

AUTHORITY FOR ADVANCE RULING – CHHATTISGARH
3rd & 4th Floor, VanijyikKar GST Bhawan, North Block Sector-19,
Atal Nagar, District-Raipur (C.G.) 492002
Email ID – gst.aar-cg@gov.in
PROCEEDING OF THE AUTHORITY FOR ADVANCE RULING

U/s. 98 OF THE CHHATTISGARH GOODS AND SERVICES TAX ACT, 2017

Members Present are

Smt. Sonal K. Mishra
Joint Commissioner
O/o Commissioner, State Tax
(CGGST), Raipur, Chhattisgarh.

Shri Rajesh Kumar Singh,
Additional Commissioner,
O/o Principal Commissioner,
CGST & Central Excise, Raipur (C.G)

Subject: -Chhattisgarh GST Act, 2017 – Advance Ruling U/s 98 Chhattisgarh GST Act, 2017 –

1. Advance Ruling U/s 98 sought by M/s HPL Electric and Power Limited Behind Mata Garage, Jai Bhole Complex, Pandri, Raipur, Chhattisgarh, 492001 GSTIN- 22AAACH0165J1Z0, (here in after referred to as the applicant) vide application dated 03/02/2022 regarding GST - seeking an advance ruling in respect of the following question:-

Whether the supply to be made by it to M/s. Adani Infra (India) Ltd. ('AIIL') for providing services for 'design, engineering, supply, testing at site, freight and transit insurance, erection, installation and commissioning and trial run of Highway Lighting System as per IRC-SP-84-2014 for the project of development, maintenance and management of 4 laning of Bilaspur to Pathrapali Section of NH-111 (New NH-130) from 0.000 km to 53.300 km in the State of Chhattisgarh under Bharatmala on Hybrid Annuity Mode' can be classified under Entry 3(iv)(a) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 and the benefit of concessional rate of GST of 12% (i.e. 6% each CGST and SGST) can be availed in respect of said supply by Applicant to AIIL?

Read: -Application dated 03/02/2022from M/sHPL Electric and Power Limited, Pandri, Raipur, Chhattisgarh, 492001 (here in after referred to as the applicant) holding GSTIN-22AAACH0165J1Z0.

PROCEEDINGS

[U/s 98 of the Chhattisgarh Goods & Services Tax Act, 2017 (herein- after referred to as CGGST Act, 2017)]

No STC/AAR/02/2022

Rajpur Dated 02/05/2022

M/s HPL Electric and Power Limited (here in after referred to as the applicant) . Pandri, Raipur, Chhattisgarh, 492001 GSTIN-22AAACH0165J1Z0 has filed an application U/s 97 of the Chhattisgarh Goods & Services Tax Act, 2017 dated 03/02/2022 enclosing duly filled in Form ARA-01(the application form for Advance Ruling) along with certain



annexure and attachments seeking advance ruling Whether the supply to be made by Applicant to AIIL can be classified under Entry 3(iv)(a) of Notification no. 11/2017-C.T. (Rate) dated 28.06.2017 and the benefit of concessional rate of GST of 12% (i.e. 6% each CGST and SGST) can be availed in respect of said supply by Applicant to AIIL?

2. Facts of the case: -HPL Electric and Power Ltd. (hereinafter referred to as '**Applicant**') is engaged in the business of manufacture, sale and installation of electrical equipments, ranging from LED lightings, industrial and domestic switchgears, metering solutions, wires and cables, etc.

The Applicant has its registered office in the state of Haryana, holding GSTIN 06AAACH0165J2ZT, wherein the manufacturing facility of the Applicant is situated. The Applicant also has its branch office in the state of Chhattisgarh, located at Jai Bhole Complex, behind Mata Garage Pandri, Raipur-492001, Chhattisgarh, holding GSTIN 22AAACH0165J1Z0 and it falls within the jurisdiction of Division-I, Range-II, Raipur/ Division-2, Circle-7, Raipur.

In the instant case, the Applicant has entered into an agreement with M/s. Adani Infra (India) Ltd. (hereinafter referred to as 'AIIL'), vide Service Order No. AIIL/HPL/SO/C/UV/33/20 dated 26.06.2020, as amended by subsequent service orders dated 18.07.2020, 21.08.2021 and 31.10.2021, for providing services for 'design, engineering, supply, testing at site, freight and transit insurance, erection, installation and commissioning and trial run of Highway Lighting System as per IRC-SP-84-2014 for the project of development, maintenance and management of 4 laning of Bilaspur to Pathrapali Section of NH-111 (New NH-130) from 0.000 km to 53.300 km in the State of Chhattisgarh under Bharatmala on Hybrid Annuity Mode'. The background of the said agreement entered into between the Applicant and AIIL is as under:

- i). The Bilaspur Pathrapali Road Private Limited, Ahmedabad (hereinafter referred to as 'Concessionaire') was awarded a contract dated 14.05.2018 by National Highways Authority of India (for short 'NHAI'), Ministry of Road Transport and Highway (for short 'MoRTH'), Government of India (for short 'GoI') relating to development, maintenance and management of 4 laning of Bilaspur to Pathrapali section of NH-111 (NH-130) from 0.000 km to 53.300 km in the State of Chhattisgarh under Bharatmala on 'Hybrid Annuity Mode'.
- ii). Subsequently, Concessionaire entered into an agreement with AIIL for Engineering, Procurement and Construction (EPC) works of development, maintenance and management of 4 laning of Bilaspur to Pathrapali Section of NH-111 (NH-130) from 0.000 km to 53.300 km in the State of Chhattisgarh.

2.1 In background of the aforesaid facts i.e. award of contract for development, maintenance and management of NH-111 by NHAI to Concessionaire and award of contract for EPC works relating to said project by Concessionaire to AIIL, AIIL has sub-contracted a portion of the works contracted to it, by sub-contracting the following



work to the Applicant, which is a part of the works awarded by NHAI to Concessionaire and then by Concessionaire to AIIIL:

'Design, engineering, supply, testing at site, freight and transit insurance, erection, installation and commissioning and trial run of Highway Lighting System as per IRC-SP-84-2014 for the project of development, maintenance and management of 4 laning of Bilaspur to Pathrapali Section of NH-111 (New NH-130) from 0.000 km to 53.300 km in the State of Chhattisgarh under Bharatmala on Hybrid Annuity Mode'.

2.2 The scope of the work awarded by AIIIL to Applicant is specified in Service Order dated 26.06.2020, the relevant portion of which is reproduced hereunder for ready reference:

"Design, engineering, supply, testing at Site/Works, freight and transit insurance, erection, installation and commissioning and Trial run (SITC) of Highway Lighting System (which includes lighting pole, luminaries, cable, feeder panels, high mast, DG set and its accessories for complete highway including flyover at 0+000 chainage, major/ minor junctions, cross roads, structures, rest area, truck lay byes, toll plaza, canopy, busbays and bus shelters) and associated civil work for complete lighting solution as per Concession Agreement and IRC-SP-84-2014 for Bilaspur to Pathrapali road project from 0.000 km to 53.300 km in the State of Chhattisgarh.

Scope of work covers all activities involved in the Lighting works at various locations including highway and flyover/VUPS/bridges area across the length of the project as indicated in TCS Schedule (Annexure-VI) and as per approved design basis by IE/NHAI.

Supply, installation & testing of electrical materials as per BOQ. All the fixtures, panels, wires/ cables, lights, earthing materials, and other items complete in all respect, shall confirm to MoRTH specifications and other relevant codes as a minimum.

Entire work shall be carried out in accordance with relevant technical specifications and applicable standards including IRC-SP-84-2014 upto the satisfaction of Employer/NHAI/IE.

Approval of 'Design basis' for manufacturing clearance and approval for executed work for complete Highway lighting system from Independent engineer (IE) appointed by NHAI/ NHAI shall be in scope of the Contractor.

Contractor shall be responsible for all the liaisoning work, all the liabilities pertaining to the successful completion of works not limited to clearances, approvals, certifications, etc. Employer/ NHAI shall not be responsible for any claim/ third party claim, etc. for any reasons whatsoever pertaining to installation of lighting system. The Employer shall not be responsible for any



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delays due to lack of clearance from IE/ NHAI. The Contractor shall endeavor to liaise with all the concerned departments and officials to ensure timely execution of the work. Extra claims of whatsoever nature shall not be entertained. For any delays or non-clearance of the site hurdles, the Contractor is only eligible for the time extension as decided by the Employer's representative.

.....
All civil works including excavation, wall and road cutting as applicable shall be in the scope of work including layer wise back filling, RMC & steel for foundation work shall be inclusive in scope of work. Horizontal direct drilling, pipes for cable protection, brackets required to fix poles on crash barriers, concrete drilling, restoring to its original condition, etc. also included in the scope of contractor including overhead or underground crossing required, if any, as per the site conditions. Any exclusion from scope of contractor shall be Nil.

.....
Contractor shall procure materials from approved vendor list (Annexure-V) only. Contractor shall get approval of sources and materials to be procured, within this approved vendor list, from IE/NHAI before procurement.

.....
Contractor shall carry out the work in close coordination with IE, NHAI authorities and other contractors to complete all sequential activities to achieve progress in totality.

Contractor shall carry out the work on behalf of the Employer under the strict supervision of Employer/ NHAI/IE and will take all the necessary approvals for material sources and will execute the work as per the relevant specifications of MoRTH, methodology approved by NHAI/IE/Employer.

.....
The Basic Price shall be inclusive of applicable Taxes (except GST), inclusive of all cost towards required Manpower, Material, Equipment, Tools & Tackles, Insurance, Safety equipment, PPE, Statutory Compliance, License, Work Permit, Mobilization, Demobilization, Lodging & Boarding, Transportation, Travelling to all the site visit/ Employer's office visit/ IE's office visit/ NHAI, Per diem charges, Material shifting, Material inspection charges, Testing charges, all Liaison work, etc. all necessary to complete the scope of work but excluding Goods & Service Tax (GST)."

2.3 The applicant has submitted that the work to be executed by the Applicant is essential for completion of the works in relation to road for which contract has been



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awarded to the Concessionaire by NHAI and forms part of the contract awarded by NHAI to Concessionaire. The Applicant is bound to follow the standard provided in the MANUAL OF SPECIFICATIONS AND STANDARDS FOR FOUR LANING OF HIGHWAYS THROUGH PUBLIC PRIVATE PARTNERSHIP published as IRC-SP-84-2014 as the same are part of Model Concession Agreement executed for construction and maintenance of Highway. All the works to be executed by the Applicant including approval of design for works, approval of vendors from whom material for the works is to be procured, etc. will be under the approval of NHAI or independent engineer appointed by NHAI.

3. Contentions of the applicant: -Applicant in the instant application has submitted that as per their understanding, the work to be executed by them is regarding installation of highway lighting system, being part and parcel of the project of development, maintenance and management of 4 laning of Bilaspur to Pathrapali section of NH-111 from 0.000 km to 53.300 km in the State of Chhattisgarh and being essential for completion of road, is classifiable under Entry 3(iv)(a) of Not. No. 11/2017-C.T. (Rate) dated 28.06.2017 and hence, attracts the rate of GST @ 12% (CGST 6% and SGST 6%).

3.1 that Entry 3 of Notification No. 11/2017- Central tax (Rate), dated 28.06.2017 provides for applicable rate of tax on a composite supply of works contract as defined in Section 2(119) of the CGST Act. The relevant entries of the Notification are reproduced hereunder for ready reference:

Sl. No.	Chapter,Section or Heading	Description of Service	Rate (%)
3	Heading 9954 (Construction services)	(iv) 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, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,- (a) a road, bridge, tunnel, or terminal for road transportation for use by general public;	6

3.2 that on coming to the first point as to whether the supply of highway lighting system can be said to be supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of a road for use by the general public in terms of Entry 3(iv)(a) of Not. No. 11/2017-CT (Rate) dated 28.06.2017, it was their contention that the highway lighting system is part and parcel of the project of construction of highway and highway cannot be



- said to be completed and capable for use by the general public, unless the lighting system is installed and starts functioning.

3.3 that for any works contract to fall under Entry 3(iv)(a), the following conditions need to be fulfilled:

- i). There should be composite supply of works contract;
- ii). The works contract should be for construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration, of road or bridge or tunnel or terminal for road transportation;
- iii). The said road or bridge or tunnel or terminal should be for use by general public.

3.4 The first condition is that there should be a composite supply of works contract, which term has been defined under Sec. 2(119) of CGST Act. As per the said definition, works contract is 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. Thus, under the CGST Act, a contract would qualify as a works contract only if such contract is for construction, erection, installation, commissioning, etc. of an immovable property and property is transferred in the goods involved therein.

3.5 That, it is pertinent to determine whether the contract undertaken by the Applicant for design, supply, installation and commissioning, etc. of Highway lighting system for the project of development, maintenance and management of National Highway-111 qualifies as Works contract under the GST regime.

3.6 The term "immovable property" has not been defined anywhere under the CGST Act. In general parlance, immovable property means the things which cannot be moved from one place to another. The dictionary meaning and the definition of the term "immovable property" as given in other statutes is as under-

Definition of 'immovable property under General Clauses Act, 1897:

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.

Definition of 'immovable property under Registration Act, 1908:

Section 2(6) - "immovable property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not include standing timber, growing crops nor grass;

Black's Law Dictionary – 8th Edition:

immovable (n.) (usu. PL.) Property that cannot be moved; an object so firmly attached to land that it is regarded as part of the land. – Also termed



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immovable thing. SEE FIXTURE. Cf. MOVABLE [Cases" Fixtures 1; Property 4. C.J.S. Property . 14-21, 23.] immovable, adj.

The Chambers Dictionary:

"Immovable" – adj. impossible to move; steadfast; unyielding; impassive, motionless; unalterable; not liable to be removed (law: commonly immovable); real not personal (law). – n (law: usu in pl immovables) immovable property. – n - immovableness or immovability. – adv. Immovably [im- (in- (2))]

3.7 A plain reading of the aforesaid definitions 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. Whether a particular property is an immovable property or not, is subject to the peculiar facts of each case. The courts have given various decisions laying down certain criteria for determining whether a property is immovable or not.

3.8 Reference is made to the decision of Hon'ble Supreme Court in the case of **Triveni Engineering & Industries Limited vs CCE, 2000 (120) E.L.T. 273 (S.C.)**, **CCE, Mumbai vs Hutchison Max Telecom Limited, 2008 (224) E.L.T. 191 (Bom.)**, **Josts Engineering Co. Ltd. Vs. CCE, Mumbai -III, 1998 (99) E.L.T. 662 (Tribunal)**.

That, the aforesaid decision has been further affirmed by the Supreme Court vide its judgment reported at **2002 (146) ELT 29 (SC)**.

Alfa Laval (India) Ltd. Vs. CCE, Pune, 1998 (99) E.L.T. 649 (Tribunal).

3.9 That, it can be derived from above judicial pronouncements that an immovable property would consist of 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

3.10 That, in the present case, the Applicant has been given a service order by AIIIL for design, engineering, supply, installation, commissioning, etc. of Highway lighting system for development, maintenance and management of National Highway-111 in the State of Chhattisgarh.

3.11 Elaborately citing reference to the various clauses of the service order dated 26.6.2020 it was their contention that the entire contract comprising of design, engineering, supply, testing at site, freight and transit insurance, erection, installation



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and commissioning and trial run of highway lighting system for the project of development, maintenance and management of National Highway-111 in the State of Chhattisgarh would qualify as a 'works contract' under Section 2(119) of the CGST Act and thus, the first condition for the works to get classified under Entry 3(iv)(a) of Not. No. 11/2017-CT (Rate) gets fulfilled.

3.12 With respect to the condition that the works contract should be for construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of road or bridge or tunnel or terminal for road transportation, it is submitted that in the instant case, the works to be executed by the Applicant are for completion of road i.e., National Highway-111. Further that construction of road does not merely include creation or construction of ground-level surface, but includes a host of things and affairs, such as markings on the roads, signboards, pavement/ footpath, medians, drainage system, intelligence transport system, toll management system, entire lighting system (including lighting pole, luminaries, cable, feeder panels, high mast, etc.) depending on the nature of road, to make it functional and operational for public use. All these facilities alongwith construction of ground-level surface make construction of road complete. In other words, a road cannot be said to be completed for use by general public, until and unless all such facilities are also made available on the road. Hence, the highway lighting system to be installed by the Applicant on the NH-111 also forms part and parcel of the highway and highway cannot be said to be completed and capable for use by the general public unless the lighting system is installed and start functioning.

3.13 Highway lighting system is important for safety of road users. It enables the road users, mainly cyclists, pedestrians, bullock-cart drivers, motorists, etc. to see more accurately and easily the carriageway and its surrounding areas at night. Though, on a highway, all the vehicles have their own headlight, but it is not possible to fully depend on headlights for night driving, as in case all the vehicles are to drive with the full headlight on, the glare problem can cause severe accidents. Thus, highway lighting is required to illuminate the carriageway and its surrounding. The lighting on highway improves traffic flow conditions as the speed of traffic improves due to better lighting. Presence of light helps in reduction of number of accidents and reduction in highway crimes at night.

3.14 Further, the importance of lighting has been emphasized even in 'Manual of specifications and standards for four laning of highways through public private partnership': IRC-SP-84-2014 published by Indian Roads Congress. Para 12.3 of the said manual provides for street lighting and states that the Concessionaire shall provide lighting at specified locations of the Project Highway, using appropriate system and source of electric power. The said manual issued by IRC shows that the lighting of the highway is part and parcel of the project of construction of roads and plays a vital role in road safety, which is of utmost importance.



3.15 That, reference is made to various clauses of service order, which shows that supply and installation of highway lighting system to be executed by the Applicant is part and parcel of the project of construction of road awarded by NHAI to Concessionaire and is to be executed by the Applicant as per various specifications provided by the government bodies vide various documents including the **IRC-SP-84-2014**.

3.16 That, all these facts show that without installation of highway lighting system, the road/ highway cannot be said to be completed and hence, the execution of the project by the Applicant will get classified under Entry 3(iv)(a), being in the nature of composite supply of works contract by way of completion of road for use by general public and thus, exigible to GST @ 12% (CGST 6% and SGST 6%).

3.17 That, It is undisputed fact in the present transaction that the National Highway Authority of India mandated such erection, installation and commissioning of lighting system for National Highway, which is to be used by public only, thus the condition for supply of works contract by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a road for use by public is satisfied.

3.18 Reliance has been placed on the advance ruling passed by Authority of Advance Ruling (for short 'AAR'), Uttar Pradesh in the case of **SiceVaan Joint Venture, 2020 (2) TMI 550**, wherein the issue was whether the installation of ITS i.e. Intelligence Transport System can be said to be part and parcel of the construction of road transportation system for use by general public and hence, classified under Entry 3(iv)(a) of Not. No. 11/2017- CT(R).

3.19 The aforesaid ruling is squarely applicable in the present case, in light of the following facts and understanding:

- The project awarded by NHAI to Concessionaire and then by Concessionaire to AIL includes the installation of highway lighting system on the National Highway-111, which involves design services, supply of equipment, installation of equipments/ system, operation and maintenance to facilitate its long term use;
- Highway lighting system is part and parcel of the construction of road transportation provided for use by general public and highway opens up for general public only when the highway lighting system is installed and starts functioning.

3.20 Hence, in view of the aforesaid ruling it was applicants contention that the project to be executed by them is classifiable under Entry 3(iv)(a) of Not. No. 11/2017-CT (R) and thus, exigible to GST @ 12% (CGST 6% and SGST 6%).

3.21 That, a doubt may arise as to whether the Entry 3(iv)(a) of Not. No. 11/2017-CT (Rate) is applicable in case of services provided by the sub-contractor to the main contractor.

3.22 that the entry 3(iv)(a) neither prescribes the identity of the service provider nor



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the identity of the service recipient. It merely requires that the supply of works contract should be towards road, bridge, tunnel or terminal for road transportation for use by general public. Accordingly, it is submitted that the said entry is qua the service and not qua the person. In the facts of the case, it is established above that the supply by Applicant would be of works contract by way of completion, of a road for use by public, thus, the requirement of Notification is satisfied. Reliance is placed on the ruling of Appellate Authority for Advance Ruling (for short 'AAAR'), Maharashtra in the case of **M/s. Shree Construction, 2019 (3) TMI 1567- AAAR, Maharashtra**, wherein the issue was whether the benefit of concessional rate of tax on the composite supply of works contract services can be availed by the sub-contractor under Entry 3(v) of Not. No. 11/2017-CT (Rate).

3.23 the ratio of the aforesaid ruling is squarely applicable to the facts of the present case, as the conditions specified in Entry 3(iv) of Not. No. 11/2-17-CT (Rate) are fulfilled by the Applicant, in the capacity of sub-contractor and hence, the benefit of concessional rate of GST of 12% is applicable to the works to be executed by the Applicant.

3.24 Reliance has also been placed by the applicant on the ruling by AAR, Punjab in the case of **S.P. Singla Constructions Pvt. Ltd., 2019 (10) TMI 315- AAR, Punjab**, wherein the issue was whether the concessional rate of GST of 12% specified in Entry 3(iv) of Not. No. 11/2017-CT (Rate) will apply even to the sub-contractors. Reliance is also placed on the ruling of AAR, Maharashtra in the case of **M/s. Building Roads Infrastructure & Construction Pvt. Ltd., 2021 (8) TMI 526- AAR, Andhra Pradesh**.

3.25 That on the same issue, reliance is also placed on the following rulings:

- **Shapoorji Pallonji and Co. Pvt. Ltd., 2020 (1) TMI 789- AAR Maharashtra**
- **Puranik Construction Pvt. Ltd., 2019 (5) TMI 493-AAR Maharashtra**
- **M/s. Core Construction (Yatin Manoj Mora), 2021 (12) TMI 609- AAR Maharashtra**
- **M/s. Shimsha Infrastructures, 2019 (10) TMI 1017- AAR, Karnataka**

In view of the above, the applicant was of the opinion that the works to be executed by them are classifiable under Entry 3(iv)(a) of Not. No. 11/2017-CT (Rate) dated 28.06.2017 and hence, is eligible to the concessional rate of GST @ 12% (CGST 6% and SGST 6%).

4. Personal Hearing:-

Keeping with the established principles of natural justice, personal hearing in the matter was extended to the applicant in Virtual mode and accordingly, Shri Manish Gaur, authorized representative of the Applicant appeared before us for hearing on 11.03.2022 and reiterated their contention. He also furnished a written submission along with sample copies of work order which has been taken on record.



5. The legal position, analysis and discussion: -

At the very outset, we would like to make it clear that the provisions for implementing the CGST Act and the Chhattisgarh GST Act, 2017 [hereinafter referred to as "the CGST Act and the CGGST Act"] are similar and thus, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the CGGST Act, 2017. Now we sequentially proceed to discuss the issues involved in the ruling so sought by the applicant and the law as applicable in the present case.

6. Section 96 of CGST Act, 2017, Authority for advance ruling, stipulates as under: -

Subject to the provisions of this Chapter, for the purposes of this Act, the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory.

Section 97(2) of CGST Act, 2017 stipulates that: -

The question, on which the advance ruling is sought under this Act, shall be in respect of—

- (a) classification of any goods or services or both;
- (b) applicability of a notification issued under the provisions of this Act;
- (c) determination of time and value of supply of goods or services or both;
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;
- (e) determination of the liability to pay tax on any goods or services or both;
- (f) whether applicant is required to be registered;
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

Further 103 of CGST Act, 2017 stipulates about the ruling pronounced as under: -*The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only –*

- a. On the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;
- b. On the concerned officer or the jurisdictional officer in respect of the applicant.

Thus, in view of the above section 103 of CGST Act, 2017, the ruling so sought by the Applicant would be binding only on the Applicant and on the concerned officer or the jurisdictional officer as stipulated above.

The question sought by the Applicant is also covered under Section 97(2)(a)/(c) of the CGST Act i.e., 'classification of any goods or services or both' and accordingly the



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present advance ruling application is maintainable before the Chhattisgarh Authority of Advance Ruling.

7. Before getting in to the issues involved, for a better understanding of the subject, we would first like to go through the relevant text of the issue in hand, as appearing at S.no. 3(iv)(a) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended, vide Notification 3/2019 Central Tax (Rate) dated 29.03.2019 effective from 1.4.2019. In the instant case the eligibility or otherwise of the benefit of said Notification no. 11/2017 Central Tax (Rate) provided under S.no. 3(iv) ibid, to the applicant is the subject matter of this proceeding. For the sake of brevity the relevant text of the same is reproduced hereunder.

7.1 Rate of GST on intra-State supply of specific services with Service Code Tariff (SAC)

Government of India
Ministry of Finance
(Department of Revenue)
Notification No. 11/2017-Central Tax (Rate)

New Delhi, the 28th June, 2017

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1), [sub-section (3) and subsection (4)] 1 of section 9, sub-section (1) of section 11, sub-section (5) of section 15[,]2 sub-section (1) of section 16 [and section 148] 3 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 central tax, on the intra-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)
1	Chapter 99	All Services		
2	Section 5	Construction Services		



[Signature]

3	Heading 9954 (Construction services)	(i)	-
			
		(ii)	...	-
		(iii)	...	-
		(iv) 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, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, - (a) a road, bridge, tunnel, or terminal for road transportation for use by general public; (b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana; (c).....	6	

7.2 Thus from the above it gets abundantly clear that for availing the benefit as stipulated supra at 3(iv)(a) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended, all the conditions mentioned therein is to be necessarily fulfilled viz.

- (i) the service should be "Construction services" under the Heading 9954
- (ii) the supply should be a 'Composite Supply'
- (iii) the work undertaken should be 'works contract' as defined in Clause (119) of Section 2 of CGST Act,2017 and
- (iv) The work should be 'by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a road, bridge, tunnel, or terminal for road transportation for use by general public.

7.3 On going through the Scheme of Classification of Services as provided in the Annexure to Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 supra, the SACs which are relevant to the issue in hand are as under:



7.3.1 It would be relevant to have a preliminary view of the text of the said Scheme of Classification of Services.

9954 Construction services:

This heading includes :

- i. General construction services for all complete constructions.
- ii. Specialized construction services i.e., services related to parts of buildings or civil engineering works, rather than the complete construction object.

99541 General Construction services of buildings.

99542 General construction services of civil engineering works

995421 General construction services of highways, streets, roads, railways, airfield runways, bridges and tunnels

This service code includes construction services

- i. for formations of highways, including elevated highways, roads, streets, other vehicular and pedestrian ways and open car parks;
- ii. footpaths, traffic-calming structures, cycle tracks, etc.;
- iii. vehicular and pedestrian underpasses and overpasses;
- iv. construction or restoration of road surface and parking lots with asphalt, concrete, etc.;
- v. installation services of crash barriers, low separating walls, traffic signs, etc.;
- vi. creation, maintenance and signposting of tracks and paths;
- vii. painting services of markings on roads, parking lots and similar surfaces;
- viii. railway roadbeds for long-line and commuter rails, street tramways and underground or elevated urban rapid transit systems;
- ix. railway electrification structures including laying services of ballast and rails;
- x. installation services of switch gear, points and crossings;
- xi. construction services of control and safety systems for railway tracks;
- xii. construction services of funicular railways and cable car systems;
- xiii. construction services for airfield runways, including taxiways, aprons and related airport structures other than buildings;
- xiv. construction of bridges, highway, road and railway tunnels and tunnels for underground railway traffic

99543 Site preparation services

99544 Assembly and erection of prefabricated constructions :

99545 Special trade construction services

99546 Installation services

995461 Electrical installation services including electrical wiring & fitting services, fire alarm installation services, burglar alarm installation services



This service code includes

i. special trade installation services involving the installation of basic electrical wiring circuits or fittings in buildings and other construction projects;

ANNEXURE: SCHEME OF CLASSIFICATION OF SERVICES

S. No.	Chapter, Section, Heading or Group	Service Code (Tariff)	Service Description
(1)	(2)	(3)	(4)
1	Chapter 99		All Services
2	Section 5		Construction Services
3	Heading 9954		Construction services
4	Group 99541		Construction services of buildings
5		995411	Construction services of single dwelling or multi dwelling or multi-storied residential buildings
6		995412	Construction services of other residential buildings such as old age homes, homeless shelters, hostels and the like
7		995413	Construction services of industrial buildings such as buildings used for production activities (used for assembly line activities), workshops, storage buildings and other similar industrial buildings
8		995414	Construction services of commercial buildings such as office buildings, exhibition and marriage halls, malls, hotels, restaurants, airports, rail or road terminals, parking garages, petrol and service stations, theatres and other similar buildings
9		995415	Construction services of other non-residential buildings such as educational institutions, hospitals, clinics including veterinary clinics, religious establishments, courts, prisons, museums and other similar buildings
10		995416	Construction services of other buildings nowhere else classified
11		995419	Services involving repair, alterations, additions, replacements, renovation, maintenance or remodeling of the buildings covered above
12	Group 99542		General construction services of civil engineering works
13		995421	General construction services of highways, streets, roads, railways and airfield runways, bridges and tunnels
14		995422	General construction services of harbours, waterways, dams, water mains and lines, irrigation and other waterworks



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Further, the 'Explanatory Notes to the Scheme of Classification of Service', indicates the scope and coverage of the Scheme of classification of service and is a guiding tool for classification of services, the Explanatory notes to SAC 995421 read as under:

EXPLANATORY NOTES TO SCHEME OF CLASSIFICATION OF SERVICES UNDER GST

Preface

The Scheme of Classification of Services adopted for the purposes of GST is a modified version of the United Nations Central Product Classification.

2. The Explanatory notes for the said Scheme of Classification of Services is based on the explanatory notes to the UNCPC, and as recommended by the committee constituted for the purpose, is annexed.

3. The explanatory notes indicate the scope and coverage of the heading, groups and service codes of the Scheme of Classification of Services. These may be used by the assessee and the tax administration as a guiding tool for classification of services. However, it may be noted that where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description.

EXPLANATORY NOTES FOR SUPPLY OF SERVICES UNDER GST

[Chapter 99]

9954 Construction services :

This heading includes :

- i. General construction services for all complete constructions.
- ii. Specialized construction services i.e., services related to parts of buildings or civil engineering works, rather than the complete construction object.

.....

.....

995421 General construction services of highways, streets, roads, railways, airfield runways, bridges and tunnels

This service code includes construction services

- i. for formations of highways, including elevated highways, roads, streets, other vehicular and pedestrian ways and open car parks;
- ii. footpaths, traffic-calming structures, cycle tracks, etc.;
- iii. vehicular and pedestrian underpasses and overpasses;
- iv. construction or restoration of road surface and parking lots with asphalt, concrete, etc.;
- v. installation services of crash barriers, low separating walls, traffic signs, etc.;
- vi. creation, maintenance and signposting of tracks and paths;



- vii. painting services of markings on roads, parking lots and similar surfaces;
- viii. railway roadbeds for long-line and commuter rails, street tramways and underground or elevated urban rapid transit systems;
- ix. railway electrification structures including laying services of ballast and rails;
- x. installation services of switch gear, points and crossings;
- xi. construction services of control and safety systems for railway tracks;
- xii. construction services of funicular railways and cable car systems;
- xiii. construction services for airfield runways, including taxiways, aprons and related airport structures other than buildings;
- xiv. construction of bridges, highway, road and railway tunnels and tunnels for underground railway traffic.

99546 Installation services

995461 Electrical installation services including electrical wiring & fitting services, fire alarm installation services, burglar alarm installation services

This service code includes

- i. **special trade installation services involving the installation of basic electrical wiring circuits or fittings in buildings and other construction projects;**
- ii. electrical wiring and fitting services for emergency power supply systems;
- iii. electrical services arising from the installation of appliances;
- iv. installation services of meters; installation services of fire alarm systems;
- v. installation services of burglar alarm systems at the construction site;
- vi. installation services of all types of residential antenna including satellite antenna;
- vii. installation services of cable television lines within a building; installation services of lightning conductors;
- viii. electrical installation services of telecommunications equipment;
- ix. **electrical installation services of illumination and signalling systems for roads, railways, airports, harbours and similar premises;**
- x. installation services of heavy electrical equipment; Page 11 of 130
- xi. installation services of telecommunications wiring, including of fibre optic cables;
- xii. other electrical installation services n.e.c.

995423 General construction services of long-distance underground/overland/submarine pipelines, communication and electric power lines (cables); pumping stations and related works; transformer stations and related works

This service code includes construction of

- i. long-distance overland, underground and submarine pipelines for the conveyance of petroleum products, gas, water or other products;
- ii. pumping stations and similar related structures;
- iii. long-distance overland, underground or submarine telecommunication cables & transmission lines;
- iv. long-distance high tension electric power transmission lines (cables);
- v. long-distance electricity power lines for railways;
- vi. transformer stations, pylons etc



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998736 Installation services of electrical machinery and apparatus n.e.c.

This service code includes installation of electric motors, generators and transformers and electrical machinery not elsewhere classified

99873 Installation services (other than construction)

This group includes physical placement, configuration, set-up, calibration and testing of proper operation of various types of machinery and equipment

998873 Other fabricated metal product manufacturing and metal treatment services

This service code includes metal treatment and coating services, general machining services, cutlery, hand tool and general hardware manufacturing services and other fabricated metal product manufacturing services n.e.c.

7.4 In the instant case under consideration, as is forthcoming from the documents furnished before us by the applicant, M/s Bilaspur Pathrapali Road Private Limited, Ahmedabad ('Concessionaire') was awarded a contract dated 14.05.2018 by National Highways Authority of India (for short 'NHAI'), Ministry of Road Transport and Highway (for short 'MoRTH'), Government of India ('GoI') relating to development, maintenance and management of 4 laning of Bilaspur to Pathrapali section of NH-111 (NH-130) from 0.000 km to 53.300 km in the State of Chhattisgarh under Bharatmala on 'Hybrid Annuity Mode'. Subsequently, Concessionaire entered into an agreement with AIL for Engineering, Procurement and Construction (EPC) works of development, maintenance and management of 4 laning of Bilaspur to Pathrapali Section of NH-111 (NH-130) from 0.000 km to 53.300 km in the State of Chhattisgarh. In background of the aforesaid facts i.e. award of contract for development, maintenance and management of NH-111 by NHAI to Concessionaire and award of contract for EPC works relating to said project by Concessionaire to AIL.

Thereafter, AIL in turn has sub-contracted the work of Highway Lighting System for the project which reads as under: -

'Design, engineering, supply, testing at site, freight and transit insurance, erection, installation and commissioning and trial run of Highway Lighting System as per IRC-SP-84-2014 for the project of development, maintenance and management of 4 laning of Bilaspur to Pathrapali Section of NH-111 (New NH-130) from 0.000 km to 53.300 km in the State of Chhattisgarh under Bharatmala on Hybrid Annuity Mode'.

7.4.1 Further, the scope of the work awarded by AIL to Applicant is specified in Service Order dated 26.06.2020, the relevant portion of which reads as under:

2.1.1 "Design, engineering, supply, testing at Site/Works, freight and transit insurance, erection, installation and commissioning and Trial run (SITC) of Highway Lighting System (which includes lighting pole, luminaires, cable, feeder panels, high mast, DG set and its accessories for complete highway including flyover at 0+000 chainage, major/ minor junctions, cross roads, structures, rest area, truck lay byes,



toll plaza, canopy, busbays and bus shelters) and associated civil work for complete lighting solution as per Concession Agreement and IRC-SP-84-2014 for Bilaspur to Pathrapali road project from 0.000 km to 53.300 km in the State of Chhattisgarh.

- 2.1.2 Scope of work covers all activities involved in the Lighting works at various locations including highway and flyover/VUPS/bridges area across the length of the project as indicated in TCS Schedule (Annexure-VI) and as per approved design basis by IE/NHAI.
- 2.1.3 Supply, installation & testing of electrical materials as per BOQ. All the fixtures, panels, wires/ cables, lights, earthing materials, and other items complete in all respect, shall confirm to MoRTH specifications and other relevant codes as a minimum.
- 2.1.4 Entire work shall be carried out in accordance with relevant technical specifications and applicable standards including IRC-SP-84-2014 upto the satisfaction of Employer/NHAI/IE.
- 2.1.5 Approval of 'Design basis' for manufacturing clearance and approval for executed work for complete Highway lighting system from Independent engineer (IE) appointed by NHAI/ NHAI shall be in scope of the Contractor.
- 2.1.6 Contractor shall be responsible for all the liaisoning work, all the liabilities pertaining to the successful completion of works not limited to clearances, approvals, certifications, etc. Employer/ NHAI shall not be responsible for any claim/ third party claim, etc. for any reasons whatsoever pertaining to installation of lighting system. The Employer shall not be responsible for any delays due to lack of clearance from IE/ NHAI. The Contractor shall endeavor to liaise with all the concerned departments and officials to ensure timely execution of the work. Extra claims of whatsoever nature shall not be entertained. For any delays or non-clearance of the site hurdles, the Contractor is only eligible for the time extension as decided by the Employer's representative.
-
- 1.11 All civil works including excavation, wall and road cutting as applicable shall be in the scope of work including layer wise back filling, RMC & steel for foundation work shall be inclusive in scope of work. Horizontal direct drilling, pipes for cable protection, brackets required to fix poles on crash barriers, concrete drilling, restoring to its original condition, etc. also included in the scope of contractor including overhead or underground crossing required, if any, as per the site conditions. Any exclusion from scope of contractor shall be Nil.
-
- 1.26 Contractor shall procure materials from approved vendor list (Annexure-V) only. Contractor shall get approval of sources and materials to be procured, within this approved vendor list, from IE/NHAI before procurement.
- 1.27
- 1.28 Contractor shall carry out the work in close coordination with IE, NHAI authorities and other contractors to complete all sequential activities to achieve progress in totality.



1.29 Contractor shall carry out the work on behalf of the Employer under the strict supervision of Employer/ NHAI/IE and will take all the necessary approvals for material sources and will execute the work as per the relevant specifications of MoRTH, methodology approved by NHAI/IE/Employer.

.....

2.2 The Basic Price shall be inclusive of applicable Taxes (except GST), inclusive of all cost towards required Manpower, Material, Equipment, Tools & Tackles, Insurance, Safety equipment, PPE, Statutory Compliance, License, Work Permit, Mobilization, Demobilization, Lodging & Boarding, Transportation, Travelling to all the site visit/ Employer/'s office visit/ IE's office visit/ NHAI, Per diem charges, Material shifting, Material inspection charges, Testing charges, all Liaison work, etc. all necessary to complete the scope of work but excluding Goods & Service Tax (GST)."

7.4.2 Thus, from the above it gets revealed that the scope of work awarded to the applicant covers only the activities involved in the Lighting works at various locations including highway and flyover/VUPS/bridges area across the length of the project as indicated in TCS Schedule and as per approved design basis by IE/NHAI. In addition to the above work of electrification or lighting works the applicant is responsible for Supply, installation & testing of electrical materials as per BOQ with the pre-condition that all the fixtures, panels, wires/ cables, lights, earthing materials, and other items complete in all respect, shall confirm to established specifications. The design and engineering for the said work allotted to the applicant in all reasonableness when looked at its entirety is nothing but construction services of electrical engineering works and in no case can be treated as "General construction services of civil engineering works". Whereas, on having a through look at the entry specified at SAC 995421 supra, it is quite evident that the same covers 'General Construction services of highways, streets, roads, railways, airfield runways, bridges and tunnels'. In the instant case in hand, it is only that the civil works involved for completion of such electrical "installation services" have been included in the scope of work entrusted upon the applicant.

7.4.3 It is further seen that SAC entry no. 99546/ 995461 pertains to "Installation services" and very specifically to Electrical installation services including electrical wiring & fitting services, fire alarm installation services, burglar alarm installation services. It can also be seen that this SAC entry no. 995461 includes "special trade installation services involving the installation of basic electrical wiring circuits or fittings in buildings and other construction projects". Besides this the said SAC entry no. 995461 also encompasses in its ambit electrical installation services of illumination and signaling systems for roads.

Similarly, SAC entry no. 995423 pertains to general construction services of long-distance underground/overland/submarine pipelines, communication and electric power lines (cables); pumping stations and related works; transformer stations and related works and similarly. Besides, these 998736 Installation services of electrical machinery and apparatus n.e.c. This service code includes installation of electric



motors, generators and transformers and electrical machinery not elsewhere classified. Further, SAC entry no. 99873 pertains to Installation services other than construction.

Thus, from the above, we come to the considered view that the instant supply of the applicant of the work of Highway Lighting System / Lighting works at various locations including highway and flyover/VUPS/bridges gets aptly covered under "Installation services", being special trade installation services involving the installation of basic electrical wiring circuits or fittings in buildings and other construction projects, as also being electrical installation services of illumination and signalling systems for roads. Further the work of supply and laying of cable aptly falls under SAC entry no. 995423 and supply of safety equipment under SAC 998736 in respect of supply of electrical materials as per BOQ furnished by applicant. As can be seen from above, the said EXPLANATORY NOTES TO SCHEME OF CLASSIFICATION OF SERVICES UNDER GST in very unambiguous way stipulates that where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description. The work undertaken by the applicant in entirety, as elaborately discussed herein is nothing but electrical "Installation services" of illumination for roads and by no stretch of imagination can be termed as civil engineering works.

The applicant in their application in the instant proceedings while listing out the essentialities required for availing the benefit as provided under S.no. 3(iv)(a) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended, seems to have missed out the very vital aspect as to whether the work entrusted upon them falls under "Construction service" by way of construction of a road under SAC 9954.

To summarize, the benefit of aforesaid Notification as provided under S.no. 3(iv)(a) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended is available only to "Construction services" of Heading no. 9954, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a road, bridge, tunnel, or terminal for road transportation for use by general public and not to the instant work of Highway Lighting System which is nothing but electrical installation services of illumination for roads.

The pre-requisite for eligibility of the benefit of as provided under S.no. 3(iv)(a) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended is that the services should fall under "Construction services" under 9954, which is not the case here. Accordingly, we come to the considered conclusion that in the instant case the basic requirement for eligibility to the said exemption as provided under S.no. 3(iv)(a) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended, of getting covered under Heading 9954 under "Construction service" supplied by way of



construction of a road stands unfulfilled, as the instant supply pertains to electrical "Installation services" of illumination for roads, as discussed above.

7.5 Now coming to the second criteria as to whether the instant supply of installation of highway lighting system undertaken by the applicant is a "Composite supply", we would first like to go through the definition of Composite supply which stands defined under Section 2 (30) of the CGST Act 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;

Illustration.- Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

7.5..1 On perusal of the copy of clause 1.1 of the service order dated 26.06.2020 issued by AIL to the applicant, the scope of work awarded is 'design, engineering, supply, testing at site/works, freight and transit insurance, erection, installation and commissioning and trial run (SITC) of Highway Lighting System (which includes lighting pole, luminaires, cable, feeder panels, high mast, DG set and its accessories for complete highway including flyover at 0+000 chainage, major/ minor junctions, cross roads, structures, rest area, truck lay byes, toll plaza, canopy, bus bays and bus shelters) and associated civil work for complete lighting solution as per Concession Agreement and IRC-SP-84-2014 for Bilaspur to Pathrapali road project from 0.000 km to 53.300 km in the state of Chhattisgarh'.

Further clause 1.3 of the service order provides that 'supply, installation & testing of electrical materials as per BOQ. All the fixtures, panels, wires/ cables, lights, earthing materials, and other items complete in all respect, shall confirm to MoRTH specifications and other relevant codes as a minimum'.

Clause 1.10 provides that the construction of suitable foundation including machinery, foundation bolt, concrete, reinforcement steel, other materials, manpower & tools and tackles, motorized high mast is included in the scope of work'.

Clause 1.11 provides that 'all civil works including excavation, wall and road cutting as applicable shall be in the scope of work including layer wise back filling, RMC & steel for foundation work shall be inclusive in scope of work. Horizontal direct drilling, pipes for cable protection, brackets required to fix poles on crash barriers, concrete drilling, restoring to its original condition, etc. also included in the scope of contractor including overhead or underground crossing



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required, if any, as per the site conditions. Any exclusion from scope of contractor shall be Nil".

Clause 1.26 provides that 'Contractor shall procure materials from approved vendor list (Annexure-V) only. Contractor shall get approval of sources and materials to be procured, within this approved vendor list, from IE/NHAI before procurement'.

Clause 6.2 provides that 'The Basic Price shall be inclusive of applicable Taxes (except GST), inclusive of all cost towards required Manpower, Material, Equipment, Tools & Tackles, Insurance, Safety equipment, PPE, Statutory Compliance, License, Work Permit, Mobilization, Demobilization, Lodging & Boarding, Transportation, Travelling to all the site visit/ Employer/'s office visit/ IE's office visit/ NHAI, Per diem charges, Material shifting, Material inspection charges, Testing charges, all Liaison work, etc. all necessary to complete the scope of work but excluding Goods & Service Tax (GST)'.

Clause 8.3 provides that 'Contractor shall be paid 50% Basic amount of milestone mentioned at clause 8.2 as secured material advance on receipt of material at site after approval of Employer, within 30 days from the date of Proforma invoice after supply of material at site. The same shall be adjusted in RA bill on prorate consumption basis. For the purposes of secured material advance release, the amount shall be calculated based on no. of poles/ high mast supplied along with required major material i.e. cable, luminaries and piping material. Installation of lighting poles/ high mast shall mean supply & installation of lighting poles/ high mast on foundation, erection of luminaries, cable and piping.'

7.5.2 Thus, from the perusal of the aforesaid clause of the service order read with Bill of Quantities (BOQ), it is clear that the Applicant is supplying all the goods required for highway lighting system as well is responsible for installation of such goods, such as lighting pole, lights, earthing work, etc.

The applicant in their submissions before us, to bring home their point has cited reference to clauses 1.10 and 1.11 of the service order wherein the Applicant has been entrusted and made responsible for all the works including construction of foundation, other civil works including excavation, wall, road cutting, fixing of poles, installation of lights, etc. We find considerable strength in the applicants contention that the scope of Applicant's work is not only limited to fixing of lights, but also fixing of poles, which when once installed as lighting system along the road of significant length, there cannot be any intention to move the same to another place during its useful life without making the same defunct. The contract also involves civil work and various items are permanently embedded into earth and these civil works are for completion of the Electrical "Installation services" entrusted upon the applicant and not the other way round. Such lighting system is embodied in the earth in such a way to withstand the



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force of high-speed wind and long-time weather conditions, much essential for undertaking the "Installation services" awarded to the applicant.

Thus, on the basis of evidences furnished by the applicant there exist all reasonable grounds to hold that natural bundle of supply of goods and services is prevalent in the instant supply of installation services of "highway lighting system" and these are supplied in conjunction with each other in the ordinary course of business by the applicant. Besides this, the impugned supply of installation services in entirety thereof can only be construed to be made, once whole of the supplies are made by the applicant. Thus, we come to the considered conclusion that the second criterion of "composite supply" stands fulfilled in the instant supply of "installation services" of "highway lighting system" made by the applicant.

7.6 Now we move on to the third criterion as to whether the work of installation of highway lighting system supra, rendered by the applicant qualifies being "Works Contract", much essential for availing the claimed exemption as provided under S.no. 3(v)(a) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended, vide Notification 01/2018 Central Tax (Rate) dated 25.01.2018.

7.6.1 We find that under the scheme of things as envisaged under GST law, the definition of "Works Contract" has been restricted to any work undertaken for an "Immovable Property" unlike the erstwhile VAT and Service Tax provisions where works contracts for movable properties were also considered. The Works Contracts has been defined in Section 2(119) of the CGST Act, 2017 as "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." Thus, from the above it can be seen that the term works contract has been restricted to contract for building construction, fabrication etc. of any immovable property only. Any such composite supply undertaken on goods say for example a fabrication or paint job done in automotive body shop will not fall within the definition of term works contract per se under GST. Such contracts would continue to remain composite supplies, but will not be treated as a Works Contract for the purposes of GST. As per Para 6 (a) of Schedule II to the CGST Act, 2017, works contracts as defined in section 2(119) of the CGST Act, 2017 shall be treated as a supply of services. Thus, there exists a clear demarcation of a works contract as a supply of service under GST. Besides this, as per section 17(5) (c) of the CGST Act, 2017, input tax credit shall not be available in respect of the works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service. Thus, ITC for works contract also stands restricted and can be availed only by one who is in the same line of business and is using such services received for further supply of works contract service. For example, a building developer may engage services of a subcontractor for certain portion of the whole work. The



subcontractor will charge GST in the tax invoice raised on the main contractor. The main contractor will be entitled to take ITC on the tax invoice raised by his subcontractor as his output is works contract service. However, in case the main contractor provides works contract service (other than for plant and machinery) to a company say in the IT business, the ITC of GST paid on the invoice raised by the works contractor will not be available to the said IT Company.

7.6.2 From the definition, a work shall be treated as Works Contract if that work is done for land or earth or for immovable property and there is transfer of property in goods involved in the execution of such contract. Immovable property by its very definition means that it cannot be moved and cannot be detached or dismantled from the land or earth and further that dismantling of the same would render it defunct / redundant. Immovable property would include in its ambit 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. Whether the particular property is an immovable property or not is subject to the peculiar facts of each case. Hon'ble courts have pronounced various judicial pronouncements laying down certain criteria for determining whether a property is immovable or not. From these decisions, it can be derived that an immovable property would consist of 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.

7.6.3 In the case present case under consideration, in view of the aforesaid factors, as is forthcoming from the various clauses of the service order AIIL/HPL/so/C/UV/33/20 dated 26.6.2020 issued by M/s AIIL in favor of the applicant, referred to in the foregoing para, the work of installation services of highway lighting system to be installed by the applicant on the National Highway comes into existence in an immovable condition and there appears no intention to move the same in future to any other place. The applicant has further submitted that it is not possible to shift the lighting system from one place to another without causing damage/breaking up the existing system. On dismantling, what would be taken out are parts/components of the



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system and not the system itself. Thus, highway lighting system installed by the Applicant is immovable in nature.

7.6.4 Now the allied aspect for a contract to qualify as 'works contract' is that the contract should involve transfer of property in goods. In this context, it is seen that clauses 1.1, 1.3, 1.26, 6.2 and 8.3 of the service order dated 26.06.2020 supra read with Annexure 1 to the said service order bring to the fore the fact that the applicant is responsible for supply of goods as well as installation thereof, which in our opinion is sufficient enough to conclude that there exists transfer of property as well as of goods being supplied in the instant "Installation services" under the contract.

7.7 As regards to the condition stipulated that the works contract should be for construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of road or bridge or tunnel or terminal for road transportation, it has been applicants' contention that in the instant case, the works to be executed by the applicant are for completion of road i.e., National Highway-111. Besides this it has been their contention all through that construction of road does not merely include creation or construction of ground-level surface, but includes a host of things and affairs, such as markings on the roads, signboards, pavement/ footpath, medians, drainage system, intelligence transport system, toll management system, entire lighting system (including lighting pole, luminaries, cable, feeder panels, high mast, etc.) depending on the nature of road, to make it functional and operational for public use.

7.7.1 This stand by the applicant is not tenable and is unsustainable under law in as much as, there remains no ambiguity as regards the fact that the instant work entrusted upon the applicant is electrical "Installation services" of highway lighting system as elaborately discussed in the preceding para, therefore arbitrarily and artificially extending and expanding the ambit of said independent services of "installation services" of highway lighting system to "construction services" of roads appears to be an afterthought to avail the benefit of exemption as provided under S.no. 3(v)(a) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended, vide Notification 01/2018 Central Tax (Rate) dated 25.01.2018, which otherwise stands ineligible. The claimed benefit of Notification supra, is available to construction services of road per se and cannot be artificially expanded to the instant subject matter of electrical "installation services" of highway lighting system for illumination of roads. Thus, citing reference to the 'Manual of specifications and standards for four laning of highways through public private partnership': IRC-SP-84-2014, published by Indian Roads Congress, does not help applicants cause in any way.

7.8 In view of the above discussions we are of the considered view that the benefit of the entry at Sl.no. 3(iv)(a) is not eligible to M/s HPL Electric and Power Limited, behind



Mata Garage, Jai Bhole Complex, Pandri, Raipur, Chhattisgarh, 492001 GSTIN-22AAACH0165J1Z0, as the basic requirement for eligibility to the said exemption as provided under S.no. 3(iv)(a) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended, of getting covered under "Construction service" under Heading 9954 stands unfulfilled, whereas the instant supply pertains to electrical "Installation services". The work undertaken by the applicant is electrical installation services of illumination for roads, as discussed above.

As regards the issue of applicability of Entry 3(iv)(a) of Not. No. 11/2017-CT (Rate) as applicable in case of services provided by the sub-contractor to the main contractor raised by the applicant, the same has no relevance as the applicant is found not eligible to be benefit of the claimed exemption.

8. Having regard to the facts and circumstances of the case and discussions as above, we pass the following order:-

ORDER

(Under section 98 of the Chhattisgarh Goods and Services Tax Act, 2017)

No.STC/AAR/02/2022

Raipur Dated ...02/05/2022

RULING

The ruling so sought by HPL Electric and Power Limited, behind Mata Garage, Jai Bhole Complex, Pandri, Raipur, Chhattisgarh, 492001 GSTIN-22AAACH0165J1Z0, the applicant is accordingly answered as under:

The aforementioned supply to be made by the applicant to AII merits classification as "Installation services", being electrical installation services of illumination for roads. The applicant is found ineligible to the benefit of tax rate of 12% [CGST @ 6% + CGGST @ 6%] as stipulated under entry No. 3 (iv) (a) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended, vide Notification 3/219 Central Tax (Rate) dated 29.03.2019 effective from 1.4.2019 as the basic requirement for eligibility to the said exemption as provided under S.no. 3(iv) (a) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended, of being "Construction service" under Heading 9954 supplied by way of construction of a road, stands unfulfilled.

-Sd/-
Sonal K. Mishra
(Member)

-Sd/-
Rajesh Kumar Singh
(Member)

TRUE COPY

Surveen 24/5/2022
MEMBER
ADVANCE RULING AUTHORITY
CHHATTISGARH, RAIPUR

TRUE COPY

Rajesh 2/5/2022
MEMBER
ADVANCE RULING AUTHORITY
CHHATTISGARH, RAIPUR