

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai - 400010.
(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

- (1) Shri B. Timothy, Addl. Commissioner of Central Tax, (Member)
(2) Shri A. A. Chahure, Joint Commissioner of State Tax, (Member)

GSTIN Number, if any/ User-id		27AAACT4033H1ZK
Legal Name of Applicant		Vertiv Energy Private Limited
Registered Address/Address provided while obtaining user id		Plot No C-20, Road No 19, Wagle Industrial Estate, Thane. (West) Maharashtra 400 604
Details of application		GST-ARA, Application No. 17 Dated 17.05.2019
Concerned officer		Division VI, Range VI, Commissionerate Thane
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Factory/Manufacturing
B	Description (in brief)	That applicant is engaged in the manufacture, supply, erection installation of UPS Systems.
Issues on which advance ruling required		(i) Classification of goods and services or both (v) Determination of the liability to pay tax on any goods or services or both (vii) Whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

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

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and MGST Act” respectively] by **M/s.Vertiv Energy Private Limited**, the applicant, seeking an advance ruling in respect of the following questions.

- Whether the contract entered into with DMRC for supply, erection, installation, commissioning and testing of UPS system qualifies as a supply of works contract under Section 2(119) of the CGST Act?

2. If yes, whether such supply made to DMRC would be taxable at the rate of 12% in terms of Sr. no. 3(v) of Notification No. 11/2017 - C.T. (Rate), as amended w.e.f. 25.1.2018?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a reference is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION - AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus-

"A. STATEMENT OF THE RELEVANT FACTS HAVING A BEARING ON THE QUESTION (ON WHICH THE ADVANCE RULING IS SOUGHT)

1. Vertiv Energy Private Limited (hereinafter referred to as "the applicant") having its corporate head office at Mumbai is, *inter-alia*, engaged in the manufacture of various types of UPS systems, which serve as an alternate source of power for a specific period of time in the event of power failure. The applicant also supplies installation commissioning and maintenance and other services to its customers.

An UPS is typically used to protect hardware such as computers, data centers, telecommunication equipment or other electrical equipment where an unexpected power disruption could cause injuries, fatalities, serious business disruption or data loss. UPS units range in size from units designed to protect a single computer without a video monitor to large units powering entire data centers or buildings:

3. The applicant is manufacturing UPS and its components at its manufacturing unit located at Ambarnath and Pune in the state of Maharashtra. Some components like battery and cables are either manufactured by the applicant or purchased by the applicant from third party vendors. The applicant has obtained GST registration in the state of Maharashtra.
4. Further, the applicant has also obtained GST registration in other states where the applicant is rendering supply of Goods and services to its customers,
5. UPS is classified under Heading 8504 and attracts GST @18% as supply of goods.

Contract with DMRC for supply of UPS

6. The applicant entered into a contract with Delhi Metro Railway Corporation ("DMRC") for Supply, installation, testing, and commissioning of UPS systems (hereinafter referred to as "the said contract") on 20.1.2014. The said contract, though entered in the pre-GST regime, is an on-going contract and the applicant has been making supplies to DMRC in the GST regime as well.
7. The scope of work agreed with DMRC provides the detailed description of various goods and services to be supplied by the applicant. The relevant portion of the contract with DMRC is extracted as under;

“3. SCOPE OF THE WORKS; SUPPLY AND SERVICES

3.1 General

3.1.1 The scope of the works includes but not limited to supply, manufacture, inspection, packing, shipping, transportation, storage, delivery, handling, insurance, installation, interfacing, integration, testing & commissioning, maintenance support, spares, special tools, test equipment, training, documentation and providing DLP for the UPS system.

3.2 Scope of supply

3.2.1 The Uninterruptible Power Supply (UPS) system shall include, but not be limited to the following: -

- Online redundant UPS;
- Battery bank;
- Spare cell charger;
- Isolation Transformer Cubicle o SCVS;
- Output isolation transformer;
- Equipment cabinets, racks & cubicles; o Distribution boxes;
- Cable trays/Trenches/Supports / Foundations;
- ATS (Automatic Transfer Switch);
- All software required for UPS system;
- All external cables (Zero Halogen FRLS), connectors;
- Accessories, earthings necessary for works;
- Spares for DLP of 3 years;
- Surge protection devices;
- Special tools and test equipment;
- Remote monitoring equipment and accessories including voltage free contacts for Alarms;
- Spares;

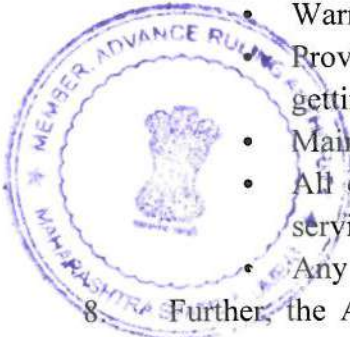


- Furniture for CS05 equipment
- Any other supply needed to provide a complete UPS system

3.3. Scope of services

3.3.1 The services to Uninterruptible Power Supply (UPS) system shall include, but not be limited to the following:

- Design, manufacture, supply, system assurance, installation, testing and commissioning of the UPS System;
- Presentations, reviews and audit support as specified in the Specification; Transportation, Handling and Storage of the material;
- Insurance Cover for the material supplied till taking over by Employer; User's Certificates and Test Reports as per specifications;
- Documentation; (Chapter 15)
- Provide all information, documents requested by Signaling, Telecommunication and AFC Contractors;
- Interface management as specified in the Specification;
- System operations and maintenance support services;
- Training for operations and maintenance staff;
- Preparation of Operation, Maintenance and Training Manuals;
- Decommissioning, removal and/ or disposal of Temporary Works;
- Design, manufacture, delivery and installation of foundations/ fixtures for equipment;
- Warranty period and defect liability support after commissioning;
- Providing necessary support and documents required including compliance for getting approval of the UPS system from Commissioner of Railway Safety;
- Maintenance support;
- All equipment necessary to allow the installation, testing and introduction of services on this line without disruption to Phase III services;
- Any other service needed to provide a complete UPS system”.



8.

Further, the Annexure to the Tender document released by DMRC clearly provides a detailed break-up of value of various goods and services to be supplied under the contract.

The relevant portion of the said Annexure is extracted as under

S N	Description	Quantity (Part-1)		Quantity (Part-2)		Unit	Unit rate (INR)	Price (INR)
		JICA	Non JICA	JICA	Non JICA			
A. Supply								
1	120 KVA for Depot complete in online redundant configuration along with isolation transformer and ATS cubicle, Battery Sharing	2	0	2	2	Nos.	20,39,403.00	1,22,36,418.00

	cubicle/ Battery Circuit Breakers, SCVS.							
2	60 KVA UPS for Interlocking station complete in online redundant configuration along with isolation transformer and ATS cubicle, Battery Sharing cubicle/Battery Circuit Breaker, SCVS.	11	0	8	6	Nos.	14,42,079.00	3,60,51,975.00
3	30KVA UPS for Secondary station complete in on line redundant configuration along with Isolation transformer and ATS cubicle Battery Sharing cubicle/ Battery Circuit Breaker, SCVS	26	1	27	8	Nos.	10,50,539.00	6,51,33,418.00
4	Appropriate capacity (for interlocked stations and depots) VRLA maintenance free batteries (Having Two sets and another set of 6 cells)	13	0	10	8	Sets	24,18,000.00	7,49,58,000.00
5	Appropriate capacity (for secondary stations) VRLA maintenance free batteries (Having Two sets and another set of 6 cells)	26	1	27	8	Sets	12,09,000.00	7,49,58,000.00
C. Documentation, Installation, Testing & Commissioning								
S N	Description	Quantity		Quantity		Unit	Unit rate (INR)	Price (INR)
		JICA	Non JICA	JICA	Non JICA			
	Documentation, Installation, Testing Commissioning of complete system at interlocking stations/depot with earthing.	13	0	10	8	Per station/ Depot	68,250.00	21,15,750.00
2	Documentation, Installation, Testing Commissioning of complete system at secondary stations with earthing	26	1	27	8	Per station	68,250	42,31,500.00
D. Training								
S N	Description	Quantity (JICA)		Unit	Unit rate (INR)	Price (INR)		
		Part - 1	Part - 2					
1	Trainer's mandays	60	0	Man-days	8,000.00	4,80,000.00		
2					GRAND TOTAL	30,50,00,001.00		

9. A copy of the contract entered with DMRC is submitted.
10. A perusal of the above tender document and contract makes it clear that the applicant is required to supply the UPS systems to DMRC. Further, the applicant is also required to undertake the erection, installation and commissioning of the UPS system at the sites

designated by DMRC. Further, separate consideration for supply of goods and services have been provided. In other words, it is not a case where the supply of goods and services is for one lump-sum consideration.

11. Further, the UPS system are manufactured from the applicant's factory at Maharashtra. Therefore, the goods are supplied by the applicant from Maharashtra. However, the service portion of the contract i.e. erection, installation and commissioning service are rendered by the New Delhi branch of the applicant, which is separately registered under GST law.
12. In view of the above, the applicants have been treating the supplies made to DMRC as under:
 - Supply of UPS from the state of Maharashtra as supply of goods
 - Supply of Erection, installation, commissioning, testing etc., of UPS system services from New Delhi as supply of services.
13. Accordingly, the applicant has been raising separate invoices on DMRC for supply of goods and supply of services. Illustrative copies of the invoices raised by the applicant on DMRC for supply of goods and supply of services are submitted. Thus, in the pre-GST as well as post GST regime, the applicant has been treating the supplies made to DMRC as separate supply of goods and services.
14. The above fact is corroborated by the dispatch clearance certificates issued by DMRC which direct the applicant to supply the UPS system along with the accessories to the designated locations for installation/erection. The said certificates issued by DMRC specify that the goods supplied by the applicant are to be stored in the designed location. Illustrative copies of the dispatch clearance certificates are submitted.
15. The goods are dispatched to the locations designated by DMRC under the cover of an E-way bill generated in the name of DRMC. Illustrative copy of the e-way bills e-way are submitted.
16. Further, the Lorry receipts issued by the transporter for the transport of the goods also mentions the name of DMRC as the consignee of the goods. Illustrative copy of the lorry receipts issued by the transporters are submitted.
17. Further, prior to the erection/installation of the UPS system, DMRC officials also inspect the UPS system and the accessories and give a go-ahead to the applicant for erection/installation of the UPS system.
18. The applicant further submits that once the goods are received by DMRC at the designated locations, the said goods cannot be removed and used elsewhere by the applicant. In other



words, the UPS systems once dispatched to DMRC's site cannot be diverted and supplied by the applicant to any other customer.

19. The above factual position demonstrates that the title/property in the goods stands transferred to DMRC prior to the installation/erection of the UPS system.
20. In the pre-GST regime, the applicants were discharging Central Excise Duty and VAT/Sales tax on the clearance and sale of UPS system. Further, the service of erection, installation and commissioning of UPS system was treated by the applicants as 'works contract service and thus the applicants were paying service tax accordingly.
21. The applicant submits that DMRC also treated the service of erection, installation and commissioning of UPS system undertaken by the applicants as 'works contract in the pre-GST regime and deducted WCT TDS, as applicable. The documents corroborating this factual position regarding the tax treatment in the pre-GST regime are collectively enclosed.

STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW AND/OR FACTS, AS THE CASE MAY BE, IN RESPECT OF THE QUESTIONS(S) ON WHICH ADVANCE RULING IS REQUIRED

A. APPLICANT'S ELIGIBILITY TO FILE PRESENT ADVANCE RULING APPLICATION.

A.1 Section 95(c) of the CGST Act defines the term applicant as under:

"applicant" means any person registered or desirous of obtaining registration under this Act"

... *Emphasis Supplied*

A.2 A perusal of the above clarifies that scope of the term 'applicant includes both, the person registered under the CGST Act and also the person desirous of seeking registration under the CGST Act.

A.3 Further, Section 22 of the CGST Act specifies the person liable for registration and reads as under:

"22. (1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

... *Emphasis Supplied*

A.4 The above referred Section can be vivisected into following essentials: -

- a. A supplier shall be liable to be registered under CGST Act in the State or Union Territory, from where he makes taxable supply of goods or services or both;
- b. If the aggregate turnover in the financial year exceeds rupees twenty lakh.



A.5 The applicant submits that it is registered in the state of Maharashtra and is also making taxable supplies of goods and services from the state of Maharashtra to its customers located in state of Maharashtra and elsewhere. Further, the turnover of the applicant exceeds rupees twenty lakhs in the financial year. Given this, it is submitted that applicant clearly satisfies the definition of 'applicant under sub Section (c) of the Section 95 of the CGST Act.

A.6 Section 95(1) of the CGST Act defines the term 'advance ruling' as under:-

"(a) "advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-Section (2) of Section 97 or sub-Section (1) of Section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;"

... Emphasis Supplied

A7 Perusal of the above clarifies that the advance ruling can be sought on the issues/matters specified under Section 97(2) of the CGST Act. The relevant portion of Section 97 of the CGST Act is extracted hereunder:

"97. (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.

(2) 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."

... Emphasis Supplied

A.8 In view of the above, an advance ruling may be sought on the issue of classification of any goods or services and also on the issue as to whether a particular activity/transaction results in a supply of goods or supply of services. Further, a ruling may also be sought regarding the liability to pay tax on any supply of goods or services or both.

A.9 The applicant submits that the question for determination in the present application concerns classification of the supply made by the applicant under the contract with DMRC. In other words, the applicant is seeking a ruling on the issue as to whether the transaction with DMRC qualifies as a supply of goods or a supply of services. Additionally, the applicant is also seeking a ruling regarding the applicable rate of tax on the supply made to DMRC.

A.10 Further, Section 96 of the CGST Act provides for appointment of advance ruling authority and reads as under:

"96. 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."

... Emphasis Supplied

A.11 Hence, an Advance Ruling Authority appointed by the concerned State or Union Government under concerned State or Union Territory Goods and Service Tax Act, shall be the deemed to be the Advance Ruling Authority for the purpose of CGST Act.

Section 96 of the Maharashtra Goods and Service Tax Act, 2017, reads as under:

"SECTION 96

(1) The Government shall, by notification, constitute an Authority to be known as the Maharashtra Authority for Advance Ruling:

Provided that the Government may, on the recommendation of the, Council, notify any Authority located in another State to act as the Authority for the State.

(2) The Authority shall consist of

(i) One member from amongst the officers of central tax; and

(ii) One member from amongst the officers of State tax,

to be appointed by the Central Government and the State Government respectively.

(3) The qualifications, the method of appointment of the members and the terms and conditions of their services shall be such as may be prescribed.

A.12 The applicant submits that in terms of the above referred Section 96 of the Maharashtra Goods and Service Tax Act, 2017, the Government of Maharashtra has issued a Notification No. MGST-1017/ CR 193/Taxation dated 24.10.2017, which constitutes this authority as Maharashtra Authority for Advance Ruling.

- A.13 The applicant submits that the applicant has its manufacturing unit in Maharashtra where the UPS for DMRC contract are being manufactured. Thus, the applicant is making a taxable supply from Maharashtra.
- A.14 Therefore, the applicant submits that by virtue of Section 96 of the Maharashtra Goods and Service Tax Act, 2017, the questions for determination in advance ruling lie before the Maharashtra Authority for Advance Ruling.
- A.15 In view of the foregoing, the applicant submits that it is eligible to file the present advance ruling application before the Maharashtra Authority for Advance Ruling, Mumbai, appointed vide Notification No. MGST-1017/CR 193/Taxation, dated 24.10.2017 read with Section 96 of Maharashtra Goods and Service Tax Act, 2017.

B. QUESTIONS REQUIRING ADVANCE RULING

The question on which Advance Ruling is sought by the applicant is as under:

- Whether the contract entered into with DMRC for supply, erection, installation, commissioning and testing of UPS system qualifies as a supply of works contract under Section 2(119) of the CGST Act?

If yes, whether such supply made to DMRC would be taxable at the rate of 12% in terms of Sr. no. 3(v) of Notification No. 11/2017 - C.T. (Rate), as amended w.e.f. 25.1.2018?

APPLICANT'S INTERPRETATION

Under the contract entered with DMRC, the applicant is supplying UPS system and also undertakes erection, installation, commissioning and testing etc., of the UPS system at the sites designated by DMRC. The applicant's understanding is that the applicant is making two supplies to DMRC namely supply of UPS Systems i.e. goods and the supply of erection, installation and commissioning service i.e. pure services. Thus, the applicant is of the view that GST liability would have to be discharged on the two supplies separately.

- C.2. The aforesaid submission is clearly supported by the fact that the scope of work under the contract with DMRC (read with the tender documents) clearly specify the various goods and services to be supplied to DMRC and also provides separate consideration to be paid/payable by DMRC to the applicant for the supply of goods and for the supply of services.
- C.3 The applicant submits that the applicant makes a supply of goods i.e. UPS system to DMRC from state of Maharashtra and issues a tax invoice for this supply. A perusal of the tax invoice

for supply of UPS system establishes that the applicant has transferred the title in the goods to DMRC. The goods are consigned to DMRC at the time of removal from the manufacturing unit.

C.4 Thus, at the time of removal of the goods from the factory, the goods are appropriated towards the contract entered into with DMRC. The applicant submit that the goods once removed from the factory and consigned to DMRC's location cannot be diverted by the applicants for supply to any other customer. This proves that the property in the goods stands transferred to DMRC once the said goods are dispatched by the applicants from the factory.

C.5 In view of the above, the applicant is of the view that the supply of UPS system made from the state of Maharashtra would be leviable to GST at the rate of 18% as supply of goods. Similarly, the applicant is of the view that supply of erection, installation, commissioning, testing etc., of UPS system made from New Delhi registration for DMRC would be leviable to GST at the rate of 18% as supply of services.

C.6 Sr. no. 3(v) of Notification no. 11/2017-C.T. (Rate) dated 28.6.2017 as amended w.e.f. 25.1.2018 *inter alia* specifies a concessional rate of 12% GST (6% CGST and 6% SGST) for a composite supply of 'works contract' in respect of construction, erection, installation, etc. of original works pertaining to railways, monorails and

C.7 Section 2(119) of the Central Goods and Services Tax Act, 2017 ('CGST Act') defines the term '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;"

C.8 Schedule II of the CGST Act specifies the activities to be treated as supply of goods or supply of services. Entry 6(a) of Schedule II is reproduced as under:

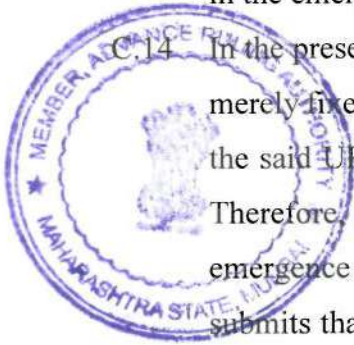
"6. Composite supply

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

(a) Works contract as defined in clause (119) of section 2; and"

C.9 Entry 6(a) of Schedule II of the CGST Act has deemed a 'works contract under Section 2(119) as a 'supply of service'.

- C.10 Section 2(119) of the CGST Act provides that a contract for construction, erection, installation, maintenance, etc. of an 'immovable property' which involves transfer of property in goods during the execution of such contract would qualify as a 'works contract'.
- C.11 In the present case, the applicant first supplies the UPS system to DMRC. Thereafter, the applicant also undertakes erection, installation, commissioning and testing etc., of the UPS system. The invoices and other documents attached with the application proves that the property in the goods is transferred to DMRC.
- C.12 The above documents establish that the property in the goods i.e. UPS system is not transferred to DMRC during the execution of the contract. Once this is the factual position, the applicant submits that the contract entered into with DMRC would not qualify as 'works contract.'
- C.13 Further, for a supply to be treated as 'works contract, the pre-requisite is that the same should be in relation to an 'immovable property'. In other words, the contract should result in the emergence of an immovable property.
- C.14 In the present case, the applicant submits that the UPS system supplied by the applicant is merely fixed to a foundation by way of nuts and bolts for its proper functioning. Further, the said UPS system is capable of being dismantled and installed elsewhere, if required. Therefore, the applicants submit that the supply of UPS System does not result in the emergence of any 'immovable property'. Once this is the factual position, the applicant submits that the contract with DMRC does not qualify as a 'works contract under Section 2(119) of the CGST Act.
- C.15 The above submission is supported by the decision of Hon'ble Supreme Court in case of CCE, Ahmedabad vs. Solid & Correct Engineering Works reported at 2010 (252) E.L.T. 481 (S.C.). In the said case, one of the respondent (M/s. Solidmec Equipments Ltd) was engaged in supply of Asphalt Drums/ Hot Mix Plants and also undertook its erection, installation and commissioning at the customer's premises. The respondent was issued a Show cause notice on the grounds that the process of assembly of the parts and components of Asphalt Drums/Hot Mix Plants at the customer's site amounted to manufacture of such plants and thus leviable to Excise duty.
- C.16 In that case, the Supreme Court held that the Asphalt Drums/Hot Mix Plants were assembled and installed by the respondent only in order to enable the said machine to



operate in a wobble-free state and fixing of the said machinery to the ground/earth would not make it an immovable property. Hence, the said activity was held to be manufacture of movable goods leviable to excise duty. The relevant portion of the said decision is extracted as under

"19. It is evident from the above that the expression "attached to the earth" has three distinct dimensions, viz. (a) rooted in the earth as in the case of trees and shrubs (b) imbedded in the earth as in the case of walls or buildings or (c) attached to what is imbedded for the permanent beneficial enjoyment of that to which it is attached. Attachment of the plant in question with the help of nuts and bolts to a foundation not more than 11/2 feet deep intended to provide stability to the working of the plant and prevent vibration/wobble free operation does not qualify for being described as attached to the earth under any one of the three clauses extracted above. That is because attachment of the plant to the foundation is not comparable or synonymous to trees and shrubs rooted in earth. It is also not synonymous to imbedding in earth of the plant as in the case of walls and buildings, for the obvious reason that a building imbedded in the earth is permanent and cannot be detached without demolition. Imbedding of a wall in the earth is also in no way comparable to attachment of a plant to a foundation meant only to provide stability to the plant especially because the attachment is not permanent and what is attached can be easily detached from the foundation. So also the attachment of the plant to the foundation at which it rests does not fall in the third category, for an attachment to fall in that category it must be for permanent beneficial enjoyment of that to which the plant is attached.

20. It is nobody's case that the attachment of the plant to the foundation is meant for permanent beneficial enjoyment of either the foundation or the land in which the same is imbedded.

24. Applying the above tests to the case at hand, we have no difficulty in holding that the manufacture of the plants in question do not constitute annexation hence cannot be termed as immovable property for the following reasons:

(i) The plants in question are not per se immovable property.

(ii) Such plants cannot be said to be "attached to the earth" within the meaning of that expression as defined in Section 3 of the Transfer of Property Act.



(iii) The fixing of the plants to a foundation is meant only to give stability to the plant and keep its operation vibration free.

(iv) The setting up of the plant itself is not intended to be permanent at a given place. The plant can be moved and is indeed moved after the road construction or repair project for which it is set up is completed.

29. Applying the above test to the case at hand, the plants in question were neither attached to earth within the meaning of Section 3(26) of the General Clauses Act nor was there any intention of permanently fastening the same to anything attached to the earth 33..... In the instant case all that has been said by the assessee is that the machine is fixed by nuts and bolts to a foundation not because the intention was to permanently attach it to the earth but because a foundation was necessary to provide a wobble free operation to the machine. An attachment of this kind without the necessary intent of making the same permanent cannot, in our opinion, constitute permanent fixing, embedding or attachment in the sense that would make the machine a part and parcel of the earth permanently. In that view of the matter we see no difficulty in holding that the plants in question were not immovable property so as to be immune from the levy of excise duty”.

C.17 In the present case as well, the UPS system is affixed on a foundation/platform for its efficient performance. Further, the said UPS system can be uninstalled without causing any significant damage to its parts and can be shifted to another location, if required.

C.18 The applicant further submits that though certain foundation/civil work is required in the installation/commissioning of the UPS system to make it operational, this very fact does not mean the UPS system becomes an immovable property.

C.19 Thus, the applicant submit that the contract for supply of UPS system to DMRC does not qualify as a 'works contract' under Section 2(119) of the CGST Act since the installed UPS system cannot be said to result in the emergence of an immovable property.

C.20 Once the contract does not qualify as a 'works contract under Section 2(119) of the CGST Act, the applicant is of the view that the concessional rate of tax under the amended Sr. no. 3(v) of Notification no. 11/2017-C.T. (Rate) dated 28.6.2017 will not be available in respect of the supply made by the applicant to DMRC.

C.21 However, since certain foundation/ civil works is required for making the UPS system operational, a doubt may arise that the UPS system supplied by the applicant results in the

emergence of an immovable property and therefore the entire contract entered into with DMRC would qualify as a works contract under Section 2(119) of the CGST Act. If the contract is treated as a 'works contract, the applicable rate of tax would be 12% and not 18% which the applicant has been paying till date. C.22 In view of the above possibility of the contract with DMRC being treated as a 'works contract' under Section 2(119) of the CGST Act and the tax consequences that may follow, we request the authority for advance ruling to expedite the resolution of the matter at hand and issue a ruling on the question as to whether contract entered into with DMRC for supply, erection and installation of UPS system qualifies as a supply of 'works contract service under Section 2(119) of the CGST Act and whether such supply would be taxable at the rate of 12% in terms of amended Sr. no. 3(v) of Notification No. 11/2017 - C.T. (Rate).

03. CONTENTION - AS PER THE CONCERNED OFFICER:

“Comments

C-1 to C-20 - No comments

C-21 Though the foundation/civil work is required, the UPS system can be uninstalled without causing any significant damage to its parts are be shifted to another location, if required, as stated by the applicant in para C-17 & hence cannot be treated as immovable property & therefore cannot be treated as a Works Contract' and would be liable for 18% rate of duty.

C-22 WORKS CONTRACT HAS BEEN DEFINED IN SECTION 2(119) OF CGST ACT, WHICH READS AS FOLLOWS:

"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. 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 is a clear demarcation of a works contract as a supply of service under GST,

In the instant case, it cannot be treated as a works contract as it is not a contract which deal with any immovable property. The applicant is supplying UPS system which is not immovable property and the services rendered by them is not related to immovable property. Further, even if the contract with DMRC is treated as works contract the rate of duty will be 18% as metro is not included.

The rate of GST for Works Contract Service has been prescribed in serial number 3 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 20/2017-Central Tax (Rate) dated 22.08.2017 & notification no.24/2017-Central Tax (Rate) dated 21.09.2017 and is as under. Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to –

6% CGST + 6% SGST

(a) Railways, excluding monorail and metro;

(b) a single residential unit otherwise than as a part of a residential complex;

(c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;

(d) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under- (1) the *Affordable Housing in Partnership' component of the Housing for All. (Urban) Mission/Pradhan Mantri Awas Yojana; (2) any housing scheme of a State Government;

(e) Post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes; or

(f) mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages Services provided to the Central Government, State Government, Union Territory, a local authority or a governmental authority 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 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.

Composite Supply under GST

Under GST, a composite supply would mean 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:

In the instant case, supply of UPS cannot be treated as Composite Supply. The recipient of UPS has the option to opt for installation or without installation.

In view of the above, the applicant's contract with DMRC cannot be treated as works contract and will be treated as supply of goods and supply of services separately and will attract 18% rate of GST.

04. HEARING

Preliminary hearing in the matter was held on 20.09.2019. Sh. Kunal Nikumbh (Pre-Associate) & Ms. Nupoor Agrawal appeared, made written submissions & requested for admission of their application. The application was admitted and taken up for final hearing as per applicant's request. Jurisdictional Officer was not present.

The representative of applicant has explained that their main activity was, construction and erection of UPS system for DMRC, Delhi. Their Maharashtra office manufactures UPS and supplies to the DMRC and their Delhi office performs the commissioning and erection of part. They raised the question, whether the whole supply could be treated as works contract.

05. OBSERVATIONS AND FINDINGS:

We have gone through the facts of the case, documents on record and submissions made by the applicant.

Applicant's corporate head office at Mumbai manufactures various types of UPS systems. Applicant, formerly known as Emerson Network Power (India) Pvt. Ltd also supplies installation, commissioning, maintenance & other services to its customers.

The applicant has submitted that they have entered into a contract with Delhi Metro Railway Corporation ("DMRC") for Supply, installation, testing, and commissioning of UPS systems and the scope of the works includes but not limited to supply, manufacture, inspection, packing, shipping, transportation, storage, delivery, handling, insurance, installation, interfacing, integration, testing & commissioning, maintenance support, spares, special tools, test equipment, training, software, documentation and providing DLP for the UPS system. They have submitted of supply of both goods as well as services to be provided by the under the said contract. We find that they will be supplying various UPS systems which will be installed, tested and commissioned by them. They have also mentioned that they will give Presentations, reviews and audit support; handle Transportation, Handling and Storage of the material; provide Insurance Cover for the material supplied, Provide all information, documents requested by Signaling, Telecommunication and AFC Contractors; provide System operations and maintenance support services, Training for operations and maintenance staff, prepare Operation, Maintenance and Training Manuals, etc. The applicant has submitted that from the tender document and contract it is clear that separate consideration for supply of goods and services have been provided and therefore this is not a case where the supply of goods and services is for one lump-sum consideration. The applicant has also submitted that whereas the goods are supplied by the applicant from their Maharashtra GST registered premises, the service portion of the contract i.e. erection, installation and commissioning service are rendered by their New Delhi branch which is separately registered under GST law.

From a perusal of the Agreement submitted by the applicant we find that even though the contract is for Supply, installation, testing, and commissioning, etc., of Uninterrupted Power Supply System for Signalling, Telecommunication and Automatic Fare Collection System for the Mass Rapid Transport System of DMRC there is a provision for separate consideration for supply of goods and services. Even though the applicant has bifurcated the work into supply of goods from their Maharashtra GST registered premises and supply of services from their New Delhi GST registered office and accordingly raising separate invoices on DMRC for supply of goods and supply of services, we find that the contract has been entered into, by the applicant's Maharashtra office and not by their New Delhi GST registered office. Thus we are taking up the contract as one contract for which

agreement has been entered into, by DMRC and the applicant situated in Maharashtra. We observed that the applicant is seeking a ruling on the issue as to whether their transaction with DMRC qualifies as a supply of goods or a supply of services and the applicable rate of tax on the supply made to DMRC.

On perusing the submissions of the applicant & the documents submitted by them, jurisdictional office, we find that the basic issue before us is whether in the subject case there is supply of Works Contract or Composite Supply. In the subject case we find that the applicant first despatches the goods to DMRC under an Invoice and E Way Bill. Thus the title in property of the said goods are transferred as soon as the delivery is completed. It is only thereafter that installation, etc takes place. We agree with the applicant's contention that the contract for supply of UPS system to DMRC does not qualify as a 'works contract' under Section 2(119) of the CGST Act since the installed UPS system cannot be said to result in the emergence of an immovable property. We shall now discuss the provisions relating to Works Contract and Composite Supply. GST Sch.-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.*

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"*

We have already observed that, the applicant, in the subject case UPS is not as immovable property as it can be dismantled and moved to a different location without any damage. We find from their submissions and agreement that the contract is considering a clear demarcation of goods & services to be provided by the applicant. Now we have to decide whether the supplies are naturally bundled & in conjunction with each other as

required by the definition of composite supply. Hence we refer to the definition of 'Composite Supply' as mentioned in sub-section (30) of Section 2 of CGST Act, 2017 which is 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'.

From the discussions made above we find that in the contract submitted by the applicant the major part of the contract is supply of goods. i.e. UPS Units, etc. These goods are delivered to the client by the applicant and such goods that are supplied are used by the applicant to provide services of installation, testing and commissioning of the substations. Without these goods the services cannot be supplied by the applicant and therefore we find that the goods and services are supplied as a combination and in conjunction and in the course of their business where the principal supply is supply of goods. Thus we find that there is a composite supply in the subject case.

Now that we have found that there is no works contract involved in the subject case and the supply is nothing but a composite supply with supply of goods being the principal supply, we come to the second question raised by the applicant which is, whether their transaction is taxable at the rate of 12% in terms of Sr. no. 3(v) of Notification No. 11/2017 - C.T. (Rate), as amended w.e.f. 25.1.2018?

The principal supply as mentioned above in this case is a supply of goods and therefore the GST will have to be paid on the goods at the appropriate rate after classification under the appropriate heading. The principal goods in the subject case is UPS units which are most important for the applicant to render supply as per the contract.

We find from the submissions made by the applicant that UPS is classified under Heading 8504 and attracts GST @18% as supply of goods. Hence the principal supply in their composite supply being goods as described under heading 8504, the applicant is liable to pay GST on the whole contract @ 18%.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

**(Under section 98 of the Central Goods and Services Tax Act, 2017 and the
Maharashtra Goods and Services Tax Act, 2017)**

NO.GST-ARA- 17/2019-20/B- 107 Mumbai, dt. 4.10.2019

For reasons as discussed in the body of the order, the questions are answered thus –

Question 1. Whether the contract entered into with DMRC for supply, erection, installation, commissioning and testing of UPS system qualifies as a supply of works contract under Section 2(119) of the CGST Act?

Answer: - Answered in the negative.

Question 2. If yes, whether such supply made to DMRC would be taxable at the rate of 12% in terms of Sr. no. 3(v) of Notification No. 11/2017 - C.T. (Rate), as amended w.e.f. 25.1.2018?

Answer: - Not answered as the answer to the first question is in the negative.



—ed—
B. TIMOTHY
(MEMBER)

—ed—
A. A. CHAHURE
(MEMBER)

CERTIFIED TRUE COPY

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Chief Commissioner of Central Tax, Churchgate, Mumbai
5. Joint commissioner of State Tax, Mahavikas for Website.


MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai – 400021.