

GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD:380009	
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ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2023/01
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2021/AR/07)

Date: 13.01.2023

Name and address of the appellant	:	M/s Shilchar Technologies Limited, Bil Road, Bil, Vadodara-391410
GSTIN of the appellant	:	24AADCS3108B1Z2
Advance Ruling No. and Date	:	GUJ/GAAR/R/07/2021, Date : 20.01.2021
Date of appeal	:	03.03.2021
Date of Personal Hearing	:	08.09.2022
Present for the appellant	:	Shri Dhruvank Parikh, CA

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act, 2017' and the 'GGST Act, 2017') are in *pari materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean reference to the corresponding similar provisions in the GGST Act, 2017.

2. The present appeal has been filed under Section 100 of the CGST Act, 2017 and the GGST Act, 2017 by M/s Shilchar Technologies Limited (hereinafter referred to as Appellant) against the Advance Ruling No. GUJ/GAAR/R/07/2021 dated 20.01.2021.

3. Brief facts of the case:

3.1 M/s Shilchar Technologies Limited, Bil Road, Bil, Vadodara- 391410 (hereinafter referred to as 'the appellant'), holding GSTIN: 24AADCS3108B1Z2, are manufactures of Electronics and Telecom and Power & Distribution Transformers.

3.2 The appellant submitted that M/s Adani Green Energy Limited (herein after referred as 'M/s AGEL') had been granted an approval by the Ministry of New & Renewable Energy for developing and setting up a 75MW Solar Project at Chitrakoot, Uttar Pradesh (UPNEDA Project). For the initial setting of the Solar Project, M/s AGEL



required machines, equipment, power cables, transformers and many other parts & components of the Solar Power Plant.

3.2.1 The appellant received an order No. 4500315135 dated 08.11.2019 from M/s AGEL, for supply of 5/6.25MVA ONAN/ONAF 33/0 8/0 8KV 'Aluminum Foil Type Winding Inverter Duty Transformers'(IDT) falling under Chapter Heading 8504 along with the mandatory spares for Transformers. According to the appellant their recipient of supply M/s.AGEL had confirmed that the said goods are parts of the Solar Power Generating System and will be used only for the said application. The appellant further submitted that as per the technical specification for Aluminum Winding Inverter Duty Transformers issued by M/s. AGEL services are also included therefore they got a separate contract for service vide SO No 5700280769 dated 23.12.2019 with regard to Supervision of Erection, Testing and Commissioning charges for the said project. The appellant added that they will be charging 18% GST on the same being classified as service. They further submitted that actual erection, commissioning and installation is not supposed to be carried out by them and they will be required only to supervise the same.

3.3 The appellant submitted that since two separate contracts had been issued to them, by the recipient of supply as supply of goods and services and have separately been bided by them explanation inserted at Sr. No 234 to the schedule –I of Notification No. 01/2017-Central Tax (Rate) dated 28th June, 2017 as amended, shall not be applicable, according to which the value of supply of goods shall be deemed as seventy percent of the gross consideration charged for all such supplies and the remaining thirty percent of the gross consideration shall be deemed as value of the said taxable service. They are of the considered opinion that the service provided by them is classified under Service Accounting Code (SAC) 9985 and they are charging 18% GST on supervisory services provided by them and therefore, the supply of Transformer to be executed / executed would be liable to GST @ 2.5% CGST and 2.5% SGST only in terms of Sr. No 234 referred above.

3.4 In view of the above, the advance ruling was sought by the appellant as under:

Whether supply of Aluminium Foil Type Winding Inverter Duty Transformer classifiable under Chapter Heading 8504 and parts of Transformer supplied/to be supplied for initial setting up of solar project falls under Sr. no. 234 in Schedule-I to Notification No. 01/2017-Central



Tax (Rate) dated 28th June, 2017 and liable to Central GST 2.5% along with State GST at the rate of 2.5%.

4. The Gujarat Authority for Advance Ruling (hereinafter referred to as “GAAR”) vide its order No. GUJ/GAAR/R/07/2021 dated 20.01.2021, gave the following ruling to the above question.

The appellant is liable for payment of GST on the total value of both the purchase order i.e supply of goods and supply of service in terms of explanation inserted vide Entry No. 234 of Noti. No. 01/2017-CT (Rate) dated 28.06.2017 vide Notification No. 24/2018-CT (Rate) dated 31.12.2018. Explanation stated that out of the gross value of the supply, 70% shall be deemed to be on account of goods and 30% deemed to be on account of service. Accordingly, the effective rate came to 8.9% as under:

S.No.	Particulars	% of value	Rate of tax	Effective rate of tax
1.	Goods	70	5%	3.5%
2.	Services	30	18%	5.4%
TOTAL				8.9%

5. Being aggrieved with the above Ruling, the appellant has preferred the present appeal on the following grounds:

- (a) That not in all but in the case of one or few purchase orders, appellant received a separate service order by filling the tender issued by the recipient of supply as supplying service is not the regular business of the appellant. Therefore testing service shall not be required to be executed with every supply of goods. That when two contracts are separate and in all cases when service itself is not involved the question of 18% deeming 30% as value of service does not arise.
- (b) That the purchase order 4500315135 dated 08.11.2019 for supply of Aluminum Foil Type Winding Inverter Duty Transformer alongwith their parts was received from M/s. Adani Green Energy Limited having GSTIN 09AANCA1814G1ZR whereas another purchase order no. 5700280769 dated 23.12.2019 for supervision of erection, testing and commissioning charges for the transformer was received from M/s. Adani Solar Energy Chitrakoot One Limited registered with GSTIN



09AARCA4590P1ZP. Hence the goods have been supplied to one entity which is different from the services supplied by the appellant to another distinct entity.

- (c) The findings given in para 29.1, 30, 31 and 32 of the impugned order tries to interpret the two separate contracts into one single indivisible contract resulting into treating the contract as 'Composite Supply' as defined in Section 2(30) of CGST Act, 2017.
- (d) In the decision given by Maharashtra Appellate Advance Ruling in the case of M/s Vertiv Energy Private Limited [2018 TaxCorp(GST) 20676(AAR)] wherein the Hon'ble Appellate Authority reversed the decision of Hon'ble Authority for Advance Rulings who held the entire supply as 'Composite Supply'. The appellate authority held that in case of a composite supply there has to be only one taxable person supplying combination of goods or services. In the case of M/s EAPRO Global Limited (AAR No. 07/2018-19 (2018) TaxCorp (GST) 3689(AAR)) the Authority for Advance Rulings, Uttarkhand held that the entire supply would fall under composite supply as much as 'Solar Power Generating System' is predominant element in the composite supply and it takes the character of the principal supply. Therefore, all the goods should be taxable @5% as 'Solar Power Generating System'.
- (e) No civil work is involved in this case and the transformer can be moved 'as such' and it is possible for the transformers to shift the base from time to time elsewhere at frequent intervals, unlike solar plants. This is not a typical EPC contract involving the erection, commissioning and installation at the premise of the customer and whatever is done on transformer is being carried out or done at the premises of the appellant.
- (f) Para No. 30 of the impugned order erroneously mentions that the agreement is for supply of an effectively running transformer as installation and commissioning has not been mentioned in the findings and is being actually done by the recipient of supply through their technical team/third persons. The clarification as provided at Sr. No 2 of Circular No. 47/21/2018-GST wherein it is stated that if value of goods and services supplied are shown separately, then the goods and services would be liable to tax at the rates as applicable to such goods and services separately.



(g) Further, Supervision of erection and commissioning falls under Service Accounting Code (SAC) 9985 and not covered under any of the SAC falling within the scope of Notification No. 11/2017-CT (Rate) as amended.

(h) As regards the inability to produce the copies of the contract, the appellant submitted that it is a normal practice in the country to act based on the purchase order awarded and hence there is no formal contract being entered into with the recipient of supply other than the copies of PO produced before the authorities.

5.1 During the course of virtual personal hearing held on 08.09.2022, the advocate for the appellant, Shri Dhruvank Parikh reiterated the submissions made also furnished additional written submissions vide which it was submitted that:

(i) They were never involved in the transaction of Works Contract as defined in Section 2(119) of the CGST Act, 2017 and that the GST audit carried out by the department (transactions pertaining to the issue involved in the present appeal were not carried on by the appellant with Adani Group in the period covered in the GST Audit but supplied the same products to other recipients and also have rendered similar services in few of the supply orders) had accepted the classification and none of the transactions had been classified as 'Works Contract'. The requirement for assigning of values of 70% and 30% is only when an EPC contract is involved which is not the case here. Relied upon the Gujarat Appellate Authority for Advance Ruling ,Goods and Services Tax, Ahmedabad Order No. GUJ/GAAAR/APPEAL/2022/14 Order dated 12th July,2022 in the case of M/s Apar Industries Limited. The appellant additionally submitted a declaration dated 26.08.2022 on behalf of M/s Adani Green Energy Ltd stating that Purchase order purely dealt with supply of goods viz supply of Aluminium Foil Type Winding Inverter Duty transformers and mandatory spares and also furnished another declaration on behalf of M/s Adani Solar Energy Chitrakoot One Limited dated 26.08.2022 whereby it was submitted that the Service Order purely dealt with supply of Supervision of Erection, Testing and Commissioning and Type Test charges i.e complete inspection of equipment and rectification or repairing of parts (in case testing is to be done) of Aluminium Foil Type Winding Inverter Duty transformers and thus no civil works was included in the scope of service. It was further clarified that M/s Adani Solar Energy Chitrakoot One Limited had



commissioned the solar power plant in UP District and they are a subsidiary unit of M/s Adani Green Energy Limited and a separate Special Purpose Vehicle and a distinct entity registered entity under the Companies act, 2013.

- (ii) The appellant stated that when the competent legislature mandates taxing certain person/certain objects in certain circumstances, it cannot be expanded/ interpreted to include those, which were not intended by the legislature. The appellant requested to modify the ruling of the GAAR by holding that the amendment made to Sr.234 of Notification No.01/2017- Integrated Tax (Rate) vide Notification No. 25/2018- Integrated Tax (Rate) dated 31.12.2018 and Notification No.28/2018- Integrated Tax (Rate) dated 31.12.2018, for deciding the value of services and rate of GST thereon, shall not be applicable to the appellant.

Discussions and Findings:

6. We have gone through the facts of the case as submitted in the Appeal papers, the Ruling of the GAAR, documents on record and oral as well as all the written submissions made by the appellant.

6.1 We find that in the ruling sought by the appellant there are two parts. The first part is, as to whether supply of Aluminium Foil Type Winding Inverter Duty Transformer classifiable under Chapter Heading 8504 and parts of Transformer supplied/ to be supplied for initial setting up of solar project falls under Sr.234 in Schedule-I to Notification No.01/2017-Central Tax (Rate) dated 28.06.2017. The second part is as to whether the said supply will be liable to Central GST at the rate of 2.5% alongwith State GST at the rate of 2.5%.

6.2 The GAAR in its findings held that Aluminium Foil Type Winding Inverter Duty Transformer and their parts are an essential part/ device of Solar Power Generating System and ruled that, *“the applicant is liable for payment of GST on the total value of both the purchase order i.e supply of goods and supply of service in terms of explanation inserted vide Entry No. 234 of Noti. No. 01/2017-CT (Rate) dated 28.06.2017 vide Notification No. 24/2018-CT (Rate) dated 31.12.2018.”* The first part of the ruling sought by the appellant has been answered in affirmative. There is no appeal by the department against the said findings of the GAAR. With regard to second part the GAAR has held that, *Explanation stated that out of the gross value of the supply, 70% shall be*



deemed to be on account of goods and 30% deemed to be on account of service. Accordingly, the effective rate came to 8.9% as under:

S.No.	Particulars	% of value	Rate of tax	Effective rate of tax
1.	Goods	70	5%	3.5%
2.	Services	30	18%	5.4%
TOTAL				8.9%

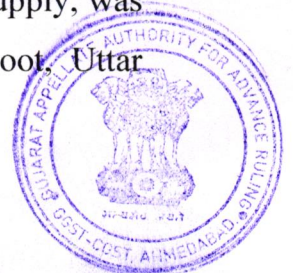
7. The issue which needs to be addressed in the present appeal is with regard to the rate of tax on the supply, of Aluminium Foil Type Winding Inverter Duty Transformer and their parts, by the appellants.

8. We find that GAAR has given findings that the appellant to avoid payment of GST in terms of the explanation inserted in the entry No.234 of Notification No.01/2017-CT (Rate) dated 28.06.2017 vide Notification No.24/2018-CT (Rate) dated 31.12.2018 w.e.f. 01.01.2019, providing deemed bifurcation of contract value into 70% of goods and 30% of service, artificially bifurcated the purchase order into supply of goods and service. However, according to GAAR the contract is linked/ single for both the supply of goods and services. We find that the GAAR in its order at Para No. 33 has inadvertently mentioned P.O. No. PO:4500315135 dated 08.11.2019 for service order instead of S.O. No. SO: 5700280769 dated 23.12.2019.

8.1 It is the contention of the appellant that GAAR has erred in holding that the recipient of supply and service is the same i.e M/s Adani Green Energy Ltd whereas they had received two separate Purchase orders i.e one for the supply of Aluminum Foil Type Winding Inverter Duty Transformers for initial setting up of Solar Power Generating System from M/s Adani Green Energy Limited and the other for Supervision services of Erection, Testing and Commissioning Charges (ETC) which was awarded to them by M/s Adani Solar Energy Chitrakoot One Limited and that two different contracts could not be clubbed together to form a composite contract for the purpose of calculating the duty liability on the appellant.

9. In this regard, we find that the appellant had in their application filed by them before GAAR submitted the following:

- a. M/s Adani Green Energy Limited (M/s.AGEL) the recipient of supply, was developing and setting up a 75 mw Solar project at Chitrakoot, Uttar



Pradesh (UPNEDA Project) for which the approval had been granted to them from Ministry of New and Renewable Energy.

- b. The recipient of supply M/s.AGEL awarded the contract for supply of Aluminum Winding Inverter Duty Transformer to be procured for 50MW Solar Project at Jalabad, 50MW Solar Project at Sahaswan and 50+25MW i.e 75MW Solar Project at Chitrakoot Uttar Pradesh to the appellant.
- c. The Technical specification issued by the recipient of supply for this contract contains scope of supply and services along with the intent of specification .
- d. Thus services are also included, the recipient of supply of service has issued a separate Service Order No. 5700280769 dated 23.12.2019 for supervision of erection, testing and commissioning charges for the transformer to be supplied/supplied by the appellant. That the appellant would be charging 18% GST on the same as the same is classified as service.

9.1 On going through the contents of the application, it is found that the appellant had not named M/s Adani Solar Energy Chitrakoot One Ltd as the recipient of the service in their application before GAAR and neither was GAAR informed anything about such a unit. Throughout the submission the reference was always to the 'recipient of supply' i.e M/s Adani Green Energy Ltd. On going the copy of the Purchase order No. 4500315135 dated 08.11.2019 it is seen that the said purchase order bears the name of M/s Adani Green Energy Ltd. Further it is seen that the copy of Service order No. 5700280769 dated 23.12.2019 furnished before GAAR, bears the stamp/seal and the signature of authorized signatory of M/s Adani Wind Energy (TN) Ltd. for AWETNL-UP_PROJECTS-SOLAR-25MW. It is noted here that there is nothing mentioned on the Service Order or any other document submitted to GAAR whereby it can be inferred that the service order has been placed by M/s Adani Solar Energy Chitrakoot One Ltd.

10. It is found that the appellant had submitted before GAAR copies of two purchase order and one Technical Specification issued by M/s AGEL for Aluminum Winding Inverter Duty Transformers and had discussed and placed reliance on the clauses containing the details of 'Intent of Specification' and the 'Scope of Supply and Services'



mentioned in the Technical Specification. Therefore, we find that GAAR has in its findings discussed these three documents in detail and gave the ruling vide the impugned order. As discussed above, the name of M/s Adani Solar Energy Chitrakoot One Limited had never appeared before GAAR as the 'recipient of service' and therefore the contention of the appellant that GAAR has erred in its finding that there is only one recipient of supply, is misleading and far from truth.

10.1 We find that the appellant had referred to the following clauses in its submissions before the GAAR which is reproduced herein under:

- i) Para 1.1.0 of the 'Intent of Specification' mentions the following:
"This specification covers Design, engineering, manufacture, assembly, inspection and testing at manufacturer's works, packing/Dispatch/ Transportation to site with transit insurance, Supervision of Erection, Testing and Commissioning of Inverter Duty Transformers as specified complete with all accessories for efficient and trouble free operation of Solar Power Plant."
- ii) Paras 2.0.0, 2.2.0, and 2.3.0 of the 'Scope of Supply' mentions the following:

2.1.0 *The scope of supply shall Cover Design, Engineering, Manufacture, Assembly and Testing at Works, Packing/Dispatch, Transportation to site with Transit Insurance and Supervision of erection, testing & commissioning of the Transformer complete with all fittings and accessories.*

2.2.0 *The scope of supply shall also include the following:*
 - a) *First fill of consumables.*
 - b) *Spare parts required for successful commissioning*
 - c) *Mandatory spare parts for three years trouble free operation & maintenance.*
2.3.0 *Scope of services*
 - a) *Preparation and submission of drawings & document in soft form as per the drawing/document submission schedule.*
 - b) *Supervision of erection, testing & commissioning of transformer.*
 - c) *Submission of progress report.*



d) *Participation in project review/technical coordination meetings.*

10.2 From the above submissions made before the GAAR, it can be seen that the appellant had solely relied and discussed the clauses mentioned in the Technical Specification issued by M/s AGEL in support of their arguments. Since no other documents were produced before GAAR other than what has been discussed above, we do not find any error in the findings given by GAAR that there was only one recipient of supply which was M/s AGEL. The Technical Specification issued by M/s.AGEL contains details relating to both supply of goods viz. Aluminium Winding Inverter Duty Transformers and supply of services viz. Supervision of Erection, Testing & Commissioning of Aluminium Foil Type Winding Inverter Duty Transformers.

11. We find that in the grounds of appeal, the appellant has submitted that two different entities have placed the two Purchase orders separately. i.e M/s AGEL has placed the order for supply of Aluminum Winding Inverter Duty Transformers (herein referred to as 'IDT') and M/s Adani Solar Energy Chitrakoot One Limited had placed the order for the service of Supervision of erection, testing and commissioning of these IDT. We further find that the appellant have at this stage submitted that M/s Adani Solar Energy Chitrakoot One Limited is a subsidiary of M/s AGEL and is an Special Purpose Vehicle and has commissioned the Solar Plant in Chitrakoot. We find that no documentary evidences or Agreement have been produced by the appellant in this regard except the two declarations mentioned at para No. 5.1(i) above.

12. On careful reading of the referred 'Technical Specification' issued by M/s AGEL reproduced at para 10.1 above, it is evident from Clause 1.1.0 of the 'Intent of Specification' and Clause 2.1.0 of the 'Scope of Supply' that M/s AGEL had prepared a comprehensive contract consisting of both the supply of the material and supply of services by way of supervision of erection, testing and commissioning of the Transformers manufactured and supplied by appellant. This is also something which has been submitted by the appellant in their application before GAAR. A conjoint reading of the clauses mentioned above clearly establishes that this is a contract involving supply of material as well as the services and both have been supplied in connection with the aforesaid supply. It has been held that Transformer is a part of the Solar Power Generating System and for that matter, is integral part. The appellant have submitted that the erection and commissioning of the transformer is being done by a third party and they



are not involved in any civil work. Even if they are not involved in its erection or commissioning, the service order has been placed in connection with the Aluminum Winding Inverter Duty Transformers which was manufactured and supplied by the appellant. Since the aforesaid clauses discussed above show that the contracts have been artificially split into two separate contracts, one for supply of material and other for rendering services but they are in fact one single contract. The goods supplied by the appellant are for the purpose of initial setting up of the Solar Power Generating System. It is also noted that in the Purchase order No. 4500315135 dated 08.11.2019 of M/s AGEL who has placed this order has been referred as 'the Employer' whereas in the Service Order No. 500280769 dated 23.12.2019, it is seen that the reference is that of 'Owner' and both the orders have been signed by the Buyer's authorized signatory. In fact, the signature of the 'Authorized Signatory' appearing on the Purchase Order and Service Order appears to be the same for both M/s AGEL and M/s Adani Solar Energy Chitrakoot One Ltd. The supply in question is a one involving both supply of goods and associated services and are to be supplied by the appellant. From the above discussion, we find that the supply of goods and the supply of services are single and connected and to be used for the same purpose viz. for supply and effective functioning of the IDT and trouble free operation of Solar Power Plant.

13. We further find that the appellant has been harping on the fact that they had received two separate purchase orders from two distinct entity. It is seen that the purchase order PO No. 4500315135 for the supply of Aluminum Foil Type Winding Inverter duty Transformer along with their parts issued by M/s. AGEL to the appellant is dated 08.11.2019 and the PO No. 5700280769 for supervision of erection, testing and commissioning charges for the Transformer from M/s Adani Solar Energy Chitrakoot One Limited is dated 23.12.2019. Further it is seen that the 'Technical Specification for Aluminum Winding Inverter Duty Transformers bearing No. 5353-E-SEP-EES-TE-S-I-002' bears the date as 15.7.2019 and the same is issued by M/s.AGEL. It is seen that on 15.07.2019 the Technical specification was issued for the tender purpose and this technical work had a comprehensive clause consisting of the scope for both i.e supply for works and service. From the wordings of the clauses of the Technical Specification issued, it is clear that the contract was for a single supply of goods and supply of services which has been artificially split. Hence, we find that the aforesaid artificial splitting of the contract into two separate orders being placed by two different entities is merely an afterthought so as to circumvent the explanation inserted in entry No 234 of Notification



No 01/2017 CT according to which, of the value of gross consideration 70% shall be deemed to be on account of goods and 30% deemed to be on account of service.

14. We produce below the relevant details appearing under Sr. No.234 of Schedule-I to Notification No.01/2017-Central Tax (Rate) dated 28.06.2017 amended vide Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018:

S.No.	Chapter/Heading/Sub-heading/Tariff Item	Description of Goods
(1)	(2)	(3)
234	84, 85 or 94	Following renewable energy devices & parts for their manufacture (a) Bio-gas plant (b) Solar power based devices (c) Solar power generating system (d) Wind mills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants / devices (f) Solar lantern / solar lamp (g) Ocean waves/tidal waves energy devices/plants (h) Photo voltaic cells, whether or not assembled in modules or made up into panels Explanation: If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 [G.S.R. 690(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service.

The details of entry at S. No.38 of the Table mentioned in the notification No.11/2017-Central Tax(Rate) dated 28.06.2017 as amended vide Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018 is reproduced below:



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

The SAC Group Code mentioned above and the service description covered under same is as follows:

Heading No.9954 Construction services

Heading no. 9983 Other professional, technical and business services

Heading no. 9987 Maintenance, repair and installation (except construction) services.

From the description of services given above and covered under the aforesaid Notification entry it is evident that the supplies undertaken by the appellant is squarely covered within the scope of the aforesaid entry.

14.1 The contention of the appellant that their service i.e. supervision of erection and commissioning does not fall either in SAC 9954, 9983 or 9987 as envisaged in Entry No. 38 to Notification No.11/2017-CT (Rate) dated 28.06.2017 as amended, but under



Heading no. 9985 'Support services' is without any base as the services provided by the appellant viz. 'Supervision of Erection, Testing & Commissioning (ETC)' is very well covered under Serial No.38 to Notification No.11/2017-CT (Rate) dated 28.06.2017 as amended.

15. We find that the appellant have submitted that the service provided by them is only for the supply of parts for manufacture of Solar Power Generating System whereas the services covered under Entry No. 38 to Notification No. 11/2017-CT is with respect to the service by way of construction or engineering or installation or other technical services provided in relation of setting up of Solar Power Generating System. Therefore the provision of this notification is not applicable in their case since they have two different recipients and non involvement of EPC contract as confirmed by the '**recipients of supply**'. The said contention of the appellant does not hold true as their supply of parts of Solar Power Generating System and the services relating to same will be used in the initial setting up of Solar Power Generating System. Further they relied on the decision in the case of M/s Apar Industries Limited in advance Ruling Appeal No. GUJ/GAAR/APPEAL/2022/14 order dated 12.07.2022. We find that the facts and circumstances in the case of M/s Apar Industries Ltd are totally different and cannot be considered relevant in the present case.

16. Therefore, on the basis of the above discussion of the clauses mentioned in the documents submitted by the appellant, it can be concluded that the activities relating to supply of the transformers and the supervision of the erection, testing and commissioning of the transformers supplied by the appellant are inextricable and for the purpose of supply of transformer which would be used in initial setting up of the Solar Power Plant. The activities to be performed based on the two contracts discussed herein are interdependent and contribute to setting up of the Solar Power Generating System as per the Project Requirements. From the explanation provided against Entry No.234 appearing under Schedule-I to the Notification No.01/2017-IT (Rate) dated 28.06.2017 which states *"If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 [G.S.R. 690(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service"*, it is clear that the explanation provided is



supplier based and not recipient based. Here, on examination of the purchase orders of supply of goods and services and the technical specification for the said supply of goods and services it is found that the supply of goods is made alongwith the supply of services and it therefore fulfills the conditions laid down under the said explanation.

17. Further we find that the Entry No. 234 appearing under Schedule-I to the Notification No.01/2017-CT (Rate) dated 28.06.2017, was omitted vide Notification No. 8/2021-CT (Rate) dated 30.09.2021. The description of goods covered under Entry No.234 alongwith the explanation provided therein now appears at Entry No.201A under Schedule-II to the Notification No. 01/2017-CT(Rate) dated 28.06.2017, amended vide Notification No. 8/2021-CT (Rate) dated 30.09.2021 w.e.f. 1.10.2021, which provides for applicable rate of GST at 12%. The description of renewable energy devices & parts for their manufacture viz. 'Solar power generating system' appearing at entry No. 234 now stands amended as 'Solar power generator' under Entry No. 201A.

17.1 Therefore we find that the appellant is liable for payment of GST in terms of Explanation inserted in Entry No. 234, appearing under Schedule-I to Notification No.01/2017- Central Tax (Rate) dated 28.06.2017, vide Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018 and in terms of Serial No. 38 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 in respect of services, considering the total value of both the orders i.e. order for supply of goods and order for related supply of services upto 30.09.2021. Thereafter the same will be covered in terms of Explanation inserted in entry Sr.No. 201A appearing under Schedule-II to the Notification No.01/2017-Central Tax (Rate) dated 28.06.2017 amended vide Notification No. 08/2021-Central Tax (Rate) dated 30.09.2021 w.e.f. 01.10.2021. The Explanation provides that out of the gross value of the supply, 70% shall be deemed to be on account of goods and 30% shall be deemed to be on account of service.

18. In view of the foregoing, we modify the Advance Ruling No. GUJ/GAAR/R/07/2021 dated 20.01.2021 of the Gujarat Authority for Advance Ruling in the case of M/s. Shilchar Technologies Limited to the following extent –

(i) The appellant is liable for payment of GST on the total value of both the Purchase Order i.e. supply of goods and supply of services in terms of Explanation inserted vide Entry No.234 to Notification No. 01/2017- Central Tax (Rate) dated 28.06.2017 vide Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018 and liable to be taxed, upto 30.09.2021, as under:



S.No.	Particulars	% of value	Rate of tax	Effective Rate of Tax
1.	Goods	70	5%	3.5%
2.	Services	30	18%	5.4%
Total:				8.9%

Thereafter the same will be covered under entry Sr.No. 201A appearing under Schedule-II to the Notification No.01/2017-Central Tax (Rate) dated 28.06.2017 amended vide Notification No. 08/2021-Central Tax (Rate) dated 30.09.2021 and liable to be taxed w.e.f. 01.10.2021 as under. Explanation stated that out of the gross value of the supply, 70% shall be deemed to be on account of goods and 30% deemed to be on account of service. Accordingly, the effective rate comes to 13.8% as under:

S.No.	Particulars	% of value	Rate of tax	Effective Rate of Tax
1.	Goods	70	12%	8.4%
2.	Services	30	18%	5.4%
Total:				13.8%

(Milind Torawane)
Member (SGST)



(Vivek Ranjan)
Member (CGST)

Place: Ahmedabad
Date: 13.01.2023