

AUTHORITY FOR ADVANCE RULING – CHHATTISGARH
3rd & 4th Floor, Vanijyikar GST Bhawan, North Block Sector-19,

Atal Nagar, District-Raipur (C.G.) 492002

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PROCEEDING OF THE AUTHORITY FOR ADVANCE RULING
U/s. 98 OF THE CHHATTISGARH GOODS AND SERVICES TAX ACT, 2017

Members Present are

Smt. Sonal K. Mishra
Joint Commissioner

O/o Commissioner, State Tax

(CGGST), Raipur, Chhattisgarh Chhattisgarh

Shri Rajesh Kumar Singh,
Additional Commissioner,

CGST, Raipur

Subject: -Chhattisgarh GST Act, 2017 – Advance Ruling U/s 98 Chhattisgarh GST Act, 2017 –

1. Advance Ruling U/s 98 sought vide Application dated 05/03/2022 from M/s Agrawal Buildcon, C/o Agrawal Traders, Main Road, Korba, Chhattisgarh, 495677(here in after referred to as the applicant) GSTIN-22ASSPA1067D1Z7, regarding GST - seeking an advance ruling in respect of the following questions: -

- i. What should be the rate of tax on their work, will it be 12% or 18%?
- ii. What is the current tax rate of tax on their work, Is there any change on rate of Tax since 1.1.2022 or till date.

Read: -Application dated 05/03/2022 from M/sAgrawal Buildcon, C/o Agrawal Traders, Main Road, Korba, Chhattisgarh, 495677 (here in after referred to as the applicant) GSTIN-22ASSPA1067D1Z7.

PROCEEDINGS

[U/s 98 of the Chhattisgarh Goods & Services Tax Act, 2017 (herein- after referred to as CGGST Act, 2017)]

No.STC/AAR/04/2022

Raipur Dated 15/06/2022

M/s Agrawal Buildcon, C/o Agrawal Traders, Main Road, Korba, Chhattisgarh, 495677 (here in after referred to as the applicant) GSTIN-22ASSPA1067D1Z7 has filed an application U/s 97 of the Chhattisgarh Goods & Services Tax Act, 2017 dated 02/02/2022 enclosing duly filled in Form ARA-01(the application form for Advance Ruling) along with certain annexure and attachments seeking advance ruling as to- What should be the rate of tax on their work, will it be 12% or 18%? ; What is the current tax rate of tax on their work, Is there any change on rate of Tax since 1.1.2022 or till date.

2. Facts of the case: -

2.1 As forthcoming from the above ARA-01 filed by the applicant, the applicant mainly deal with construction work and it has further been their submission that a firm / party had received a work order from RITES Ltd., and that the applicant too wishes to participate in the same kind of work.Accordingly,they have filed the instant ARA-01, in order to have a clear view about the tax rate of the civil works for the construction of



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Kusmunda S&T work and other TMS & Crew rest room at various five locations within 2.8Km length of siding area in connection with construction of rail infrastructure for providing Railways siding at SECL Kusmunda Project, District Korba, Chhattisgarh for dispatch of washed and raw coal. The applicant also enclosed a copy of the said Letter of Acceptance pertaining to the third party /firm referred to above.

3. Contentions of the applicant: -

3.1 The applicant has further informed that the work order for above project is from RITES Ltd. (A Government of India Enterprise, Ministry of Railway – An ISO 9001 Company) and is provided to the said firm/ party on behalf of SECL Kusmunda Project acting as principal employer and invoice is generated in GST no. of SECL by the working party (firm).

3.2 It has further been submitted by the applicant that as the aforesaid firm /party has received this work from SECL Kusmunda project, the liability of built and payment is of SECL and that according to SECL, such works comes under 12% tax slab, whereas the said firm / party has sent bill for 18% to SECL, but SECL has refused to accept the same. The applicant's contention in the matter is that the said work should come under 18% tax slab as per CBEC guidelines. The applicant has further informed that this has led to confusion between the said party and SECL. Further that as SECL is demanding for bill with 12% tax rate as per the protocols of SECL, to avoid any future liability for the said work if it is allotted to them, the applicant has requested for clarification in the matter. It was in this context, that the applicant has desired ruling on the following questions.

- i. What should be the rate of tax on the said work, will it be 12% or 18%?
- ii. What is the current tax rate of tax on the work and as to whether there is any change on rate of Tax since 1.1.2022 or till date?

4. Personal Hearing:-

Keeping with the established principles of natural justice, personal hearing in the matter was extended to the applicant in person, as requested by them and accordingly, Shri Bhavesh Agrawal, Proprietor and Shri Rafik Memon, Tax Consultant, Authorised representative of the Applicant appeared before us for hearing on 07.04.2022 and reiterated their contention. He also furnished a written submission dated 07.04.2022 along with sample copy of work order which has been taken on record.

5. The legal position, analysis and discussion: -

At the very outset, we would like to make it clear that the provisions for implementing the CGST Act and the Chhattisgarh GST Act, 2017 [hereinafter referred to as "the CGST Act and the CGGST Act"] are similar and thus, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the CGGST Act, 2017. Now we



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sequentially proceed to discuss the issues involved in the ruling so sought by the applicant and the law as applicable in the present case.

6. Section 96 of CGST Act, 2017, Authority for advance ruling, stipulates as under: -

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.

Section 97(2) of CGST Act, 2017 stipulates that: -

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.*

Further 103 of CGST Act, 2017 stipulates about the ruling pronounced as under: -*The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter 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.*

Thus, in view of the above section 103 of CGST Act, 2017, the ruling so sought by the Applicant would be binding only on the Applicant and on the concerned officer or the jurisdictional officer as stipulated above.

7. Before getting in to the issues involved, we would first like to go through the relevant text of the issue in hand, as appearing at S.No. 3(v)(a) of Notification No. 11/2017 Central Tax(Rate) dated 28.06.2017 as amended, vide Notification 01/2018 Central Tax(Rate) dated 25.01.2018 and various other amendments from time to time, lastly amended vide Notification no. 22/2021-Central Tax (Rate) dated 31.12.2021. In the instant case the eligibility or otherwise of the benefit of said Notification no. 11/2017 Central Tax (Rate) as amended, provided under S.no. 3(v)(a) ibid, to the applicant is



the subject matter of this proceeding. For the sake of brevity the relevant text of the same is reproduced hereunder.

7.1 *Rate of GST on intra-State supply of specific services with Service Code Tariff (SAC)*

Government of India
Ministry of Finance
(Department of Revenue)
Notification No. 11/2017-Central Tax (Rate)

New Delhi, the 28th June, 2017

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1), [sub-section (3) and subsection (4)] 1 of section 9, sub-section (1) of section 11, sub-section (5) of section 15[,],2 sub-section (1) of section 16 [and section 148] 3 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby notifies that the central tax, on the intra-State supply of services of description as specified in column (3) of the Table below, falling under Chapter, Section or Heading of scheme of classification of services as specified in column (2), shall be levied at the rate as specified in the corresponding entry in column (4), subject to the conditions as specified in the corresponding entry in column (5) of the said Table:-

TABLE

Sl. No.	Chapter, Section or Heading	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)	(i)..... (ia)..... (ib)..... (if).....		
		(ii) [***]	-	-
		(iii) Composite supply of works contact as defined in clause (119) of section 2 of the.....	6	[***]



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		(a).....		
		(b).....		
		(c).....		
		(iv) Composite supply of works contract.....	6	-
		(a).....		
		(b).....		
		(c).....		
		(d).....		
		(da).....		
				
		(v) 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 supplied by way of construction, erection, commissioning, or installation of original works pertaining to,-	6	-
		(a) railways, [including monorail and metro;		
		(b) a single residential unit otherwise than as a part of a residential complex;		
				
		(va).....		
		(vi).....		
		(vii).....		
		(viii).....		
		(ix) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and	6	***]



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		Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (iii) or item (vi) above to the Central Government, State Government, Union territory or a local authority.		
		(x) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (vii) above to the Central Government, State Government, Union territory or a local authority.	2.5	***
		(xi)		
		(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	-]]]]

7.2 Thus from the above it gets abundantly clear that for availing the benefit as stipulated supra at 3(v)(a), all the conditions mentioned therein is to be necessarily fulfilled viz.



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- (i) the service should be under the Heading 9954 (Construction Service)
- (ii) the supply should be a 'Composite Supply'
- (iii) the work should be 'works contract' a, defined in Clause (119) of Section 2 of CGST Act and
- (iv) The work should be 'by way of construction, erection, commissioning, or installation of "original works" "pertaining to railways", including monorail and metro.

7.3 On going through the Scheme of Classification of Services as provided in the Annexure to Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 supra, the SAC relating to the works of railways are as under:

ANNEXURE : SCHEME OF CLASSIFICATION OF SERVICES

S. No.	Chapter, Section, Heading or Group	Service Code (Tariff)	Service Description
(1)	(2)	(3)	(4)
1	Chapter 99		All Services
2	Section 5		Construction Services
3	Heading 9954		Construction services
4	Group 99541		Construction services of buildings
5		995411	Construction services of single dwelling or multi dwelling or multi-storied residential buildings
6		995412	Construction services of other residential buildings such as old age homes, homeless shelters, hostels and the like
7		995413	Construction services of industrial buildings such as buildings used for production activities (used for assembly line activities), workshops, storage buildings and other similar industrial buildings
8		995414	Construction services of commercial buildings such as office buildings, exhibition and marriage halls, malls, hotels, restaurants, airports, rail or road terminals, parking garages, petrol and service stations, theatres and other similar buildings
9		995415	Construction services of other non-residential buildings such as educational institutions, hospitals, clinics including veterinary clinics, religious establishments, courts, prisons, museums and other similar buildings
10		995416	Construction services of other buildings nowhere else classified



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11		995419	Services involving repair, alterations, additions, replacements, renovation, maintenance or remodeling of the buildings covered above
12	Group 99542		General construction services of civil engineering works
13		995421	General construction services of highways, streets, roads, railways and airfield runways, bridges and tunnels
14		995422	General construction services of harbours, waterways, dams, water mains and lines, irrigation and other waterworks

Further, the 'Explanatory Notes to the Scheme of Classification of Service', indicates the scope and coverage of the Scheme of classification of service and is a guiding tool for classification of services, the Explanatory notes to SAC 995421 are as follows:

EXPLANATORY NOTES TO SCHEME OF CLASSIFICATION OF SERVICES UNDER GST

Preface

The Scheme of Classification of Services adopted for the purposes of GST is a modified version of the United Nations Central Product Classification.

2. The Explanatory notes for the said Scheme of Classification of Services is based on the explanatory notes to the UNCPCL, and as recommended by the committee constituted for the purpose, is annexed.
3. The explanatory notes indicate the scope and coverage of the heading, groups and service codes of the Scheme of Classification of Services. These may be used by the assessee and the tax administration as a guiding tool for classification of services. However, it may be noted that where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description.

EXPLANATORY NOTES FOR SUPPLY OF SERVICES UNDER GST

[Chapter 99]

9954 Construction services :

This heading includes :

- i. General construction services for all complete constructions.
- ii. Specialized construction services i.e., services related to parts of buildings or civil engineering works, rather than the complete construction object.



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.....
995421 General construction services of highways, streets, roads, railways, airfield runways, bridges and tunnels

This service code includes construction services

- i. for formations of highways, including elevated highways, roads, streets, other vehicular and pedestrian ways and open car parks;
- ii. footpaths, traffic-calming structures, cycle tracks, etc.;
- iii. vehicular and pedestrian underpasses and overpasses;
- iv. construction or restoration of road surface and parking lots with asphalt, concrete, etc.;
- v. installation services of crash barriers, low separating walls, traffic signs, etc.;
- vi. creation, maintenance and signposting of tracks and paths;
- vii. painting services of markings on roads, parking lots and similar surfaces;
- viii. railway roadbeds for long-line and commuter rails, street tramways and underground or elevated urban rapid transit systems;
- ix. railway electrification structures including laying services of ballast and rails;
- x. installation services of switch gear, points and crossings;
- xi. construction services of control and safety systems for railway tracks;
- xii. construction services of funicular railways and cable car systems;
- xiii. construction services for airfield runways, including taxiways, aprons and related airport structures other than buildings;
- xiv. construction of bridges, highway, road and railway tunnels and tunnels for underground railway traffic

7.4 In the instant case under consideration, the applicant has furnished a sample copy of letter of acceptance dated 17.1.2020 issued by RITES LIMITED issued to the said third party / firm, for and behalf of SECL in respect of technical offer opened on 11.7.2019. From the submissions as put forth by the applicant and from the said sample letter of acceptance that RITES LIMITED for and on behalf of South Eastern Coalfields Limited, (SECL), Gevra awarded to the said party / firm it is seen that the work being awarded by RITES is the work of Construction of Kusmunda S&T block cabin, East and West Panel buildings for S&T work and other TMS & Crew rest room at various five locations within 2.8Km length of siding area in connection with construction of rail infrastructure for providing Railways siding at SECL Kusmunda Project, District Korba, Chhattisgarh for dispatch of washed and raw coal.

As can be seen, SAC 995421 supra covers 'General Construction services of highways, streets, roads, railways, airfield runways, bridges and tunnels' which by their very nature relates to work of civil engineering and there exists all plausible reasons to link the same to the aforementioned work awarded by RITES LIMITED, intended to be undertaken by the applicant. Therefore, the instant supply in question gets aptly covered under SAC 9954 in general. Accordingly, in the case in hand the basic requirement for eligibility to the said exemption as provided under S.no. 3(v)(a) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended, of getting covered under SAC 9954 stands fulfilled.



7.5 Now coming to the second criteria as to whether the instant supply is a "Composite supply", we would first like to get in to the definition of Composite supply which stands defined under Section 2 (30) of the CGST Act, 2017 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;

Illustration.- Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

On perusal of the copy of letter of acceptance issued by RITES LIMITED supra, furnished by the applicant it is seen that the intended works to be undertaken by the applicant is civil works for of Construction of Kusmunda S&T block cabin, East and West Panel buildings for S&T work and other TMS & Crew rest room at various five locations within 2.8Km length of siding area in connection with construction of rail infrastructure for providing Railways siding at SECL Kusmunda Project, District Korba, Chhattisgarh for dispatch of washed and raw coal. Now for the instant supply of Civil works to be undertaken by the applicant to be categorized as "composite supply" there needs to be supply of goods and services and the same should be natural bundle of supply of both and supplied in conjunction with each other in the ordinary course of business. No such details of supply of goods for the intended civil works is forthcoming from the sample letter of acceptance furnished by the applicant. Thus without substantial evidence of the works contracted/undertaken like materials/ goods to be supplied, related schedules/detailed write-up on the civil works, etc., it is practically impossible for this authority to conclude or for that matter to hold that the works as is forthcoming from the "letter of acceptance" supra, undertaken is 'composite supply' per se. Accordingly, this authority on the basis of records furnished and available on record, is not in a position to conclusively hold that the works, as is forthcoming from the "letter of acceptance" issued by RITES LIMITED supra, intended to be undertaken by the applicant qualifies being treated as 'Composite supply' as per Section 2 (30) of CGST Act, 2017.

7.6 Now we move on the third criterion of the work being "Works Contract", essential for availing the claimed exemption as provided under S.No. 3(v)(a) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended, vide Notification 01/2018 Central Tax (Rate) dated 25.01.2018.

We find that under the scheme of things as envisaged under GST law, the definition of "Works Contract" has been restricted to any work undertaken for an "Immovable Property" unlike the erst while VAT and Service Tax provisions where works



contracts for movable properties were also considered. The Works Contracts has been defined in Section 2(119) of the CGST Act, 2017 as "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. Any such composite supply undertaken on goods say for example a fabrication or paint job done in automotive body shop will not fall within the definition of term works contract per se under GST. Such contracts would continue to remain composite supplies, but will not be treated as a Works Contract for the purposes of GST. 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 exist a clear demarcation of a works contract as a supply of service under GST. Besides this, as per section 17(5) (c) of the CGST Act, 2017, input tax credit shall not be available in respect of the works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service. Thus, ITC for works contract also stands restricted and can be availed only by one who is in the same line of business and is using such services received for further supply of works contract service. For example, a building developer may engage services of a subcontractor for certain portion of the whole work. The subcontractor will charge GST in the tax invoice raised on the main contractor. The main contractor will be entitled to take ITC on the tax invoice raised by his subcontractor as his output is works contract service. However, in case the main contractor provides works contract service (other than for plant and machinery) to a company say in the IT business, the ITC of GST paid on the invoice raised by the works contractor will not be available to the said IT Company.

From the definition, a work shall be treated as Works Contract if that work is done for land or earth or for immovable property and there is transfer of property in goods involved in the execution of such contract. Immovable property by its very definition means that it cannot be moved and cannot be detached or dismantled from the land or earth and further that dismantling of the same would render it defunct / redundant. Immovable property would include in its ambit land and the things which are attached to or embedded in the land such as buildings, bridges etc. However not everything that is attached to the land would automatically constitute an immovable property. Whether the particular property is an immovable property or not is subject to the peculiar facts of each case. Hon'ble courts have pronounced various judicial pronouncements laying down certain criteria for determining whether a property is immovable or not. From these decisions, it can be derived that an immovable property would consist of the following characteristic -



- It should be permanently attached to or affixed to the earth.
- It should come into existence as an immovable property.
- It cannot be shifted from one location to other location without dismantling it. In other words, only individual parts can be shifted and property as such cannot be shifted.
- The dismantling of the property would cause substantial damage to the said property.
- The said property is not attached to earth merely for operational efficiency of the said property such as to prevent it from wobbling during the operations.
- There is an intention of permanently attaching the said property to the ground.

In the present case under consideration, the sample letter of acceptance supra furnished by the applicant, issued by RITES to substantiate their claim of exemption supra only provides a peripheral aspect and indicates towards the outline description of the works and the activity to be undertaken by the applicant. The other aspects of the property as required for categorizing the same under the definition of 'Works Contract' is a prerequisite and can in no way be ignored with. Under GST, only those defined works carried out on any immovable property is covered under 'Works Contract'. Thus, although the intended "civil works for of Construction of Kusunda S&T block cabin, East and West Panel buildings for S&T work and other TMS & Crew rest room at various five locations within 2.8Km length of siding area in connection with construction of rail infrastructure for providing Railways siding at SECL Kusunda Project, District Korba, Chhattisgarh for dispatch of washed and raw coal", by its very description as is forthcoming from the letter of acceptance appears to be an immovable property, there must also be transfer of property in goods involved in the execution of such contract. Accordingly, this authority on the basis of records furnished before and available on record, comes to considered conclusion that the benefit of Notification supra is eligible only when the said civil work intended to be undertaken by the applicant qualifies being treated as 'Works Contract' as defined under Section 2 (119) of CGST Act, 2017, as discussed herein.

7.7 The other prerequisite to be satisfied in the instant case is that the supply should be by way of 'construction, erection, commissioning, or installation of original works' pertaining to railways, including monorail and metro. Original work is defined in Para 2(zs) of the Notification No. 12/2017-C.T.(Rate) dated 28.06.2017 as follows: "original works" means- all new constructions; (i) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable; (ii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;



From the sample letter of acceptance furnished before us by the applicant, and in view of the elaborate discussions above regarding the work undertaken by the applicant as is forthcoming from the "letter of acceptance" supra, it is seen that the work awarded to the applicant are 'Original work' as defined in the notification. Further, on a thorough look into the text of the claimed exemption as provided under S.no. 3(v)(a) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended, vide Notification 01/2018 Central Tax (Rate) dated 25.01.2018, we find that the entry at 3(v)(a) do not specify the class of service provider to whom it applies. The entry is specific to the composite supply of works contract pertaining to railways including monorail and metro. We would also like to cite reference to recommendation of the Fitment Committee to the 25th GST Council meeting and though the same was related to metro rail, the ratio of the said decision is squarely applicable in the case in hand for arriving at a decision. The said recommendation of the Fitment Committee to the 25th GST Council meeting (available in Volume -2 of the Agenda) which facilitated the downward revision of the GST rate from 18% to 12% for composite supply of works contract supplied by way of construction, erection, commissioning or installation of original works pertaining to Metro rail reads as under:

Discussion on Agenda Items Agenda Item 10: Issues recommended by the Fitment Committee for the consideration of the GST Council Agenda Item 10(ii): Recommendations on Services The Summary Sheet of the recommendations of the Fitment Committee on Services was circulated as Agenda Item 10(ii) in Volume - 1 of the Detailed Agenda Note. It was indicated therein that detailed justification for the recommendations will be circulated separately in Volume - 2 of the Detailed Agenda Note. 2. The detailed justification for the recommendations of the Fitment Committee on Services are attached as Annexure 1. 3. The recommendations of the Fitment Committee are placed before the Council for consideration and approval.

S.no	Represented By	Proposal	Justification	Comments of Fitment Committee
4	Hon'ble CM Maharashtra and Secretary, Ministry of Housing and Urban Affairs	Request to reduce the GST rate from 18% to 12% for composite supply of works contract supplied by way of construction, erection, commissioning or installation of original works pertaining to	Levy of high rate of GST adversely affects the financial position of metro companies. The metro companies facilitate easy and quick movement of people and has positive impact on economic growth,	Services provided by way of construction, erection, commissioning, or installation of original works pertaining to monorail or metro were exempt till 1-3-2016. Thereafter, the



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		Metro rail.	apart from reduction in traffic congestion, pollution, road and parking cost. Reduces both cost and time of travel and improves competitiveness of the city. said services provided under a contract entered into prior to 1-3-2016 were exempt. Exemption to the said services was withdrawn in Budget, 2016 with a view to minimize exemptions in the run up to GST as exemptions break ITC chain, increase cost and result in distorted tax structure. However, GST rate on most of the services provided to the Govt. which were exempted under service tax has been reduced from 18% to 12% so as to reduce cost of Govt. projects. Service of transportation of passengers by a monorail or metro rail has been exempted under GST so as to reduce the cost of supply of the said public transportation service to the public. Reduced rate of GST of 12% has been extended to services provided for construction
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				of railways, road, bridge, tunnel or terminal for road transportation for use by general public vide notification No. 20/2017-CT(R) dated 22nd August, 2017. The same reduction in GST rate from 18% to 12% can be considered for construction of metro and monorail projects (construction, erection, commissioning or installation of original works). Fitment Decision Agreed
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7.8 Now coming to the aspect of "railways", it is seen that the term "railways" is not defined in the GST Act. It, however, is defined under Section 2(31) of the Railways Act, 1989, meaning "a railway, or any portion of a railway, for the public carriage of passengers or goods, and includes

- (a) All lands within the fences or other boundary marks indicating the limits of the land appurtenant to a railway;
- (b) All lines of rails, sidings, or yards, or branches used for the purpose of, or in connection with, a railway;
- (c) All electric traction equipment, power supply and distribution installations used for the purpose of, or in connection with, a railway;
- (d) All rolling stock, stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, roads and streets, running rooms, rest houses, institutes, hospitals, waterworks and water supply installations, staff dwellings and any other works constructed for purpose of, or in connection with, railway;
- (e) All vehicles which are used and any road for the purpose of traffic of a railway and owned hired or worked by a railway;
- (f) All ferries, ships, boats and rafts which are used on any canal, river, lake or other navigable inland waters for the purpose of the traffic of a railway and owned, hired or worked by a railway administration.



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but does not include-

- (i) A tramway wholly within a municipal area; and
- (ii) Lines of rails built in any exhibition ground, fair, park, or any other place solely for the purpose of recreation.

Further the Railways Act, 1989, distinguishes between, but covers, Government Railway under Section 2(20) and Non-Government Railway under Section 2(25) of the Act. It, therefore, includes scope for railways under both Government and private administrations.

In the instant case as is forthcoming from the sample letter of acceptance furnished by the applicant for the intended civil works to be undertaken by them, issued by RITES the subject of work allotted is "civil works for of Construction of Kusmunda S&T block cabin, East and West Panel buildings for S&T work and other TMS & Crew rest room at various five locations within 2.8Km length of siding area in connection with construction of rail infrastructure for providing Railways siding at SECL Kusmunda Project, District Korba, Chhattisgarh for dispatch of washed and raw coal",

Whether the phrase "public carriage of passenger or goods" prevents a proposed feeder line of East West rail Corridor from being included in the definition of 'railways' has repeatedly come up for judicial scrutiny involving the issue akin to the case in hand. The courts generally held that the phrase 'public carriage of passengers or goods' cannot be construed in such manner as to exclude from the ambit of 'railways' other works related to Railway.

[Cases relied upon: *DMRC v. Municipal Corporation of Delhi*, 2008 (103) DRJ 369 (Delhi High Court); *Commissioner, Central Excise, Raipur v. Anand Construction*, 2017 (51) S.T.R. 435 (CESTAT, Principal Bench, New Delhi); *SMS Infrastructure Ltd. v. Commissioner, Central Excise, Nagpur*, 2017 (47) S.T.R. 17 (CESTAT, West Zonal Bench, Mumbai)]

Art. 366(20) of the Constitution excludes from the ambit of 'railway' only (a) a tramway wholly within a municipal area and (b) any line of communication wholly situate in one State and declared by Parliament by law not to be a railway. The Parliament excludes by law, apart from the tramways, the lines of rails mentioned under Section 2(31)(ii) of the Railways Act, 1989, being rails built solely for the purpose of recreation. The term 'public carriage', therefore, cannot be given any meaning that may add more exclusion than specifically provided under Section 2(31)(ii) of the Railways Act, 1989.

The intended civil work is for Construction of rail infrastructure for providing Railways siding at SECL Kusmunda Project, District Korba, Chhattisgarh for dispatch of washed and raw coal. The purpose of the carriage of coal is, therefore, not recreation, but producing public goods like electricity. It is, therefore, not excluded under Section 2(31)(ii) of the Railways Act, 1989. Further as per the details of M/s. RITES Ltd available in



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public domain online, it is seen that Rail India Technical and Economical Services limited (RITES Ltd.) is a Public Sector Undertaking wherein ownership of the Government of India (72.02% in equity shares) and is an engineering consultancy company, specializing in the field of transport infrastructure. Established in 1974 by the Government of India, the company's initial charter was to provide consultancy services in rail transport management to operators in India and abroad. RITES has since diversified into planning and consulting services for other infrastructure, including airports, ports, highways and urban planning.

As the proposed work is in connection with construction of rail infrastructure for providing Railways siding at SECL Kusmunda Project, District Korba, Chhattisgarh for dispatch of washed and raw coal, the same can reasonably be held to be pertaining to Railways. The term "pertaining to Railways", as appearing at S.no. 3(v)(a) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended, vide Notification 01/2018 Central Tax (Rate) dated 25.01.2018 is more expansive and includes other establishments other than Indian Railways. Needless to mention here that there is no stipulation in the said entry claimed for exemption supra, that this work must be executed to the Railways but it is sufficient that it must be "pertaining to Railways", meaning therein that the supplier and the recipient is immaterial. Thus, we are of the considered opinion that the work intended to be undertaken by the applicant for RITES Limited pertains to railways and accordingly this pre-requisite stands fulfilled.

7.9 In view of the above discussions we come to the considered view that it would be appropriate to conclude that the benefit of the entry at Sl.no. 3(v)(a) of Notification No. 11/2017 Central Tax(Rate) dated 28.06.2017 as amended, vide Notification 01/2018 Central Tax(Rate) dated 25.01.2018 and various other amendments from time to time, lastly amended vide Notification no. 22/2021-Central Tax (Rate) dated 31.12.2021 would be eligible to M/s Agrawal Buildcon, C/o Agrawal Traders, Main Road, Korba, Chhattisgarh, 495677 [GSTIN-22ASSPA1067D1Z7], the applicant, subject to the fact that the works undertaken by them are "Composite supply" and "Works Contract" as per Section 2 (119) of the Act and if so the applicable GST would be @ 12% effective from 25.01.2018. In cases other than above the same attracts GST @ 18% under the residual entry at Sr. no. 3(xii) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended.

7.10 As regards applicants query regarding any change on the rate of tax since 1.1.2022, it is seen that there is no change in the rate of GST in such composite supply of works contract as defined in clause (119) of the Central Goods and Services Tax Act, 2017 supplied by way of construction, erection, commissioning, or installation of original works pertaining to railways.



8. Having regard to the facts and circumstances of the case and discussions as above, we pass the following order:-

ORDER

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

No.STC/AAR/04/2022

Raipur, dated 15/06/2022

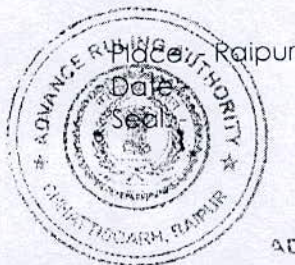
The ruling so sought by M/s Agrawal Buildcon, C/o Agrawal Traders, Main Road, Korba, Chhattisgarh, 495677 [GSTIN-22ASSPA1067D1Z7], the applicant, is accordingly answered as under:

RULING

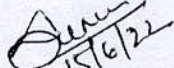
- i. The benefit of entry at Sl.no. 3(v)(a) of Notification No. 11/2017 Central Tax(Rate) dated 28.06.2017 as amended, vide Notification 01/2018 Central Tax(Rate) dated 25.01.2018 and various other amendments from time to time, lastly amended vide Notification no. 22/2021-Central Tax (Rate) dated 31.12.2021 would be eligible to M/s Agrawal Buildcon, C/o Agrawal Traders, Main Road, Korba, Chhattisgarh, 495677 [GSTIN-22ASSPA1067D1Z7], the applicant, provided that the works undertaken by them qualifies as "Composite supply" as stipulated under Section 2 (30) of CGST Act, 2017 as also the said work undertaken satisfies the condition of being 'Works Contract' as per Section 2 (119) of the Act, and if so the applicable rate of GST would be @ 12% effective from 25.01.2018. In cases other than above the said work would attract GST @ 18% under the residual entry at Sr. no. 3(xii) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended. This authority on the basis of records furnished and available on record, is not in a position to conclusively hold that the works, as is forthcoming from the "letter of acceptance" issued by RITES LIMITED supra, intended to be undertaken by the applicant qualifies being treated as 'Composite supply' as per Section 2 (30) of CGST Act, 2017 or are 'Works Contract' as defined under Section 2 (119) of CGST Act, 2017, as discussed herein above.
- ii. There is no change in the rate of GST with effect from 1.1.2022 on such composite supply of works contracts as defined in Section 2(119) of the Central Goods and Services Tax Act, 2017 supplied by way of construction, erection, commissioning, or installation of original works pertaining to railways.


Sonal K. Mishra
(Member)

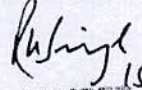

Rajesh Kumar Singh
(Member)



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