



2019-TIOL-66-AAAR-GST

 सत्यमेव जयते	RAJASTHAN APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX NCR BUILDING, STATUE CIRCLE, C-SCHEME JAIPUR – 302005 (RAJASTHAN)	
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Proceedings under Section 101 of the Central GST Act, 2017 read with Rajasthan GST Act, 2017

Before the Bench of

1. Sh. Rakesh Kumar Sharma, Member(Central Tax)
2. Dr. Preetam B. Yashvant, Member(State Tax)

ORDER NO. RAJ/AAAR/02/2019-20 DATED 15.05.2019

Name and address of the Appellant	:	Shri Kailash Chandra, (Prop. Mali Construction), Mali Vas, Maandava, Mandwa, Sirohi-307001 (Rajasthan)
GSTIN of the Appellant	:	08ALVPC2862Q1ZA
Clause(s) of Section 97(2) of CGST / SGST Act, 2017, under which the question(s) raised	:	Determination of the liability to pay tax on any goods or services or both
Date of Personal Hearing	:	02.05.2019
Present for the Appellant	:	Shri Yash Dhadda, CA Ms. Shuchi Sethi, CA
Details of Appeal	:	Appeal No. RAJ/AAAR/APP/09/2018-19 dated 01.03.2019 against Advance Ruling No. RAJ/AAR/2018-19/32 dated 31.01.2019



(Proceedings under Section 101 of the Central GST Act, 2017 read with Section 101 of the Rajasthan GST Act, 2017)

At the outset, we would like to make it clear that provisions of both the Central GST Act, 2017 and Rajasthan GST Act, 2017 are same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central GST Act, 2017 would also mean a reference to the same provisions under Rajasthan GST Act, 2017.

2. The present appeal has been filed under Section 100 of the Central GST Act, 2017 (**hereinafter also referred to as ‘CGST Act’**) read with Section 100 of the Rajasthan GST Act, 2017 (**hereinafter also referred to as ‘RGST Act’**) by Sh. Kailash Chandra , Proprietor of Mali Construction, Mali Vas, Maandava, Mandwa, Sirohi-307001, Rajasthan, against the Advance Ruling No. RAJ/AAR/2018-19/32 dated 31.01.2019.

Brief Facts of the Case

3. Sh. Kailash Chandra , Proprietor of Mali Construction, Mali Vas, Maandava, Mandwa, Sirohi-307001, Rajasthan (**hereinafter also referred to as ‘the Appellant’**) is holding GSTIN 08ALVPC2862Q1ZA .

4. The Appellant provides comprehensive water services to the clients both private and Government . At the time of applying before the Rajasthan Authority for Advance Ruling, GST, Jaipur, the Applicant (**now the Appellant**) was in the process of bidding



for tender floated by Public Health Engineering Department (PHED), a unit of Rajasthan Government, for Designing, Supply, Installation, Commissioning, Operation & Maintenance of Solar Energy based Bore Well Pumping Systems, Reverse Osmosis Plant and Operation & Maintenance of Fluoride Control Project on ESCO and O & M contract.

5. In relation to the said tender, the scope of the work included Designing, economically and efficiently best suited to site conditions including depth of water table and safe yield of Bore Well, finalizing alignment of SPV (Solar Photo Voltaic) Plant , Providing and Installation of complete Solar Power Operated Water Pumping System including De-Fluoridation unit and all other components & accessories as per specifications, Drawing & Design and making it operational and keeping operational upto complete O & M period for 7 years.

6. The Appellant shall provide the potable water to the villagers regularly free of cost at the site of SPV Plant during and upto the end of O & M period for 7 years .

7. On the expiry of the O & M period, the Appellant is free to remove the plant at its cost and vacate the land subject to the prior intimation to P.H.E.D. and will take the possession of the plant.

8. In relation to such Tender, the Appellant was required to quote a rate for undertaking all the aforesaid activities which shall be inclusive of all the costs of site visits on the part of the Appellant, packaging, forwarding, spare parts, insurance and taxes & duties as may be applicable.



9. The Rajasthan Authority for Advance Ruling, GST, Jaipur (**hereinafter also referred to as 'AAR'**) vide its Advance Ruling Order No.RAJ/AAR/2018-19/32 dated 31.1.2019, has classified the activities of Supply, Design, Installation, Commissioning and Testing of Solar Energy based Water Pumping Systems and O & M work by the Applicant as a Works Contract of Composite Supply and determined the rate of Tax at 12% (CGST @ 6% and SGST @6%) under HSN CODE 9954, since the same is proposed to be undertaken for the Government Department .

10. Aggrieved by the rate of 12% of GST as determined under the Advance Ruling *ibid*, the Appellant has preferred the subject appeal under section 100 of the CGST Act/ RGST Act, 2017.

Grounds of Appeal

11. It has been submitted by the Appellant that the additional submissions made by them during the Personal Hearing held before the AAR, have not been considered and the Advance Ruling Order dated 31.1.2019 was passed in violation of provisions of Law and principles of natural justice.

12. The additional submissions pointed out the amendments made in the relevant Notifications having a direct impact on the case and non-consideration thereof resulted in an adverse effect .

13. The Notification No. 24/2018- Central Tax (Rate) dated 31.12.2018 reduced the rate of GST while inserting an Explanation against S. No.234 in the Entry in Column (3) of the Schedule-I of the Notification No. 1/2017- Central Tax (Rate) dated 28.06.2017 read with the Notification No. 27/2018- Central Tax (Rate), dated 31.12.2018, inserting



a new Entry at S. No. 38 in the Notification No. 11/2017- Central Tax (Rate), dated 28.06.2017.

14. The Notification No. 24/2018- Central Tax (Rate), dated 31.12.2018 inserted the following Explanation in Col. No. 3, against **S. No. 234** of Schedule-I of Notification No. 01/2017- Central Tax (Rate) ibid :-

“ **Explanation** : If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 [G.S.R. 690(E)], the **value of supply of goods for the purposes of this entry** shall be deemed as **seventy per cent.** of the gross consideration charged for all such supplies, and the **remaining thirty per cent.** of the gross consideration charged shall be deemed as **value of the said taxable service.**”

15. Similarly, the Notification No. 27/2018- Central Tax (Rate), dated 31.12.2018 inserted the following **Entry No. 38** :-

(1)	(2)	(3)	(4)	(5)
38	9954 or 9983 or 9987	Service by way of construction or engineering or installation or other technical services, provided in relation of setting up of the following , - (a) Bio – gas plant (b) Solar Power based devices (c) Solar power generating system (d) Wind mills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants/ devices (f) Ocean waves/tidal waves energy devices/plants Explanation :- This entry shall be read in conjunction with serial number 234 of Schedule I of the Notification No.1/2017-Central Tax (Rate) , published in the Gazette of India, Extraordinary, Part II, section 3, sub section(i) dated 28 th June,2017 vide GSR number 673(E) dated 28 th june,2017.	9	-



16. Thus, rate of GST on supply of Goods and Services in relation to Solar Power based devices came to be as under :

- * 5% on value of Goods (Value of Goods to be taken as 70% of the gross consideration)
- * 18% on the value of Services (Value of Services to be taken as 30% of the gross consideration)
- * Effective rate of GST - 8.9% ($5\% \times 70\% + 18\% \times 30\% = 8.9\%$)

Personal Hearing

17. A personal hearing in the matter was held on 02.05.2019 . Shri Yash Dhadda, CA & Authorised Representative alongwith Ms. Shuchi Sethi, CA ; appeared for personal hearing on 02.05.2019 on behalf of the Appellant. Sh. Yash Dhadda reiterated the submissions made in the appeal memorandum. He had nothing further to add.

Discussion and Findings

18. We have carefully gone through the Appeal papers filed by the Appellant, the Ruling of the AAR , as well as oral submissions made by the authorized representative(s) of the Appellant, at the time of Personal Hearing held on 02.05.2019. We find that the Appellant had requested for Ruling on whether the activity of supply, design, installation, commissioning and testing of solar energy based water pumping systems is supply of Goods or supply of Service and what shall be the rate of GST on it ?



19. The Rajasthan Authority for Advance Ruling (AAR) in its Ruling No. RAJ/AAR/2018-19/32, dated 31.01.2019, has pronounced the following Ruling :-

“ the activity of supply, design, installation, commissioning and testing of solar energy based water pumping systems and O & M work by the Applicant is a Works Contract of composite supply . Since this supply is proposed to be undertaken for a Govt. department, the rate of tax applicable on given service shall fall under Entry No. 3(iii) with HSN code 99544 and it should be IGST @ 12% (CGST @ 6% , SGST @ 6%).”

20. The Appellant is not satisfied with the aforesaid Ruling of the AAR and hence has appealed before this forum that no attention was paid by the AAR on Notification No. 24/2018- Central Tax (Rate) and No. 27/2018- Central Tax (Rate), both dated 31.12.2018, by which changes have been effected in the Notification No. 01/2017- Central Tax (Rate) dated 28.06.2017 and No. 11/2017- Central Tax (Rate) dated 28.06.2017 respectively.

21. We consider it necessary to analyze both the notifications so as to reach a conclusion whether the said notifications cover the activities of the Appellant or not. Hence, it will be relevant to reproduce the relevant entry No. 234 of Schedule-I of the Notification No. 01/2017- Central Tax (Rate) dated 28.06.2017 as amended by the Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018 and entry No. 38 of the Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 as inserted by the Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018.



Notification No.1/2017-Central Tax (Rate) dated 28th June, 2017

Schedule I – 2.5%

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
1	2	3
234	84 or 85	<p>Following renewable energy devices & parts for their manufacture</p> <p>(a) Bio-gas plant</p> <p>(b) Solar power based devices</p> <p>(c) Solar power generating system</p> <p>(d) Wind mills, Wind Operated Electricity Generator (WOEG)</p> <p>(e) Waste to energy plants / devices</p> <p>(f) Solar lantern / solar lamp</p> <p>(g) Ocean waves/tidal waves energy devices/plants</p> <p>(h) Photo voltaic cells, whether or not assembled in modules or made up into panels</p> <p>Explanation: If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 [G.S.R. 690(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service.</p>



Notification No. 11/2017-Central Tax (Rate) dated 28th June, 2017

(1)	(2)	(3)	(4)	(5)
38	9954 or 9983 or 9987	Service by way of construction or engineering or installation or other technical services, provided in relation of setting up of the following , - (a) Bio – gas plant (b) Solar Power based devices (c) Solar power generating system (d) Wind mills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants/ devices (f) Ocean waves/tidal waves energy devices/plants Explanation :- This entry shall be read in conjunction with serial number 234 of Schedule I of the Notification No.1/2017-Central Tax (Rate) , published in the Gazette of India, Extraordinary, Part II, section 3, sub section(i) dated 28 th June,2017 vide GSR number 673(E) dated 28 th june,2017.	9	-

22. We find that the Appellant had produced copies of the Volume-I and Volume-II of the Tender-Documents No. 17/2016-17 dated 23.08.2016 issued by the Additional Chief Engineer , Public Health Engineering Department (PHED) , Region-II, Jodhpur inviting tenders for designing, providing, installation, commissioning, of 118 Nos. Solar Energy based bore well water pumping systems (with De-fluoridation unit of capacity 1000 LPH) including comprehensive operation and maintenance for a period of seven years in various fluoride affected villages/habitations in district of Pali , Jaisalmer and Jalore . They had submitted that they are in the process of bidding for the **similar** tender floated by PHED for designing, providing, installation, commissioning, operation and maintenance of solar energy based bore well water pumping systems , Reverse Osmosis Plant and operation and maintenance of Fluoride Control Project on ESCO and O & M contract.



23. On careful consideration of the abovementioned entries of the said notifications, we find that the Solar Energy based bore well water pumping system (**hereinafter also referred to as “the System”**) deserve classification under entry No. 234 of the Notification No. 01/2017-Central Tax (Rate) as ‘**Solar Power based devices**’ . The Appellant has contended that benefit of Notification Nos. 24/2018-Central Tax(Rate) and 27/2018- Central Tax(Rate) inserting ‘Explanation’ in the entry No. 234 ibid and inserting entry No. 38 ibid respectively should be available to them . After going through the amended entries 234 and 34 ibid , we find that the benefit is available only when the **Solar Power based devices**’ i.e. **the System** is supplied along with **other goods and Services** , one of which being a taxable service specified in the entry at S. No. 38 ibid . We find that a standard Solar Energy based bore well water pumping system comprises SPV panels, Structures, Storage tank, Controller, Pipe and Cables. The Appellant is also adding De-fluoridation unit (DFU) and also accomplishing the task of installation, commissioning, operation and maintenance of the System including DFU. DFU qualifies for **other goods** while **Installation** and **Commissioning** of the System are the Services which are not only **taxable** but are also being provided in relation to setting up of the **System** , a requirement of the ‘Explanation’ to entry No. 234 ibid and entry No.38 ibid. Thus, we find that the condition precedent to availment of the benefit of these entries i.e. “supply of **other goods** and **Services** also, one of which should be a taxable service specified in the entry No. 38 ”, stands fulfilled .


24. In view of above, we hold that, with respect to a **Tender**, identical to the **Tender-Document No. 17/2016-17** ibid, which has been enclosed with the application dated 14.11.2018 filed by the Applicant/Appellant before the AAR, in terms




of supply of Goods and Services , the activities of supply, design, installation, commissioning and testing of solar energy based water pumping systems , whose time of supply falls after 31.12.2018, are both supply of Goods and supply of Services in terms of entry No. 234 , read with entry No. 38 ibid with rate of GST as prescribed under these entries . The Ruling dated 31.01.2019 passed by the Rajasthan Authority for Advance Ruling , Goods and Services Tax, Jaipur accordingly needs to be modified in view of the discussions hereinabove. Accordingly, we pass the following order :-

ORDER

25. We modify the Advance Ruling rendered by the Rajasthan Authority for Advance Ruling, Goods and Services Tax, Jaipur vide their Ruling No. RAJ/AAR/2018-19/32 dated 31.01.2019 and hold that with respect to a **Tender**, identical to the **Tender-Document** No. 17/2016-17 ibid in terms of supply of Goods and Services , the activities of supply, design, installation, commissioning and testing of solar energy based water pumping systems , whose time of supply falls after 31.12.2018, are both supply of Goods and supply of Services in terms of entry No. 234 ibid, read with entry No. 38 ibid, with rate of GST as prescribed under these entries. Consequently, the Appeal filed by the Applicant/Appellant i.e. Shri Kailash Chandra, Prop. Mali Construction, Sirohi is disposed of in above terms.


(RAKESH KUMAR SHARMA)
MEMBER (CENTRAL TAX)


(DR. PREETAM B. YASHVANT)
MEMBER (STATE TAX)



To,

Shri Kailash Chandra,
(Prop. Mali Construction),
Mali Vas, Maandava, Mandwa,
Sirohi-307001 (Rajasthan)

F.No. IV(16)AAAR/RAJ/09/2018-19/4595 to 4601 Dated: 16 May, 2019

Copy to :-

1. The Chief Commissioner of CGST & Central Excise (Jaipur Zone), NCR Building, Statue Circle , Jaipur-302005.
2. The Commissioner of RGST & Commercial Taxes, Rajasthan, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme, Jaipur-302005.
3. The Commissioner , Central GST Commissionerate , Jodhpur, G-105, New Jodhpur Industrial Area, Basni, Jodhpur-342003.
4. The Deputy/Asstt. Commissioner, Circle-Sirohi , Ward-3, Commercial Taxes Deptt., Sirohi - 307026
5. The Asstt./Deputy Commissioner , Central GST Division-E, Ground Floor, TDM Office , BSNL, Mahaveer Nagar, Pali-306401
6. Rajasthan Authority for Advance Ruling, Goods and Service Tax, NCR Building, Statue Circle , Jaipur-302005
7. Guard File

(Pramod Kumar Sharma)

Superintendent