



## Dhruva Alert for GST Updates – 14<sup>th</sup> Edition

### Advance rulings:

#### 1. Ujjwal Pune Limited – Maharashtra

##### Issues for Consideration

##### Issues:

- Whether supply under the Project is covered under Sr.no. 3(vi)(a) of notification no. 11/2017 - Central Tax (Rate) dated 28 June 2017 as amended i.e. composite supply of works contract 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 civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession?
- What is the rate of GST applicable for the Project?

##### Discussion & Ruling

##### Discussion:

- The Contract awarded to the Applicant by the Pune Municipal Corporation ('PMC') involves supply, installation, erection, operation and maintenance of Energy Efficient dimmable LED street lights along with pet feeder basis SCADA system for a period of 12 years. Thereafter, all the assets are handed over to PMC.
- The Applicant is responsible for the warranty, replacement and maintenance of street lights during the contract period.
- The Applicant *inter alia* submitted that:
  - a) The installation and operation of the SCADA system is suitable only for the LED fixtures which are installed for this specific purpose.
  - b) No LED fixtures and SCADA system used in the Contract can be useful for any other purpose and for any other projects.



- c) There will be no commercial value except salvage value once the materials are removed from the Project.
- d) The Contract qualifies as a 'works contract' service as the materials including lights and other fixtures supplied become part of the immovable property and cannot be transferred without causing extensive damage to the property.
- Given the above, the Applicant contended that the Contract falls under Sr.no.3(vi)(a) of notification no. 11/2017 - Central Tax (Rate) dated 28 June 2017 as amended i.e. composite supply of works contract 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 civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession.
- The Authority held that the activity in question is a composite supply (with supply of LED Dimmable Street lights/ fixtures as principle supply) as defined under the GST Act, 2017 because:
  - a) The terms of the contract elucidate that the contract would involve more than two taxable supplies such as supply of LED Dimmable Street lights and fixtures, installation, commissioning, operation, etc.
  - b) The goods and services are supplied in conjunction with each other in the ordinary course of business.
- Further, it was observed that the parameters of a works contract as defined in sub-section (119) of section 2 of the GST Act, 2017 were not fulfilled as:
  - a) There would be no transfer of assets and the assets would remain the property of the Applicant for 12 years.
  - b) In case of malfunction or if the LEDs/fixtures do not function, the Applicant would be responsible for changing them which implies that the fixtures can be replaced without any damage to the poles.
  - c) The Applicant was obliged to make the installations on electric poles without compromising on existing aesthetics, which further implies that removal or replacement of the lighting fixtures do not lead to damage.
  - d) The argument that LEDs / fixtures become immovable property because they are not useful for any other purpose does not hold good as the definition of an immovable property does not envisage the usefulness or non-usefulness of the property in question.

**Ruling:**

- Project will not be covered under Sr.no. 3(vi)(a) of notification no. 17/2017 - Central Tax (Rate) dated 28 June 2017, as amended, as the said notification does not cover supply of goods.
- The Contract is taxable at 12% as supply of 'LED Lights or Fixtures including LED Lamps' which is covered under the Sub-Heading 9405 40 90 of the GST Tariff, 2017.



**Dhruva  
Comments /  
Observations**

- The question of immovability of goods is a contentious matter. Reliance is generally placed on the definitions of ‘immovable property’ contained in allied legislations such as the General Clauses Act, 1897 as well as the Transfer of Property Act, 1882. There are judicial precedents which state that if movement of a chattel requires dismantling and reassembling (causing substantial damage) or re-erecting at another place for use, then such chattel would be immovable in nature. Also, whether an article that is permanently fastened to anything attached to the earth would qualify as an ‘immovable property’ would also require ascertainment of both the intention as well as the factum of fastening from the facts and circumstances of each case (Triveni Engineering & Industries Ltd vs. CCE [(2000) 120 ELT 273 (SC)]). The issue is all the more complex while analysing the applicability of such provisions in case of build-operate-transfer contracts. Oddly enough, though, the above ruling observes that there is no transfer of property in the assets for 12 years, it goes on to conclude that the contract results in a composite supply wherein the principal supply is the supply of goods.
- Further, this ruling is an addition to the advance ruling pronounced in the State of Odisha in the case of M/s Super Wealth Financial Enterprises (P) Ltd (later upheld by the Appellate Authority). The said ruling also mused on a similar issue and came to the conclusion that the activities undertaken by the applicant would not qualify as ‘pure service’. The Appellate Authority very categorically held that activities carried out would qualify as supply of goods in terms of the provisions of Schedule II of the GST Act, 2017.

**2. Rambagh Palace Hotels Private Limited – Rajasthan**

**Issues for  
Consideration**

**Issues:**

- Whether GST paid on the following would be available as input tax credit (‘ITC’):
  - a. building materials meant for repair of building;
  - b. electrical/ sanitary fittings meant for repair of existing electrical/ sanitary fittings;
  - c. consumables meant for repair of existing furniture and fixtures;
  - d. labour supply where material and supervision are provided by the Applicant, for carrying out:
    - repair of building;
    - repair of electrical installation and/ or sanitary fittings;
    - repair of existing furniture and fixtures;
  - e. works contract services received for:
    - repair of building;
    - repair of electrical installation and/ or sanitary fittings;
    - repair of existing furniture and fixtures;
  - f. purchase of new ready to use furniture.

**Discussion &  
Ruling**

**Discussion:**

- The Applicant is a hotelier and is required to undertake repair and maintenance of the building and its components.



- The Applicant asserted that ITC in respect of repair and maintenance of the hotel building, furniture and fixtures, sanitary and other items will be available to him in accordance with provisions of section 17 of GST Act, 2017.
- The authority observed that ITC in general is not available for construction, reconstruction, renovation, addition, alteration or repair of an immovable property even when such goods or services or both are used in course or furtherance of business, the limiting factor being the extent of capitalisation.
- Accordingly, each scenario in relation to construction of immovable property was examined in light of the provisions contained in section 17 (5)(c) and 17(5)(d) of the GST Act, 2017 and the availability of the ITC was determined.
- It was also held that furniture and fixtures are not immovable property in most cases. In case, the furniture and fixtures are fixed or immobilised or considered as a part of construction activity of immovable nature, then the ITC will not be available to the extent of capitalisation of such goods and services.
- Further it was held that the Applicant can avail ITC of GST paid on purchase of new ready-to-use furniture such as chairs, etc. as per provisions mentioned in section 16 of the GST Act, 2017.

**Ruling:**

Sr. no.	Availability of ITC on GST paid on the following:	Ruling
a	building materials meant for repair of building	No - to the extent of capitalisation
b	electrical/ sanitary fittings meant for repair of existing electrical/ sanitary fittings	
c	consumables meant for repair of existing furniture and fixtures	Yes
d	labour supply where material and supervision are provided by the Applicant, for carrying out:	
	repair of building	No - to the extent of capitalisation
	repair of electrical installation and/ or sanitary fittings	
	repair of existing furniture and fixtures	Yes
e	works contract services received for:	
	repair of building	No to the extent of capitalisation
	repair of electrical installation and/ or sanitary fittings	
	repair of existing furniture and fixtures	Yes
f	purchase of new ready-to-use furniture	Yes

**Dhruva  
Comments /  
Observations**

- This ruling affirms the provisions cited in the Act and provides clarity on the availability of ITC in specified scenarios.



### 3. Puranik Construction Private Limited – Maharashtra

#### Issue for Consideration

##### Issues:

- Eligibility under notification 01/2018-Central Tax (Rate) dated 25 January 2018 which provides for concessional rate of GST at 12% on supply of works contract service in respect of Original Works pertaining to construction of a low cost house in an Affordable Housing Project ('AHP')

#### Discussion & Ruling

##### Discussion:

- The Applicant/ Contractor proposes to enter into a contract with a Developer for construction of a residential project.
- The Applicant has submitted an architect's certificate certifying that 98.5% sq. mtrs. of the Floor Space Index ('FSI') will be consumed for flats having carpet area below 60 sq. mtrs.
- Thus, the Applicant has opined that their project falls under the definition of 'Affordable Housing' as mentioned in the notification issued by Government of India, Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30 March 2017 ('DEA notification').
- The Authority observed that the DEA notification has *inter alia* defined 'Affordable Housing' as a housing project using at least 50% of the Floor Area Ratio ('FAR')/ FSI for dwelling units with a carpet area of not more than 60 sq. mtrs. and 'Carpet Area' shall have the same meaning as assigned to it in section 2(k) of the Real Estate (Regulation and Development) Act, 2016.
- Also, a clarification was issued by the Government vide F.No. 354/52/2018-TRU, Government of India Ministry of Finance Department of Revenue (TRU) dated 7 May 2018 stating that low cost houses up to a carpet area of 60 sq. mtrs. per house in an AHP, which has been given infrastructure status under the DEA notification attracts concessional GST of 8%. Further, the builder/ developer shall determine whether the housing project qualifies as an AHP as per the definition of affordable housing given in the DEA notification. No certificate from any authority is required.

##### Ruling:

- The contention of Applicant was upheld based on a combined reading of the above clarification, DEA notification and the Notification 01/2018-Central Tax (Rate) dated 25 January 2018.
- It was also clarified that that entry (v) (da) of notification 01/2018 *supra* nowhere restricts the benefit to a 'Developer' only. The entry is qua the supply of service and not qua the person.

#### Dhruva Comments / Observations

- This ruling elucidates the reliance placed on notifications issued by governing bodies other than GST authorities for interpretation of terms not defined under the GST Act, 2017. For the real estate sector, heavy reliance has been placed on the GST regulations, on allied laws and regulations to interpret various terms and the scope of the various levies and exemptions.



#### 4. Siemens Limited – Maharashtra

##### Issue for Consideration

- Whether the freight charges recovered from the customer without the issuance of a consignment note will be eligible for exemption from GST in terms of Sr. no. 18 of notification no. 12/2017 - Central Tax (Rate) dated 28 June 2017.

##### Discussion & Ruling

###### **Discussion:**

- One of the major PSUs has awarded a Contract to the Joint Venture ('JV') which includes the supply of equipment and services both on an off-shore and on-shore basis (the overall contract was broken into six contracts). The Applicant, being the associate of the JV, is required to supply equipment and also certain services such as transportation, insurance, installation charges and training charges for the said equipment, i.e., two out of the six contracts.
- The Applicant will engage local transporters who are issuing consignment notes along with invoices, on which GST liability is being discharged under the reverse charge mechanism by the Applicant for providing transportation service to the customer.
- The Applicant stated that the transportation charges billed by them are exempt from GST in terms of notification *supra* primarily on the following grounds:
  - a) Since the Applicant is not issuing a consignment note on supply of transportation services under the contract, it will not qualify as a goods transport agency ('GTA') and is therefore eligible for exemption.
  - b) The Applicant has duly discharged GST on transportation charges levied by local transporters under reverse charge mechanism and has not claimed input tax credit on such services, assuming that the subsequent charge of the transportation costs from the customer will not be subject to GST.
  - c) The Applicant submitted that the activity performed is a *simpliciter* supply of specific equipment and pure services which does not result in any immovable property, hence the activities cannot be treated as a supply of works contract service.
  - d) The Applicant is executing two separate contracts and therefore the activities are independent supplies of goods and services and therefore cannot be regarded as one single contract. The mere presence of a cross fall breach clause in the two contracts does not alter the nature of the contracts with regard to composite supply.
- The Authority observed the following with respect to the contracts executed by the JV (including that of the Applicant):
  - a) The contracts are inter-dependent and the Contract makes it abundantly clear that notwithstanding the breakup of the contract price, the Contract shall at all times be construed as a single source responsibility. Any breach in any part of the First Contract shall be treated as a breach of the Second Contract, and vice-versa.
  - b) The scope of work in the Contract (six contracts in total) entered into with JV includes the installation, civil works, testing and commissioning of the supplied plant and equipment.
  - c) When considering the overall Contract, including the part which is executed by the Applicant, it was noted that the overall Contract it is awarded on a turnkey basis



	<p>and are in the nature of composite supply of works contract service and would be taxable at 18%.</p> <p><b>Ruling:</b></p> <ul style="list-style-type: none"> <li>• Since the services are rendered as part of the overall Contract which partakes the nature of works contract, and thus the freight charges recovered by the Applicant will not be eligible for exemption from GST in terms of notification <i>supra</i>.</li> </ul>
<p><b>Dhruva Comments / Observations</b></p>	<ul style="list-style-type: none"> <li>• The Authority has concluded that the separate contracts, which are interlinked by virtue of the cross fall breach clause, will constitute a single contract given that the overall Contract is classified as a supply of works contract service. The ruling is in line with the principles laid down by the Hon'ble Supreme Court in Indure Limited vs. CTO (2010 (9) SCC 461). However, the mere presence of a cross fall breach clause should not automatically lead them to a conclusion on the composite nature of the contract. The tests that need to be satisfied are whether the said activities are naturally bundled in the ordinary course of business. In this instance, the scope of work in the contract with the JV covered within its ambit installation, including civil works and hence the overall contract, (including the part executed by the Applicant) was considered to be a supply of works contract service by the JV. Therefore, the benefit of a notification of exemption, which seeks to exempt services in relation to transportation provided by any person other than a GTA or Courier Agency, cannot be extended to the Applicant on the basis that the overall contract is a composite supply of works contract service.</li> </ul>

**Circular:**

**5. Circular no. 101/20/2019 dated 30 April 2019**

<p><b>Issue</b></p>	<ul style="list-style-type: none"> <li>• Whether upfront amount payable in instalments for long term lease of plots is admissible for exemption from GST under notification no. 12/2017- Central Tax (Rate) dated 28 June 2017?</li> </ul>
<p><b>Clarification</b></p>	<ul style="list-style-type: none"> <li>• The entry at Sr. no. 41 of the notification <i>supra</i> reads as under: <p style="text-align: center;"><i>“Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of <b>long term lease</b> of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 50 per cent. or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area”</i></p> <p style="text-align: right;">(emphasis supplied)</p> <p><b>Clarification:</b></p> <ul style="list-style-type: none"> <li>• Once the amount is decided upfront, GST exemption on upfront amount is admissible under the notification <i>supra</i> irrespective of whether such upfront amount is payable or paid in one or more instalments.</li> </ul> </li> </ul>



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