



BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH
Goods and Service Tax

D. No. 5-56, Block-B, R.K. Spring Valley Apartments, Eedupugallu, Vijayawada-521151

Present

1. Sri. D. Ramesh, Commissioner of State Tax (Member)
2. Sri. RV Pradhamesh Bhanu, Joint Commissioner of Central Tax (Member)

AAR No.26/AP/GST/2021 dated: 10.12.2021

1	Name and address of the applicant	M/s. YVR & Co, MIG IIA/144, Sriharipuram, Gollalapalem, Visakhapatnam-530011
2	GSTIN	37AAAFY1642E2ZC
3	Date of filing of Form GST ARA-01	01.07.2021
4	Virtual Hearing	21.10.2021
5	Represented by	Sri Y V Ratnam
6	Jurisdictional Authority - Centre	Assistant Commissioner (ST) Steel Plant Circle, Visakhapatnam Division
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	e) determination of the liability to pay tax on any goods or services or both;

ORDER

(Under sub-section (4) of Section 98 of Central Goods and Services Tax Act, 2017 and sub-section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and SGST Act, 2017 are in parimateria and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the APGST Act.
2. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to CGST Act and APGST Act respectively) by M/s. YVR & Co (hereinafter referred to as applicant), registered under the AP Goods & Services Tax Act, 2017.

3. Brief Facts of the case:

The applicant, M/s. YVR & Co is engaged in construction services in respect of commercial / industrial buildings and civil structures. Certain civil works were awarded to the applicant by Andhra Pradesh Industrial Infrastructure Corporation Limited (APIIC). The applicant had filed an application in form GST ARA-01 dated 01.07.2021 by paying required amount of fee and approached the Authority for Advance Ruling on the applicability of GST Tax rates on the executed works.

4. Questions raised before the authority:

The applicant seeks advance ruling on the following:

1. Applicability of CGST and SGST Tax Rate on the listed works executed for Andhra Pradesh Industrial Infrastructure Corporation (APIIC).
2. Applicability of CGST and SGST Tax Rate on construction of 20MT cold storage building for Primary Processing Centre (PPC) under Mega park scheme at peddapuram, East Godavari district.

On Verification of basic information of the applicant, it is observed that the applicant is under State jurisdiction, i.e. Assistant Commissioner (ST) Steel Plant Circle, Visakhapatnam Division. Accordingly, the application has been forwarded to the jurisdictional officer and a copy marked to the Central Tax Authorities to offer their remarks as per Sec. 98(1) of CGST /APGST Act 2017. No remarks were received from the jurisdictional officers concerned on the issue.

5. Applicant's Interpretation of Law:

The applicant seeks Advance Ruling in the context of the argument put forth by its contractee, APIIC that all the works executed for them attract concessional rate of tax. APIIC Claims that it is a Government company and works executed to them shall be considered as works executed for Government of Andhra Pradesh under category VI (a) of the notification No 11/2017 Central Tax (Rate) dated 28th June 2017 with the applicable rate of tax (CGST and SGST) for works numbered 1 to 6 as 12%.

In case of last work of sl.no 7, i.e., Construction of 20 MT Cold Storage Building for Primary Processing Centre the works come under sl.no. 3 of constructions services clause V (e) of notification no 11/2017 Central Tax (Rate) dated 28th June 2017 with, the applicable rate of tax as 12% (CGST and SGST each).

6. Virtual Hearing:

The proceedings of Hearing were conducted through video conference on 21.10.2021 for which the authorized representative, Sri Y V Ratnam attended and reiterated the submissions already made.

7. Discussion and Findings:

We have examined the specific issues raised in the application such as various construction works enlisted by the applicant and the applicable rate of tax thereon for the listed works under the provisions of respective GST Acts.

As seen from the application, the applicant was awarded by Andhra Pradesh Industrial Infrastructure Corporation Limited (APIIC) different construction projects as listed below:

1. Construction of compound wall in open space opp. Berger Paints
2. Construction of compound wall in open space ADJACENT TO PLOT No-188
3. Providing Chain link mesh for open spaces
4. Construction of RCC Storm water drains from NH-5 to Mindi Junction
5. Construction of Administrative Building at Traditional Food Park at Industrial Park
6. Repairs to the Existing storm water bricks drains and
7. Construction of 20 MT Cold Storage Building for 'Primary Processing Centre'.

There is no dispute on the classification of construction work, being carried out by the applicant as 'works contract' under section 2(119), which reads as under:

"The Section 2 (119) of CGST Act, 2017 / APGST Act, 2017 defines "works contract" as 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 composite supply of works contract under Section 2 (119) of CGST Act, 2017 / APGST Act, 2017 is treated as supply of service in terms of Serial No.6 (a) of Schedule II of CGST Act, 2017 / APGST Act, 2017.

The Government of India, vide notification No. 11/2017 - Central Tax (Rate), dated - 28th June 2017 notified the rate of GST applicable on supply of services. Under this notification for heading 9954, the applicable rate of GST is 9%.

The said notification has been amended from time to time and the following notifications are issued by the Government of India and the said amendment Notifications are as follows -

- 1) Notification No- 20/2017 - Central Tax (Rate), Dated - 22/08/2017.
- 2) Notification No- 24/2017 - Central Tax (Rate), Dated - 21/09/2017.
- 3) Notification No- 31/2017 - Central Tax (Rate), Dated - 13/10/2017.
- 4) Notification No- 46/2017 - Central Tax (Rate), Dated - 14/11/2017.
- 5) Notification No- 01/2018 - Central Tax (Rate), Dated - 25/01/2018.

Vide Notification No. 24/2017 - Central Tax (Rate), Dated - 21.09.2017, Government of India by inserting entry No. (vi) notified concessional GST rate of 6%. In this regard the applicant claims that APIIC is a Government company and works executed to them shall be considered as works executed for Government of Andhra Pradesh under category VI (a) of the notification No 11/2017 Central Tax (Rate) dated 28th June 2017 with the applicable rate of tax (CGST and SGST) for works numbered 1 to 6 as 12%.

Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
3	Heading 9954 (Construction services)	[[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 - (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;	6	Nil

This context necessitates the examination of two issues:

1. Whether APIIC, which awarded construction work to the applicant would qualify for a Governmental Authority/entity or not.
2. Whether the construction works taken up by the applicant are meant for use other than for commerce, industry, or any other business or profession.

1) Initially we examine whether M/S. APIIC is a Government Authority / Entity or otherwise:

The clauses (ix) & (x) of Notification No.11/2017 – CT (Rate) dated 28.06.2017 as amended by Notification No.31/2017 – CT (Rate) dated 13.10.2017 are as hereunder;

“(iii) in paragraph 4, after clause (viii), the following clause shall be inserted, namely: -

(ix) "Governmental Authority" means an authority or a board or any other body, -

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government, with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243 W of the Constitution or to a Panchayat under article 243 G of the Constitution.

(x) "Governmental 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 a State Legislature; or

(ii) established by any Government,

with 90% or more participation by way of equity or control, to carry out any function entrusted by the Central Government, State Government, Union Territory or a local authority”.

If we look into the genesis of Andhra Pradesh Industrial Infrastructure Corporation Ltd. (APIIC), it was formed in 1973 by GO No. 831 dated 10-SEP-1973 issued by the Government of Andhra Pradesh. As seen from the shareholding ratios of the 41st Annual Reports for the years 2013-14 as made available by APIIC website <https://www.apiic.in>, the Government of Andhra Pradesh including its nominees is having 100% of shareholding and thus it is covered under the definition of 'Government Entity' under the above said provisions. Therefore, we conclude that M/s APIIC is a "Government Entity" for the purpose of GST matters.

2). Now we examine whether the construction work in which the applicant is engaged in, is meant for any business or otherwise.

When we look into the listed construction projects sl.no from 1 to 6, prima facie, it is evident that all of them are meant for business purpose only. Moreover, the applicant did not provide any information or documentary proof clarifying that the constructions are for use other than for commerce, industry, or any other business or profession, to be eligible for concessional

rate of 12% (6% CGST + 6% SGST) available under Notification No.24/2017 – CT (Rate) dated 21.09.2017.

In this case, the works executed by the applicant are classifiable under SAC Heading No. 9954 under construction services, entry no (ii) of serial No.3 of notification no. 11/2017 Central Tax (Rate) dated 28.06.2017 i.e., Composite Supply of Works Contract as defined in clause 119 of Section 2 of Central Goods and Services Act, 2017 and the applicable rate of tax is 18% (9% under Central Tax and 9% State Tax).

Now we look into the claim of the applicant that whether the construction project listed in sl.no 7 i.e., Construction of 20 MT Cold Storage Building for Primary Processing Centre can be classified under sl.no. 3 of constructions services clause V (e) of notification no 11/2017 Central Tax (Rate) dated 28th June 2017, with the applicable rate of tax as 12% (CGST and SGST each) or not.

Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
3	Heading 9954 (Construction services)	----- ----- [(v) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to, ----- ----- (e) post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes; or	6	Nil

In this regard, basing on the facts and records submitted, we concur with the opinion of the applicant that the concessional rate of 12% is applicable to the construction work in sl.no 7 of the list, which, being the Cold Storage Building for Primary Processing Centre, under Mega Food Park Scheme at Peddapuram, East Godavari District under V (e) of sl.no 3 under heading 9954 of Notification no 11/2017 Central Tax (Rate) dated 28th June 2017.

With the foregoing we rule as under.

RULING

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

Question: Applicability of CGST and SGST (Rate) on the listed works executed for Andhra Pradesh Industrial Infrastructure Ltd.

Answer: The listed works are classifiable under SAC Heading No. 9954 Construction Services, entry no (ii) of serial No.3 of notification no. 11/2017 Central Tax (Rate) dated 28.06.2017 and the applicable rate of tax is 18% (9% under Central tax and 9% State tax).

Question: Applicability of CGST and SGST (Rate) on construction of 20MT cold storage building for Primary Processing Centre (PPC) under Mega park scheme at peddapuram, East Godavari district.

Answer: Classified under V (e) of sl.no 3 under heading 9954 Construction Services of notification no 11/2017 Central Tax (Rate) dated 28th June 2017 with applicable rate of tax at 12%.

Sd/- D. Ramesh
Member

Sd/- RV Pradhamesh Bhanu
Member

//t.c.f.b.o//


Deputy Commissioner (ST)

DEPUTY COMMISSIONER (ST)
O/o. Chief Commissioner of State Tax,
Government of A.P. Vijayawada

To

1. M/s. YVR & Co, MIG IIA/144, Sriharipuram, Gollalapalem, Visakhapatnam-530011 Andhra Pradesh **(By Registered Post)**

Copy to

1. The Assistant Commissioner of State Tax, Steel Plant Circle, Visakhapatnam Division. **(By Registered Post)**
2. The Superintendent, Central Tax, CGST HPCL Range, Visakhapatnam South Division. **(By Registered Post)**

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Eedupugallu, Vijayawada, (A.P)
2. The Principal Chief Commissioner (Central Tax), O/o Principal Chief Commissioner of Central Tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035.A.P. **(By Registered Post)**

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act, 2017, with in a period of 30 days from the date of service of this order.

