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017. We, therefore observe that the issue before us is squarely covered under Section 97(2) of the CGST Act, 2017 and therefore we admit the application for consideration.
- 4.1 It has been argued by the applicant, through the written submission and also at the time of personal hearing, that the impugned supply is a composite supply of works contract service which is being supplied to IIT, Bhubaneswar a Government entity/Governmental Authority/Government and accordingly the same would merit entitlement for concessional rate of GST @ 12% [CGST @ 6% + SGST @ 6%] in terms of Serial Number 3(vi) (a) & (b) of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 (as amended).
- 4.2 We have given a careful consideration to the arguments adduced by the applicant and the counsel. We observe that there are number of works entrusted to the applicant under a single contract/agreement made on 02.05.2016. We also find that IIT, Bhubaneswar has engaged the

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applicant as a "Project Management Consultant". In order to execute the project, the applicant has engaged contractors through different competitive tender process. The applicant has awarded different types of works to various agencies/contractors with categorical mention of individual works to be carried out by them with specific remuneration for each such work. Hence, it is a supply having distinctly identifiable components with distinct value attributable to each of the components. We, however, do not agree with the contention of the applicant for the reasons that the items covered under the 'Scope of Work' are disjoint in character and can be supplied in conjunction with each other in the ordinary course of business. Hence, we are unable to subscribe to the views of the applicant that the supply of services and goods encompassed in the subject work order/contract are naturally bundled. Mere fact that a number of tasks have been entrusted to the applicant would not make it entitled to be categorized as 'composite supply' particularly in terms of Section 2(30) of the CGST Act, 2017.

- 4.3 Now, coming to the legal status of IIT, Bhubaneswar. The Applicant has stated that IIT, Bhubaneswar has been established by the Government. All the institutions of the Indian Institutes of Technology are established by the Government of India, Ministry of Human Resource Development. Further, IITs under the All India Council of Technical Education(AICTE) are the institutions controlled and owned by the Ministry of Human Resource Development. That being the stated position, IIT, Bhubaneswar is entitled to be termed as 'Government Entity' in terms of Explanation to Notification No. 11/2017-C.T. (Rate), and also as per Notification No. 31/2017-C.T. (Rate), dated 13-10-2017. We would also like to mention here that the issue of IIT, Bhubaneswar being a Government entity has been stated with at length in the application submitted by the Applicant. "Government Entity" is defined in the Notification No.11/2017-Central Tax rate vide clause 4(x) as under -

"Government 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 State Legislature; or (ii) established by any Government, with 90 per cent, or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government. Union Territory or a local authority."

- 4.4 We find that Government of India, Ministry of Human Resource Development is exercising full control over the activities of IITs all over the country. Needless to say that in the given circumstances IIT, Bhubaneswar qualifies to be called and termed as a 'Government Entity' for the purpose of GST law, as it fulfils the necessary and sufficient conditions laid down under notification supra. It therefore leaves no doubt that IIT, Bhubaneswar is a Government Entity for the purpose of provisions of CGST Act, 2017 and OGST Act, 2017.
- 4.5 We observe that the Entry No. 3(vi) to the Notification No. 11/2017-C.T. (R) covers a wide spectrum of Construction Services as composite supply. To be more specific the entry covers;

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(vi) Composite supply of works contract as defined in clause (119) of Section 2 of the Central Goods and Services Act, 2017, 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 work meant predominantly for use other than for commerce, industry or any other business or profession;

(b) a structure meant predominantly for use as (i) and 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 Act, 2017.

The above mentioned Serial No. 3(vi) provides a concessional rate of GST @ 12% subject to condition provided under Column (5) of the said table, which reads as under :

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.

4.6 Now in the instant case we find that the applicant has been engaged as a PMC to execute the contract for carrying out different specified works for IIT, Bhubaneswar which includes erection, commissioning, installation, etc. We also find that for executing the project, the applicant shall be paid agency charges of 5.5% in addition to the actual cost of work. The agency charges are type of commission or remuneration for rendering 'consulting service' to IIT, Bhubaneswar. We also find it necessary to place on record that there are certain items of supply made to IIT, Bhubaneswar including, but not limited to, 'supply of consulting services' which definitely do not find place in the ambit of Sr. No. 3(vi) to the Notification No. 11/2017-C.T. (Rate). Needless to mention that such supply shall not qualify for exemption as envisaged under Sr. No. 3(vi) to the Notification No. 11/2017-C.T. (Rate), inasmuch as the said supply is a "Pure Service" and not in the nature of works contract service.

4.7 The works entrusted to the Applicant namely construction of 800 seater boys hostel, 200 seater girls hostel, Construction of lecture hall complex, Construction of Student Activity Centre, Dispensary, Construction of 1000 capacity Auditorium, Construction of Central Research & Instrumentation facilities, Construction of Central Workshop, Play grounds are within the purview of sub-clause (b) of Clause (vi) of Sl No.3 (heading 9954) of Notification No. 11/2017-C.T. (Rate) under CGST Act and corresponding notification under OGST Act, 2017, and hence merit exemption where the applicable tax rate is 12% (6% under CGST & 6% under OGST Act, 2017).

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- 4.8 The works contract so executed by the applicant includes Sewerage disposal (Sewerage & STP) unit & construction of water works are covered vide SI No. (iii) (c) to the said notification and merit exemption where the applicable tax rate is 12% (6% under CGST & 6% under OGST Act, 2017).
- 4.9 Now coming to the issue of construction of Directors Bungalow and construction of staff/faculty quarters. We see that the applicant has been awarded construction of Directors Bungalow, 40 nos. staff Quarters, 84 nos Faculty Quarters in the IIT Campus, Bhubaneswar. We also observe that the civil construction of residential quarters is not the primary work entrusted to IIT, Bhubaneswar. Accordingly, we fail to understand as to why the benefit of concessional rate @ 12% GST should be available to this particular works contract awarded to the applicant? The intention of the Legislature has been to allow concessional rate to such work which has been entrusted to a Government entity for public interest in general, but extrapolating and extending this concessional rate to any or all activities of IIT, Bhubaneswar will not only be unwarranted but also defeat the very purpose of concessional rate. Hence, we hold that construction of Directors Bungalow and construction of staff/faculty quarters is out of purview of exemption provided under Notification No. 11/2017-C.T. (Rate), dated 28-6-2017 and would attract GST @ 18% (9% CGST + 9% SGST).
- 4.10 In view of the discussions foregoing, we are inclined to hold that the works entrusted to the Applicant by IIT, Bhubaneswar under contract/agreement dated 02.05.2016 cannot be termed as composite supply and thus entire work under the said contract shall not be entitled to concessional rate in terms of Notification No. 11/2017-C.T. (R), dated 28-6-2017. However, we also hold that the supply of goods and/or services or both which squarely fall within the ambit of scope of work entrusted to IIT, Bhubaneswar by Government of India shall be entitled for concessional rate under Sr. No. 3(vi) to Notification No. 11/2017-C.T. (R). Accordingly, each and every supply under the subject contract shall be treated separately for determining the rate of tax under the CGST Act, 2017 read with the provisions of GST Tariff and respective exemption notifications.

5.0

RULING

1. Whether on the basis of the facts 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) relying on clause 119 to section 2 read with item no. 6(a) to the schedule –II of the said Act. For that matter, the applicable rate of tax would be governed by Sr. No. 3 (classification code 9954) of the table in the Notification No. 11/2017-Central Tax (Rate) dated the 28th June, 2017.

Ans: Replied at para 4.2, 4.6 to 4.10

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2. Whether on the basis of law as well as fact, IIT, Bhubaneswar is a 'Governmental Authority' or a 'Government Entity' as defined at clause no (ix) and (x) in the explanation at serial no. 4 to Notification No. 11/2017 Central Tax (rate) dated 28.06.2017 under Central GST Act.

Ans: IIT, Bhubaneswar is a 'Government Entity'

3. If yes, whether the works contract service of construction of IIT Bhubaneswar Campus allotted to the Applicant company, covered under clause (vi)(b) of Sr. No. 3 (classification code 9954) of the table in the Notification No. 11/2017-Central Tax(Rate) dated the 28th June, 2017. For that matter the applicable rate of tax is 12% (including State GST rate).

Ans: Replied at para 4.2, 4.6 to 4.10

4. Alternatively, if the works contract service could not be fully/ partially covered under entry 3(vi)(b), in the facts and circumstances of the Applicant company, then whether it would be covered under 3(vi)(a) of the said notification as the construction work is predominantly for use other than for commerce, industry or any other business of profession.

Ans: Replied at para 4.10

5. Alternatively, whether the construction services related to sewerage project falls under clause (iii) of serial no 3 (classification code 9954) of the table in the Notification No. 11/2017-Central Tax(Rate) dated the 28th June, 2017.

Ans: Yes.

6. Or otherwise if the works contract service is not covered under clause (vi) or clause (iii) of entry 3 of the aforesaid notification, in the facts and circumstances of the Applicant company, then what will be applicable clause under entry no. 3 and what would be the rate of GST?

Ans: Replied at 4.2, 4.6 to 4.10

- 6.0 This ruling is valid subject to the provisions under Section 103(2) until and unless declared void under Section 104(1) of the GST Act.

7.0 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.

H K Pati
1/10/2020
(G K Pati)
Member, CGST

H K Mishra
1.10.2020
(H K Mishra)
Member SGST



C. No. V (1) ARA/ODISHA/BBSR/2019/14

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Dated: 19.11.2020

To

M/s NBCC (INDIA) limited, Plot No.G/1, NBCC Imperia, New Govt Colony, Press
Chhak, 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, Banijyakar Bhawan, Old Secretariat Compound,
Cuttack-753001, Odisha.
3. Office copy.

