

 सत्यमेव जयते	RAJASTHAN AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX KAR BHAWAN, AMBEDKAR CIRCLE, NEAR RAJASTHAN HIGH COURT JAIPUR – 302005 (RAJASTHAN)	 राष्ट्र कर बाजार
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ADVANCE RULING NO. RAJ/AAR/2022-23/21

Umesh Kumar Garg Joint Commissioner	Member (Central Tax)
Mahendra Singh Kavia Additional Commissioner	Member (State Tax)
Name and address of the applicant	Sh.Om Prakash Agarwal, Prop. M/s Mittal Trading Company, 882, Ram Nagar, Shastri Nagar, Jaipur 302016 (Rajasthan)
GSTIN of the applicant	08ADOPA8235G1ZI
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised.	<i>(b) applicability of a notification issued under the provisions of this Act</i>
Date of Personal Hearing	23.11.2022
Present for the applicant	Adv. Anil Goyal (Authorized Representatives)
Date of Ruling	17.01.2023

Note: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.

1. At the outset, we would like to make it clear that the provisions of both the CGST Act and the SGST 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 SGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / SGST Act would be mentioned as being under the "GST Act".

2. The applicant, Sh.Om Prakash Agarwal, Prop. M/s Mittal Trading Company, 882, Ram Nagar, Shastri Nagar, Jaipur 302016 (Rajasthan) (hereinafter the Applicant) being a registered person (GSTIN is 08ADOPA8235G1ZI) as per the declaration given by him in Form (ARA-01) the issue raised by the applicant is neither pending for proceedings nor proceedings were passed by any authority. The Applicant has submitted the copy of application in Form GST ARA - 01 and also submitted a copy of Challan evidencing payment of application fees of Rs.5,000/- each under sub-rule (1) of Rule 104 of CGST rules 2017 and SGST Rules 2017

3. The appellant, Sh.Om Prakash Agarwal, Prop. M/s Mittal Trading Company, 882, Ram Nagar, Shastri Nagar, Jaipur 302016 (Rajasthan) has raised the following question for advance ruling in the application for Advance Ruling filed by it.

Applicability of Notification No. 11/2017 – Central Tax Rate dt. 28th June, 2017 amended with Notification No. 24/2017 – Central Tax (Rate) dt. 21.09.2017 and further amended vide notification no. 31/2017 – Central Tax (Rate) dt. 13.10.2017, and furthermore amended vide notification no. 15/2021 – Central Tax (Rate) dt. 18.11.2021

4. The applicant submitted that it is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2) (d) given as under:

(b) Applicability of a notification issued under the provisions of this Act

A. SUBMISSION OF THE APPLICANT : (in brief)

1) The Applicant, that Sh.Om Prakash Agarwal, Prop. M/s Mittal Trading Company, 882, Ram Nagar, Shastri Nagar, Jaipur 302016 (Rajasthan) has been awarded a contract from Rajasthan State Industrial Development & Investment Corporation through vide Work order No. U(16)-2(1942)/2021-2022/2618 dated 08.09.2021 for Development of Commercial Complex at Industrial Area Agro Food Park – II, Ranpur, Kota.

Under said contract, the Major works under the said contract are as follows: -

a. Construction and Re-carpeting of C.C. Road.

That, Rajasthan State Industrial Development & Investment Corporation is a body constituted under RIICO Industrial Areas (Prevention of Unauthorized Development and Encroachment) Act, 1999 as a special vehicle for undertaking of various government projects as envisaged by the Government of Rajasthan.

The major works executed by the RIICO includes the following: -

- Infrastructural Development of Rajasthan region by construction of Roads, flyovers, etc....
 - Development of Commercial projects and residential buildings for residential purpose.
 - Development of basic amenities like parks, roads.
 - Development & Rehabilitation of Industries.
 - Preparation and implementation of guidelines for colonization of industrial area.
 - Environment development by planning and implementing of roadside plantations and by developing eco – friendly schemes.
 - Development of industrial area around region of Rajasthan
 - Development of Transport facilities.
2. That Rajasthan State Industrial Development & Investment Corporation is covered under the status of Government: -

Definition of term “Government”: -

The definition of the term as given under the CGST Act, 2017 & respective RSGST Act, 2017 is being iterated as under:-

“As per section 2(53) of the CGST Act, 2017, ‘Government’ means the Central Government. As per clause (23) of section 3 of the General Clauses Act, 1897 the

'Government' includes both the Central Government and any State Government. As per clause (8) of section 3 of the said Act, the 'Central Government', in relation to anything done or to be done after the commencement of the Constitution, means the President. As per Article 53 of the Constitution, the executive power of the Union shall be vested in the President and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution. Further, in terms of Article 77 of the Constitution, all executive actions of the Government of India shall be expressed to be taken in the name of the President. Therefore, the Central Government means the President and the officers subordinate to him while exercising the executive powers of the Union vested in the President and in the name of the President. Similarly, as per clause (60) of section 3 of the General Clauses Act, 1897, the 'State Government', as respects anything done after the commencement of the Constitution, shall be in a State the Governor, and in an Union Territory the Central Government. As per Article 154 of the Constitution, the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution. Further, as per article 166 of the Constitution, all executive actions of the Government of State shall be expressed to be taken in the name of Governor. Therefore, State Government means the Governor or the officers subordinate to him who exercise the executive powers of the State vested in the Governor and in the name of the Governor."

Since, Rajasthan State Industrial Development & Investment Corporation is being set up by an Act vide Act No. 9 of 2002, Received assent of the President on the 6th August, 2002 is an authority legally entitled to carry out the function entrusted by the Government of Rajasthan under which the all the executive powers are vested with Governor of Rajasthan and which shall be exercised by him either directly or indirectly through the officers subordinated to him in accordance of the Constitution of India for which the copy of organization chart of Rajasthan State Industrial Development & Investment Corporation is enclosed which clearly specifies the division of Ministry as done by the Governor of Rajasthan in order to exercise the executive powers either directly or indirectly through the Ministers and subordinate officers so appointed under the Constitution of India and further "The RIICO industrial areas (prevention of unauthorised development and encroachment) act, 1999" states that as per Section – 18 "Powers of Government to make rules" which states that

a) "The State Government may take rules for carrying out the purposes of this Act.

b) The RIICO may, from time to time, make subject to the prior approval of the State Government, regulations for all or any of the matters provided under this Act to be governed by regulations, and generally matters also for which provisions are necessary for the exercise of its powers and discharge of its functions and duties under this Act.

3) All rules and regulations made under this Act after its commencement, shall be laid, as soon as may be after they are made, before the House of the State Legislature while it is in session for a total period of fourteen days which may be comprised in one session or two or more successive sessions, and if, before the expiry of the session in which they are so laid or the successive sessions as aforesaid, the House agrees in making any modification in the rules or regulations, as the case may be, or resolves that the rules of regulation, as the case may be, should not be made, the rules or regulation, as the case may be, shall thereafter have effect only in such

modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under these rules or regulations, as the case may be.

- 4) No regulation made by the RIICO under sub-section (2) or rules made by the State Government under sub-section (1) shall take effect unless they are published in the Official Gazette.” The State Government may, at any time by notification in the Official Gazette, repeal wholly or in part or modify any regulation made by the RIICO provided that, before taking any action under this sub-section, the State Government shall communicate to the RIICO the grounds on which it proposes to do so, fix a reasonable period for the RIICO to show cause against the proposal and consider the explanation and objections, if any, of the RIICO.
- 5) The repeal or modifications of any regulations shall take effect from the date of publication of the notification in the Official Gazette, if no date is therein specified, and shall not affect anything done or omitted or suffered before such date.

Thus, the sub – section (1), (2), (3) & (4) of Section 18 of The RIICO Industrial Areas (Prevention of Unauthorized Development and Encroachment) Act, 1999, which clearly defines that the State Government shall approve the rules as made by the officers subordinated after being published under the Official Gazette. Thus, we can conclude that the powers exercised by the officer subordinated shall be under the name of Governor of Rajasthan, hence the department established by the Government of Rajasthan comes under the purview of definition of State Government under the CGST Act, 2017 and RSGST Act, 2017. Furthermore, as stated under the Article 166 of the Constitution of India, all the executive actions of the subordinates’ officers of Rajasthan State Industrial Development & Investment Corporation as executed by them shall be deemed to be the powers executed by under the name of Governor of Rajasthan. Thus, we can conclude that the department established by the Government of Rajasthan comes under the purview of definition of State Government under the CGST Act, 2017 and RSGST Act, 2017.

B Interpretation and understanding of applicant on question rose (in Brief)

1. The applicant submitted that the GST rate applicable for the nature of work being awarded i.e., @ 12% (6% CGST & 6% SGST): -
2. The applicant contended that as per description of the services mentioned at Sl. No. 3 (vi)(a) of the Notification No. – 11/2017 – Central Tax Rate dt. 28th June, 2017 amended with Notification No. 24/2017 – Central Tax (Rate) dt. 21.09.2017 and further amended vide notification no. 31/2017 – Central Tax (Rate) dt. 13.10.2017, and furthermore amended vide notification no. 15/2021 – Central Tax (Rate) dt. 18.11.2021, GST rate applicable for the following services is @ 12%.

Notification No. – 11/2017 dated 28.06.2017: -

“3. Construction Services: -

(vi) [Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, provided] 12 to the Central Government, State Government, Union Territory, [a local authority, a Governmental Authority or a Government Entity]13 by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –

a) civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;”

3. The applicant further submitted that scope of works covered in the projects in the following: -Since, the scope of works covered in the projects is primarily in the nature of Construction and re-carpeting of C.C. Road, the project is covered under Sl. No. 3 (vi) (a) of the Notification No. 11/2017 – Central Tax Rate dt. 28th June, 2017 amended with Notification No. 24/2017 – Central Tax (Rate) dt. 21.09.2017 and further amended vide notification no. 31/2017 – Central Tax (Rate) dt. 13.10.2017, and furthermore amended vide notification no. 15/2021 – Central Tax (Rate) dt. 18.11.2021 and the GST Rate applicable on such project would be @ 12%.

C. Question(s) on which advance ruling is sought

“Applicability of Notification No. 11/2017 – Central Tax Rate dt. 28th June, 2017 amended with Notification No. 24/2017 – Central Tax (Rate) dt. 21.09.2017 and further amended vide notification no. 31/2017 – Central Tax (Rate) dt. 13.10.2017, and furthermore amended vide notification no. 15/2021 – Central Tax (Rate) dt. 18.11.2022.”

D. PERSONAL HEARING

In the matter personal hearing was granted to the applicant on 23.11.2022. On behalf of the applicant Adv. Anil Goyal (Authorized Representatives) appeared for PH. During the PH, he reiterated the submissions already made in the application. He asked seven days to submit supplementary submission. Adv. Anil Goyal submitted Copy of work order along with agreement and also stated that a tender to RIICO in respect of Pure Labor Service Contract which is being covered under entry 3A of Notification -12/2017. Thus in respect of such tender RIICO can be considered as Government applicability of notification shall be given to the tax payer.

E. COMMENTS OF THE JURISDICTIONAL OFFICER

In the matter, comments were asked from Jurisdictional CGST Division I Jaipur vide F.No. 5/Comm/AAR/State/2022-23/127 dated 15.07.2022 and even no 141-142 dated 26.08.2022, even no 161-162 dated 07.09 2022 but no response has been turned up, thus no Option left to decide case without comments of jurisdictional officer.

F. FINDINGS, ANALYSIS & CONCLUSION:

- 1) We have carefully examined the statement of facts, supporting documents filed by the Applicant along with application, oral and written submissions made at the time of Virtual hearing and the comments of the Central Tax Authority. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts. We would like to discuss the submission made by applicant and will take up the above question for discussion one by one.
- 2) The applicant is engaged construction services by way of construction of Commercial Complex, mainly Construction and Re-carpeting of C.C. Road at Industrial Area Agro Food Park – II, Ranpur, Kota, undertook the work contract tendered by Rajasthan State Industrial Development & Investment Corporation (RIICO). The applicant has sought ruling on the following question: “Applicability of Notification No. 11/2017 – Central Tax Rate dt. 28th June, 2017 amended with Notification No. 24/2017 – Central Tax (Rate) dt. 21.09.2017 and further amended vide notification no. 31/2017 – Central Tax (Rate) dt. 13.10.2017, and furthermore amended vide notification no. 15/2021 – Central Tax (Rate) dt. 18.11.2022.
- 3) We are unable to understand the fact stated by Adv. Anil Goyal (Authorized Representatives) that a tender to RIICO in respect of Pure Labor Service Contract which is

being covered under entry 3A of Notification -12/2017. Thus in respect of such tender RIICO can be considered as Government applicability of notification shall be given to the tax payer. Applicant sought applicability of Notification No. 11/2017 – Central Tax Rate dt. 28th June, 2017, as amended. We don't find any relevance of this additional submission made by applicant in respect of advance ruling sought by the applicant. However, Applicant has raised the question on the eligibility of the Notification on tax rate to the service supplied by them. Therefore, the application is admitted and the question for which ruling is sought is taken up for decision.

4) We observe that the facts of the case as seen from the records before us is that the applicant is undertook the work of construction mainly Construction and Re-carpeting of C.C. Road from RIICO. Rajasthan State Industrial Development & Investment Corporation is a body constituted under RIICO Industrial Areas (Prevention of Unauthorized Development and Encroachment) Act, 1999 as a special vehicle for undertaking of various government projects as envisaged by the Government of Rajasthan, but it's not Government itself.

5) The Section 2(53) of the Central Goods and service Tax Act 2017 had defined the government

"Government" means the Central Government;

And sub-section 2(53) of the Rajasthan Goods and service Tax Act, 2017 provided that

"Government" means the Government of Rajasthan;

The Rajasthan State Industrial Development & Investment Corporation (RIICO) is a corporation constituted under RIICO Industrial Areas (Prevention of Unauthorized Development and Encroachment) Act, 1999. The (RIICO) is constituted by the State Government and it is not falls under definition of state or central "Government".

6) Apart from above, now we are discussing the legal position of the case. As per submission made by the applicant, the **project is covered under Sl. No. 3 (vi) (a) of** Notification No. 11/2017- Central Tax(Rate) dated 28.06.2017 [as amended].We also observes that the amendments made through Notification No. 15/2021-Central Tax (Rate) dated 18.11.2021 and further vital amendment is made through vide Notification No. 03/2022- Central Tax (Rate)| Dated: 13th July, 2022:

7) Keeping in view the above relevant legal position of the case, it is clear that the words “or a Governmental authority or a Government Entity” has been omitted at serial number 3, in column (3), in the heading “Description of Services” in the said Notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017 vide aforesaid Notification No. 15/2021- Central Tax (Rate) dated 18.11.2021.

8) We further observed that GST rates of Works contract involving construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of following rendered to Government or Local authority increased to 18% vide Notification No. 03/2022- Central Tax (Rate) | Dated: 13th July, 2022 which is stated as under-

“in the Table, – (I) against serial number 3, in column (3), – (a) items (iii), (iv), (v), (va), (vi) and (ix) and the corresponding entries relating thereto in columns (4) and (5) shall be omitted;

(b) against items (vii) and (x), for the entry in column (4), the entry “6” shall be substituted;

(c) in item (xii), for the brackets and figures “(iii), (iv), (v), (va), (vi), (vii), (viii), (ix)”, the brackets and figures “(vii), (viii),” shall be substituted”;

9) Moreover, on gone through the facts of the case, we observe that applicant filed their application before the Rajasthan Authority for Advance Ruling (RAAR) on 02.06.2022 i.e. much later from the execution of contract dated 08.09.2021. We observe that the applicant is registered with GST authorities and well aware about the type of supply, its notification, circular, discharging his GST tax liability and submitting his GST returns in accordance to them wef execution of contract. Thus we observe that Rajasthan Authority for Advance Ruling should pronounce the decision in light of law situation arise after application come in process. Thus we observe that Rajasthan Authority for Advance Ruling should pronounce the decision in light of law situation arise after application come in process. We also observe that Notification No. 11/2017 – Central Tax Rate dt. 28th June, 2017 amended with Notification No. 24/2017 – Central Tax (Rate) dt. 21.09.2017 and further amended vide notification no. 31/2017 – Central Tax (Rate) dt. 13.10.2017, and furthermore amended vide notification no. 15/2021 – Central Tax (Rate) dt. 18.11.2022, has been further amended vide Notification No. 03/2022- Central Tax (Rate), Dated: 13th July, 2022, thus applicant should pay tax in accordance to latter amendment of Notification.

10) We observe that in this case applicant is providing service to Rajasthan Housing Board and in light of above discussion, we observe, applicant will be liable to pay GST @18% in light of Notification No. 11/2017 – Central Tax Rate dt. 28th June, 2017 amended with Notification No. 03/2022- Central Tax (Rate) | Dated: 13th July, 2022.

In view of the extensive deliberations as hereinabove, we rule as follows: -

RULING

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Rajasthan Goods and Services Tax Act, 2017)

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

Question - "Applicability of Notification No. 11/2017 – Central Tax Rate dt. 28th June, 2017 amended with Notification No. 24/2017 – Central Tax (Rate) dt. 21.09.2017 and further amended vide notification no. 31/2017 – Central Tax (Rate) dt. 13.10.2017, and furthermore amended vide notification no. 15/2021 – Central Tax (Rate) dt. 18.11.2022?"

Answer- Notification No. 11/2017 – Central Tax Rate dt. 28th June, 2017 amended with Notification No. 24/2017 – Central Tax (Rate) dt. 21.09.2017 and further amended vide notification no. 31/2017 – Central Tax (Rate) dt. 13.10.2017, and furthermore amended vide notification no. 15/2021 – Central Tax (Rate) dt. 18.11.2022, has been further amended vide Notification No. 03/2022- Central Tax (Rate), Dated: 13th July, 2022. The services provided by applicant to RIICO, after 13.07.2022 onward until rate not changed will attract a rate of 18% GST.


17.01.23
(Umesh Kumar Garg)
MEMBER
CENTRAL TAX




17/01/2023
(Mahendra Singh Kavia)
MEMBER
STATE TAX

SPEED POST

Sh.Om Prakash Agarwal, Prop. M/s Mittal Trading Company, 882, Ram Nagar, Shastri Nagar, Jaipur 302016 (Rajasthan))

F. No. AAR/SF/2022-23 **276-280**

Date:

Copy to: -

1. The Chief Commissioner, CGST and central Excise, (Jaipur Zone), NCRB, Statue Circle, Jaipur, Rajasthan 302005
2. The Chief Commissioner, State Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005.
3. The Commissioner, CGST and Central Excise Commissionerate Udaipur, Rajasthan.
4. The Deputy Commissioner, CGST Division I, Jaipur, Rajasthan.

o/c