

WEST BENGAL AUTHORITY FOR ADVANCE RULING

GOODS AND SERVICES TAX

14 Beliaghata Road, Kolkata – 700015

(Constituted under section 96 of the West Bengal Goods and Services Tax Act, 2017)

Members present:

Mr Brajesh Kumar Singh, Joint Commissioner, CGST & CX

Mr Joyjit Banik, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Tax Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	Purple Distributors Pvt Ltd
Address	Ground Flour, 10 Ganesh Chandra Avenue, Kolkata, Pin Code 700013
GSTIN	19AADCP1474B1ZN
Case Number	WBAAR 18of 2022
ARN	AD190722000380J
Date of application	July, 05 2022
Jurisdictional Authority (State)	Princep Street Charge
Jurisdictional Authority (Central)	BBD Bag II Division, Kolkata North Commisssionerate
Order number and date	17/WBAAR/2022-23 dated 22.12.2022
Applicant's representative heard	Mr. Shubham Khaitan, C.A, Authorized Representative Mr. Nishant Baid, C.A. Authorized Representative

1.1 At the outset, we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like matter except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the WBGST Act. Further to the earlier, henceforth for the purposes of these proceedings, the expression 'GST Act' would mean the CGST Act and the WBGST Act both.

1.2 The applicant, on being awarded a sub-contract from M/s Patil Rail Infrastructure Pvt. Ltd., undertakes the work of conversion of Short Welded Rails ("SWR") to Long Welded Rails ("LWR") by Flash Butt Welding process on the tracks running from Furkating (FKG)-Jorhat (JTTN)-Mariani (MXN), in the state of Assam. The work also includes supply of all assistance of labour for welding of rail joints.

1.3 The applicant has made this application under sub section (1) of section 97 of the GST Act and the rules made there under raising following questions vide serial number 14 of the application in FORM GST ARA-01:

- a. Whether the services provided by the applicant is that of a works contractor, falling under any of the entries under Heading 9954?
- b. If the answer to (a) is yes, then the Sr. No under which it should be classified.
- c. Whether the services provided by the applicant is that of a Job Worker, falling under Heading 9988 [*Manufacturing services on physical inputs (goods) owned by others*] Sr. No26 (id) i.e *Services by way of job work other than 78b[(i), (ia), (ib), (ic) and (ica)] above*; having tariff rate of 12% under Notification No. 11/2017-Central Tax (Rate) as amended.
- d. If the services do not fall under any of the above categories, what should be the HSN code and GST rate?

1.4 The aforesaid question on which the advance ruling is sought for is found to be covered under clause (a) of sub-section (2) of section 97 of the GST Act.

1.5 The applicant states that the question raised in the application has neither been decided by nor is pending before any authority under any provision of the GST Act.

1.6 The officer concerned from the Revenue has raised no objection to the admission of the application.

1.7 The application is, therefore, admitted.

2. Submission of the Applicant

2.1 The applicant submits that pursuant to a contract awarded to M/s Patil Rail Infrastructure Pvt. Ltd, (hereinafter referred to as the “principal contractor”) by the Engineering Department of Northeast Frontier Railway for conversion of Short Welded Rails (“SWR”) to Long Welded Rails (“LWR”) by Flash Butt Welding process, it has entered into an agreement with the said principal contractor to execute the said contract job on the tracks running from Furkating (FKG)-Jorhat (JTTN)-Mariani (MXN), in the state of Assam.

2.2 The nature of work being undertaken by the applicant is stated to be as follows:

2.2.1 A SWR consists of just two or three rail tracks welded together whereas a LWR is anything longer. The split between two SWR is generally after 36 meters and in case of LWR, the split is generally after 250 meters.

2.2.2 The Indian Railways is converting SWR to LWR for the numerous benefits it has to offer.

- i. The reduced number of joints provide good quality ride.
- ii. There is minimized wear of rail at joints.
- iii. LWR increases the life of rail and reduces the cost of maintenance.
- iv. Expansion effect due to temperature is reduced.

2.2.3 The SWR would be converted into LWR by the applicant by the process of Flash Butt Welding (FBW). FBW is a type of resistance welding that does not use any filler metals. The pieces of metal to be welded are set apart at a predetermined distance based on material thickness, material composition, and desired properties of the finished weld. Current is applied to the metal and the gap between the two pieces creates resistance and produces the arc required to melt the metal. Once the pieces of metal reach the proper temperature, they are pressed together, effectively forge welding them together. Thus, the process of welding does not require any use of materials.

2.3 The applicant submits that only welding services are provided by them by using Flash Butt Welding Machine on railway tracks which can be easily detachable from the earth without any damage and no goods are transferred in the services involved. In view of the nature of activities being carried out by the applicant, it is contended that the services

provided by the applicant should not be treated as works contract and hence not classifiable under any of the entries under Heading 9954.

2.4 The contention of the applicant is enumerated as under:

- According to the applicant, a contract would be treated as a “works contract” if there is a transfer of property in goods along with services which lead to creating of immovable property. Clause (119) of section 2 of the GST Act defines the term ‘works contract’ which reads as follows:

“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.

- Further, clause (52) of section 2 defines the term ‘goods’ as under:
“Goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.
- However, the term “immovable property” has not been defined under the GST law. Therefore, references may be drawn to other laws and judicial precedents in this regard which are as follows:

- Section 3(26) of General Clauses Act, 1897 defines immovable property as under:

"immovable property shall include land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth."

- Section 2(6) of The Registration Act, 1908 defines immovable property as under:

"Immovable Property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass;"

- In the case of Solid and Correct Engineering Works [2010 (252) E.L.T. 481 (S.C.)], the Hon'ble Supreme Court of India has laid down following principles:
 - Immovable property involves permanent fixing, embedding or attachment in the sense that would make the machine a part and parcel of the earth permanently.
 - Where attachment is easily detachable from the foundation, it is not permanent.
 - If it can be dismantled without causing substantial damage to the asset, it is a movable property

2.5 The applicant further argues that the services provided by them would qualify as job work as defined in clause (68) of section 2 of the GST Act which reads as follows:

- *“job work” means “any treatment or process undertaken by a person on goods belonging to another registered person and the expression “job worker” shall be construed accordingly;*

2.6 The applicant submits that the goods (rail tracks) sent by the principal contractor are the property of the Indian Railways. As both the principal contractor and the Indian Railways are registered under the GST Act and the treatment or process of welding has only been carried out on such goods (rail tracks) to convert from SWR to LWR, the said services provided by them would fall under the ambit of job work.

2.7 In course of personal hearing, the authorized representatives of the applicant request to consider following questions:

- Whether the supply of labour for the process of welding would be considered as a standalone supply or ancillary to the composite supply of welding? What should be the rate of tax and classification of such labour supply?

The applicant, with reference to aforesaid questions, submits that the supply of labour services provided by them along with the job work services should be considered as a composite supply as these supplies are naturally bundled in this industry for which the principal supply would be that of the job work whereas labour supply would be ancillary. Hence, the rate of GST would be the same as that of job work.

2.8 In the light of aforesaid arguments, the applicant submits that the supply of services provided by them would attract tax @ 12% vide serial number 26(i)(id) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended from time to time.

3. Submission of the Revenue

3.1 The concerned officer from the revenue has not expressed any view on the issue raised by the applicant.

4. Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorised representatives of the applicant during the course of personal hearing.

4.2 The applicant, as a sub-contractor, undertakes the work for conversion of Short Welded Rails ("SWR") to Long Welded Rails ("LWR") by Flash Butt Welding process. It is contended by the applicant that since the welding services are provided on railway tracks which can be easily detachable from the earth without any damage and no goods are transferred in the services involved, such services should not be treated as 'works contract' as defined in clause (119) of section 2 of the GST Act. The applicant further argues that as the treatment or process of welding has only been carried out on goods i.e., on railway tracks to convert from SWR to LWR and the said goods are the property of Indian Railways who is a registered person under the GST Act, the services provided by them would fall under the ambit of job work in terms of definition laid down in clause (68) of section 2 of the Act *ibid*.

4.3 We find that it would be apposite if we proceed to analyze the issues involved in the instant case under following sequence:

- (i) Whether the supply falls under the ambit of 'works contract' as defined in clause (119) of section 2 of the GST Act;
- (ii) If the answer is found to be in negative, whether the supply can be termed as 'job work' as per definition given in clause (68) of section 2 of the GST Act;
- (iii) If the answer is still found to be in negative, what would be the classification of such supply.

4.4 The definition of 'works contract' given in clause (119) of section 2 of the GST Act read with Para 6(a) of Schedule II of the Act *ibid* clearly denotes that works contract is a composite supply of services which shall fulfil both the following conditions:

- (a) the supply shall be in relation to immovable property only;
- (b) the supply essentially involves transfer of property in goods (whether as goods or in some other form).

Even if we lay aside the first condition for the moment, still the supply being undertaken by the applicant in the present case doesn't satisfy the later condition as per submission of the applicant i.e., the supply doesn't involve transfer of property in goods. We therefore hold that the instant supply would not be treated as works contract.

4.5 We now come to the next issue related to job work i.e., whether the instant supply provided by the applicant would qualify as 'job work' as defined in clause (68) of section 2 of the GST Act or not. It appears from the definition of 'job work' that activities of any treatment or process shall qualify as job work subject to fulfilment of following two criteria:

- (i) the treatment or process has to be undertaken on goods i.e., on any movable property;
- (ii) the goods in question must be belonging to a registered person.

The applicant undertakes the job for conversion of Short Welded Rails ("SWR") to Long Welded Rails ("LWR") by Flash Butt Welding process and it is argued by the applicant that railway tracks, on which the activities of welding is carried out, would fall under the category of movable property since the railway tracks are easily detachable from the earth without any damage and thereby would qualify as goods.

4.6 Since the term 'immovable property' has not been defined under the GST law, the applicant has drawn references to other laws which inter alia includes section 3(26) of General Clauses Act, 1897 which defines 'immovable property' as under:

"immovable property shall include land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth."

4.7 For the purpose of interpretation of the expression "attached to the earth", section 3 of the Transfer of Property Act, 1882 may be referred to which reads as follows:

"attached to the earth" means— (a) rooted in the earth, as in the case of trees and shrubs; (b) imbedded in the earth, as in the case of walls or buildings; or (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached;

In the case of Triveni Engineering & Industries Ltd. & Anr. Vs. Commissioner of Central Excise & Anr, the Hon'ble Supreme Court of India has observed as follows:

“From a combined reading of the definition of immovable property in Section 3 of the Transfer of Property Act, Section 3(25) of the General Clauses Act, it is evident that in an immovable property there is neither mobility nor marketability as understood in the Excise Law. Whether an article is permanently fastened to anything attached to the earth require determination of both the intention as well as the factum of fastening to anything attached to the earth. And this has to be ascertained from the facts and circumstances of each case.”

4.8 In this context, it would be relevant to have a brief account how the rail tracks are laid. The procedure, as we find from the website wikipedia.org and trackopedia.com is summarized as under:

- A railway track or railroad track also known as permanent way is the structure on a railway or railroad consisting of the rails, fasteners, railroad ties and ballast plus the underlying subgrade.
- The role of the subgrade in railways is similar to that of a building foundation. The applied loads are transferred by the deflection of the rail to the ballast bed and then passed on via the subgrade to the subsoil.
- Traditionally, tracks are constructed using flat-bottomed steel rails laid on and spiked or screwed into timber or pre-stressed concrete sleepers with crushed stone ballast placed beneath and around the sleepers.
- Sleepers: A sleeper is a rectangular object on which the rails are supported and fixed. The sleeper has two main roles: to transfer the loads from the rails to the track ballast and the ground underneath, and to hold the rails to the correct width apart (to maintain the rail gauge). They are generally laid transversely to the rails.
- Fixing rails to sleeper: Various methods exist for fixing the rail to the sleeper. Historically spikes gave way to cast iron chairs fixed to the sleeper, more recently springs (such as *Pandrol clips*) are used to fix the rail to the sleeper chair.

4.9 The applicant in support of his argument has placed reliance on the judgement delivered by the Hon'ble Supreme Court of India in the matter of Solid and Correct Engineering Works [2010 (252) E.L.T. 481 (S.C.)]. In the said judgement, the Hon'ble Apex Court observed that attachment of the plant in question with the help of nuts and bolts to a foundation intended to provide stability to the working of the plant and prevent vibration/wobble free operation does not qualify for being described as attached to the earth. The court further held that manufacture of the plants in question do not constitute annexation hence cannot be termed as immovable property for the following reasons:

“(i) The plants in question are not per se immovable property.

(ii) Such plants cannot be said to be "attached to the earth" within the meaning of that expression as defined in Section 3 of the Transfer of Property Act.

(iii) The fixing of the plants to a foundation is meant only to give stability to the plant and keep its operation vibration free.

(iv) The setting up of the plant itself is not intended to be permanent at a given place.

The plant can be moved and is indeed moved after the road construction or repair project for which it is set up is completed."

4.10 In the case at hand, there can be no dispute in this regard that the intention of annexation of railway tracks involves significant degree of permanence and for this very characteristic of it, railway tracks are also called as 'permanent way'. Contrary to the observation made by the Hon'ble court that 'the plant can be moved and is indeed moved after the road construction or repair project', railway tracks are not intended to be moved and indeed not moved after laying it at a given place. Further, in the above-referred case, the Hon'ble Court observed that 'fixing of the plants to a foundation is meant only to give stability to the plant and keep its operation vibration free'. The instant case is also not identical in this respect since transportation on rail can be possible only when the railway tracks are firmly laid on the sleepers so that the same cannot be moved. Therefore it cannot be said that fixing of rails on sleepers is meant only to provide stability. In this context, we would like to highlight the network of Indian Railway that consists inter alia of wagons and coaches for transportation of goods and passengers respectively, railway tracks, electrification, signaling and telecommunication. As the connectivity stretches across the states and covers a total route length of 68,103 km (source: Wikipedia.org), railway tracks are laid not only over the ground but the tracks are laid over numerous railway bridges and also the same passes through a number of tunnels. In fact, the railway tracks are considered to be the backbone of railway transportation system and to keep utmost priority on safety measures, railway tracks are firmly fastened on the sleepers. The applicant has contended that railway tracks are easily detachable and therefore should not be treated as immovable property. Considering the procedure as well as the technical aspects for laying of railway tracks, we are unable to accept the factum that railway tracks can easily dismantled from a place and subsequently can easily be laid again elsewhere.

4.11 We are therefore of the view that that railway tracks, for its permanent characteristic and in absence of mobility like other goods, would be regarded as immovable property and therefore fail to qualify to be goods. As a result, the work of conversion of Short Welded Rails ("SWR") to Long Welded Rails ("LWR") by Flash Butt Welding process cannot be

treated as 'job work' since we have already discussed that to qualify any treatment or process to be job work, the same has to be undertaken on goods only.

4.12 We also find that the definition of 'job work' is restricted to any treatment or process only i.e., the activities of a job worker is to undertake any treatment or process on goods which belongs to another registered person. In the case in our hand, we find that the contract awarded to the applicant is not limited to any treatment or process (the process of welding for the instant case) on goods belonging to another person. The scope of work as it is noticed from the work order covers the entire job for conversion of SWR to LWR including replacement of existing AT welds for a total distance of 54.03 km by flash butt welding. The work requires pulling back of rail, unfastening of fittings, lifting of rail with wooden block, opening out PSC sleepers either side of joints, removing of ballast, squaring, re-spacing and reinsertion of sleepers, putting back ballast, checking of joint sleeper, re-fixing of fittings etc.

4.13 The authorized representatives of the applicant, in course of personal hearing, have made a request to clarify whether the supply of labour for the process of welding would be considered as a standalone supply or ancillary to the composite supply of welding. It is contended in this regard that the supply of labour services provided by them along with the job work services should be considered as a composite supply as these supplies are naturally bundled in this industry for which the principal supply would be that of the job work whereas labour supply would be ancillary.

4.14 We have already expressed our view that the work being undertaken by the applicant of conversion of Short Welded Rails ("SWR") to Long Welded Rails ("LWR") by Flash Butt Welding process cannot be treated as job work. However, on due consideration of the applicant as well as the scope of work as described in Para 4.12 above, we are also of the view that the services of welding of railway track along with labour services are naturally bundled and supplied in conjunction in each other and therefore would fall under the ambit of 'composite supply' as defined in clause (30) of section 2 of the GST Act.

4.15 Now, for the purpose of deciding the classification of the services in question, we find that the instant services is supplied by the applicant for construction of railways and therefore would be treated as 'General construction services of civil engineering works' under Group 99542. Services under Tariff code 995421 and 995429 is reproduced below for reference:

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

995429: Services involving repair, alterations, additions, replacements, renovation, maintenance or remodeling of the constructions covered above

The instant services, therefore, falls under Tariff Code 995429 and to be taxed @ 18% vide serial number 3(xii) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended from time to time [corresponding West Bengal State Notification No.1135 F.T. dated 28.06.2017].

In view of the above discussions, we rule as under:

RULING

The work being undertaken by the applicant as a sub-contractor for conversion of Short Welded Rails ("SWR") to Long Welded Rails ("LWR") by Flash Butt Welding process on the railway tracks along with supply of labour services shall be treated as composite supply of services falling under Tariff 995429 and shall be taxable @ 18% vide serial number 3(xii) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended from time to time [corresponding West Bengal State Notification No.1135 F.T. dated 28.06.2017].

(BRAJESH KUMAR SINGH)
Member
West Bengal Authority for Advance Ruling

(JOYJIT BANIK)
Member
West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 22.12.2022

To,
Purple Distributors Pvt Ltd
Ground Floor, 10 Ganesh Chandra Avenue, Kolkata, Pin Code 700013

Copy to:

(1) The Principal Chief Commissioner, CGST & CX, 180, Shantipally, R.B.Connector,
Kolkata-7000107

- (2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015
- (3) The Sr. JCCT, Princep Street Charge, 14, Beliaghata Road, Kolkata-700015
- (4) Office Folder