

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) **Shri. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)**
(2) **Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)**

ARN No.	AD270222033480L
GSTIN Number, if any/ User-id	27AACCK7073N1Z0
Legal Name of Applicant	M/s. KPC Projects Ltd.,
Registered Address/Address provided while obtaining user id	M/s. KPC Projects Ltd., Plot No.64, BLDG No.3, High Lands, Lokhandwala Township, Akurli Road, Mumbai-400101,
Details of application	GST-ARA, Application No. 65 Dated 22.02.2022
Concerned officer	MUM-VAT-D-716, NODAL-08
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A	Category
B	Description (in brief)
	Uttar Pradesh Rajkiya Nirman Nigam Ltd., ("UPRNN"), a Government of Uttar Pradesh Undertaking had floated online global open e-tenders for construction of 200 bedded ESI Hospital at Butibori, Nagpur, Maharashtra and the applicant was one of the bidder and entered into a contract with UPRNN.
Issue/s on which advance ruling required	<ul style="list-style-type: none">➤ Classification of goods and/or services or both➤ Applicability of a notification issued under the provisions of the Act➤ Determination of the liability to pay tax on any goods or services or both
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

NO.GST-ARA- 65/2021-22/B- 57 Mumbai, dt. 04.05.2022

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. KPC Projects Ltd.**, the applicant, seeking an advance ruling in respect of the following questions.

1. In view of the construction services provided by the applicant to UPRNN, is the applicant eligible to avail the concessional rate of GST at 12% as prescribed in of S. No. 3 (vi) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended?
2. If not, what is the appropriate rate and classification of GST to be charged by the applicant?

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 FACTS:

- 2.1 *Uttar Pradesh Rajkiya Nirman Nigam Ltd., ("UPRNN"), a Govt of Uttar Pradesh Undertaking had floated online global open e-tenders for construction of 200 bedded ESI Hospital at Butibori, Nagpur, Maharashtra for which, M/s. KPC Projects Ltd., the applicant, got selected based on their bid for the above work and entered into a contract with UPRNN for providing the following works:*

"Construction of 200 bedded ESI Hospital at Butibori, Nagpur, Maharashtra".

Scope of present work order requires applicant to construct the hospital for (ESIC) Employee State Insurance Corporation, a statutory body under Ministry of Labour and Employment, Govt of India.

Applicant submits that, provisions of Notification No.11/2017- CTR dated 28.06.2017, as amended are applicable to them and the rate of the GST is 12% on their supply.

- 2.4 *Applicant is providing works contract services (supply of services as per Sl. No. 6(a) of Sch. II of the CGST Act, 2017) in the form as defined under Section 2 (119) of the CGST Act, 2017. In the present scenario, there is a supply by the applicant to UPRNN in the form of a works contract which involves services for the installation, fitting out and construction of the hospital.*
- 2.5 *UPRNN is a wholly owned company by the Govt. of Uttar Pradesh and in terms of Sl. No. 3 (vi) of Notification 11/2017- CTR dt 28.06.2017, as amended, composite supply of works contract provided to the Central/State Govt, Union Territory, local authority, Governmental Authority or Governmental Entity is eligible for the concessional rate of 6%.*

2.6 UPRNN satisfies the definition of Govt Authority as per the GST Laws. UPRNN also satisfies the definition of "Govt Entity" as it is wholly owned undertaking of the Govt of Uttar Pradesh including its nominees wholly own 100% of share-holding in UPRNN.

2.7 Applicant submits that the reduced rate of 6 % CGST under entry 3 (vi) would apply only in respect of three types of works mentioned in sub clauses (a), (b) and (c) of clause (vi) of S. No. 3, out of which only clause (b) is relevant for the present purpose which reads as, "(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;".

2.8 Explanation to the Sl. No. 3 (vi) to Notification no. 11/2017 added vide Notification No. 17/2018-Central Tax (Rate) dated 26.07.2018 states that: "For the purposes of this item, the term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities".

2.9 Activities undertaken by UPRNN for present projects are not in the form of business, rather, they are hospitals for ESIC wherein ESIC is a public authority. The ESIC Hospital must be allowed for concessional rate of 12% (CGST+SGST) since they are for the use of officers and employees but, not for commercial purposes.

The present contract awarded to applicant to develop a clinical establishment, is for a Governmental Authority. The same cannot be treated as business since they are functioning as a Governmental Authority and any activity or transaction entered into by them cannot be held as business. Therefore, there is no commercial activity or business or profession but the present contract is for a governmental authority. Therefore, the present contract must be allowed for the concessional rate of 12%.

2.11 The applicant submits that the present contract is awarded by ESIC to the UPRNN. Therefore, UPRNN becomes the principal contractor and the applicant becomes the sub-contractor in the present scenario and Notification No. 01/2018- C.T.(Rate) read with Sl. No. 3(ix) of Notification No. 11/2017- C.T. (Rate) provides for a concessional rate of 6% GST.

2.12 Applicant submits that ESIC must be considered as a local body as defined under Section 2 (69) of the CGST Act. The promulgation of Employees' State Insurance Act, 1948(ESI Act), by the Parliament was the first major legislation on social Security for workers in independent India. The ESI Act 1948, encompasses certain health related eventualities that the workers are generally exposed to; such as sickness, maternity, temporary or permanent disablement, Occupational disease or death due to employment injury, resulting in loss of wages or earning capacity-total or

partial. Social security provision made in the Act to counterbalance or negate the resulting physical or financial distress in such contingencies, are thus, aimed at upholding human dignity in times of crises through protection from deprivation, destitution and social degradation while enabling the society the retention and continuity of a socially useful and productive manpower.

2.13 In view of Section 2(69) (c) of the CGST Act, the ESIC is a body entrusted by the Central Government in control of the ESIC fund and governed by the ESIC Act. Hence, the service recipient i.e., ESIC should fall under the category "local authority" and UPRNN and the applicant are providing service to a local authority. Therefore, the construction services provided by the applicant to the UPRNN are eligible for the concessional rate of 6% GST as provided in Sl. No. 3 (vi) of the Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017.

03 CONTENTION – AS PER THE CONCERNED OFFICER:

OFFICER SUBMISSION DATED 20.04.2022-

3.1 As per Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 and further amended by Notification No. 24/2017- Central Tax (Rate) dated 21.09.2017, the said taxpayer is liable to pay GST rate of 12 % till 31st December 2021.

But as per Notification No. 22/2021- Central Tax (Rate) dated 31.12.2021; the said taxpayer is liable to pay the GST at the rate 18 % w.e.f. 01.01.2022.



04 HEARING

Preliminary hearing in the matter was held on 12.04.2022. Shri. Sai Makrand, Learned Advocate was present and made submissions. The Jurisdictional officer Shri. Vilas Naik, AC-MUM-VAT-D-716, NODAL-8 was also present. The jurisdictional officer was asked to file written submission within a weeks' time. On request of applicant, the case was heard finally and kept for order. Application was heard.

05. OBSERVATIONS AND FINDINGS:

5.1 We have perused the documents on record and considered the submissions made by the concerned parties to the issue.

5.2 M/s. KPC Projects Ltd., the applicant has been awarded a Work Order for "Construction of 200 bedded ESI Hospital at Butibori, Nagpur, Maharashtra", the scope of which requires the applicant to construct the entire hospital for Employee State Insurance Corporation ("ESIC"), a

statutory body under the ownership of Ministry of Labour and Employment, Government of India.

5.3.1 The applicant has submitted that, since they are rendering a Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, provided to the Uttar Pradesh Rajkiya Nirman Nigam Ltd., ("UPRNN"), a Govt of Uttar Pradesh Undertaking i.e. a Governmental Authority/Government Entity by way of construction of a clinical establishment i.e. a hospital, the provisions of Sr. No. 3 (vi) to Notification no. 11/2017 – Central Tax (Rate) dated 28.06.2017 as amended, are applicable to its supply and therefore the concessional rate of GST would be @ 12%. Therefore the relevant Sr.No. 3 (vi) mentioned above is reproduced as under:-

Sr. No.	Chapter, Section or Heading	Description of services	Rate (%)	Condition
(1)	(2)	(3)	(4)	(5)
3	Heading 9954 (Construction services)	<p>(vi) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax 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 –</p> <p>(a);</p> <p>(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or</p> <p>(c)</p> <p>Explanation. - For the purposes of this item, the term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.</p>	6	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

5.3.2 From the submissions made by the applicant, we find that in the instant case there is Composite supply of works contract provided to UPRNN, a Government Entity by way of construction of a clinical establishment i.e. a hospital.

5.3.3 However we also find that, the above mentioned Rate Notification No 11/2017 has been further amended by Notification No. 15/2021 – CTR dated 18.11.2021 (with effect from 01.01.2022) and in Sr. No 3, in column (3), in the heading “Description of Services”, in item (vi), for the words “Union territory, a local authority, a Governmental Authority or a Government Entity” the words “Union territory or a local authority” have been substituted and that means the words “or a Governmental authority or a Government Entity” are omitted. Therefore, with effect from 01.01.2022, the impugned services supplied by the applicant will not be covered under Sr. No. 3 (vi) of Notification No. 11/2021 – CTR dated 28.06.2017 as amended from time to time.

5.3.4 During the course of the final hearing, the Authorised representative of the applicant informed this Authority that the impugned services are not being rendered at present and they will begin the construction as per the Work Order only in the future as a proposed activity.

5.3.5 Thus we find that the Sr. No. 3 (vi) mentioned above will not be applicable to the activity to be undertaken by the applicant at a future date. The Authorised representative of the applicant also agreed that the provisions of Sr. No. 3 (vi) will not be applicable to applicant's activities in view of the amendment brought about in Notification No. 11/2017-CTR dated 28.06.2017 vide Notification No. 15/2021 – CTR dated 18.11.2021 (with effect from 01.01.2022). However, this authority has been asked by the applicant to answer all its questions.

5.3.6 In view of the above discussion made in para nos 5.3.1 to 5.3.4, we hold that the applicant is not eligible to avail the concessional rate of GST at 12% as prescribed in of S. No. 3 (vi) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 for the impugned construction services provided by them to UPRNN.

5.4.1 The second question raised by the applicant is if the impugned service is not covered under Sr. No. 3(vi) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, then what is the appropriate classification and rate of GST to be charged by the applicant.

5.4.2 Since the impugned service is expected to commence only at a future date, in view of the amended Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, the impugned activity is not covered under Sr. No. 3 (vi) mentioned above and therefore the said activity will be covered under the residuary clause (xii) of Sr. No. 3 of Notification No. 11/2017- mentioned above and the rate of GST to be paid by the applicant will be 18% of the taxable value.

06 In view of the extensive deliberations as held hereinabove, 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)

For reasons as discussed in the body of the order, the question is answered thus –

Question 1: In view of the construction services provided by the applicant to UPRNN, is the applicant eligible to avail the concessional rate of GST at 12% as prescribed in of S. No. 3 (vi) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended?

Answer: - Answered in the negative.

Question 2: If not, what is the appropriate rate and classification of GST to be charged by the applicant?

Answer: - The impugned activity of the applicant is classifiable under Heading 9954 (Construction services), Sr. No 3 (xii) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended from time to time and the rate of GST will be 18% (CGST @ 9% and SGST/UTGST @ 9% or IGST @ 18%)



RAJIV MAGOO
(MEMBER)



T. R. RAMNANI
(MEMBER)

Copy to:-

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

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. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.