MAHARASHTRA AUTHORITY FOR ADVANCE RULING

GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai – 400010.

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Ms. Vinitha Sekhar, Additional Commissioner of Central Tax, (Member)

(2) Mr. A. A. Chahure, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id		**27AABCP1023G1ZX**
Legal Name of Applicant		**M/s. Prasa Infocom & Power Solutions Private Limited**
Registered Address/Address provided while obtaining user id		1001, Casablanca, Sangam press road, Kothrud, Pune -411 038.
Details of application		GST-ARA, Application No. 26 Dated 10.07.2019
Concerned officer		Division-IV, Commissionerate Pune-II
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	**Works Contract**
B	Description (in brief)	Supply of goods and services thereof by way of commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration resulting in setting up of Data Center at Pune.
Issue/s on which advance ruling required		(i) Classification of goods and/or services or both (ii) Determination of the liability to pay tax on any goods or services or both (vii) Whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term.
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as

"the CGST Act and MGST Act" respectively] by **M/s. Prasa Infocom & Power Solutions Private Limited** , the applicant, seeking an advance ruling in respect of the following questions.

Whether supply of goods and service by Prasa Infocom & Power Solutions Private Limited to Cray Inc. (Cray) qualify as 'works contract' as defined under Section 2(19) of the Central Goods and Services Tax Act, 2017 (CGST Act)?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION – AS PER THE APPLICANT

The submissions of the applicant is as under:-

2.1 Prasa Infocom & Power Solutions Private Limited ("Applicant"), is engaged in the business of providing data center construction and contracting services.

2.2 M/s Cray Inc. ('Cray') has entered into a Contract with Indian Institute of Tropical Meteorology (ITM) for supply of high performance computing solutions (including its maintenance) and preparation and maintenance of Data Center. Cray has sub-contracted the portion related to preparation of Data Center (including its maintenance) to the Applicant vide contract dated 05.05.2017 ('hereinafter referred to as the Contract') for a data center project for the Ministry of Earth Sciences at Pune.

2.3. The 'scope of services' in the contract dated 05.05.2017 provided that the parties, may from time to time enter into mutually agreed written order for services and products, to be called 'statement of work', and accordingly shall undertake tasks that are necessary for fulfilling obligations under the Contract. Subsequently, on 13.06.2017, both the parties entered into an agreement (amending the Contract dated 05.05.2017). The said amendment agreement also incorporated the 'statement of work' dated 20.05.2017 which encapsulated the works to be undertaken for completing the data center project on turnkey basis like: Design approval for the complete data center; Civil and Mechanical Works; Supply of items;

loading unloading of items at site; Installation of items; testing and commissioning of the installed equipment and detailed documentation, namely, built drawings, operational manuals, warranty and test certificates, detailed hand over along with training to end customer and providing process flow chart for maintaining all the equipment.

2.4. Before supplying and subsequently commissioning the equipment, Applicant was required to undertake civil and mechanical works, namely construction of a civil structure to house the equipment. Applicant also undertook supply and installation of other ancillary equipment necessary in a civil structure namely UPS and batteries, fire alarm system, chillers, air conditioners, surveillance systems, etc. All such activities undertaken by the Applicant were required to set up Data Center, as a whole. Thus the Contract does not limit itself to mere supply of equipment but extends to civil and mechanical works, installation, testing and commissioning as well. Thus, the Contract involves a composite supply of goods as well as services that are naturally bundled in the course of setting up of a 'data center'. The Data Center cannot be shifted to another location without first dismantling and then re-erecting it at another site.

2.5 The applicant has cited the various provisions and definitions of the GST Act and stated that: GST is levied on supplies of goods or services or both at the rate as may be notified by the Government; Supply of works contract shall be treated as supply of service. Applicant has reproduced relevant provision of Notification No - 8/2017 – I.T. (Rate) dated 28.06.2017 (**"Rate Notification"**) and has stated that analyzing the provisions of the CGST Act and the relevant entries of the aforementioned Rate Notification, it is pertinent to note that in order to be eligible to pay GST under the aforementioned entry of the Rate Notification, the supply of services by the Applicant will have to be in the nature of works contract.

2.6 Applicant has reproduced the definition of 'Works Contract' as per Section 2 (119) of the CGST Act, and the various dictionary meanings of the words/terms used in the said definition and submitted that to qualify as a 'works contract', a contract shall not be a contract for mere supply of goods or supply of services but shall be a composite supply involving supply of both goods as well as services, which results in the creation or repair/maintenance/renovation/improvement etc. of an immovable property as a whole.

2.7 Applicant has submitted that they have agreed to complete the project on a turn-key, end-to-end basis as is evident from the statement of work dated 20.05.2017 and all such activities undertaken by the Applicant are required to set up Data Center, as a whole. Additionally, Cray is required to provide its acceptance after inspection of services or deliverables as mentioned in the statement of works. Further, the Applicant is required to employ competent and qualified staff for operation/ performance of works. The payment on milestone basis is linked to successful completion of the project i.e. preparation of data center. Referring to the decision of the Hon'ble Bombay High Court in the case of National Organic Chemical Industries Ltd. vs State of Maharashtra, 2012 SCC Online Bom 2128, applicant has stated that the predominant nature of the services undertaken is to provide an end-to-end solution to Cray which is nothing but performance of works contract service.

2.8 Applicant has submitted that as per Section 2(119) of the CGST Act, performance of works contract must be in relation to an 'immovable property'. Since the term 'immovable property' has not been defined under CGST Act the applicant, has cited the decision of the Hon'ble Supreme Court in the **case of *T.T.G. Industries Limited v. CCE, 2004*** 4 *SCC 751* as well as the decision of the Maharashtra Authority for Advance Ruling **in *Fermi Solar Farms Private Limited, 2018 VIL 14 AAR***, in support of their contention that, Applicant is supplying goods and services which is resulting in setting up of a Data Center, which cannot be shifted to another location without first dismantling and then re-erecting it at another site and hence, Data Center shall be treated as an immovable property under the CGST Act and the transaction, as a whole, shall be regarded as supply of 'works contract'. Applicant has also referred to various online web sources to explain the structure and design of a data center reference and submitted that essentially, a data center is referred to as an immovable structure with various security and temperature control features housing enormous servers which cannot be moved or shifted.

2.9 In view of above, applicant has submitted that it is supplying goods and services which are in the nature of works contract service as the supply not only involves supply of goods but also installation, fitting out, repair, maintenance of an immovable property i.e. Data Center. Such activities fall under the ambit of works contract under CGST Act, hence all supplies under Contract should be subject to GST at the rate of 18%.

03. CONTENTION – AS PER THE JURISDICTIONAL OFFICER:

The submissions made by the jurisdictional officer are as under:-

3.1 Applicant under letter dated 08.11.2019 has intimated that the works with respect to construction and commissioning of the service in relation to the said contract has been completed, and further, invoicing in relation to the said work done has been done separately for goods and services and GST has been paid accordingly. Thus, in the instant case, the supply of goods and service is already completed and therefore their application is liable for rejection, because in advance ruling, as per the provisions of Section 95 of the CGST Act, 2017, only those cases are eligible where the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant and not already completed at the time of filing of the application.

3.2 From the definition of Works Contract under the GST Laws, it is clear that works contract is applicable only in immovable properties for GST purpose and where the value of goods and services are not distinct. Perusal of the copy of agreement / documents submitted by the applicant reveal that the value of goods/equipment is clearly distinct and separated from the value of services. Therefore, their project/work is not classifiable under "Works Contract". The same view has also been taken by Hon'ble Authority for Advance Ruling, Maharashtra in case of M/s Jalaram Feeds (GST-ARA 23/ 2018-18/ B-03) dated 08.01.2019 which is squarely applicable to this case as this project is also a "Turn Key Project" as claimed by the applicant. Further it is submitted that on going through the list of goods and services, it is seen that items at Sr. No. 2 to 17 are in nature of machine/instruments/equipment and are all replaceable and hence cannot be said to be of 'immovable' nature.

3.3 Further, with respect to the claim of applicant that subject supply is classifiable under Chapter 9954 (Construction Services) and falls under description of services- (ii) Composite supply of works contract as defined in clause (119) of Section 2 of CGST Act, 2017 it is to submit that only those supply are classifiable under Chapter 9954 which are mainly related to the construction service. In this case, it is found that there is a construction of a room to fit/ install the equipment/machinery/other various apparatus and the value of construction is not significant, as compared to the value of such equipment/machinery/apparatus. The major portion in this project is of fitting/ installation

of equipment/Machinery/other various apparatus. It is also submitted that since their work/project does not qualify under the definition of works Contract", the benefit of Notification No. 08/ 2017- I.T. (Rate) dated 28.06.2017 is not available to them. Further, it is to say that vide Not. No. 03/2019 IT (Rate) dated 29.03.2019, the item (ii) of S. No. 3 which relates to works contract" is omitted.

3.4 Hence it is requested to reject the claim of applicant classifying the said project/ work under as "works Contract" as defined under Section 2 (119) of CGST Act, 2017.

04. HEARING

Preliminary hearing in the matter was held on 14.11.2019. Shri Onkar Sharma, Advocate & Authorized Representative appeared and requested for admission of their application. Jurisdictional Officer Shri. Shailendra Nath, Superintendent., Range-III, Division – IV, (Kothrud), Pune- II Commissionerate also appeared and requested for time to make submissions.

The application was admitted and called for final hearing on 22.01.2020. Shri. Onkar Sharma, Advocate & Authorized Representative appeared made oral and written submissions. Jurisdictional Officer Shri. Shailendra Nath, Superintendent, Range-III, Division – IV, (Kothrud), Pune- II Commissionerate also appeared and made submissions. We heard both the sides.

MEMBER, ADVANCE RULING AUTHORITY MAHARASHTRA STATE, MUMBAI

05. DISCUSSIONS AND FINDINGS:

5.1 We have gone through the facts of the case, documents on record and oral and written contentions made by both, the applicant as well as the jurisdictional officer. The question before us is whether supply of goods and services by the applicant to M/s Cray Inc. (Cray) qualify as 'works contract' as defined under Section 2(19) of the Central Goods and Services Tax Act, 2017 (CGST Act)?

5.2 M/s Cray Inc. ('Cray') has entered into a **'Services and Development Agreement'** with the Applicant on 04.04.2017 wherein the applicant, acting as an independent contractor, and not as an agent of Cray, shall furnish personnel and services pursuant to the terms and conditions mentioned under Article Nos. I to XXX of the said agreement.

5.2.1 The 'scope of services' as per Article I of the impugned agreement states that both the parties may enter into mutually agreed upon written orders for services and products to be fulfilled by the applicant as per Cray's requirements with each written order to be called as "Statement Of Work".

5.2.2 As per Article V, the Agreement shall be effective as of the first date stated in the Agreement and shall remain in effect for a period of one year, and thereafter shall automatically renew for successive one year terms until terminated under the terms mentioned in the Article V of the Agreement.

5.2.3 Article XXVII of the Agreement refers to 'Exhibit 1' and the said Exhibit, signed by the applicant's Director mentions the Scope of Work as including Detailed Statement of Works Activities dated 25.04.2017 and Layouts of Data Centre, UPS, DG Set, etc. Sr. No. 2 of the Exhibit mentions that if the applicant fails to supply and install the necessary components required for Cray to install its system then the applicant is liable for liquidated damages.

5.2.3.1 The detailed Statement of Works Activities is dated 24.04.2017 and therein the applicant, in a tabular form, has given separately, the costs of goods supplied, the Installation Price and the AMC Fees for a three year period along with VAT/CST/Service Tax thereon. There is also an unexplained Buyback cost mentioned which would presumably be in respect of the goods supplied by the applicant to Cray. The total cost as per the statement dated 24.04.2017 is Rs. 26,21,16,223/-, after a Buyback cost of Rs. 1 crore.

5.2.3.2 There is another detailed Statement of Works Activities dated 17.05.2017 and therein too, the applicant, in a tabular form, has given separately, the costs of goods supplied, the Installation Price and the AMC Fees for a three-year period along with VAT/CST/Service Tax thereon. There is again an unexplained Buyback cost mentioned which would presumably be in respect of the goods supplied by the applicant to Cray. The total cost as per this Statement is Rs. 34,60,95,168/-, after deduction of a Buyback cost of Rs. 1 crore. The value of goods supplied is Rs. 26.03 (excluding taxes), the value of Civil and Mechanical Work is Rs. 0.34 crores, the installation cost is Rs. 1.02 crores and the AMC cost (post warranty) for a one year period and three year period is Rs. 0.86 crores and Rs.2.59 crores. There is a further cost shown against Onsite Resources for a period of 3 years totaling Rs. 2.01 crores.

5.2.3.3 It is therefore seen, as per the Exhibit that, the costing of goods and services are shown separately and the major value of the contract exceeding 85% of the total cost of the project is pertaining to supply of goods.

5.3 The applicant has also submitted the Amendment dated 05.05.2017, made to the Agreement mentioned at 5.3 above. While the amendment is dated 05.05.2017, it incorporates a Statement of Work in letter format dated much after i.e. on 20.05.2017 and a Cost Summary dated 17.05.2017.

5.3.1 The Statement of Work mentioned in 5.3 above includes Design approval for the complete data center, Supply of items, Installation of items, Testing and commissioning of the installed equipment, Detailed documentation, namely as built drawings, operational manuals, warranty and test certificates, detailed hand over along with training to end customer and providing process flow chart for maintaining all the equipment.

5.3.2 The Cost Summary mentioned in 5.3 above, against 'Funds Flow', mentions that 40% advance to be paid to applicant for supply of large value items and the balance against material readiness before delivery. For supply of small value items, 100% amount to be paid against delivery and for installation and commissioning, 100% to be paid on completion. The Cost summary does not make a mention of any amounts to be charged towards Annual Maintenance Services to be rendered by the applicant.

5.4 Applicant has submitted that the subject activity undertaken by them involves creation of an immovable property and therefore qualifies as a supply of works contract liable to GST @ 18%. The questions raised by the applicant is with respect to a Data Center project awarded to them by Cray for supply of various equipment along with installation, testing and commissioning thereof at site. The applicant has further submitted that the scope of the work involves complete design of data Centre, supply of equipment, transport and delivery to sites, training, installation, testing and commissioning of such equipment. They have further submitted that maintenance of the Data Centre for further period of three years are also being undertaken by them. It is seen from the documents submitted by them that, separate prices are indicated for each of the activity for supply of various materials and the activity for installation, testing & commissioning, maintenance, etc. Since the agreement was entered prior to the introduction of GST, they have, in their documents, shown levy of Value Added Tax (VAT)/Central Sales Tax (CST) and Service Tax.

5.5 Since the applicant is claiming that the subject activities undertaken by them amounts to Works Contract as per GST Laws, we shall therefore discuss all the provisions relating to Works Contract. GST Schedule II clearly mentions that the following are supply of services:-

a. construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly,

b. works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract

Hence Works contract will be treated as service and tax would be charged accordingly. 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"*

5.5.1 Thus what we need to find out is whether the applicant in the subject case is dealing in any immovable property which is transferred in the execution of the contract. The applicant has submitted that as per their contracts with Cray, the final outcome or deliverable is ready to operate Data Centre. Their contention is that the installed equipment cannot be dismantled and removed after installation, without damage. Hence it is in the nature of permanent installation of equipment within the Data Centre and becomes a part of such data Centre and therefore inherits the characteristics of an "immovable property" and therefore their transaction is a transaction of "works contract", covered under Section 2(119) of the Act.

5.5.2 The documents submitted by the applicant reveal that the contract pricing is different for Equipment/Materials, their Installation and Maintenance. For goods supplied, the prices are shown exclusive of VAT/CST and for services rendered the prices are shown excluding Service Tax. The Statement of Works Activities dated 17.05.2017 has clearly bifurcated the contract into a supply of goods and supply of services. Further, Amendment dated 05.05.2017, made to the Agreement dated 04.04.2017 incorporates a Cost Summary dated 17.05.2017, which, against 'Funds Flow', envisages separate payment for supply of works and for supply of materials /equipment. There appears to be a clear bifurcation, in the

subject Agreement and other documents submitted by the applicant, with respect to supply of goods and supply of services.

5.5.3 Thus, from all the documents submitted by the applicant we find that the agreement is considering a clear demarcation of goods and services to be provided by the applicant but such 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'.

5.5.4 From the discussions made above we find that, as per the subject agreement and documents submitted by the applicant, the major part of the contract is supply of goods. These goods are sold to the client by the applicant and they receive separate payment for such goods sold. Further we find that the goods that are supplied are used by the applicant to provide services of installation, testing and commissioning of the Data Centre. 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. Thus we find that there is a composite supply in the subject case but there is no 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 the contract. Therefore there is no works contract involved in the subject case.

5.6 Further, with respect to the claim of applicant that subject supply is classifiable under Chapter 9954 (Construction Services) and falls under description of services- (ii) Composite supply of works contract as defined in clause (119) of Section 2 of CGST Act, 2017 it is to state that only those supply is classifiable under Chapter 9954 which are mainly related to the construction service. In this case, it is found that there is absolutely

no construction of any kind. The Data Centre, as per the submissions made, appears to be a space /room where the equipment /machinery /other various apparatus are installed. The value of Civil Construction shown is insignificant, as compared to the value of goods/ services. The major portion in this project is of sale of equipment/ Machinery/ other various apparatus.

5.7 The jurisdictional officer has submitted that the Applicant, under letter dated 08.11.2019 has intimated that the works with respect to construction and commissioning of the service in relation to the said contract has been completed and therefore their application is liable for rejection, because in advance ruling, as per the provisions of Section 95 of the CGST Act, 2017, only those cases are eligible where the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant and not already completed at the time of filing of the application. It has been further submitted that invoicing in relation to the said work done has been done separately for goods and services and GST has been paid accordingly.

5.7.1 We do not agree with this submissions for rejection of the application made by the jurisdictional officer because we observed that the maintenance work is ongoing and is a part of the subject agreement.

5.8 The jurisdictional officer has also submitted that, in the event the application is not rejected, from the definition of Works Contract under the GST Laws, it is clear that works contract is applicable only in immovable properties for GST purpose and where the value of goods and services are not distinct and in the subject case, perusal of the copy of agreement/documents submitted by the applicant reveal that the value of goods/equipment is clearly distinct and separated from the value of services. Therefore, their project/work is not classifiable under "Works Contract".

5.8.1 We agree with these submissions of the jurisdictional officer and for reasons mentioned in the aforesaid paras we hold that the supply of goods and service by the applicant to Cray Inc. (Cray) does not qualify as 'works contract' as defined under Section 2(19) of the Central Goods and Services Tax Act, 2017 (CGST Act)?

5.9 The decision of the Authority for Advance Ruling, Maharashtra in case of M/s Jalaram Feeds, as cited by the jurisdictional officer, is not applicable in the subject case because the facts of both the matters are totally different.

5.10 The jurisdictional officer has submitted that, on going thrcugh the list of goods and services, it is seen that items at Sr. No. 2 to 17 are in nature of machine/instruments/equipment and are all replaceable and hence cannot be said to be of 'immovable' nature. We agree with this observation made by the jurisdictional officer.

06. In view of the above discussions, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 26/2019-20/B- 43 **Mumbai, dt.** 18.03.2020

For reasons as discussed in the body of the order, the questions are answered thus –

Question: - Whether supply of goods and service by Prasa Infocom & Power Solutions Private Limited to Cray Inc. (Cray) qualify as 'works contract' as defined under Section 2(19) of the Central Goods and Services Tax Act, 2017 (CGST Act)?

Answer: - Answered in the negative.

PLACE - Mumbai
DATE -

sd-
A. A.CHAHURE
(MEMBER)

sd-
P. VINITHA SEKHAR
(MEMBER)

Copy to:-
1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint Commissioner of State Tax, Mahavikas for Website.

CERTIFIED TRUE COPY

MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai – 400021.