

**AUTHORITY FOR ADVANCE RULING, TAMILNADU
INTEGRATED COMMERCIAL TAXES OFFICE COMPLEX, DOOR NO.32,
5TH FLOOR, ROOM NO. 503, ELEPHANT GATE BRIDGE ROAD,
CHENNAI – 600 003.
PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.**

Members present:

Shri R.Gopalsamy, I.R.S., Additional Commissioner / Member, Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -600034	Tmt N.Usha, Joint Commissioner (ST)/ Member, Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-600003
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Advance Ruling No. 04 /ARA/2023 Dated: 28.03.2023

1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Rulings, Chennai as under Sub-Section (1) of Section 100 of CGST Act / TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed is communicated.
2. In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act 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.
3. In terms of Section 103(2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.
4. Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.
5. The provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

GSTIN Number, if any / User id		33AAAFE0197Q1Z8
Legal Name of Applicant		ESVEE Constructions
Registered Address / Address provided while obtaining user id		Second Floor, No.33/1, Mahalakshmi Street, T.Nagar, Chennai - 600017.
Details of Application		GST ARA - 01 Application Sl.No.25/2022 dated 25.04.2022
Jurisdictional Officer		Centre : Chennai South Commissionerate ; Division: T.Nagar
Concerned Officer		State : Nandanam Assessment Circle, Chennai.
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Service Provider
B	Description (in brief)	The applicant is a civil works contractor. Their customers are Indian Institute of Technology, Madras, CSI Diocese, Chennai, The KCP Ltd, BPCL and State Bank of India.
Issue/s on which advance ruling required		Determination of the liability to pay tax on any goods or services.
Question(s) on which advance ruling is required		What is the applicable rate of tax under CGST Rules for the Civil Contract Services (SAC 995415) undertaken / to be undertaken to our customer M/s IIT, Madras (GST No.33AAAAI3615G1Z6) by us with effect from 01.01.2022 by virtue of amendment to Notification No.11/2017 C.T (Rate) vide Notification No.15/2021 C.T (Rate) dated 18.11.2021? Whether it is 12% or 18%?

The applicant M/s ESVEE Constructions, having registered premises at Second Floor, No.33/1, Mahalakshmi Street, T.Nagar, Chennai - 600017 (hereinafter referred as the applicant) is registered under the GST Act 2017 vide GSTIN 33AAAFE0197Q1Z8. The Applicant has sought Advance Ruling on the following questions:

What is the applicable rate of tax under CGST Rules for the Civil Contract Services (SAC 995415) undertaken / to be undertaken to our customer M/s IIT, Madras (GST No.33AAAAI3615G1Z6) by us with effect from 01.01.2022 by virtue of amendment to Notification No.11/2017 C.T. (Rate) vide

Notification No.15/2021 C.T (Rate) dated 18.11.2021? Whether it is 12% or 18%?

1.2 The applicant submitted a copy of challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST Rules 2017 and SGST Rules 2017.

2.1 The Applicant's customer M/s Indian Institute of Technology, Madras claims that they come under Central Government Entity category, as it was constituted by enacting a legislation by Parliament. Therefore, M/s IIT, Madras claims that rate of GST is 12% for Civil Contract Services (SAC 995415) with effect from 01.01.2022 even after amendment to Notification No.11/2017 C.T.(Rate) vide Notification No.15/2021 C.T.(Rate) dated 18.11.2021.

2.2 On interpretation of law, applicant state that they charged GST rate 12% for the Civil Contract Services (SAC 995415) provided to M/s IIT Madras, till 31.12.2021 as it comes under the category of Central Government entity. The applicant opine that there would not be a change in GST rate of 12% for the Civil Contract Services (SAC 995415) provided / to be provided to M/s IIT Madras, with effect from 01.01.2022 even after amendment to Notification No.11/2017 C.T.(Rate) vide Notification No.15/2021 C.T.(Rate) dated 18.11.2021.

3.1 The applicant, after consent, was given an opportunity to be virtually heard on 15.06.2022. The authorized representative (AR) Sri G.Madhusudhana Rao appeared before the authority and reiterated the submissions made with a request to issue clarification for the applicable tax rate for the works undertaken for IIT Madras with effect from 01.01.2022 after amendment to Notification No.11/2017 C.T (Rate) vide Notification No.15/2021 C.T (Rate). Further, the AR was asked to produce copy of contract for the works being undertaken for IIT Madras along with letter / correspondences from IIT Madras for their claim that they are Central Government. Consequent to change of members of Authority, additional personal hearing was extended to the applicant. AR appeared for the virtual hearing on 08.12.2022, wherein he requested to give a ruling on the rate of tax for the works undertaken for IIT Madras.

3.2.1 Sri Y.Venkatachalam, Partner of the applicant Firm submitted a copy of 'The Institutes of Technology Act, 1961' along with copy of letter of acceptance of e-

Tender No.18/2020-21/Composite issued by IIT Madras vide F/EU/EE/e-T.No.18/2020-21/Civil/LOI dated 28.01.2021 for addition and alteration of D1 Type quarters 45 units at IITM for total consideration of Rs.4,55,48,650/- inclusive of GST @ 12% and other applicable taxes, duties and levies and a copy of Invoice No.24 dated 11.03.2022 for 4th and part bill issued by applicant to Indian Institute of Technology Madras for a total invoice value of Rs.1,43,66,750/-, including GST Rs.15,39,294.64 @ 12% collected separately.

3.2.2 Some of the relevant provisions of the Institutes of Technology Act, 1961 are reproduced below for ready reference. Section 2 of the Institutes of Technology Act, 1961 declares certain institutions as institutions of national importance as below;

Whereas the objects of the institutions known as the Indian Institute of Technology, Bombay, the College of Engineering and Technology, Delhi, the Indian Institute of Technology, Guwahati, Assam, the Indian Institute of Technology, Kanpur, the Indian Institute of Technology, Madras, the Indian Institute of Technology, Roorkee, the Indian Institute of Technology, Bhubaneswar, the Indian Institute of Technology, Gandhi Nagar, the Indian Institute of Technology, Hyderabad, the Indian Institute of Technology, Indore, the Indian Institute of Technology, Jodhpur, the Indian Institute of Technology, Mandi, the Indian Institute of Technology, Patna, the Indian Institute of Technology, Ropar and the Indian Institute of Technology (Banaras Hindu University), Varanasi, are such as to make them institutions of national importance, it is hereby declared that each such institution is an institution of national importance.

3.2.3 As per Section 3(j) "society" means any of the following societies registered under the Societies Registration Act, 1860, (21 of 1860) namely:-

(i)

(ii)

(iii) the Indian Institute of Technology, Madras;

3.2.4 As per Section 3(c) "corresponding Institute" means,—

(i)

(ii)

(iii) in relation to the society known as the Indian Institute of Technology, Madras, the Indian Institute of Technology Madras;

3.2.5 As per Section 4(1), each of the Institutes mentioned in section 2 shall be a body corporate having perpetual succession and a common seal and shall, by its name, sue and be sued.

3.2.6 As per Section 5(a), any reference to a society in any law (other than this Act) or in any contract or other instrument shall be deemed as a reference to the corresponding Institute.

4. The applicant is under the administrative control of Central Tax. The said jurisdictional authority was addressed to report if there are any pending proceedings against the applicant on the issues raised by the applicant in the ARA application and for comments on the issues raised. The said authority has neither furnished their comments on the question raised by the applicant nor informed about any pending proceeding against the applicant on the question raised. Therefore, it is presumed that there is no proceeding pending against the applicant with the concerned authority on the question raised.

5. The State Tax Officer vide letter RC. No.613/2021/A2 dated 20.09.2022 stated that no pending proceedings in the assessment circle against M/s ESVEE Constructions regarding the issue raised by the applicant.

6.1 We have carefully considered the submissions made by the applicant in the advance ruling application, the additional submissions made during the personal hearings and the comments furnished by the State Tax Authorities. The applicant filed advance ruling application for determination of the liability to pay tax on any goods or services or both in respect of civil contract services undertaken to their customer M/s IIT Madras, within the meaning of that term as per Section 97(2)(e) of GST Act, 2017.

6.2 The question which needs to be answered is the rate of tax applicable for the civil contract services undertaken by the applicant to their customer M/s IIT Madras with effect from 01.01.2022 consequent to amendment of Notification No.11/2017 C.T (Rate) dated 28.06.2017 by Notification No.15/2021 C.T (Rate) dated 18.11.2021 effective from 01.01.2022.

7.1 It is seen from the submissions and documents enumerated in para 3.2 supra that the applicant is a contractor who has been awarded a contract by IIT Madras for 'addition and alteration of D1 type quarters 45 units at Indian Institute of Technology Madras' for an amount of Rs.4,55,48,650/- inclusive of GST @ 12% and other applicable taxes, duties and levies.

7.2 The applicant also submitted copy of Tax Invoice No.24 dated 11.03.2022 issued as 4th and part bill to M/s Indian Institute of Technology Madras for an amount of Rs.1,43,66,750/- including GST Rs.15,39,294.64 @ 12% on the taxable value of Rs.1,28,27,455.36 for the said contract work.

8.1 The statutory provisions relevant to the above contentions of the applicant are discussed as under:

Section 2(119) of the Act defines 'Works Contract' as under:

(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;

8.2.1 Serial No. 3(vi) of Notification No.11/2017 C.T (Rate) dated 28.06.2017, as amended, reads as follows till 31.12.2021;

(vi) 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, provided to the Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or

(c) a residential complex meant predominantly for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.

Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.

Explanation. - For the purposes of this item, the term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.

8.2.2 The terms 'Government Authority' & 'Government entity' were inserted by Notification No. 31/2017 - Central Tax (Rate) dated 13.10.2017 in Notification No. 11/2017 as clauses (ix) & (x) of explanation in Para 4 as follows:

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

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

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

(x) Government Entity means an authority or a board or any other body including a society, trust, corporation,-

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

(ii) Established by any Government, with 90per cent. or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.

8.2.3 Description of service in Serial No. 3(vi) of Notification No.11/2017 C.T (Rate) dated 28.06.2017 was amended by Notification No.15/2021 C.T (Rate) dated 18.11.2021 and the same superseded by Notification No.22/2021 C.T (Rate) dated 31.12.2021. The said amendment substituted the words "Union territory, a local authority, a Governmental Authority or a Government Entity" with the words "Union territory or a local authority" with effect from 01.01.2022 and also the condition

under column 5 has been omitted. In short the words 'a Governmental Authority or a Government Entity' have been deleted.

8.2.4 Notification No.3/2022 C.T (Rate) dated 13.07.2022 omitted, inter alia, item (vi) and the corresponding entries in column 4 of serial number 3 of Notification No.11/2017 C.T (Rate) dated 28.06.2017, as amended, with effect from 18.07.2022.

8.3 As per Section 20 of the Societies Registration Act, 1860, *the following societies may be registered under this Act:*

Charitable societies, the military orphan funds or societies established for the promotion of science, literature, or the fine arts, for instruction, the diffusion of useful knowledge, -[the diffusion of political education], the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs.

8.4 It is evident from Section 3 (j) (iii) of The Institutes of Technology Act, 1961 that Indian Institute of Technology Madras is a 'Society' registered under the Societies Registration Act, 1860, conferred with the status of 'body corporate' by Section 4 (1) of the said Act for the promotion of science, education, diffusion of useful knowledge, etc. under the control of Central Government.

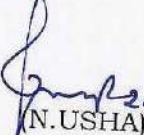
8.5 Accordingly, Indian Institute of Technology Madras is a 'Government Entity' within the meaning of explanation 4(x) of Notification No.11/2017 C.T (Rate) dated 28.06.2017, as amended, and the nature of service provided by the applicant narrated under para 7.1 supra is covered under entry in serial number 3(vi) of Notification No.11/2017 C.T (Rate) dated 28.06.2017 till 31.12.2021. However, after omission of 'Government Entity' from the description of service under the said entry vide Notification No.15/2021 C.T (Rate) dated 18.11.2021 read with Notification No.22/2021 C.T (Rate) dated 31.12.2021 with effect from 01.01.2022, the services of the applicant is covered under serial number 3 (xii) of Notification No.11/2017 C.T (Rate) dated 28.06.2017 and attract CGST of 9%.

9. In view of the above, we rule as under:


RULING

1. What is the applicable rate of tax under CGST Rules for the Civil Contract Services (SAC 995414) undertaken / to be undertaken to our customer M/s IIT, Madras (GST No.33AAAAI3615G1Z6) by us with effect from 01.01.2022 by virtue of amendment to Notification No.11/2017 C.T. (Rate) vide Notification No.15/2021 C.T.(Rate) dated 18.11.2021? Whether it is 12% or 18%?

The Civil contract services of the applicant provided / to be provided to IIT Madras is covered under serial number 3 (xii) of Notification No.11/2017 C.T (Rate) dated 28.06.2017, as amended, and liable to pay CGST @ 9% and SGST @ 9% with effect from 01.01.2022.


28.3.2023
N.USHA
Member (SGST)




(R.GOPALSAMY)
Member (CGST) 28/03/23

To

M/s Esvee Constructions,
No.33/1, Mahalakshmi Street,
T.Nagar, Chennai - 600017.

//By RPAD//

Copy submitted to:-

1. The Principal Chief Commissioner of CGST & Central Excise,
No. 26/1, Uthamar Mahatma Gandhi Road, Nungambakkam,
Chennai - 600 034.
2. The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai - 600 005.

Copy to:

3. The Commissioner of GST & C.Ex.,
Chennai South Commissionerate.
4. The Assistant Commissioner (ST),
Nandanam Assessment Circle,
5. Master File / spare - 1.

