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(E)

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 :

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1. Sri Gopal Krishna Pati, IRS, Additional Commissioner, Office of the Chief Commissioner, GST, Central Excise & Customs, Bhubaneswar
 2. Sri Dillip Satpathy, Special Commissioner of CT&GST Office of the Commissioner, CT&GST, Odisha Baniyakar Bhawan, Cantonment Road, Cuttack-753001-Odisha.

1	Name and Address of the Applicant	M/s Nexustar Lighting Project Private Limited, Plot No.306,1815,3102, House No.-17, Surya Vihar, Near KIIT Square, Bhubaneswar, Odisha-751024.
2	GSTIN or User ID	21AAGCN3434J1ZO
3	Date of Filing of Form GST ARA-01	05.02.2020
4	Present for the Applicant in the E-hearing/Virtual hearing	Kevin Gogri & Siddhartha Shankar
5	Date of Personal Hearing	04.12.2020

ORDER NO.03/ODISHA-AAR/2020-21/DATED 20/01/2021

Subject: M/s Nexustar Lighting Project Private Limited, Plot No.306,1815,3102, House No.-17, Surya Vihar, Near KIIT Square, Bhubaneswar, Odisha-751024 (herein after referred to as the 'Applicant') having a GSTIN : 21AAGCN3434J1ZO, 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.

Govil (Policy)
NO
59-1-2021
Advance Ruling



1.0 The Applicant having assigned with GSTIN number 21AAGCN3434J1ZO sought for an advance ruling in respect of the following questions.

- A. Whether in facts and circumstances of the case, the activities of supply installation, operation and maintenance of Greenfield Public Street Lighting System (GPSLS) carried out by the Applicant is classifiable as a supply of Works Contract Services?
- B. If the answer to Question 1 is in affirmative, whether GST is liable to be paid under Entry 3(vi) of Notification No. 11/2017-CT(Rate) dated 28 June 2017 (as amended) on the supply and installation activities along with operation and maintenance activities to be undertaken by the Applicant?
- C. Whether in facts and circumstances of the case, the capital subsidy received/receivable by the applicant for the subject transaction be liable to be included in the Transaction Value for the purpose of calculation of GST payable in terms of Section 15 of the CGST Act, 2017?

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, 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, *inter alia*, engaged in the business of executing Greenfield street lighting project. The Government of Odisha, through the Housing and Urban Development Department, the Urban Infrastructure Development Fund and the Directorate of Municipal Administration has decided to develop an energy efficient street lighting system covering new and upcoming road stretches in Greenfield areas across 113 Urban Local Bodies(ULBs), including in the cities of Cuttack, Berhampur, Rourkela, Sambalpur & Bhubaneswar, on a Public Private Partnership basis.

2.2 For this purpose, the Odisha Urban Infrastructure Development Fund issued a Request for proposal based on an open bidding process vide Document No. 13-HUD-65-REFM-17-SCH-0009/2017 (Pt.)/12646/HUD dated 22 May 2018. The Applicant



has made a successful bid for the said tender and has consequently entered into an agreement on 29.12.2018 for design, supply, installation, operation, maintenance and transfer of the energy efficient Greenfield Public Street Lighting System and the Centralized Control & Monitoring System with the Government of Odisha represented by the Directorate of Municipal Administration (“the Authority”) and the ULBs. The Agreement provides that the initial term of the Agreement shall be 7 years. Under the Agreement, the Applicant undertakes to supply and install equipment such as LED Luminaire, feeder panels, poles, outreach arms, cables/wires with holding arrangement for overhead supply cables, in respect of both, the Greenfield Public Street Lighting System as well as the Centralized Control & Monitoring System.

2.3 It was submitted that for such installation, the Applicant is entitled to receive a consideration, in the form of Capital Subsidy, being 90% of the total capital expenditure incurred by the Applicant in supplying, installing and commissioning of the equipment. The balance 10% of the total capital expenditure along-with O&M fees is receivable as ‘Annuity fees’, and is recovered by the Applicant by raising quarterly invoices on the ULBs. After the Greenfield Public Street Lighting System has been commissioned, the Applicant is required to undertake the Operation and Maintenance of the system till the end of the term of the Agreement.

2.4 It was also submitted that the applicant has fulfilled all the conditions of works contract service (WCS). Therefore, the supply made by the applicant qualifies as a supply of works contract services. Further, it was submitted that the Greenfield Street Lighting System along with the Centralized Control & Monitoring System is an immovable property. In the present case, the streetlight poles, with the overreach arms, LED Luminaires, feeder panels, etc. attached thereto, are erected along the roadways by burying the same up to 1.8 meters underground depth. The street light poles have to be attached to the earth in such a manner that they should be capable of withstanding wind speeds of 150 km/h. Further, each pole is connected (underground) to an earthing electrode attached to every fifth pole. It is submitted that the said poles cannot be dismantled and reassembled without substantial damage to the entire paraphernalia. Thus, the Greenfield Street Lighting System qualifies as an immovable property.

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2.5 The applicant has submitted that the entire contract shall be treated as a contract for the composite supply of works contract involving a supply of goods and services. In support of its claim, the applicant cited the decision of (i) Super Wealth Financial Enterprises (P) Ltd. reported in 2019 (20) GSTL 505 (AAR-GST) (ii) Tag Solar System – 2018 (17) GSTL 532 (AAR) (iii) Dinesh Kumar Agarwal – 2018 (15) GSTL 404 (AAR) (iv) Kailash Chandra – 2018 (19) GSTL 537 (AAR-GST).

2.6 Further, it was submitted that the activity that will be undertaken by the Applicant will fulfill all the following conditions and therefore, the supply would fall under Entry 3(vi) of the Notification No. 11/2017-CT(Rate) dated 28 June 2017 (as amended) .

- (i) There must be a supply of works contract as defined under Section 2(119) of the Act;
- (ii) The said supply must be made to the Central Government, State Government, local authority or Government Authority;
- (iii) The said supply must be by way of erection, commissioning, installation, completion, fitting out, or maintenance;
- (iv) The aforesaid activities must be carried out in respect of a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession.

2.7 The Applicant submitted that as per para 13.1 (a) of the agreement, the Applicant is entitled to receive from the Authority and the ULBs a consideration, in the form of Capital Subsidy, being 90% of the total capital expenditure incurred by the Applicant in supplying, installing and commissioning of the equipment. As per Section 15 of the CGST Act, 2017, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy excluding subsidies provided by the Central Government and State Governments. The applicant pleaded that in the present case, capital subsidy has been received from the Authority and the ULBs, as already stated, the Authority is an extension of the State Government. Hence, in their case, capital subsidy should not be included in the value of supply.



- 3.0 The personal hearing was fixed on 04.12.2020 under due intimation to the applicant, the jurisdictional officer of State GST & jurisdictional officer of Central GST (intimated through their respective commissionerate along with a copy of application and the written submission of the applicant). The applicant appeared E-hearing/Virtual hearing through its CA and Representatives. During P.H., Sri Kevin Gogri & Siddhartha Shankar on behalf of the applicant re-iterated the submissions already furnished in the annexure to the application.

Discussion & findings

- 4.0 We have gone through the advance ruling application along with all the annexures submitted at the time of filing application & the additional written submission of the applicant submitted on 06.11.2020. We find that the questions before us essentially pertain to classification of supply of goods/services and the rate of GST applicable on supply of such goods/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 supply of works contract service which is being supplied to Government of Odisha represented by the 'Directorate of Municipal Administration' and the 'Urban Local Bodies' and accordingly the same would merit entitlement for concessional rate of GST @ 12% [CGST @ 6% + SGST @ 6%] in terms of Serial Number 3(vi) of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 (as amended).
- 4.2 We find that the basic issue before us is whether in the subject case there is a supply of 'works contract' or not. Before proceeding to discuss about 'works contract', it is essential for us to discuss all the provisions relating to 'composite supply' and whether in the present case, the supply being undertaken or proposed to be undertaken by the applicant would qualify to be a supply of 'composite supply' or not.
- 4.3 On perusal of the SIOM agreement (supply, installation, operation and maintenance) & Equipment Price Schedule for Cluster A, we see that the contract value for cluster



A (urban Local Bodies in Cuttack, Dhenkanal, Ganjam, Jagatsinghpur , Khurda and Puri) is Rs. 74.63cr and the contract pricing is different for Equipment of Materials and O&M Fee (operation and maintenance fee). Out of Rs.74.63cr, the price of Equipments is Rs.73.46 Cr and the price for O&M Fee is Rs.1.17Cr only. Thus the contract price has clearly bifurcated the contract into a supply of goods and supply of services. Further clause No. 13 of the agreement deals with TERMS OF PAYMENTS. The said clause of the agreement envisages that separate payment for capital subsidy & O&M Fee. There appears to be a clear bifurcation in the agreement with respect to price of Equipments and O&M Fees.

4.4 Thus we find from the agreement that the contract is considering a clear demarcation of goods and services to be provided by the applicant but the supplies are naturally bundled and in conjunction with each other. Hence we now refer to the definition of ‘composite supply’ as mentioned in sub-section (30) of Section 2 of CGST Act, 2017 and which is as under :-

‘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.’

4.5 From the discussions made above we find that in the agreement submitted by the applicant the major part of the contract is supply of goods. The price of these goods are supplied to the client by the applicant constitutes 98.43% of total contract price. Further we find that the goods that are supplied are used by the applicant to provide services like installation, commissioning and maintenance etc. Without these goods the services cannot be supplied by the applicant and therefore we find that the goods and services are supplied as a combination and in conjunction and in the course of their business where the principal supply is supply of goods. Therefore, the instant supply squarely falls under the definition of “composite supply”. Thus we find that there is a composite supply in the subject case since in the subject case there is no building, construction, fabrication, completion, erection etc of any immovable



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property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of the contract.

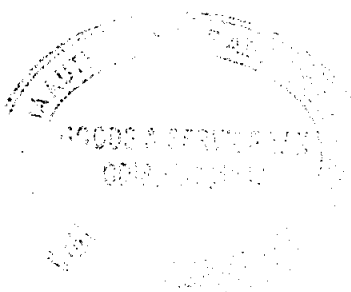
4.6 Besides, as per para 1(c) of Schedule II of the CGST/OGST Act, any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods and not a service.

4.7 The next issue to be considered and examined is whether the supply of the applicant falls under the supply of 'works contract service'. As per Section 2(119) of the CGST Act, 2017, unless the context otherwise requires, *the term "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.*

The following two points emerge from the abovementioned definition of 'works contract'.

- (i) The agreement/contract and the relevant supply must be for building , construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property .
- (ii) The supply must involve transfer of property in goods in execution of the said contract.

4.8 In order to examine the fulfillment of these requirements, it is imperative to examine the contract/agreement under which the supplies are made. The applicant has submitted that they are under an obligation to supply and install equipment such as LED Luminaire, feeder panels, poles, outreach arms, cables/wires with holding arrangement for overhead supply cables, in respect of both, the Greenfield Public Street Lighting System as well as the Centralized Control & Monitoring System. It was also submitted that the applicant shall be responsible for the supply, installation and commissioning of the following:



- (i) Street light poles of 8 to 9 meters in height (above ground) along with outreach arms, LED Luminaires, feeder panels and overhead cables. The poles will be buried up to 1.8 meters underground depth and base plates will be welded to the bottom of the poles. All the poles shall be connected with earthing electrodes installed at every fifth pole. The poles shall be designed and installed in such a manner as to withstand wind speeds of 150 km/hr.;
 - (ii) Central Control and Monitoring System & automation system comprised of wireless central automation controller, server cluster, control centre, enterprise middleware system, enterprise management information system and call centre. The entire street lighting system should be capable of being controlled from the Central Control and Monitoring System;
- 4.9 The applicant further submitted that the street light poles and feeder panels are attached to the earth permanently and the LED Luminaires, outreach arms, etc. are also permanently fastened to the street light poles for their use. Thus, the Greenfield Street Lighting System qualifies as an immovable property. It was also stated that at the end of the term of the Agreement (7 years), the Applicant is under the obligation to transfer all the rights, interests and property in the equipment installed by it, including any goods used in providing the operation and maintenance services. Further, After the Greenfield Public Street Lighting System has been commissioned, the Applicant is then required to undertake the Operation and Maintenance of the system till the end of the term of the Agreement. The applicant has also explained what a Greenfield Public Street Lighting System & central control, monitoring system and automation system is, in their case and also the processes involved in the subject case. The applicant has tried to establish that the supply made by them qualifies as a supply of works contract services and GST is liable to be paid under Entry 3(vi) of Notification No. 11/2017-CT(Rate) dated 28 June 2017 (as amended).
- 4.10 The salient features of the agreement indicate that the obligation on the applicant is in relation to the effective installation and functioning of the goods supplied by them and thereafter, they would undertake the activities of 'operation and maintenance' of the same. The contract governing their supplies does not relate to building, construction, and fabrication etc. of any immovable properties, as envisaged in the



definition of 'works contract'. Their supplies are in the nature of movable property i.e. supply of goods which involves ancillary services such as installation, commissioning etc. All these services which are supplied to the clients are nothing but ancillary activities with the main activities of supply of goods. The primary activity of the applicant is therefore, 'supply of goods' and not 'supply of services'. Further, the said activity performed by the applicant is not related to the immovable property at any point of the time and hence the said activity does not qualify to be a 'works contract'. The applicant in support of their contention has cited some rulings (as mentioned in para 2.5) pronounced by different Advance Ruling Authorities which are not applicable to the present case inasmuch as the facts and circumstances of those cases are distinguishable from the noticee's case.

- 4.11 We come to the second question raised by the applicant which is, "If the answer to Question 1 is in affirmative, whether GST is liable to be paid under Entry 3(vi) of Notification No. 11/2017-CT(Rate) dated 28 June 2017 (as amended) on the supply and installation activities along with operation and maintenance activities to be undertaken by the Applicant?". Since, the answer to question no.1 is 'in the negative', the provisions of Notification No. 11/2017-CT(Rate) dated 28 June 2017 (as amended) are not applicable to the noticee's case. The principal supply as mentioned above in this case is a 'supply of goods' and therefore the GST will have to be paid on the goods at the appropriate rate after classification under the appropriate heading.
- 4.12 The next question to be answered is 'whether in facts and circumstances of the case, the capital subsidy received/ receivable by the applicant for the subject transaction be liable to be included in the Transaction Value for the purpose of calculation of GST payable in terms of Section 15 of the CGST Act, 2017? It was submitted that the Applicant is to receive from the Authority and the ULBs a consideration, in the form of Capital Subsidy, being 90% of the total capital expenditure incurred by the applicant in supplying, installing and commissioning of the equipment. In support of its claim, the applicant relied upon provisions of Section 15 of the CGST Act, 2017, contended that the amount of subsidy received/receivable from the central government and state government shall not be included in the value of supply of the



supplier who receives the subsidy. In their case, the 'Authority' from whom the subsidy received/ receivable is an extension of the State Government. Therefore, the capital subsidy should not be included in the Transaction Value for the purpose of calculation of GST.

4.13 In view of Section 15(2)(e) of the CGST Act, the 'value of supply' shall include subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments. On perusal of the agreement/contract, we see that the capital subsidy received/ receivable by the applicant in the instant case is the actual cost incurred by the project SPV (the applicant in the instant case) in the project as approved by the Authority & ULBs. It is not a subsidy which generally means grant/grant-in-aid or a benefit given to an individual, business or institution, usually by the government. It is also not a subsidy which typically given to remove some type of burden and to promote a social good or an economic policy for overall interest of the public. The so called 'capital subsidy' cannot be a 'subsidy' by any stretch of the imagination, rather the same is a consideration as defined in Section 2(31) of the CGST Act in relation to the supply of goods and therefore, the said 'capital subsidy' shall certainly be liable to be included in the Transaction Value for the purpose of calculation of GST. We are of the considered view that the applicant is liable to pay GST on 'Capital Subsidy' (90% of the total capital expenditure).

RULING

5.0

Question No.1 Whether in facts and circumstances of the case, the activities of supply installation, operation and maintenance of Greenfield Public Street Lighting System (GPSLS) carried out by the Applicant is classifiable as a supply of Works Contract Services?

Answer:- Answered in the negative.

Question No.2 If the answer to Question 1 is in affirmative, whether GST is liable to be paid under Entry 3(vi) of Notification No. 11/2017-CT(Rate) dated 28 June 2017 (as amended) on the supply and installation activities along with operation and maintenance activities to be undertaken by the Applicant?



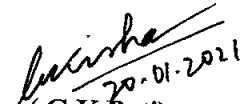
Answer:- Since, answer to Question No.1 is in negative, there is no need to answer Question No.2.

Question No.3 Whether in facts and circumstances of the case, the capital subsidy received/ receivable by the applicant for the subject transaction be liable to be included in the Transaction Value for the purpose of calculation of GST payable in terms of Section 15 of the CGST Act, 2017?

Answer:- Capital Subsidy received/ receivable by the applicant for the subject transaction be liable to be included in the Transaction Value for the purpose of calculation of GST.

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.


(G K Pati)
20.01.2021

Member, CGST


20.1.21
(Dillip Satpathy)
Member SGST

C. No. V (1) ARA/ODISHA/BBSR/2020/12 / 1799-A

Dated: 20/1/21.

To

M/s Nexustar Lighting Project Private Limited, Plot No.306,1815,3102, House No.-17, Surya Vihar, Near KIIT Square, Bhubaneswar, Odisha-751024.

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, Baniykar Bhawan, Old Secretariat Compound, Cuttack-753001, Odisha.
3. Office copy.

