



**TELANGANA STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Goods and Services Tax)
1st Floor, Commercial Taxes Complex, M.J. Road, Nampally,
Hyderabad 500 001**

AAAR.COM/03/2021

Dated: 04-04-2023

Order-in-Appeal No. AAAR/01/2023

(Passed under Section 101 (1) of the Telangana Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Telangana Goods and Services Tax Act, 2017 (TGST Act, 2017 or the Act), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the order. Provided that, no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the applicant or the appellant has been given an opportunity of being heard.

2. Under Section 103 (1) of the Act, this advance ruling pronounced by the Appellate 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. Under 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. Under Section 104 (1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-Section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

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Subject: GST – Appeal filed by M/s Transmission Corporation of Telangana Limited (TS Transco), Hyderabad, under Section 100 (1) of TGSST Act, 2017 against Advance Ruling TSAAR Order No.09/2021 dated 14.09.2021 passed by the Telangana State Authority for Advance Ruling - Order-in-Appeal passed – Regarding.

* * * * *

1. The subject appeal has been filed under Section 100 (1) of the Telangana Goods and Services Tax Act, 2017 (hereinafter referred to as “TGSST Act, 2017” or “the Act”, in short) by M/s. Transmission Corporation of Telangana Limited (hereinafter referred in short as “M/s.TS-Transco” or “the appellant”). TS Transco is a State Transmission Utility (STU) notified by Government of Telangana under Section 39 of Electricity Act, 2009 having GSTIN No. 36AAFCT0166J1Z9. The appeal is filed against the Order No.09/2021 dated 14.09.2021 (“impugned order”) passed by the Telangana State Authority for Advance Ruling (Goods and Services Tax) (“Advance Ruling Authority” / “AAR” / “lower Authority”). TS-Transco filed by the application seeking Advance Ruling with regard to HSN Codes and rate of tax in respect of the following:

1. The Classification of supplies made by TS TRANSCO in terms of HSN and applicable rate of tax;
2. The Classification of supplies procured by TS TRANSCO and eligibility to obtain services at reduced rate of 12% as per entry 3(iv) of Notification 11/2017 CTR dated 28 June 2017;

2. Vide the impugned order, the Advance Ruling Authority had given the following advance rulings:

Serial No	Question raised	Advance Ruling
1	Eligibility to exemption from tax on the supply of works contract services by the applicant to GHMC	Taxable @ 18%
2	Tax liability with respect to works contract services procured by the applicant from a 3 rd party for supplying same services to GHMC	Taxable @ 18%
3	Eligibility to exemption from tax on supply of works contract services by the applicant to I&CAD department	Exempt to the extent of grants received against supplies by applicant
4	Tax liability with respect to works contract services procured by the applicant from a 3 rd party for supplying same services to I&CAD department	Taxable @ 18%
5	Tax liability for supply of works contract service by the applicant to South Central Railway	Taxable @ 18%
6	Tax liability for procuring works contract services by the applicant from a 3 rd party in order to supply the same to SCR	Taxable @ 18%

3. The present appeal challenges the rulings 1, 2, 4, and 5 above in respect of classification and taxability of services provided to GHMC, I&CAD and SCR. In respect of Advance ruling at S.No.(3) and (6) pertaining to eligibility to exemption from tax on supply of works contract services provided by the appellant to I&CAD Department to the extent of grants received by the appellant and Tax liability for procuring works contract services by the appellant from a 3rd party in order to supply the same to South Central Railway, has been accepted and not disputed by the appellant.

Whether the appeal is filed in time:

4. In terms of Section 100 (2) of the Act, an appeal against Advance Ruling passed by the Advance Ruling Authority, has to be filed within thirty (30) days from the date of communication thereof to the applicant. The impugned Order dated 24.06.2020 was received by the appellant on 11.10.2021 as mentioned in their Appeal Form GST ARA-02. They filed the appeal on 10.11.2021, which is within the prescribed time-limit.

Brief Facts:

5. M/s Transmission Corporation of Telangana Limited (hereinafter referred to as "TS TRANSCO"/ "the Appellant") are a state-owned utility responsible for transmission of electricity in the state of Telangana having its corporate office (head office) located in Vidyut Soudha building (Khairatabad), Hyderabad. All offices including the corporate office are mapped to a single GST registration obtained vide **GSTIN 36AAFCT0166J1Z9** wherein corporate office is the principal place of business and the regional offices are appearing as "Additional Place of Business" in GST registration certificate.

6. The Appellant functions as State Transmission Utility (STU) notified by the Government of Telangana under Section 39 of the Electricity Act, 2003. As a STU, TS TRANSCO, is required to construct, operate and maintain integrated transmission networks to ensure smooth transmission of electricity across the state. For this purpose, TS TRANSCO undertakes contracts for construction, erection, installation and commissioning of networks which may vary from sub-stations, lines, transformers depending on transmission needs. The transmission assets need to be owned, operated and maintained by the Appellant only (though the cost is recovered) which is represented in the books of accounts as "Deposit Contribution Works (DC Works)". The plant and machinery or equipment used in execution of contracts are shown as deferred consumer contributions towards property, plant, and equipment under non-current liabilities, as such the asset belongs to TS TRANSCO.

7. DC Works are undertaken to meet the requirements of Department of State Government (such as Irrigation & CAD department, Road & Building Department), Local authorities (such as GHMC), Government Authorities/entities and Industrial Consumers. These DC works are undertaken based upon a request received from the consumers. The estimated cost is prepared and communicated to the consumer with a request to make a deposit of the estimated cost. Generally, DC works are undertaken for erection of feeder bays, shifting of transmission assets, laying and replacement of overhead and underground cables etc. at the request of the consumers. These DC works are classified as non-current liabilities under the head "Deferred consumer contributions towards property, plant and equipment" in the Balance Sheet and the actual expenditure incurred for construction is capitalized to asset A/c. For the purpose of executing DC Works the Appellant engages the turnkey vendors/contractors for procuring services in relation to services undertaken by the Appellant following established protocols of calling for tenders. The contractors are registered

under GST and charge GST at the applicable rates to the Appellant, the incidence of tax falls on the Appellant.

8. The appellant filed an application in which the following clarifications were sought.:

1. Eligibility to exemption from tax on the supply of works contract services by the applicant to Greater Hyderabad Municipal Corporation (GHMC).
2. Tax liability with respect to works contract services procured by the applicant from a 3rd party for supplying same services to GHMC
3. Eligibility to exemption from tax on supply of works contract services by the applicant to I & CAD department.
4. Tax liability with respect to works contract services procured by the applicant from a 3rd party for supplying same services to I & CAD department.
5. Tax liability for supply of works contract service by the applicant to south central railway.
6. Tax liability for procuring works contract services by the applicant from a 3rd party in order to supply the same to south central railway.

9. The Authority for Advance Ruling, heard the appellants and their averments submitted and ruled that the services provided by them are taxable @ 18% and they are not eligible to claim the benefits of notification Nos. Notification 12/2017 – CT(R) dated June 28, 2017 and the taxes cannot be levied as claimed by them under Notification no. 11/2017-CT(R) dated June 28, 2017. Aggrieved by the said order, the present appeal has been filed by the appellants on the following aspects of the order:

S. No	Question raised	Advance Ruling issued	Appellant's contentions before AAAR
1.	Eligibility to exemption from tax on the supply of services by the appellant to Greater Hyderabad Municipal Corporation (GHMC).	Taxable @ 18%	Exempt under entry 3 of Notification 12/2017 CT(R) dated June 28, 2017.
2.	Tax liability with respect to works contract service procured by the appellant from a 3 rd party for providing same services to GHMC.	Taxable @ 18%	Taxable @ 12% under entry 3(vi) of Notification 11/2017 CT(R) dated June 28, 2017.
3.	Eligibility to exemption from tax on the supply of services by the appellant to I & CAD department.	Exempt to the extent of grants are received.	We agree with the decision of the AAR & no appeal is preferred.
4.	Tax liability with respect to works contract service procured by the appellant from a 3 rd party for providing same services to I&CAD.	Taxable @ 18%	Taxable @ 12% under entry 3(vi) of Notification 11/2017 CT(R) dated June 28, 2017.
5.	Tax liability with respect to supply of service by the appellant to South	Is a <u>works contract</u>	It is a <u>pure service</u> Taxable @ 18%

	Central Railways (SCR).	service and is Taxable @ 18%	
6.	Tax liability with respect to works contract service procured by the appellant from a 3 rd party for providing same services to SCR.	Taxable @ 18%	We agree with the decision of the AAR & no appeal is preferred.

10. The averments submitted before the Appellate Authority, with regard to issues that have been contested by the appellant are detailed below:

I. In respect of services provided to GHMC:

- a. Appellant has undertaken replacement of the existing overhead cables of TS TRANSCO which are affected due to the constructing an elevated corridor in Road no. 45 of Jubilee Hills, Hyderabad with the underground cables. Resultantly, in terms of the Electricity Regulatory Commission Codes and Regulations, the cost of shifting of existing line, structure and equipment's shall be borne by GHMC or in other words the party at whose request such alteration of the structure, equipment is undertaken.
- b. The impugned order held that the works performed for GHMC, from the estimate of contract submitted by the appellant involves significant portion of material and therefore is not a pure service and is a works contract service which shall be taxable @ 18%.
- c. The Appellant wishes to submit that the Authority on Advance Ruling (in short AAR) has arrived at this conclusion without examining the issue that there is no transfer of property by TS TRANSCO to GHMC despite the appellant repeatedly explaining this fact and vehemently reiterating the same even in the course of personal hearing.
- d. It would be pertinent to examine whether the services undertaken for GHMC qualify to be called "Works contract Service". The definition of the term "Works Contract Service" is contained in clause (119) of section 2 of CGST act, 2017 which is 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;"*
- e. On the Basis of this definition, the following can be concluded to be essential elements to render a service as "Works contract service":
 - i. The contract should be for construction, fabrication, completion, erection, installation, fitting out, improvement, modification repair, maintenance, renovation, alteration or commissioning;
 - ii. The above activities should be of an immovable property;

- iii. There should be use of goods in the execution of the said contract;
 - iv. There should be transfer of property in the said goods used in the execution of the contract.
- f. In case of TS TRANSCO, the conditions (i) to (iii) are satisfied as follows:
- i. TS TRANSCO is engaged for construction, erection, installation and commissioning of transmission assets;
 - ii. These transmission assets such as sub-stations, transformers, bays and lines are embedded into the surface of the earth permanently and are immovable in nature.
 - iii. In the course of construction of these said assets, TS TRANSCO also uses civil and Electrical material;
- g. However, in-spite of the above, the title in the said transmission assets are not transferred to the recipient (government department / agency). The government department / agency is only funding the cost of construction of these assets and there exists no title transfer. Hence, one of the essential conditions to qualify as a works contract service is not satisfied by TS TRANSCO.
- h. Moreover, it is to bring to your consideration that merely the word “material” in the abstract of estimate does not mean that TS TRANSCO is supplying materials to GHMC. The word “material” in the abstract of estimate means estimate of the project cost undertaken by TS TRANSCO. In the said case for instance, it is not of relevance to GHMC as to what material and/or goods are used to replace the overhead cables with underground cables, the concern of GHMC is that the cables should not hinder the construction of the elevated corridor. However, the impugned order has not understood the facts stated by the Appellant and has proceeded in a pre-conceived notion.
- i. The Appellant makes reference to Entry 3 of Notification 12/2017 CT(R) dated June 28, 2017 which is as follows:
- "3. **Pure services** (excluding works contract service or other composite supplies involving supply of any goods) **provided to** the Central Government, State Government or Union territory or **local authority** or a Governmental authority or a Government Entity **by way of any activity in relation to** any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under **article 243W of the Constitution.**"*
- j. Implies following conditions must be satisfied in order to avail the exemption from the GST,
- It is a pure service excluding works contract service or other composite supplies involving supplies of goods
 - is provided to a Central Government/State Government/ Governmental Authority/Local authority;

- “In relation to” any function enumerated under Article 243G/ 243W of the Constitution;
 - Then such a service is exempt from the levy of GST.
- k. In the instant case for consideration, TS TRANSCO is providing pure service to in terms of alteration of location of the existing transmission assets & replacement of overhead cables with underground cables which is for the purposes of the construction of an elevated corridor (road) by GHMC. The said activity is in the nature of DC works and does not involve transfer of any ownership in the goods thereby constituting pure services and satisfying the 1st condition for the eligibility to the exemption.
- l. The said services are provided to GHMC, which is a Local authority even as per the definition contained in Section 2(69) of the CGST Act and also as per The Greater Hyderabad Municipal Corporation Act, 1955 and thus satisfying the 2nd condition of providing services to local authority for the eligibility to the exemption.
- m. Article 243G of the constitution has to be read with Schedule XI at Entry 13 has listed inter-alia functions in relation to Roads, culverts, bridges, ferries, waterways and other means of communication. Also, Article 243W of the constitution has to be read with Schedule XII at Entry 4 has as listed inter-alia functions in relation to “Roads and Bridges’ therefore the services provided are “in relation to” the functions enumerated under Article 243G read with Schedule XI and Article 243W read with Schedule XII of the Constitution of India, thereby satisfying the 3rd and the last condition for the eligibility to the exemption.
- n. Reliance is placed on the following decisions of the Authority for Advance rulings under GST:

P.K. MAHAPATRA [2020 (40) G.S.T.L.99 (A.A.R. – GST – Chh.)]

In response to the application filed by P.K. Mahapatra it has been held by the Chhattisgarh Authority for Advance Ruling that an activity will not be classified as a works contract service unless there is a transfer of property in goods by the supplier to the recipient.

Below is the extract of the same:

*“..Thus, Construction activity **will not qualify as works contract** if there is **no transfer of property in goods** involved i.e. the contractor is supplying service and there is no supply of goods. Thus, works contract may or may not be a construction..”*

KSC BUILDCON PVT. LTD [2020 (38) G.S.T.L.413 (A.A.R. – GST – Raj.)]

In the case of KSC Buildcon Pvt. Ltd it has been held that one of the important condition to qualify as a works is contract is that there must be transfer of property in goods.

Below is the extract of the same:

*“...Thus, the **foremost conditions** of WCS are that it leads to creation of an immovable property and then **transfer of the said property in goods...**”*

11. In view of the aforesaid submissions, on facts and unambiguous position in terms of law, the exemption under Notification 12/2017 – CT (R) is squarely applicable for services provided by TS TRANSCO to GHMC and therefore qualifies to be an exempt service.

II. In respect of supplies received by TS TRANSCO from its sub-contractors is taxable at the lower rate of 12% in terms of Notification no. 11/2017-CT(R) dated June 28, 2017 as per Entry No. 3(vi) of the said notification.

- a. Once more the AAR has arrived at a conclusion without scrutinizing the transaction in its entirety. The authority has stated that Entry 3(vi) of Notification 11/2017 dated 28th June, 2017 exempts specifically only following works of construction, erection, commissioning, etc., are covered for claiming lower rate of tax:
 - i. Civil structures or any other any **original works** meant predominantly for use other than for Commerce, industry, or any other business or professions.
 - ii. Structures meant for education, clinics, art or cultural establishments.
 - iii. Specified Residential Complexes

The authority has failed to examine the definition of “original works” before arriving at this conclusion. The term “Original Works” is set-out in the Clause (zs) of Paragraph 2 of Notification 12/2017-CT® dated 28 June, 2017

“Original Works means-

- i. All new constructions;**
- ii. All types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;*
- iii. Erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;”**

12. Thus, the construction of transmission assets undertaken by turnkey vendors to TS TRANSCO qualify to be original works since these involve civil structures which are new constructions.

- a. The appellant submits that the expression “other than” “business or commerce” in entry 3 (vi) of the notification should be given full

effect. In this regard it is brought to the kind notice of the AAR that the intended predominant use of such original works shall have to be determined necessarily with reference to the activity for which the structure or original works is intended to be used predominantly and in determining the “intended pre-dominant use” the purpose for which the entity is set-up is not a relevant consideration.

- b. This submission conforms to the understanding of contemporaneous authorities as is evident from the Circular No. 152/08/2021-GST dated June 17, 2021 issued by the Central Board of Indirect Taxes & Customs (CBIC). It is evident from the circular that the test of intended pre-dominant usage has to be with reference to the Civil structure created in terms of works entrusted by local authority. When the local authority undertakes the activity as a public authority, the activity shall continue to be so even if is executed through a Government entity. Copy of the Board Circular has also been submitted to the AAR.
- c. This view is also fortified by the proceedings of the 22nd Meeting of the GST Council held on 06 October 2017 which brings out succinctly the purport of inserting the term Government Entity and extending the concessional rate to the Government entity with the proviso to restrict the concession to services rendered to Government Entity pursuant to work entrusted by Central Government or State Government or Local authority. The genesis of extending the concession to the Government Entity can be traced to the law committee recommendations vetted by Tax Research Unit (TRU) apropos the issues raised State Governments of Gujarat and Telangana. This having culminated into the amendments to Sl. No. 3(vi) of Notification 11/2017-CT (Rate) dated June 28, 2017 vide Notification No. 31/2017-CT (Rate) dated October 13, 2017 is a clear pointer to the contemporaneous understanding. In this connection we also place reliance of Supreme Court judgement in the case of K.P.Varghese Vs. Income Tax Officer & ANR (1981) 131 ITR 597 (SC) with regard to the weightage to be given to the contemporaneous understanding in construing an entry in the statute. It is a settled position in law that construction of the statute or the delegated legislation ought to be such as to effectuate to the fullest extent the intention leading to the legislation - ITAT Hyderabad bench in UCO Bank. Similar is the ratio of the judgement in District Mining officer Vs TISCO.
- d. Following the legal maxim of ejusdem generis industry and commerce necessarily imply profit motive and accordingly only that business which has a profit element is covered by the Entry. This is also supported by the legal maxim of noscitur a sociis to the effect that the true meaning of the expression business is known by its associates. In this connection, the appellant placed reliance on judgement of Supreme Court in Rohit Pulp & Paper Mills Vs. CCE, Baroda (1991) AAR 754 1990 SCR (2) 797 and has also submitted a copy of this case law before the AAR.

- e. It has been held by the Hon'ble Tribunal that the mere fact that a fee is collected will not render the activity as commercial in the case of B.G Shirke Construction Technology Private Limited Vs. CCE Pune 2014 (33) S.T.R 77 (Tri-Mum). Further, it follows from the order of the CESTAT in Noble Hospital & Research Centre Vs. CCE, Aurangabad 2017 (5) G.S.T.L 408 (Tri-Mumbai) that the character of the activity namely, commercial or otherwise is not determine by the Entity providing the service but by the activity itself just as in case of renting of immovable property by a Trust which is a non-commercial entity has been held to be a commercial activity. Service procured by the Appellant in the process of providing services by way of replacement of overhead cables with underground cables at the behest of the Local authority as a Public Authority, the character of the Appellant is immaterial and the ultimate purpose for which the work has been entrusted to it will be the determining factor. To the same affect is also the decision of the Authority of Advance Rulings (AAR) in the case of Borbheta Estate Private Limited.
- f. The true meaning of the expression commerce or industry has also been elaborately dealt by the Larger Bench of CESTAT in the case of Lanco Infratech 2015 (38) S.T.R 709 (Tri-LB) along with the relevant entries in the service tax legislation and CBEC Circulars.

13. The Appellant submits that views taken above stressing the need for a logical, coherent, fair, true, holistic, harmonious reading of Entry in 3(vi) with the Proviso thereto and the explanation is necessary in order to uphold legislative intent of extending the concessional rate of 12% even to specified works contract services performed to a Government Entity also in relation to works entrusted to such entity by the Central government, State Government, Union Territory or Local Authority.

III. In respect of services supplied by the contractor to the appellant towards supply of services to I & CAD, fall under Entry 3(vi) of Notification 11/2017 CT(R) dated June 28, 2017. This supply of works contract services to the appellant is taxable at the rate of 6% under GST Act.

- a. The authority has here concluded that the concessional rate of tax of 12% is not applicable for the services received by the appellant from turnkey vendors to provide the same services to I&CAD once again without examining the transaction in its entirety as mentioned point II above.
- b. The appellant has made the submissions as mentioned in point II above which shall apply in the present case also.
- c. The Appellant submits on practical considerations the unintended consequence of a rigid interpretation of the entry without a cogent reading with the Proviso and Explanation as intended renders the Appellant's projects unviable, considered at a micro level and at a macro level

leading to the additional cost to the State's Exchequer resulting in loss. A representative sample analysis of 3 projects delineating the unintended consequences is set out as 'Exhibit G'.

IV. In Respect of supplies made to South Central Railways it is the supply of works contract services which is enumerated at entry 3 (vii) of Notification 11/2017 dated June 28, 2017 as amended from time to time and are taxable @ 9% under CGST/SGST Acts.

- a. The Appellant has submitted that though the contract is a pure supply of service to Central Government (SCR), the exemption mentioned in Entry 3 of Notification 12/2017 CT dated June 28, 2017 may not apply since the civil structures and original works in this case are for the use and purport of a business or commerce activity and is taxable @ 18%.
- b. Though the authority has stated that these service are taxable @ 18% it has mentioned that these services are works contract service with which we don't accord since these services are pure services and not works contract service as mentioned in Point I above.

14. The Appellant therefore, submits that since the civil structures of RTSS are meant for electricity transmission and though for the use of SCR in the course of its business of transporting goods and passengers across the country the property in these assets is not transferred to the appellant and therefore is a taxable outward supply in the nature of "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" at 18%.

V. In relation to works contract service received by the appellant from its sub-contractors are in nature of General Construction service for long-distance underground/overland/ submarine pipe lines, communication and Electric power lines (cables); pumping stations and related works; transformer stations and related works. These works are taxable @ 9% under GST Act.

- a. The authority has stated that the works contract service supplied by the appellant are in nature of General Construction service for long-distance underground/overland/ submarine pipe lines, communication and Electric power lines (cables); pumping stations and related works; transformer stations and related works which are taxable @9% under CGST & SGST Acts.
- b. We accede with the decision of the AAR in this matter and therefore don't prefer any appeal in this matter.

Personal Hearing:

15. In terms of Section 101(1) of the Act, the appellant was given personal hearing, in virtual mode on 02.12.2021. Smt. Radhika Verma, Chartered

Accountant and Authorised Representative appeared for the Appellants. The appellants were requested to submit copies of MOU/Contract entered with GHMC, I&CAD and SCR in the subject issue. They requested to set aside the advance ruling in respect of said issues that are being contested and consider their appeal favourably.

Discussions and Findings:

16. We have gone through the application for Advance Ruling filed by the appellants before the Authority for Advance Rulings and TSAAR Order No. 09/2021 dated 14.09.2021. The Authority for Advance Ruling passed its order by classifying the services provided by appellant as 'Works Contract Service' leviable to tax @ 18%. Further denied the appellant's claim for classifying the service as 'Pure Service' and allow exemption under Notification No.12/2017 CT (Rate) dated 26.06.2017 as amended. With regard to services procured by the appellant, the Authority denied the concessional rate of tax @12% in terms of Notification No.11/2017 CT(Rate) dated 28.06.2017 as amended. The appellant has agreed on two aspects of the rulings issued by the Authority relating to services provided by the appellant to I&CAD, and services procured by the appellant from 3rd party towards services provided to South Central Railway. The appellant filed an appeal before the Appellate Authority in respect of four issues. We have gone through the written submissions, their contentions and also case laws cited in their support.

17. The appellants vide their letter dated 08.12.2021 submitted relevant documents as discussed during the course of personal hearing conducted on 02.12.2021. We have gone through the synopsis, copies of contracts, and additional submissions made by them.

18. We have carefully considered the facts on record, the relevant entries in Notification No.11/2017 –Central Tax (Rate) dated 28.06.2017, Notification No.12/2017 –Central Tax (Rate) dated 28.06.2017, as amended, the impugned order passed by Advance Ruling Authority, the appellant's grounds of appeal and submissions during personal hearing.

19. We find that the following issues are for determination in the subject appeal:

1. exemption of tax on the services provided by TS Transco to GHMC.
2. Tax liability for supply of works contract service by the applicant to South Central Railway.
3. Rate of Tax applicable to services procured by the appellant from 3rd party contractor in providing services to GHMC and I& CAD.

I. Classification of services provided by Appellant to GHMC and rate of tax applicable.

Opinion of the Appellate Authority (State Member)

20. The applicant has undertaken replacement of overhead cables and underground cables in road no 45 Jubilee hills, Hyderabad as GHMC was

constructing an elevated corridor. For the purpose the applicant has collected the cost of such shifting/replacement from GHMC.

21. As seen from the contract between the parties there is no transfer of property in goods is involved from the applicant to GHMC in the execution of the contract. As per definition of works contract in section 2(119) of the CGST Act,2017 transfer of property in goods (whether is goods or in other form) is essential concomitant for a contract to be works contract.

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;

22. The Authority for advance ruling has stated that since a significant portion of material is involved in the contract, the contract between the applicant and GHMC is a works contract. A careful reading of the communication made between M/s GHMC and M/s TRANSCO reveals the contract is for shifting of the 132 KV towers (which are owned by the appellant) which are an obstruction for construction work taken up by M/s GHMC. For the said purpose (shifting), valuation was provided by M/s TRANSCO. It can be understood that, the material value mentioned in the contract is only for arriving at the cost of replacement and there is no transfer of property in such goods from the applicant to GHMC. Therefore, the contract cannot be termed as a works contract.

23. The applicant, as per the request of GHMC has agreed to replace or shift its own electric equipment and cables etc to other place, for the purpose of replacing or shifting such electric equipment the expenditure that is expected to be incurred by the applicant is collected from GHMC. So, the agreement entered between the applicant and GHMC can be classified as 'agreeing to do an act' under SAC '999792'.

24. The applicant claimed that the services provided by them are exempt from tax as per Entry 3 of notification no 12/2017 CT(R) date June 28 2017.

Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

25. As per the present contract the service provided by applicant is 'agreeing to do an act' and there is no supply of goods involved (neither there is a transfer of title in goods or nor there is a transfer of right in goods). Therefore, it cannot be termed a works contract service or other composite supplies involving supply of any goods. Hence, this contract is a 'pure service' as per entry no 3 of notification no 12/2017 CT(R) date June 28 2017.

26. As per section 2(62) (b) of the CGST Act Local authority includes a Municipality as defined in clause (e) of article 243P of the Constitution. GHMC 'Greater Hyderabad Municipal Corporation' is Municipal Corporation of Hyderabad city and surrounding areas and falls under clause (e) of Article 243P of the Constitution.

27. As per Schedule XII of Constitution of India Construction of roads is a function entrusted to Municipality under Article 243W of the Constitution. The present service provided by the applicant to Local authority is in relation to construction of roads, i.e., agreeing to shift the property for the purpose of construction of roads. Therefore, the activity of agreeing to shift the property for the purpose of laying roads can be termed as an activity in relation to function entrusted to the Municipality under Article 243W of the Constitution.

28. In view of the above, the service provided by the applicant to GHMC is classifiable as 'Agreeing to do an act' falling under SAC '999792' and is a pure service provided to the Local authority by way of an activity in relation to function entrusted to a municipality under Article 243W of the Constitution, making the supply exempt from levy of tax as it falls under Entry 3 of notification no 12/2017 CT(R) date June 28, 2017.

Opinion of the Appellate Authority (Central Member)

29. The applicant has undertaken replacement of overhead cables and underground cables in Road No. 45 Jubilee hills, Hyderabad as Greater Hyderabad Municipal Corporation ('GHMC' in short) was constructing an elevated corridor. For this purpose, the applicant collected the cost of such shifting/replacement from GHMC.

30. As seen from the contract submitted by the applicant in their written submissions, the work was w.r.t. shifting of 132 KV tower on Road No. 45 near 132/33 KV Jubilee Hills substation and to replace the overhead line across the road by laying UG cable, so as to take up the work of elevated corridor from Road No. 45 to Durgam Cheruvu. As per the abstract of estimate of the work order, major portion of value was towards material viz. Cables, OH line and SS.

31. On the above activity, the applicant claimed exemption from payment of tax in terms of Sl.No. 3 of Notfn No. 12/2017-CT(R), dt. 28.6.2017. The said serial number is reproduced below:

“3. **Pure Services** (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union Territory or local authority or a governmental authority or a government entity by way of any activity in relation to any function entrusted to a panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243G of the Constitution”.

32. From plain reading of the above definition, what can be construed is that if the supplies are not in the nature of works contract service or other composite supplies involving supply of any goods, when rendered to authorities mentioned above, would get exempted from payment of tax. However, in the present case, as can be seen from the abstract of estimates, the value of material is significant and more than the value of labour. The abstract of estimate also includes GST @18% on all the charges including gross estimate value. Hence, the services rendered cannot be classified as 'Pure Services' and exemption thereof could not be available.

33. As the Advance Authority Ruling has classified the above activity as Works Contract Service, the basic issue i.e. whether the activity can be classified as supply of Works Contract or not is to be decided.

34. GST Schedule-II clearly mentions that the following are supply of services: -

- (a) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly.
- (b) works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract.

35. Hence Works contract will be treated as service and tax would be charged accordingly. As per Section 2(119) of the CGST Act, 2017, unless the context otherwise requires, *the term "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.*

36. It is evident from the work order that their work involves shifting and replacing of cables with underground cabling. It needs to be appreciated that replacing of cables underground cannot be done without having a support to such cables either in the form of concrete bedding / cc foundation fastening with nuts and bolts or in any other form which allows such cables to remain undisturbed. Such an arrangement would make the whole replacement of cables embedded to earth making them immovable in turn becoming immovable property. As such, their contract for electrical cable supply and laying work can be classified as contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract. Hence there is no hesitation in holding that the applicant is supplying Works Contract Services.

37. Section 3(26) of General Clauses Act, 1897 defines 'Immovable Property' as "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;"

38. It is evident from the work order that the work involves shifting of 132 kv Jubilee Hills – Chandrayangutta DC feeder and 132 Kv Erragadda – Shivarampally SC feeder at 132 Kv SS Jubilee Hills by replacing of 132 Kv Jubilee Hills – Chandrayangutta DC overhead line with 132 Kv DC UG cable and 132 Kv Erragadda – Shivarampally SC UG cable for GHMC for construction of elevation corridor from road No. 45 to Durgam Cheruvu.

39. It is evident from the abstract of estimate that they are supplying and erecting cables, OH line and Stainless Steel (SS) during the course of the work. Therefore, the implication is that the cables are enclosed in such RCC pipes which are kept under the ground at a certain depth and then the entire pipes with the enclosed cables are covered back with filling to make the road as it is. This clearly satisfies the condition of being attached to earth. The pipes are fixed underneath the ground level underground, covered with filling and in such case, it is clear that the said pipes are meant to be affixed permanently underneath the ground and therefore cannot be considered as movable property. TS TRANSCO is engaged for construction, erection, installation and commissioning of transmission assets. These transmission assets such as sub-stations, transformers, bays, and lines are embedded into the surface of the earth permanently and are immovable in nature. In the course of construction of these said assets, TS TRANSCO also uses construction materials such as cement and steel reinforcement rods. As such there is an element of transfer of property.

40. The work schedule submitted by the applicant also indicates that their work involves shifting of HT & LT Overhead line & cable through underground. The contract for shifting of cables and replacing with underground cables can be classified as contract for building, construction, fabrication, completion, erection, fitting out, improvement, modification, etc., of immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract. Hence, there is no hesitation in holding that the applicant is supplying Works Contract Services. It is also apparent that the nature of the works undertaken by the applicant are not in the nature of 'Original Works' and is to be classified as works contract service.

41. In view of the above, the case laws relied by the applicant are not applicable to the case on hand and consequently, the applicant is not eligible for exemption available against Sl.No. 3 of the Notification ibid and the services are liable to be classified as works contract services and therefore is subject to payment of tax as applicable.

II. Rate of Tax applicable to services procured by the appellant from 3rd party contractor in providing services to GHMC and I& CAD.

42. In this context, at the first instance, it is observed from the contracts that the appellant has entered into contract with GHMC, I&CAD for providing certain services. However, for providing these services, the appellant has engaged various private contractors who will execute the works. During, the course of execution and completion, the services along with goods are handed over to the appellant and there is transfer of property in goods, as discussed in paras 39 and 40 above. Therefore, the services

provided by 3rd party i.e., private contractors are classifiable as 'Works Contract Service'.

43. The contention is only with regard to rate of tax and the appellant requests for concessional rate as provided under serial no. 3(vi) of the Notification No. 11/2017-CT (R) dated 28.06.2017 as amended. The relevant extract of notifications viz., 11/2017 CT(R) is required to be examined. The basic notifications have been amended from time to time for appropriate levy of tax keeping in view the changes and activities of businesses and discussions/decisions of GST Council. As such the serial numbers of relevant entries mentioned in notifications have changed. For ease of reference, the same are reproduced as per the latest amendments, as under:

Notification No. 11/2017-CT (R) dated 28.06.2017 as amended:

Sl. No.	Chapter, Section, Heading, Group or service code	Description of Service	Rate (per cent)	Condition
(1)	(2)	(3)	(4)	(5)
1	Chapter 99	All Services		
2	Section 5	Construction Services		
3	Heading 9954 (Construction services)	<p>vi) Composite supply of works contract as defined in clause (119) of Section 2 of the CGST 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 –</p> <p>(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;</p> <p>(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or</p> <p>(c) a residential complex predominantly meant 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.</p> <p><i>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.</i></p>	6	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be

44. Since, the structure being constructed for the appellant is neither a residential complex nor a structure meant predominantly for use as an

educational, clinical, or an art or cultural establishment, For the services procured by the appellant to fall under the said entry, the service should be:

- i. a Composite supply of works contract
- ii. Should be provided to a Government Entity
- iii. Should be a civil structure or any other original works
- iv. The said works should be meant predominantly for use other than for commerce, industry, or any other business or profession

45. There is no dispute regarding the fact that in this case works contract service is being provided to a government entity. Even, if the work is classified as construction of a civil structure or any other original works, the point of dispute that still remains is the classification of works as being meant predominantly for use other than for commerce, industry, or any other business or profession. The appellant has contested that they are liable to pay tax @ 6% only, as per serial No. 3(vi)(a) read with the explanation provided therein. The appellants emphasized that the expression “other than” business or commerce” in entry 3(vi) of the notification should be given full effect. They relied on Circular No.152/08/2021-GST dated 17.06.2021 and averred that the test of intended pre-dominant usage has to be with reference to the civil structure created in terms of works entrusted by local authority. They contest that the local authority undertakes the activity as a public authority, the activity shall continue to be so even if it is executed through a Government entity.

46. The appellant’s inference that industry and commerce necessarily imply profit motive and accordingly only that business which has a profit element is covered by the entry is a logical fallacy, in the context of the Judgment rendered by the Hon’ble Supreme Court in the case of Bangalore Water-Supply Vs. R. Rajappa & Others, 1978 AIR 548, wherein it was held that:

“If any principle can be said to be settled law in this vexed field it is this: the twin consideration of profit motive and capital investment is irrelevant for determining whether an activity is an industry.”

This judgment also dealt with the wider and comprehensive scope of the term industry. Here, TRANSCO as an entity is engaged in the systemic transmission of electricity in line with the growing demand from the consumers and therefore activities undertaken by the appellant do not get excluded from the scope of industry.

47. In view of the averments made, it is important to examine the contours of the term ‘business’ as defined under Section 2(17) of the CGST Act, which is as follows:

business includes -

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;*
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);*
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;*

- (d); and
(i) *any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities*

48. As per definition of business in section 2(17) of the CGST Act, 2017 any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit is a business. It is evident from the above facts that TRANSCO is in the business of transmission of electricity and collecting charges for the said activity. The Profit & Loss Account of TRANSCO specifies income generated as “Income from Sale of power”. Thus, it is seen that TRANSCO has been established on commercial principles in as much as Section 61 of the Electricity Act, 2003 stipulates the guiding principles for determination of tariff by the STATE Regulatory Commission and mandates that the Tariff should progressively reflect cost of supply of electricity, reduce cross subsidy and recover the cost of electricity in a reasonable manner.

49. The legal maxim *noscitur a sociis* is not applicable to the present case as there is no ambiguity in relation to the word ‘business’ having been clearly defined in the Act itself. The word ‘business’ encompasses within itself activities undertaken whether or not for a pecuniary benefit, which removes any scope for exclusion of the activities undertaken by the appellant from the ambit of ‘business’. It is immaterial, if the Government entity (Appellant) is running with or without generating any surplus as long as the activity undertaken has commercial implication. In this context, the rulings and the judgements referred to by the appellant are not applicable to the facts of the present case.

50. Further, the circular issued by CBIC vide No.152/08/2021-GST dated 17-06-2021 also supports this view. A similar issue was clarified through the circular, on whether or not the works contract service provided to the Government Entity by way of construction of rope way, falls under entry 3(vi) of Notification 11/2017. It was clarified that the works contract service provided to a Government Entity is taxable @ 18% and is not eligible for 12% rate under entry 3(vi) of Notification 11/2017, the relevant portion of circular is extracted hereunder:

“2. According to entry No. 3(vi) of notification No. 11/2017-CT (R) dated 28.06.2017, GST rate of 12% is applicable, inter alia, on-

“(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; “

2.1 Thus, said entry No 3 (vi) does not apply to any works contract that is meant for the purposes of commerce, industry, business of profession, even if such service is provided to the Central Government, State Government, Union

Territory, a local authority a Governmental Authority or a Government Entity. The doubt seems to have arisen in the instant cases as Explanation to the said entry states, 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. However, this explanation does not apply to Governmental Authority or Government Entity, as defined in clause (ix) and (x) of the explanation to said notification. Further, civil constructions, such as rope way for tourism development shall not be covered by said entry 3(vi) not being a structure that is meant predominantly for purposes other than business. While road, bridge, terminal, or railways are covered by entry No. 3(iv) and 3(v) of said notification, structures like ropeway are not covered by these entries too. Therefore, works contract service provided by way of construction such as of rope way shall fall under entry at sl. No. 3(xii) of notification 11/2017-(CTR) and attract GST at the rate of 18%”

51. The applicant's argument that, since GHMC has entrusted this work in the capacity of public authority, the character of the work will remain so, even if provided through the Government entity doesn't appear to be valid for the reason that the applicant themselves have stated it is not of relevance to GHMC as to what material and/or goods are used to replace the overhead cables with underground cables, the concern of GHMC is that the cables should not hinder the construction of the elevated corridor. Therefore, it is of no interest to GHMC if the work of re-construction is taken up or not, hence, it is of the applicant's interest to get re-constructed the civil structure to ensure that there is no hindrance to smooth transmission of electricity.

52. Beyond all other consideration, the applicant appears to have misinterpreted the words "Use" as "Purpose". Purpose is the reason for doing an act, while "Use" is the act of usage. The verbatim used in the construction of the said entry is "meant predominantly for use". In this context, the "purpose" for which the Local authority has entrusted this work has no relevance. Therefore, the purpose for which the work was entrusted will not be the determining factor as to whether the activity falls within the scope of entry, instead, the intended usage of the civil structure/original work so constructed will be the deciding factor. The same was re-affirmed through the CBEC Circular.

53. The applicant has issued contracts to third parties for purpose of installation and erection of electric equipment and transmission lines. The resultant civil structure is thus being used by the applicant for transmission of electricity and for supply of power to various customers for a consideration, meant pre-dominantly for the purpose of business.

54. As discussed at paras 36, 39 and 40 above, the work contract executed by various contractors to the applicant is meant for the purpose of business and it can be seen that there is involvement of transfer of property also , as discussed in para 36,39 and 40 the supply can be squarely classified as "Works Contact", . Thus the facts of the case are analogous to the circular issued by CBIC vide No.152/08/2021-GST dated 17-06-2021. Hence, works contract service provided to M/s TRANSCO by way of construction of the said civil structure meant predominantly for the purpose of business is not covered under Entry 3(vi) of Notification No. 11/2017-CT(R).

55. Therefore, the services procured by the appellant from 3rd party contractor in providing services to M/s GHMC and I& CAD are covered under

the residual entry 3(xii) of Notification No. 11/2017-CT(R) and attract tax at the rate of 9% + 9% (CGST+TGST), the contents of which are reproduced as under:

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (percent)	Condition
1	Chapter 99	All Services		
2	Section 5	Construction Services		
3	Heading 9954 (Construction services)	(xii) Construction services other than (i), (ia), (ib), (ic), (id),(ie), (if), (iii), (iv), (v), (va), (vi), (vii), (viii),(ix), (x), and (xi) above. Explanation: For the removal of doubt, it is hereby clarified that, supply by way of services specified at items (i), (ia), (ib), (ic), (id),(ie) and (if),in column (3) shall attract central tax prescribed against them in column (4) subject to conditions specified against them in column(5) and shall not be levied at the rate as specified under this entry.	9	-

56. From the above reading, the services provided by 3rd party are works contract services covered under residual entry 3(xii) of the notification as amended. As such, the appellants claim that the services procured by them from private contractors are eligible for concessional rate of tax is not sustainable. Hence, the decision of the Lower Authority is upheld on the issue.

III. Tax liability for supply of works contract service by the applicant to South Central Railway. (Hereinafter referred to as 'SCR')

57. At the outset, the appellant has claimed the services provided by the appellant to South Central Railway to be 'Pure Services'.

58. The phrase 'Pure Service' has not been defined under the Act (CGST/SGST), as such it has to be understood in the context of intent for which the phrase has been used in the CGST/SGST Act and notifications issued there under. As a general understanding, any supply which is either deemed as services under Schedule II of CGST Act or which is not covered under the definition of goods shall be categorized as pure services. That is to say, Services without involving any supply of goods would be treated as supply of 'pure services'. In the context of the language used in the notification, supply of services without involving any supply of goods would be treated as supply of 'pure services'.

59. Works Contract has been defined under Section 2 (119) of the CGST Act, 2017: "*works contract*" means a contract of 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".

60. As seen from the definition, the essential elements that are required to construe a service as “Works contract service” are:

- a) The contract should be for construction, fabrication, completion, erection, installation, fitting out, improvement, modification repair, maintenance, renovation, alteration or commissioning; of an immovable property;
- b) There should be use of goods in the execution of the said contract; and
- c) There should be transfer of property in the said goods, whether as goods or in some other form in the execution of the contract.

61. We have gone through the contracts of works entered by the appellant with SCR. The work is for the purpose of extension of 132KV Power Supply to the proposed RTSS (traction sub stations) by laying a specific line for this purpose including certain Telecom work. As seen from the scope of work, it can be broadly classified that they are in the nature of construction, fabrication, erection, installation and commissioning and are resulting in formation of an immovable property. As such the two aspects of essential characteristics have been achieved, in this reference is also invited to discussion in para 36,39 and 40 regarding the qualification of a supply for being classified as “Works Contract”.

62. The appellant in his submissions has stated that, as a State Utility, they are responsible for transmission of electricity and generally, any works that are being taken up by them involves use of materials or goods that are essential for transmission of electricity. However, these works are taken up as deposit contribution works (DC Works) wherein the cost of execution of works involving various factors like, earth work, civil works, Engineering works, procurement of materials/goods are estimated and is collected from their customers. Even though, the amounts are collected from the customers, the value of materials/goods are shown as Deferred consumer contributions towards property, plant and equipment under Non-Current Liabilities in their balance sheet, which implies that the ownership of the goods lie with the appellant in their books of accounts and are amortized after relevant periods. Therefore, the appellant contended that the essential factor of ‘transfer of property in goods’ has not been satisfied so as to classify the service as ‘works contract service’.

63. The applicant was issued with contracts of installation and erection of electric equipment and transmission lines. The resultant civil structure is thus being used by the applicant for transmission of electricity and for supply of power to various customers for a consideration, meant predominantly for the purpose of business.

64. Thus, the work contract executed by the applicant is meant for the purpose of business. Thus, the facts of the case are analogous to the circular issued by CBIC vide No.152/08/2021-GST dated 17-06-2021. Hence, works contract service provided by M/s TRANSCO by way of construction of the said civil structure meant predominantly for the purpose of business is not covered under Entry 3(vi) of Notification No. 11/2017-CT(R).

65. The documents furnished indicate the service rendered to SCR where the service rendered was for construction of certain transformers for the purpose of extending the power supply including certain telecommunication work. In this context, it would be relevant to bring in the extract of annexure giving scheme of classification of services attached to Notification No. 11/2017-CT(R). Relevant portion is reproduced below:

S. No.	Chapter, Section, Heading or Group	Service Code (Tariff)	Service Description
1	Chapter 99		All Service
2	Section 5		Construction Services
3	Heading 9954		Construction Services
12	Group 99542		General construction services of civil engineering works
		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
		995424	General construction services of local water and sewage pipelines, electricity and communication cables and related works.

Notification No. 11/2017-CT (R) dated 28.06.2017 as was amended as under:

Sl. No.	Chapter, Section, Heading, Group or service code	Description of Service	Rate (per cent)	Condition
(1)	(2)	(3)	(4)	(5)
1	Chapter 99	All Services		
2	Section 5	Construction Services		
3	Heading 9954 (Construction services)	vi) Composite supply of works contract as defined in clause (119) of Section 2 of the CGST 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	6	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be

	<p>art or cultural establishment; or (c) a residential complex predominantly meant 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.</p> <p><i>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.</i></p>		
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66. It is observed that the above entry 3(vi) of the Notification covers service code 9954. By specific entry, only following works of construction i.e., erection, commissioning, etc., are covered for claiming lower rate of tax.

- i. Civil structures or any other original works meant predominantly for use other than for Commerce, industry, or any other business or professions.
- ii. Structures meant for education, clinics, art or cultural establishments.
- iii. Specified Residential complexes.

67. It is evident that the above entry is specific entry covering only certain construction services. This entry does not cover other works contract services under service head 9954 which include long-distance underground/overland/ submarine pipe lines, communication and electric power lines (cables); pumping stations and related works; transformer stations and related works i.e., General construction services. However there is a residual entry at 3(xii) (as brought out at para 55 above) of the above Notification covering all other construction services not mentioned in the preceding entries.

68. It is well known rule of construction that General provisions should yield to specific provisions. This principle of interpretation was upheld by the Hon'ble Supreme Court of India in a Catena of Case law of which J K Cotton Spinning & Weaving Mills Company Ltd Vs State of UP AIR 1961 SC1170 is a land mark case. Applying this principle entry 3 (vi) excludes the electrical works. Therefore, the claim of lower rate of tax claimed under this entry is not valid in view of this discussion

69. In the light of the foregoing, we pass the following:

ORDER

Sl.No. 1 of para 9 above - Issue regarding exemption of tax on the services provided by TS Transco to GHMC:

In view of difference of opinion between the Members of the Appellate Authority, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal, as provided under sub section (3) of Section 101 of the Act.


Sl.No. 2 & 4 of para 9 above - Rate of Tax applicable to services procured by the appellant from 3rd party contractor in providing services to GHMC and I& CAD:


The Services procured by TS Transco (Appellant) from private contractors for providing service to GHMC and I&CAD are classifiable as Works Contract Service and are taxable @ 18% in terms of Serial No. 3(xii) of Notification No. 11/2017- CT(Rate) dated 28.06.2017 as amended.

Sl.No. 5 of para 9 above - Tax liability for supply of works contract service by the applicant to South Central Railway.:

The Services provided by TS Transco (Appellant) to SCR are classifiable as 'Works Contract Service' falling under Chapter 99, Group 99542 as per the Scheme of Classification of Services provided under Annexure to Notification No. 11/2017- CT(Rate) dated 28.06.2017 as amended and are taxable @ 18% in terms of Serial No. 3(xii) of Notification No. 11/2017- CT(Rate) dated 28.06.2017 as amended.

The subject appeal is disposed accordingly.


(Nectuprasad)
Commissioner
State Tax,
Telangana State


(B.V. Siva Naga Kumari)
Pr. Chief Commissioner
Central Tax
Hyderabad Zone

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To:

M/s Transmission Corporation of
Telangana Limited, 6-3-572, Vidyut Soudha, Khairatabad,
Hyderabad 500 082. Telangana.

Copy to:

1. The Telangana State Authority for Advance Ruling, CT Complex, MJ Road, Nampally, Hyderabad- 500 001.
2. The Chief Commissioner of Central Tax & Customs, Hyderabad Zone – for information and for forwarding copies of the order to the concerned / jurisdictional officer of Central tax.
3. The Commissioner of State Tax, Telangana State – for information and for forwarding copies of the order to the concerned / jurisdictional officer of State tax.