

ODISHA AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX (GST)
RAJASWAVIHAR, BHUBANESWAR-751007(ODISHA)
PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING
U/S.98 OF THE GOODS AND SERVICE TAX ACT, 2017

Members Present:

1. Sri Gopal Krishna Pati, IRS, Additional Commissioner, Office of the Chief Commissioner, GST, Central Excise & Customs, Bhubaneswar-751 007 (Odisha).
2. Sri P.K. Mohanty, OFS(SS), Special Commissioner of CT&GST, Commissionerate of CT & GST, Odisha, Baniyakar Bhawan, Cantonment Road, Cuttack-753 001 (Odisha).

1	Name and Address of the Applicant	KONKAN RAILWAY CORPORATION LIMITED, Plot No-06, 2nd floor,3rd Floor, Belapur Bhawan, Sector-11, CBD Belapur, Navi Mumbai, Thane, Maharashtra, 400614
2	GSTIN or User ID	Temporary user ID: 212200000229AR9
3	Date of Filing of Form GST ARA-01	02.06.2022
4	Present for the Applicant in the E-hearing/Virtual hearing	Vishal Sheth, CA, Authorized representative Mr Arup Bagui, DGM, Tax & Audit
5	Date of Personal Hearing	07.07.2022

ORDER NO.02/ODISHA-AAR/2022-23/DATED / 20/9/22.

Subject: M/s KONKAN RAILWAY CORPORATION LIMITED, Plot No. 06, 2nd floor,3rd Floor, Belapur Bhawan, Sector-11, CBD Belapur, Navi Mumbai, Thane, Maharashtra, 400614 (herein after referred to as the 'Applicant') having GSTIN : Temporary user ID: 212200000229AR9, has filed an application for Advance Ruling

under Section 97 of CGST Act, 2017 and Section 97 of the OGST Act, 2017 in



FORM GST ARA-01 discharging the fee of Rs. 5,000/- each under the CGST Act and the SGST Act.

1.0 The Applicant sought for an advance ruling in respect of the following questions.

(A). Whether separate registration is required in Odisha state? If yes, whether E-tender document/LOA would suffice as address proof since nothing else is with the Applicant and service recipient will not provide any other proof?

(B). If registration is not required in Odisha state and if we purchase goods from a supplier of Maharashtra and want to ship goods directly from the premises of a supplier of Maharashtra to Odisha state, then whether CGST & SGST would be charged from us or IGST by the supplier of Maharashtra?

(C). If registration is not required in Odisha state and if we purchase goods from a dealer of Odisha to use the goods in Odisha then whether IGST would be charged from us or CGST & SGST by the dealer of Odisha?

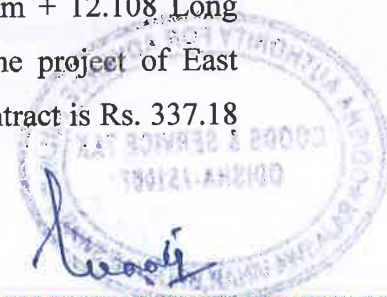
1.1 At the outset, we would like to make it clear that the provisions of both the CGST Act and the OGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision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

2.0 Submission of the Applicant

2.1 The Applicant having its principal place of business at Plot No. 06, 2nd floor, 3rd Floor, Belapur Bhawan, Sector-11, CBD Belapur, Navi Mumbai, Thane, Maharashtra, 400614 bearing GSTIN-27AAACK3725H1ZO is engaged in providing Works Contract Service, Transportation of Goods & Transportation of Passengers Service by Railways, and Project Services to Zonal Railways and Other agencies.

2.2 The Applicant is a Government company and established in the year 1990 with equity participation by Ministry of Railways (51%), Maharashtra (22%), Karnataka (15%), Kerala (6%) and Goa (6%) for the purpose of construction and operation of Railway along the Western Coast of India.

2.3 The Applicant has received a letter of acceptance (LOA) dated 15th February 2022 for executing Construction of Major bridges, ROB, Supply of Vehicle, Site facilities & other allied works between km 143 to km 184 (172 (29 Route km + 12.108 Long Chainage=41.1 km)) of Khurda Road- Bolangir new BG Rail line project of East Coast Railway in Boudha District, Odisha. The total cost of the contract is Rs. 337.18



Crore and the entire work shall be completed within 24 months from the date of issue of Letter of Acceptance (LOA).

2.4 The scope of the works as a part of this contract consist of: -

- a. Providing and maintaining office accommodation and vehicles for use of Railway and their Assistants and Staff.
- b. Survey for fixing the working alignment and establishment of working benchmarks for doing Bridges, river training and protection works etc
- c. Construction of Viaduct, Major Bridge & ROBs including required protection works for the proposed new line.
- d. Construction of Bridge for the proposed new line including laying of suitable backings for the bridges.
- e. Protection works for bridges against severe exposure conditions and temperate climate with heavy to very heavy rain fall.
- f. Supply, fabrication, painting and erection of open web welded steel girders, open/pile/well foundations etc.
- g. Supply, fabrication and fixing of steel sleepers for track on bridge as per Tender Document.
- h. Setting of batching plant for production of controlled concrete.
- i. Setting up of workshops for fabrication, painting, etc of steel superstructure.
- j. Deployment of all personnel and equipment as specified in the Contract and more, if required.
- k. Setting out alignments and levels and marking of locations for all piers, abutments of bridges as well as river training and protection works.
- l. All temporary works required to for execution of work.
- m. Making and supply of 'As Built" drawings of all the assets created.

2.5 The Applicant has submitted that it has got no Permanent/fixed establishment/premises in state of Odisha. As per the contract, the Applicant shall provide for the use of the Railway / Engineer office accommodation,



equipment, communication & drawing facilities throughout the course of the work and for such period of time during the defect's liability period as the Railway & Engineer may require. All the facilities will continue to be maintained by the Applicant free of cost till the defect liability period is over. Further, the Applicant shall, at his own expense, provide himself with sheds, storehouses, and yards in such situations and in such numbers as in the opinion of the Engineer is requisite for carrying on the works.

2.6 The Applicant contended that in the absence of fixed establishment from where the supply is made, the "Location of Supplier of service" is the location of the usual place of the supplier. In the instant case LOA received by the M/s Konkan Railway Corporation Ltd is Navi Mumbai, Maharashtra, hence location of Applicant(works contractor) will be the state where its principal place of business is registered i.e. Maharashtra state.

2.7 The Applicant has also contended that Place of supply is important to determine the kind of tax that is to be charged. When the location of the supplier and the place of supply are in two different States, then it will be an inter-State supply and IGST would be chargeable. And when they are in the same State, then it will be an intra- State supply and CGST/ SGST would be chargeable. The place of supply, in case of works contract services as governed by Section 12(3)(a) of IGST Act 2017, shall be the location at which the immovable property (construction site) is located. In Applicant's case, Place of Supply is State of Odisha and Location of Supplier is state of Maharashtra, hence IGST needs to be charged. Therefore, Applicant is not required to have any separate GST registration in Odisha State.

2.8 The Applicant has submitted that it has already floated e-tender No: KR-CO-INFRA-30- ECoR-2022 dated 18/03/2022 and issued LOA no KR-CO-INFRA-30- ECoR dated 29th April'22 to M/s SRC Company Infra Pvt. Ltd on L1 basis for sub-contracting the entire work except supply of steel and cement.

2.9 The Applicant has in its additional submission has stated that following three elements are critical to determine whether a place is a 'fixed establishment':-

a) Having a sufficient degree of permanence;



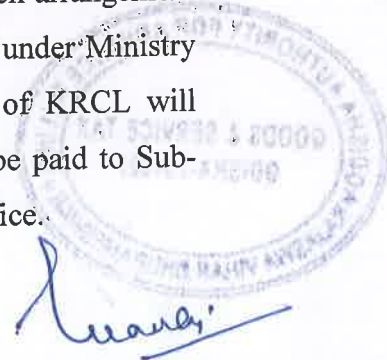
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- b) Having a structure of human and technical resources; and
- c) Other than a registered place of business.

2.10 The Applicant has submitted that a fixed establishment refers to a place of business which is not registered. It is one where the person undertakes supply of services or uses services for own needs in such place. Not every temporary or interim location of a project site or transit-warehouse will become a fixed establishment of the taxable person. Such project site or warehouse will not automatically become Fixed Establishment (FE). Temporary presence of staff in a place by way of a short visit to a place or so does not make that place a fixed establishment. Even extended duration of site camp may not meet the requirements to constitute Fixed Establishment (FE) by itself;

2.11 As regards construction of site office, it has been submitted that the Applicant shall provide for the use of the Railway / Engineer office accommodation, equipment, communication & drawing facilities throughout the course of the work and for such period of time during the defect liability period as the Railway & Engineer may require. Accommodation for the Railway / Engineer shall consist of one site office to be constructed by the Contractor at place as decided by the Railway. The site office constructed at the cost of ECoR will be mainly for use of Project-in-charge and other site Engineers of ECoR, constructed at ECoR's cost. Very few site engineers of the Applicant will be deployed in Odisha for supervision on the job at site and give report to Applicant's head quarter at Mumbai, Maharashtra. Such site engineers will get site allowance as per the norms of the Applicant and will arrange their own stay near to site. All other Senior engineers involved in planning, drawing, designing, quality control and inspection will travel from Mumbai as and when required, for very short period. Few site Engineers deployed at site will occupy few desks in the site office of ECoR and Sub-contractor as per the tender conditions of Sub-contract. However, it is also important to state that there will be no rent agreement for such arrangement as both ECoR and Konkan Railway Corporation are working under Ministry of Railways, Government of India and cost of site office of KRCL will indirectly increase the cost of Project. Further, no rent will be paid to Sub-contractor for occupying few desks at Sub-contractor's site office.



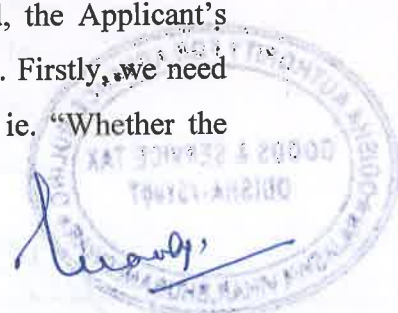
2.12 The Applicant has submitted that as per contract, substantial value of work is sub-contracted to Sub contractor located & registered under GST in the state of Odisha having GSTIN 21AATCS8714K1ZV. Sub-contractor will raise an IGST invoice to KRCL and KRCL will raise a works contract invoice charging IGST to ECoR. Hence there is no revenue loss to Odisha State. the Applicant has sub-contracted majority of work, except supply of Cement and Steel which will be procured and directly sent to site for consumption at Odisha, and it will be on billed to Maharashtra and shipped to Site (Odisha) basis. The Applicant will not construct any Godown at site for Cement and Steel, as the site is scattered over 42 kilometers distance. Further Cement and Steel will be supplied to respective site as and when required basis, for direct consumption.

3.0 Based on the aforesaid submission, the Applicant has requested Hon'ble Authority for Advance Ruling (AAR) to kindly consider above and grant exemption for GST Registration in Odisha State.

4.0 The personal hearing was fixed on 07.07.2022 under due intimation to the Applicant, the jurisdictional officer of State GST & jurisdictional officer of Central GST (intimated through their respective Commissionerates along with a copy of application and the written submission of the Applicant). The Applicant through its representatives i.e. Mr Vishal Sheth, CA, Authorized representative & Mr Arup Bagui, DGM, Tax & Audit appeared for personal hearing. They re-iterated the submissions already furnished in the annexure to the application. However, they also submitted a fresh written submission on 12.07.2022 wherein it has been requested Hon'ble Authority for Advance Ruling (AAR) to kindly consider the above submission and grant the Applicant exemption from GST Registration in Odisha State.

5.0 Discussion & findings

5.1 We have considered the submissions made by the Applicant in its application for advance ruling as well as the submissions made during personal hearing and submission made post hearing. We have also considered the questions and issues on which advance ruling has been sought for by the Applicant, relevant facts having bearing on the question/issue raised, the Applicant's understanding/interpretations of law in respect of the issue. Firstly, we need to decide the crucial question asked in the application i.e. "Whether the



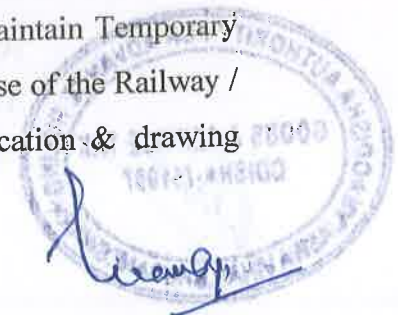
Applicant is required to be registered under Odisha Goods and Services Act, 2017 and Central Goods and Services Act, 2017 for rendering works contract service by way of executing Construction of Major bridges, ROBs, Supply of Vehicle, Site facilities & other allied works to M/s East Coast Railway, Odisha? We, observe that the issue before us is squarely covered under Section 97(2) of the CGST Act, 2017 and therefore we admit the application for consideration.

5.2 It has been contended that the Applicant is registered under Maharashtra Goods and Service Tax Act, 2017 as Works Contractor. The Applicant has received a letter of acceptance (LOA) dated 15th February 2022 for executing Construction of Major bridges, ROBs, Supply of Vehicle, Site facilities & other allied works between km 143 to km 184 (172 (29 Route km + 12.108 Long chainage=41.1 km)) of Khurda Road- Bolangir new BG Rail line project of East Coast Railway in Boudha District, Odisha. In its submission, the Applicant submitted that the place of supply, in case of works contract services as governed by Section 12(3)(a) of IGST Act 2017, shall be the location at which the immovable property (construction site) is located. In the Applicant's case, Place of Supply is State of Odisha and Location of Supplier is state of Maharashtra, hence IGST needs to be charged. Therefore, the Applicant is not required to have any separate GST registration in Odisha State. Also, It is to be stated that Works contract, being service, can be provided from anywhere. In this regard the Applicant draws attention to the Sr. No 6 of Schedule II (Activity or transactions to be treated as supply of goods or services).

5.3 It has also been stated that the Applicant has already floated e-tender and issued LOA to M/s SRC Company Infra Pvt. Ltd for sub-contracting the entire work except supply of steel and cement. The Applicant contended that as per Section 2(50) of CGST Act, 2017 "fixed establishment" means a place (other than the registered place of business) which is characterized by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs. It has no "fixed establishment" in the state of Odisha. However, as per Tender Documents the Applicant is required to maintain Temporary Site office/structure. The Applicant shall provide for the use of the Railway / Engineer office accommodation, equipment, communication & drawing



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facilities throughout the course of the work and for such period of time during the defect liability period as the Railway & Engineer may require. Further, the Applicant submitted that as per contract, substantial value of work is sub-contracted to Subcontractor located & registered under GST in the state of Odisha having GSTIN 21AATCS8714K1ZV. Sub-contractor will raise an IGST invoice to KRCL and KRCL will raise a works contract invoice charging IGST to ECoR. Hence there is no revenue loss to Odisha State.

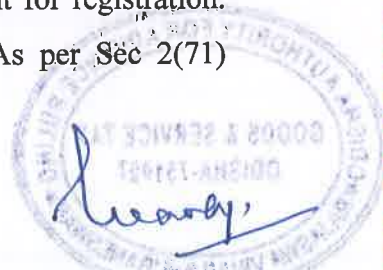
5.4 We see that the Applicant has entered into an agreement with M/s East Coast Railway, Odisha for executing Construction of Major bridges, ROBs, & other allied works between km 143 to km 184 (172 (29 Route km + 12.108 Long chainage=41.1 km)) of Khurda Road- Bolangir new BG Rail line project of East Coast Railway in Boudha District, Odisha. The total cost of the contract is Rs. 337.18 Crore and the entire work shall be completed within 24 months from the date of issue of Letter of Acceptance (LOA).

5.5 The scope of the works mostly includes Construction of Bridge for the proposed new line , Supply, fabrication, painting and erection of open web welded steel girders, open/pile/well foundations, Setting of batching plant for production of controlled concrete & Setting up of workshops for fabrication, painting, etc of steel superstructure. So, the nature of the aforesaid works seems to be 'Works Contract' .

5.6 Before deciding the case, we need to discuss the provisions of registration for works contract service under GST. As per Sec 22(1), every supplier shall be liable to be registered under GST, in the State or Union territory, from where he makes taxable supply of goods or services or both, In case of inter-state supply of goods, registration is mandatory. It is pertinent to mention that registration is required 'in' the State 'from which' taxable supplies are made. Therefore, for the purposes of obtaining registration, it is important to identify the 'origin' of supply even though GST is a 'destination' based tax. Tax goes to the destination State but registration is required in the origin-State. In case of "works contract" service which is immovable in nature, place of supply is where the immovable property is located. Place of Supply (as determined from IGST Act) provides the 'destination' and this is not relevant for registration.

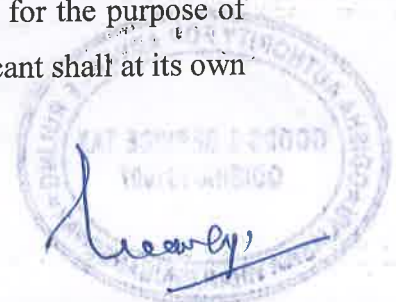
The location of Supplier is relevant for registration. As per Sec 2(71)

"location of the supplier of services" means,



- (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place business;
- (b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and
- (d) in absence of such places, the location of the usual place of residence of the supplier;

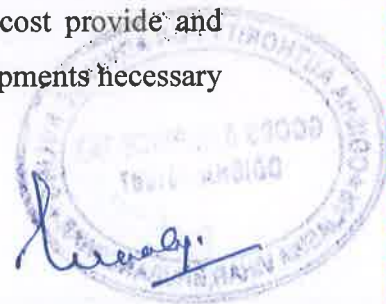
5.7 Location of supplier is usually where a supply is made from, a place mentioned as a principal place of business on the GST registration certificate. But in the instant case, clause (b) appears to be applicable to the Applicant for the location of supplier of services. The location of supplier seems to be at the project site, East Coast Railway, Odisha which is different from the place of business. We see that the contract is for Rs. 337.18 Crore and for the purpose of construction of Bridge for the proposed new line, supply, fabrication, painting and erection of open web welded steel girders, open/pile/well foundations, setting of batching plant for production of controlled concrete & setting up of workshops for fabrication, painting, etc of steel superstructure, **huge quantity of Steel, Cement, Sand, aggregates, other construction materials & Engineers, technicians, labour force are required.** The nature of supply is such that, it is not feasible to get it supplied from the State of Maharashtra. So an establishment is definitely required in the state of Odisha, where the work is being carried out. In the present case, we observe from the E-Tender documents of East Coast Railway that the Applicant shall, at its own expense, will provide it self with Sheds, Store houses and Yards in such situation and in such numbers as in the opinion of the Engineer is requisite for carrying on the works and the Applicant shall keep at each such sheds, storehouses and yards a sufficient quantity of materials. The Engineer's representative shall have free access to the said sheds, storehouses and yards at any time for the purpose of inspecting the stock of materials or plant. Further the Applicant shall at its own



cost provide and maintain suitable mortar mills, soaking vats or any other equipments necessary for execution of the works.

5.8 Further examination of the E-Tender documents of East Coast Railway reveals that the Applicant shall construct one site office for the Railway / Engineer. The Applicant shall supply and maintain new furniture and equipments for the Engineer's office and for this no extra payment will be paid by East Coast Railway. From the Applicant's submission, it has also been noticed that a good number of site Engineers and technical personnel of the Applicant will be deployed in Odisha for supervision of the job at site and give report to Applicant's head quarter at Mumbai, Maharashtra. Site Engineers deployed at site will occupy few desks in the site office constructed by the Applicant .

5.9 We also observe that the Applicant has sub contracted some part of the work to M/s SRC Company Infra (P) Ltd, Hyderabad. The value of the contract accepted by the sub-contractor is Rs. 137,60,47,790 out of the total cost of the contract of Rs.337.18 Cr. In this regard, the Applicant has contended that it has sub-contracted majority of work, except supply of Cement and Steel which will be procured and directly sent to site for consumption at Odisha, The Applicant further stated that it would not construct any Godown at site for Cement and Steel, as the site is scattered over 42 kilometers distance. Cement and Steel will be supplied to respective site as and when required basis, for direct consumption. This view/contention of the Applicant appears to be contrary to Clause 19 of the E-Tender documents (under Chapter-3-General Conditions of Contract) wherein the conditions are laid down that the Applicant shall at his own expense provide himself with Sheds, Storehouses and yards in such situation and in such numbers as in the opinion of the Engineer is requisite for carrying on the works and the Applicant shall keep at each such sheds, storehouses and Yards a sufficient quantity of materials and plant in stock. The Engineer's representative shall have free access to the said sheds, storehouses and yards at any time for the purpose of inspecting the stock of materials. Further, the Applicant shall at its own cost provide and maintain suitable mortar mills, soaking vats or any other equipments necessary for execution of the works.



5.10 We further observe that the instant project is a long-term contract spanning over 24 months followed by defects liability period involving substantial amount of Rs.337.18. crores. The Applicant is responsible for supplying goods i.e Cement, Steel etc from the sheds/store houses constructed at the project site to carry out the construction work. The Applicant has to construct site office at the project site which shall be used by site Engineers/technical staff of the Applicant deployed for supervision of the job at site as well as for the Engineers of the East Coast Railway. As per the agreement, in order to rendering works contract service, the Applicant would depute/deploy a good number of Engineers and technical staff at the project site. From the volume and nature of the works contract, it is quite apparent that in order to oblige the terms & conditions of the contract, the Applicant needs to deploy adequate number of site Engineers and technical staff and ancillary equipments for satisfactory completion of the project work, which cannot be feasible /possible without having a permanent site offices of sufficient capacity.

5.11 Thus, it is clearly evident from the above discussion that the Applicant is required to maintain suitable structures in terms of human and technical resources with sufficient degree of permanence at the sites of East Coast Railway, Odisha to effect supply of desired services as per the terms and conditions of the work order. It has to ensure provision of works contract service for the contract period, indicating sufficient degree of permanence to the human and technical resources employed at the sites. The Applicant through its expert belonging, therefore, is to supply the services at the site from the establishment as defined under section 2 (7) of the IGST Act. The location of the supplier should, therefore, be in Odisha in terms of section 2 (15) of the IGST Act. Therefore, We do not agree with the contention of the Applicant that the Location of Supplier is in state of Maharashtra not in Odisha. Accordingly, we hold that the Applicant is required to be registered under Odisha Goods and Services Tax Act, 2017 and Central Goods and Services Tax Act, 2017 in the state of Odisha for the works contract services to be provided to M/s East Coast Railway, Odisha vide agreement under discussion.



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5.12 The Applicant in support of its stand has cited the decision pronounced by the Authority for Advance Ruling, Karnataka vide order No.KAR ADRG 18/2020 dated 31.03.2020 in the case of M/S T & D ELECTRICALS, Rajasthan. But on perusal of the said order, it is observed that the facts of the instant case is distinguishable from the case cited by the Applicant inasmuch as there is no fixed establishment other than the principal place of business of M/S T & D ELECTRICALS. Therefore, the mandate of the said ruling is not applicable to the present case.

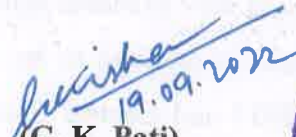
6.0 RULING

6.1 Q.1 Whether separate registration is required in Odisha state? If yes, whether E-tender document/LOA would suffice as address proof since nothing else is with the Applicant and service recipient will not provide any other proof?

Ans: Yes, the Applicant is required to be registered under Odisha Goods and Services Act, 2017 and Central Goods and Services Act, 2017 for the works contract service provided to M/s East Coast Railway, Odisha. As regards, rest part of the question whether E-tender document/LOA would suffice as address proof, we are of the opinion that the said question does not get covered under the issue/s on which the advance ruling can be sought under CGST Act, 2017 in terms of Section 97(2) of the said Act. Therefore, no ruling is given to this question.

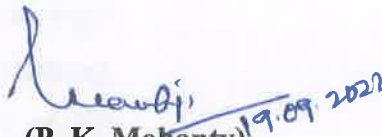
Q. 2 & 3 need not be answered as the answer to Q.1 is in the affirmative.

7.0 Note: The Applicant or jurisdictional officer, if aggrieved by the ruling, may appeal to the Odisha State Appellate Authority for Advance Ruling under Section 100 of the CGST/OGST Act, 2017 within 30 days from the date of receipt of the advance ruling.


(G. K. Pati)

Member, CGST




(P. K. Mohanty)

Member SGST



C. No. V (30) 01/ARA/ODISHA/BBSR/2022/01 / 14171-73-A

Dated: 20/9/22

To

M/s KONKAN RAILWAY CORPORATION LIMITED, Plot No. 06, 2nd floor, 3rd Floor, Belapur Bhawan, Sector-11, CBD Belapur, Navi Mumbai, Thane, Maharashtra, 400614.

Copy forwarded to:

1. The Principal Commissioner, CGST & Central Excise, Bhubaneswar Commissionerate, C R Building, Rajaswa Vihar, Bhubaneswar-751007 (Odisha)
2. The Commissioner, SGST Odisha, Baniyakar Bhawan, Old Secretariat Compound, Cuttack-753001 (Odisha).
3. Office copy.



