

**AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX
UTTAR PRADESH
4, Vibhuti Khand, Gomti Nagar, Lucknow-**

ADVANCE RULING NO. UP ADRG - 10/2022 **Dated 23/08/2022**
PRESENT:

- 1. Shri Rajendra Kumar**
Additional Commissioner, Central Goods and Service Tax
Audit Commissionerate, Lucknow Member (Central Tax)
- 2. Shri Vivek Arya**
Joint Commissioner, State Goods and Service Tax Member (State Tax)

1.	Name of the Applicant	M/s The India Thermit Corporation Limited 84/22, Fazalganj, Kanpur-208012, Uttar Pradesh
2.	GSTIN or User ID	09AAACT7462Q1ZK
3.	Date of filing of Form GST ARA-01	26.05.2022
4.	Represented by	Shri Kunal Kapoor, Authorized Representative
5.	Jurisdictional Authority-Centre	CGST & Central Excise Division-II, Kanpur
6.	Jurisdictional Authority-State	Kanpur Sector -3 Range- Kanpur (A)
7.	Whether the payment of fees discharged and if yes, the amount CIN	ICIC22050900100759

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 & UNDER SECTION 98
(4) OF THE UPGST ACT, 2017**

1. M/s The India Thermit Corporation Limited, 84/22, Fazalganj, Kanpur-208012 (here in after referred to as the applicant) is a registered assessee under GST having GSTN: 09AAACT7462Q1ZK.
2. The applicant has filed application for advance ruling in Form GST ARA-01 and submitted as under-
 - (1) The applicant is *inter-alia* engaged in the supply of works contract to the Indian Railways.
 - (2) Indian Railways issues tenders inviting quotes from various suppliers for carrying out different works on construction lines or open lines.
 - (3) Construction lines are the new rail lines/tracks which are being laid down by the Indian Railways and open lines are existing rail lines/tracks which are being used by the Indian Railways.
 - (4) Some of these tenders are for supply of works contracts including welding, painting, etc. of the rails so as to do fabrication, completion, installation, fitting

out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of such lines as immovable property.

- (5) In accordance with the scope of work detailed in the LOA, the Applicant *inter-alia* provides the following supplies in respect of construction lines and open lines:

A. CONSTRUCTION LINES

a. Welding:

- The scope of this supply involves joining of new railway tracks, laid down by Indian Railways, by the flash butt welding/aluminothermic (AT) welding process. The entire welding work is undertaken at the site where tracks are being laid down. The Applicant is responsible for welding the rails together to make them fit for traffic movement.

- Flash butt welding is a type of resistance welding wherein the pieces of metal, which are to be welded, are set apart at a predetermined distance based on material thickness, material composition and desired properties of the finished weld. In order to weld the said pieces, electrical energy is applied to both the pieces of metal and as a result of the electrical energy, the air gap between the two pieces creates necessary resistance and produces the heat required to melt the metal. Once the pieces of metal reach the proper temperature, they are pressed together to effectively forge/weld them together.

- AT welding is a type of *in-situ* welding where the molten steel is poured into a mould surrounding the gap between the rail ends to be joined. The molten steel is formed by the Applicant by igniting the exothermic aluminium powder. The ends of the rails are cut to create a specified gap and the rails are aligned. Thereafter, a refractory mould is fastened around the gap by means of steel mould shoes. Leaks in the moulds are prevented by special luting material. After pre-heating both rail ends, the exothermic reaction of the aluminum powder and iron oxide is started in a re-usable or a 'one-shot' crucible which forms the liquid steel which then flows into the mould. The rail ends are connected by the liquid metal which molten metal edges of the gap to form a weld.

b. Painting of welds:

In some cases, besides welding, the weld is also required to be painted using black paint. The material (i.e. paint) used for this process belongs to the Applicant and property in such paint, after execution of work, shall stand transferred to the Indian Railways.

c. Painting of rails:

In some cases, besides welding, the Applicant is required to paint rails. In these contracts, painting of rails is included in the weld price which entails painting the rail with multiple coats. In these cases as well, paint belongs to the Applicant and property in such paint after execution of work shall stand transferred to the Indian Railways.

B. OPEN LINES

a. Maintenance Activities:

Rail lines which are being used by the Indian Railways require periodical maintenance which *inter-alia* includes weld renewal or rail renewal. In order to carry out maintenance activities, the running lines are temporarily closed in small portions by Indian Railways and the Applicant is given a

limited time window to carry out the following replacements on the said demarcated portion of the rail/track.

- Weld renewal

In case of weld renewal, weld joints on railway tracks which are approaching the end of their lifecycle are replaced with fresh welds using the flash butt welding/AT welding method. Thereafter, the fresh welds are painted.

- Rail renewal

In case of rail renewal, rails on railway tracks which are approaching the end of their lifecycle are replaced with new rails which are then welded, using flash butt/AT welding method, on to the existing tracks. They are subsequently painted as necessary. In case of rail renewal, essentially the scope of work on Applicant's end remains the same except for the fact that they will be welding new rails provided to them by the Indian Railways on free of cost basis for execution of the works.

3. The applicant has sought advance ruling on following questions as per Form GST ARA-01 -

Whether the activities undertaken by the Applicant for the Indian Railways are classified under Entry 3(v)(a) of Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017 and the benefit of concessional rate of GST of 12% can be availed in respect of the said supply?

4. As per declaration given by the applicant in Form GST ARA-01, the issue raised by the applicant is neither pending nor decided in any proceedings under any of the provisions of the Act, against the applicant.

5. The applicant have submitted their interpretation of law as under-

(1) In the understanding of the Applicant, the activities undertaken by it are composite works contracts supplied by way of construction, erection, commissioning or installation of original works pertaining to Railways. Therefore, the said activities are covered under clause 3(v)(a) of the Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017 and will be taxed at the concessional rate of 12%.

(2) Similarly, Section 5(1) of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the 'IGST Act') being the charging section, provides for levy of integrated tax on all inter-state supplies of goods or services or both on the value determined under Section 15 of the CGST Act and at such rates as may be notified by the Government on the recommendations of the Council.

(3) In terms of Section 7 of the CGST Act, supply includes-

a)

b)

c)

d) **the activities to be treated as supply of goods or supply of services as referred to in Schedule II.**

(4) Clause 6(a) of the Schedule II provides that the following composite supply shall be treated as a supply of services:

"6. Composite supply

The following composite supplies shall be treated as a supply of services, namely:-

(a) works contract as defined in clause (119) of section 2;".

- (5) That Section 2 in clause (119) of the CGST Act defines works contract as follows:
"2. Definitions.

In this Act, unless the context otherwise requires,

.....

(119) "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."

- (6) In terms of Section 20(i) of the IGST Act, the above referred provisions of the CGST Act would be applicable to the inter-state supplies.

- (7) That the Central Government issued Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017 notifying the rate of tax on inter-state supply of services. For ease of reference, the relevant clause of the said notification is reproduced hereunder:

"Notification No. 8/2017-Integrated Tax (Rate)

New Delhi, the 28th June 2017

G.S.R. 683(E). - *In exercise of the powers conferred by sub-section (1) sub-section (3) and sub-section (4)] of section 5, subsection (1) of section 6 and clauses (iii), (iv) and (xxv) of section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) read with sub-section (5) of section 15 sub-section (1) of section 16 and section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby notifies that the integrated tax, on the inter-State supply of services of description as specified in column (3) of the Table below, falling under Chapter, Section or Heading of scheme of classification of services as specified in column (2), shall be levied at the rate as specified in the corresponding entry in column (4), subject to the conditions as specified in the corresponding entry in column (5) of the said Table:-*

Table

Sl. No.	Chapter, Section or Heading	Description of service	Rate (per cent)	Condition
(1)	(2)	(3)	(4)	(5)
...
...
3	Heading 9954 (Construction services)	(i)
		(iv)
		(v) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than that	12	

		<p><i>covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above supplied by way of construction, erection, commissioning, or installation of original works pertaining to,-</i></p> <p><i>(a) railways, including monorail and metro;</i></p> <p><i>(b).....</i></p>	
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- (8) The Applicant submits that for giving ruling on the issue raised by the Applicant, it is pertinent to determine answers to the following two questions:
- a. Whether the activities undertaken by the Applicant qualify as composite supply of works contract?
 - b. If answer to question (i) hereinabove is in affirmative, whether such works contract can be said to be supplied by way of construction, erection, commissioning or installation of original works pertaining to railways?
- (9) On a careful perusal of the above definition, it is evident that to qualify as a works contract, the following two conditions need to be satisfied:
- a. the specified activities are carried out in relation to any immovable property; and
 - b. the execution of contract involves transfer of property in goods.
- (10) It is submitted that the activities undertaken by the Applicant satisfy the above referred conditions and therefore, qualify as works contracts. Detailed submissions in this regard are made in the following paragraphs.
- (11) The term 'immovable property' has not been defined anywhere in the CGST Act. In general parlance, immovable property means the things which cannot be moved from one place to another. To further understand the meaning of the term 'immovable property', reference is also made to definition of the term 'immovable property' as given in General Clauses Act, 1897 which is reproduced hereunder-
- "Section 3(26) - "Immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth."*
- (12) A plain reading of the above referred definition suggests that 'immovable property' would include land and the things which are attached to or embedded in the land such as buildings, bridges, etc. However, not everything that is attached to the land would automatically constitute an immovable property. That whether a particular property is an immovable property or not is subject to the peculiar facts of each case.
- (13) It is submitted that Hon'ble Courts have given various decisions laying down criteria for determining whether a property is immovable or not. In this regard,

reference is made to the decision of the Hon'ble Supreme Court in the case of **Triveni Engineering & Industries Limited v. CCE, (2000) 7 SCC 29.**

- (14) Further, in the case of **CCE v. Hutchison Max Telecom P. Ltd. & Anr., 2007 SCC OnLine Bom 702**, the issue before the Hon'ble Bombay High Court was whether the Base station controller (BST)/base trans-receiver station (BTS) which are required to be assembled at the site using towers, UPS, cable trays, AC etc. would be treated as movable and therefore, liable to excise duty. The Hon'ble High Court held that the BST/BTS comes into existence in an immovable form and therefore, no excise duty would be leviable on the same.
- (15) Reference is also made to the decision of the Hon'ble CEGAT, Mumbai in the case of **Josts Engineering Co. Ltd. v. CCE, Mumbai -III, 1997 SCC OnLine CEGAT 1547** wherein the Hon'ble Tribunal held that since the parts of the spray/painting system supplied, erected and installed by the appellants at the customers site was so embedded in the earth that it could not be removed without causing damage to the said system, the spray system supplied and installed by the appellants was an immovable property.
- (16) In view of above, it can be concluded that an immovable property would have the following characteristic -
- It should be permanently attached to or affixed to the earth.
 - It should come into existence as an immovable property.
 - It cannot be shifted from one location to other location without dismantling it. In other words, only individual parts can be shifted and property as such cannot be shifted.
 - The dismantling of the property would cause substantial damage to the said property.
 - The said property is not attached to earth merely for operational efficiency of the said property such as to prevent it from wobbling during the operations.
 - There is an intention of permanently attaching the said property to the ground.
- (17) In the present case, the Applicant is undertaking specified activities in respect of the rail tracks. Thus, the question which arises is whether or not the rail tracks qualify as 'immovable property'. In order to answer this question, it is necessary to understand the procedure of laying down the tracks which is detailed hereunder:
- a. Laying of subgrade:
The ground on which rail track is to be laid is first prepared by compacting it to the required stiffness and by ensuring the sufficient drainage. This is done to ensure that the soil is not soft so that movement of rail tracks can be prevented. This ground prepared for laying down rail track is known as subgrade.
 - b. Bottom Ballast:
Once the subgrade is prepared, a layer of ballast i.e. sharp-edged rocks, is spread on it. Ballast provides stability to the rail tracks and it also spreads the wheel load to the entire foundation.
 - c. Laying down of sleepers/ties:
On the layer of ballast, sleepers or ties made of concrete or wood are laid down. These sleepers or ties are used to hold the rails in place and transmit the load from rails to ballast. Sleepers along with the ballast and subgrade constitute the formation of rail tracks.
 - d. Laying down of rails:

At the end, the rails are laid down on the sleepers/ties. Rails are joined in series by fish plates and bolts which are fixed to the sleepers/tiers with the help of fastenings.

e. Top ballast:

After laying down of rail tracks, a layer of top ballast is put between the sleepers which provide additional stability to the rails.

- (18) Thus, rail tracks are permanently attached to the earth which cannot be shifted from one location to another without dismantling it. On dismantling, what would be taken out are parts/components of the rail tracks (*viz.* rails, sleepers, etc.) and not the foundation itself. Therefore, rail tracks will qualify as an immovable property.
- (19) In view of the above, it can be concluded that the specified activities undertaken by the Applicant are in relation to the immovable property (i.e. rail tracks). Thus, the first condition to qualify as works contract, as mentioned in paragraph 18(a) hereinabove, is satisfied by the Applicant.
- (20) It is submitted that while executing the contracts of welding (AT welding) along with painting, etc. of the rails, goods, which are transferred are on account of the Applicant. The paint used for painting welds/rails and liquid metal, formed by igniting the exothermic aluminum powder, used for AT welding becomes a part of the railway tracks owned by the Indian Railways. Therefore, it is evident that the property in the goods involved in the execution of the contracts of AT welding and/or painting, etc. stands transferred to the Indian Railways.
- (21) It is further submitted that in case of flash butt welding, no metal is used for welding. However, this type of welding is done using electricity which also qualifies as goods. Reliance in this regard is placed on the following decisions wherein it was held that electricity is goods:
- **State of A.P. v. National Thermal Power Corporation Ltd. [(2002) 5 SCC 203]**
 - **CST, MP, Indore v. Madhya Pradesh Electricity Board, Jabalpur [(1969) 1 SCC 200]**
- (22) Thus, while carrying out flash butt welding, the Applicant is using goods (i.e. electricity) which is consumed and in this process the property in such goods (electricity) is also transferred to the recipient.
- (23) The Applicant submits that even if the goods used in execution of a contract are in the form of consumables, the property in such goods stands transferred to the contractee. Thus, in the instant case also, the property in goods/consumables (i.e. electricity) is transferred to the Indian Railways. To substantiate this contention, reliance is placed on the decision of the Hon'ble Supreme Court in **State of Gujarat v. Bharat Pest Control, (2018) 14 SCC 685.**
- (24) In support of the above contention, reliance is also placed on the decision of Hon'ble Kerala High Court in **Enviro Chemicals v. State of Kerala, 2011 SCC OnLine Ker 3685** wherein, the majority held as under:

“

*31. When the assessee has used it, will it remain the owner of the chemical any longer ? Will not the property in the goods pass to the awardee ? **We would think that the moment the assessee pours the chemicals into the effluent, he***

will cease to be the owner and at that point of time the awarder must be deemed to have taken delivery of the same. In our view the fact that upon it being poured into the effluent, it loses its identity and that it is consumed will not detract from the fact that there is delivery of the same to the awarder. The assessee does not have a case that the effluent belongs to the assessee. We do not think that it can be their case that the effluent does not belong to the awarder. Let us pose a question, if a complaint by a third party is raised about the treated effluent, can the awarder absolve itself of the ownership of the same? We would think, it may not be possible. Therefore we would be justified in holding that the effluent and the treated effluent both belonged to the awarder. It is, therefore, into the property of the awarder, namely the effluent that the assessee supplies the chemical. The Apex Court in its decision in *Gannon Dunkerley & Co. v. State of Rajasthan* ((1993) 1 SCC 364) had, inter alia, held that cost of consumables, such as, water, electricity, fuel etc. used in the execution of the works contract, the property in which is not transferred in the course of execution of a works contract, is to be deducted. In S. 5C also, the words "not involving any transfer of property in goods" have been incorporated. Just like the toner and developer having been put into xerox machine becoming the property of the customer in the case before the Apex Court in *Xerox Modicorp Ltd.* case and the sale taking place before the goods are consumed, in the same way, the property in the chemical passed to the awarder the moment they are put into the effluent by the assessee and its subsequent consumption is the consumption after sale and it does not detract from the factum of sale and consequently the exigibility to tax becomes unquestionable."

- (25) Thus, in view of the above referred judicial precedents, it is submitted that even in case of flash butt welding, the property in goods (i.e. electricity) gets transferred to the Indian Railways.
- (26) In view of the above, it is evident that the contracts executed by the Applicant involve transfer of property in goods. Thus, the second condition to qualify as works contract, as mentioned in paragraph 18(b) hereinabove, is also satisfied by the Applicant.
- (27) In light of the above discussion, it is submitted that as the activities undertaken by the Applicant satisfy the twin conditions of works contracts, as mentioned in paragraph 18 hereinabove, they will qualify as 'works contracts' as defined under Section 2(119) of the CGST Act.
- (28) Thus, the answer to question (a) in paragraph 16 hereinabove needs to be in affirmative in the understanding of the Applicant.
- (29) As detailed in the facts hereinabove, the Applicant undertakes activities in respect of construction lines and open lines. In case of construction lines, the Applicant undertakes welding, painting, etc. of new rails. Besides this, the Applicant also undertakes maintenance activities which include weld renewal or rail renewal along with painting, etc. of open lines i.e. pre-existing lines which are in use. In this factual backdrop, the question which arises is whether or not the said

activities are supplied by way of construction, erection, commissioning or installation of original works.

(30) It is submitted that the term 'original works' is neither defined under the GST laws nor in the Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017. Thus, to understand the meaning of the term 'original works', reference is made to clause 2(zs) of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, which defines the said term as under:

"2. Definitions. - For the purposes of this notification, unless the context otherwise requires,

.....

(zs) "original works" means- all new constructions;

(i) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(ii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;"

(31) At the outset, it may be noted that the said definition is for the purposes of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. However, in the absence of any statutory definition, reference may be made to the said definition to understand the meaning, purport and extent of the term 'original works' used in clause 3(v)(a) of Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017.

(32) On a careful perusal of the above referred definition of original works, it is evident that the said term includes the following:

a.all new constructions;

b. all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable; and

c.erection, commissioning or installation of plant, machinery or equipment or structures whether pre-fabricated or otherwise.

(33) In the context of construction lines, it is submitted that the Applicant welds the new rails, laid down by the Indian Railways, using flash butt/AT welding method. These new rails are laid down at the site and are joined by the process of welding to form a continuous rail known as track. These welds and/or rails are also painted. Thus, the activities undertaken by the Applicant are necessary to form continuous rail track and it is only after such welding, painting, etc. a new track comes into existence and becomes operational. Thus, the said activities undertaken by the Applicant on the new rail lines are in the nature of construction of a railway track which being a new structure amounts to an original work.

(34) In the context of open lines, it is submitted that the Applicant carries out maintenance activities on the running lines whereunder welds or rails which are worn out or which have reached the end of their usable life, are replaced with new welds or new rails (which are provided by the Indian Railways). At this juncture, it is necessary to understand whether the said worn out rails will qualify as 'damaged structure'. It may be noted that the phrase 'damaged structure' is not defined anywhere in the GST laws and the notifications issued thereunder. Therefore, reference may be made to the dictionary meaning of the said phrase which are reproduced hereunder:

Oxford Dictionary of English, 3rd ed. (page 439)

“damage (noun) : physical harm that impairs the value, usefulness or normal function of something”

- (35) On a careful perusal of the above definition, it is evident that ‘damage’ would mean such harm to a structure or thing that reduces the effectiveness, soundness or value of that structure/thing.
- (36) In the present case, the welds or rails which are renewed by the Applicant have worn out or are reaching the end of their usable life. Thus, by efflux of time, the welds or rails, as the case may be, have lost their effectiveness, soundness or value and therefore, they have become damaged structure.
- (37) It is thus submitted that it is necessary to replace these damaged welds or rails to make the track continuously workable without any interruptions. Thus, the maintenance activities undertaken by the Applicant on the open lines are in the nature of additions and alterations to damaged structures to make them workable which also amounts to an original work.
- (38) In light of the above discussion, it can be concluded that the activities undertaken by the Applicant are in the nature of works contracts which are supplied by way of construction, erection, commissioning or installation of original works pertaining to Railways. Therefore, the activities undertaken by the Applicant are covered under clause 3(v)(a) of the Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017 and will be taxed at the concessional rate of 12%.

6. The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report on the matter. The Deputy Commissioner, CGST & Central Excise Division-II, Kanpur vide C.No. V(30)02-CGST/R-XII/Div.-II/Legal/2021/473 dated 20.07.2022 submitted his report as under-

- (i) Applicant is inter alia engaged in the composite supply of works contract to the Indian Railways.
- (ii) This supply is made by the Applicant in accordance with the Letter of Acceptance (LOA) issued by the Indian Railways to the Applicant.
- (iii) In accordance with the terms of the LOA, the Applicant is responsible to carry out various activities which inter-alia include Aluminothermic welding of rails. Painting of weld/rails, maintenance of rails, etc., for the Indian Railways.
- (iv) according to Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017, the composite supplies of works contract, specified in entry 3(v)(a), was subject to the IGST rate of 12% until 17.06.2022.
- (v) The rate of IGST has now been increased to 18% for the composite supplies of works contract, specified in above entry 3(v)(a), from 18.06.2022, vide Notification No. 3/2022-Integrated Tax (Rate) dated 13.07.2022.
- (v) there is no proceedings on the questions raised in the application are pending or decided.

7. The applicant was granted a personal hearing on 22.08.2022 which was attended by Shri Kunal Kapoor, Authorized Representative during which they reiterated the submissions made in the application of advance ruling.

DISCUSSION AND FINDING

8. At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST 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 UPGST Act. Further for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / UPGST Act would be mentioned as being under the 'CGST Act'.

9. We find that the applicant has sought advance ruling on following questions-

Whether the activities undertaken by the Applicant for the Indian Railways are classified under Entry 3(v)(a) of Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017 and the benefit of concessional rate of GST of 12% can be availed in respect of the said supply?

10. We have gone through the submissions made by the applicant and have examined the explanation submitted by them. We find that the issue raised in the application is squarely covered under Section 97(2)(a)&(b) of the CGST Act 2017 being a matter related to classification of goods and applicability of notification issued under the provisions of the CGST Act, 2017. We therefore, admit the application for consideration on merits.

11. The applicant has submitted that they have provided following two types of supply to the Railway.

A. CONSTRUCTION LINES

(i) Welding:

• The scope of this supply involves joining of new railway tracks, laid down by Indian Railways, by the flash butt welding/aluminothermic (AT) welding process. AT welding is a type of welding where the molten steel is poured into a mould surrounding the gap between the rail ends to be joined. The molten steel is formed by the applicant by igniting the exothermic aluminium powder. The ends of the rails are cut to create a specified gap and the rails are aligned. Thereafter, a refractory mould is fastened around the gap by means of steel mould shoes. Leaks in the moulds are prevented by special luting material. After pre-heating both rail ends, the exothermic reaction of the aluminum powder and iron oxide is started in a re-usable or a 'one-shot' crucible which forms the liquid steel which then flows into the mould. The rail ends are connected by the liquid metal which molten metal edges of the gap to form a weld.

(ii) Painting of welds:

In some cases, besides welding, the weld is also required to be painted using black paint. The material (i.e. paint) used for this process belongs to the applicant and property in such paint after execution of work shall stand transferred to the Indian Railways.

(iii) **Painting of rails:**

In some cases, besides welding, the applicant is required to paint rails. In these cases as well, paint belongs to the applicant and property in such paint after execution of work shall stand transferred to the Indian Railways.

B. OPEN LINES

(i) **Maintenance Activities:**

Rail lines which are being used by the Indian Railways require periodical maintenance which *inter-alia* includes weld renewal or rail renewal.

(ii) **Weld renewal**

In case of weld renewal, weld joints on railway tracks which are approaching the end of their lifecycle are replaced with fresh welds using the flash butt welding/AT welding method. Thereafter, the fresh welds are painted.

(iii) **Rail renewal**

In case of rail renewal, rails on railway tracks which are approaching the end of their lifecycle are replaced with new rails which are then welded, using flash butt/AT welding method. They are subsequently painted as necessary.

12. We find that vide Notification No. 8/2017-Integrated Tax (Rate) dated 28th June 2017, it has been notified that the integrated tax, on the inter-State supply of services of description as specified in column (3) of the Table below, falling under Chapter, Section or Heading of scheme of classification of services as specified in column (2), shall be levied at the rate as specified in the corresponding entry in column (4), subject to the conditions as specified in the corresponding entry in column (5) of the said Table

Table

Sl. No.	Chapter, Section or Heading	Description of service	Rate (per cent)	Condition
(1)	(2)	(3)	(4)	(5)
...
3	Heading 9954 (Construction services)	(i)
	
		(iv)
		(v) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above supplied by way of construction, erection, commissioning, or installation of original works pertaining to,- (a) railways, including monorail and metro; (b).....	12	
			
		(xii) Construction services other than	18	-

		(i), (ia), (ib), (ic), (id), (ie), (if), (iii), (iv), (v), (va), (vi), (vii), (viii), (ix), (x) and (xi) above.		
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13. The entry 3(v)(a) of Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017 prescribes the rate of 12% for *Composite supply of works contract {as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017}, other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) of the above notification supplied by way of construction, erection, commissioning, or installation of original works pertaining to railways, including monorail and metro.*

14.1. As such, there should be following ingredients for claiming exemption under entry 3(v)(a) of Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017-

- (i) there should be composite supply of works contract
- (ii) the said composite supply of works contract should not be covered in entry (i), (ia), (ib), (ic), (id), (ie) and (if) of the above notification.
- (iii) the supply should be by way of construction, erection, commissioning, or installation of original works
- (iv) the same should be pertaining to *railways, including monorail and metro.*

14.2 The term 'composite supply' is defined under clause 30 of Section 2 of the CGST Act, 2017 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.

14.3 We find that the applicant is supplying paint and welding material during maintenance of railway tracks as such there is composite supply of goods and service in the instant case.

14.4. The term 'works contract' as defined in clause (119) of section 2 of the CGST Act, 2017 is as under-

"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."

14.5 Immovable property has not been defined in the CGST Act. Definition of Immovable Property is given in Clause 3 (26) of General Clauses Act, 1897 which says that *"immovable property shall include land, benefits arising out of land and things attached to earth, or permanently fastened to anything attached to earth."*

14.6 As per Section 3 of the Transfer of Property Act 1882, the phrase *"attached to earth"* means- (a) *rooted in the earth, as in the case of trees and shrubs;* (b) *imbedded in the earth, as in the case of walls or buildings;* or (c) *attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.*

14.7 The applicant has submitted that the rail tracks are permanently attached to the earth which cannot be shifted from one location to another without dismantling it. On dismantling, what would be taken out are parts/components of the rail tracks (*viz.* rails, sleepers, etc.) and not the foundation itself. Therefore, rail tracks will qualify as an immovable property.

14.8 We find that the term 'immovable property' has been examined by the various courts. Some of the relevant case laws are given below-

- (i) In case of M/s Sirpur Paper Mills Ltd. Vs. Collector of Central Excise, Hyderabad (1998 (97) ELT 3 (SC)), CEGAT recorded finding that whole purpose behind attaching machine to a concrete base was to prevent wobbling of machine and to secure maximum operational efficiency and also for safety. Supreme Court held that in view of those findings it was not possible to hold that the machinery assembled and erected by the appellant at its factory site was immovable property as something attached to earth like a building or a tree.
- (ii) In the case of Virgo Industries (Eng.) Pvt Ltd vs CCE, Chennai, 2015 (4) TMI 247(Mad.), the Madras High Court observed that an item fixed to the earth can continue to be movable if the same is capable of being shifted to another place without having to dismantle the same into constituent components and without causing substantial damaging to such individual components.
- (iii) The Hon'ble Supreme Court in the case of Commissioner of Central Excise, Ahmedabad Vs. Solid and Correct Engineering Works, (2010) 5 SCC 122 has explained in detail the law relating to Immovable property. In that case the asphalt drum/ hot mix plants were claimed to be immovable property. Hon'ble Court has held that that an Asphalt Drum mix plant was no per se immovable and becomes immovable only when embedded in earth. Further, it was held that the attachment of the plant with nuts and bolts was intended to provide stability and prevent vibration/wobble free operation and the attachment, as such, was easily detachable from the foundation and not permanent, does not qualify for being described as attached to Earth. The observations of the Court in that case as regards immovable property are reproduced below -

Para 24-Section 3 (26) of the General Clauses Act includes within the definition of the term "immovable property" things attached to the earth or permanently fastened to anything attached to the earth. The term attached to the earth has not been defined in the General Clauses Act, 1897. Section 3 of the Transfer of Property Act, however gives the following meaning to the expression "attached to the earth"

(a) rooted in the earth, as in the case of trees and shrubs;

(b) imbedded in the earth, as in the case of walls or building; or

(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

Para 25-it is evident from the above that the expression 'attached to the earth' has three distinct dimensions.... Attachment of the plant in question with the help of nuts and bolts to a foundation not more than one and half feet deep intended to provide stability to the working of the plant and preventing vibration/wobble free operation does not qualify for being described as attached to the earth under any one of the three clauses extracted above. That is because attachment of the plant to the foundation is not comparable or

synonymous to trees and shrubs rooted in the earth. It is also not synonymous to imbedding in the earth of the plant as in the case of walls and buildings, for the obvious reason that a building imbedded in the earth is permanent and cannot be detached without demolition. Imbedding of a wall in the earth is also in no way comparable to attachment of a plant to a foundation meant only to provide stability to the plant especially because the attachment is not permanent and what is attached can easily be detached from the foundation. So also the attachment of the plant to the foundation at which it rests does not fall in the third category, for an attachment to fall in that category it must be for permanent beneficial enjoyment of that to which the plant is attached. It is nobody's case that the attachment of the plant to the foundation is made for permanent beneficial enjoyment of either the foundation or the land in which the same is embedded.'

14.9 We find that the case of railway tracks are similar to case of M/s Solid and Correct Engineering Works (supra) as attachment of the railway track with the help of nuts and bolts to sleepers (foundation) intended to provide stability to the working of the railway track and preventing vibration/wobble free operation. The applicant have themselves submitted that in case of rail renewal, rails on railway tracks which are approaching the end of their life cycle are replaced with new rails. As such we are of the opinion that the railway track is not an immovable property.

14.10 For the goods/services supplied by the applicant to be covered in the works contract, it is necessary that the contracts enumerated therein should relate to immovable property. If the contract is otherwise or if the same results in movables, then it may be a composite supply but not the works contract.

14.11 Moreover, "Transfer of property" though not defined in the CGST Act, is defined in Section 5 of the Transfer of Property Act, 1882 as, "*Transfer of property*" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons.

14.12 Therefore, from what is mentioned above u/s 5 of the Transfer of Property Act, 1882, it is quite clear that, for transfer to take place, there must be "conveyance". However, the root word "convey" or "conveyance" is not defined in CGST Act. The Black's Law Dictionary defines "convey" as. "*To pass on or transmit the property from one another, to transfer property or the title to property by deed or instrument under seal used popularly in sense "assign," "sale, or transfer".*"

14.13 The decision of the three-Judges Bench of the Supreme Court in the case of **M/S. LARSEN & TOUBRO LIMITED & ANOTHER VERSUS STATE OF KARNATAKA & ANOTHER [2013 (9) TMI 853-SUPREME COURT]**, has explained the expression "**whether as goods or in some other form**" used in parenthesis in clause 29-A(b). The Hon'ble Court then referred and observed that "goods in some other form" in Article 366(29-A)(b) would thus mean "goods which have ceased to be chattels or movables or merchandise and become attached or embedded to earth, in other words, goods which have by incorporation become part of immovable property are deemed as goods".

14.14 The goods involved in repair and maintenance of 'open line' as well as in 'construction line' are welding material and paints are consumed purely during the execution of contract and hence the same shall not be treated as 'transfer of property in goods', as lawful convey and absolute transfer of ownership of the said property i.e. consumable goods does not take place.

14.15 In this connection, we would like to refer to the case law of Delhi High Court in case of **VPSSR FACILITIES VERSUS COMMISSIONER OF VALUE ADDED & ANR. [2017 (2) TMI 814-DELHI HIGH COURT]**, Kerala High Court's decision in M/s. Enviro Chemicals Versus State of Kerala-2011 (2) TMI 1296-KERALA HIGH COURT, and the Apex Court decision of Xerox Modicorp Ltd. Versus State of Karnataka-2005 (8) TMI 359-Supreme Court wherein it was held that, no property in the consumable goods passes on to the contractee and consequently the said goods are not eligible to tax.

14.16 *The entry 3(v)(a) of Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017 prescribes that the supply should be by way of construction, erection, commissioning, or installation of original works. The definition of Works contract" includes contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning but in the entry 3(v)(a) of Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017, only construction, erection, commissioning, or installation of original works has been included. As such, all work contracts are not covered in the said notification.*

14.17 It is submitted that the term 'original works' is neither defined under the GST laws nor in the Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017. Thus, to understand the meaning of the term 'original works', reference is made to clause 2(zs) of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, which defines the said term as under:

"2. Definitions. - For the purposes of this notification, unless the context otherwise requires,

.....

(zs) "original works" means- all new constructions;

(i) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(ii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise

14.18 The supply provided by the applicant does not fall under the category of 'new construction' as the applicant is not doing any work relating to new construction. Even in case of work relating to 'construction lines' wherein new railway tracks are constructed, the applicant is not constructing new railway line and only supplying completion and finishing services in respect of 'construction lines' wherein the applicant has to provide welding work and painting work. The standalone contract for welding and painting work is not covered in the original work. During erstwhile regime of service tax, separate service tax rate was provided for original work and completion and finishing work as per Rule 2A(ii) of service Tax (Determination of value) Rules, 2006. It is pertinent to mention that definition of original work in the service tax regime was the same as in the GST regime.

14.19 The supply provided by the applicant do not fall under the category of ‘*all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable*’ in case of construction lines. Even in case of Open Lines, the railway lines which are replaced on completion of shelf life are not abandoned or damaged structures. Further, there is no *erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise* during execution of contracts by the applicant.

15. As such, the applicant is not entitled to benefit of entry 3(v)(a) of Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017 because-

- (i) there is no contract for building, construction, fabrication, completion, erection, Installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of **any immovable property.**
- (ii) there is no transfer of property in goods (whether as goods or in some other form) involved in the execution of contracts.
- (iii) The supply is not by way of construction, erection, commissioning, or installation of **original works.**

16. Further, the **Notification No. 8/2017-Integrated Tax (Rate)** dated 28.06.2017 was amended vide Notification No. 03/2022-Integrated Tax (Rate) dated 13 July 2022 and following changes have been made in serial No. 3 of the **Notification No. 8/2017-Integrated Tax (Rate)** dated 28.06.2017 with effect from 18.07.2022-

In the said notification, -

(A) in the Table, -

(I) against serial number 3, in column (3), -

(a) items (iii), (iv), (v), (va), (vi) and (ix) and the corresponding entries relating thereto in columns (4) and (5) shall be omitted;

(b) against items (vii) and (x), for the entry in column (4), the entry “12” shall be substituted;

(c) in item (xii), for the brackets and figures “(iii), (iv), (v), (va), (vi), (vii), (viii), (ix)”, the brackets and figures “(vii), (viii),” shall be substituted;

17. As such, the entry 3(v) of the **Notification No. 8/2017-Integrated Tax (Rate)** dated 28.06.2017 has been omitted vide Notification No. 03/2022-Integrated Tax(Rate) dated 13 July 2022 with effect from 18.07.2022 and entry 3(xii) has been amended to be read as under-

Table

Sl. No.	Chapter, Section or Heading	Description of service	Rate (per cent)	Condition
(1)	(2)	(3)	(4)	(5)
...
3	Heading 9954 (Construction services)	(i) ... (xii) Construction services other than (i), (ia), (ib), (ic), (id), (ie), (if), (vii), (viii), (x) and (xi) above	18	...

18. As such, the question raised by the applicant has no significance in view of omission of entry 3(v) of the **Notification No. 8/2017-Integrated Tax (Rate)** dated 28.06.2017 with effect from 18.07.2022. As such, the applicant is not entitled for IGST rate of 12 % after 18.07.2022 or even before 18.07.2022. In our view, the appropriate rate of IGST payable by the applicant on services provided on 'construction line' as well as 'open line' is 18%

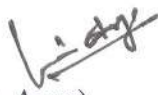
19. In view of the above discussions, we unanimously pass an order as follows:

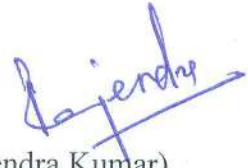
ORDER

Question - Whether the activities undertaken by the Applicant for the Indian Railways are classified under Entry 3(v)(a) of Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017 and the benefit of concessional rate of GST of 12% can be availed in respect of the said supply?

Answer- Replied in negative as entry 3(v)(a) of Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017 is not existing with effect from 18.07.2022.

20. This ruling is valid only within the jurisdiction of Authority for Advance Ruling Uttar Pradesh and subject to the provisions under Section 103(2) of the CGST Act, 2017 until and unless declared void under Section 104(1) of the Act.


(Vivek Arya)
Member of Authority for Advance
Ruling


(Rajendra Kumar)
Member of Authority for Advance
Ruling

To,
M/s The India Thermit Corporation Limited,
84/22, Fazalganj,
Kanpur-208012

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

Copy to –

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Commissioner, CGST & C. Ex, Kanpur, 117/7, Sarvodaya Nagar, Kanpur-208005.
4. The Deputy Commissioner, CGST & Central Excise, Division-II, 117/7, Sarvodaya Nagar, Kanpur-208005.
5. Through the Additional Commissioner, ~~City-1, Kanpur Zone-I~~, Uttar Pradesh to jurisdictional tax assessing officers.

Note: An Appeal against this advance ruling order lies before the Uttar Pradesh Appellate Authority for Advance Ruling for Goods and Service Tax, 4, Vibhuti Khnad, Gomti Nagar, Lucknow – 226010, within 30 days from the date of service of this order.