

THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULINGS  
UNDER GOODS AND SERVICES TAX (GST)

(Constituted u/s 99 of the Maharashtra Goods and Services Tax Act, 2017)

Order No. MAH/AAAR/KS-RM/17/2022-23

Date: 07.02.2023

Before the Bench of

(1) Dr. D. K. Srinivas, Member (Central Tax)

(2) Shri Rajeev Kumar Mital, Member (State Tax)

Name and address of the Appellant	Sterlite Technologies Limited Address: E-1, E-2, E-3, MIDC Waluj, Aurangabad, Maharashtra-431136.
GSTIN/User id of the appellant	27AAECS871981ZC
Clause(s) of Section 97 under which question(s) are raised	(b) applicability of a notification issued under the provisions of this Act;
Date of Personal Hearing	10 <sup>th</sup> November 2022
Present for the Appellant	i) Shri. Rohit Jain, Advocate ii) Shri. Srinivas Kali, Sterlite, Head, Taxation iii) Vivek Baj, Advocate
Details of Appeal	MAH/AAAR/Sterlite/2021-22 dated 02.03.2022 against Maharashtra Advance Ruling No GST-ARA-80/2019-20/B-25 dt 18.02.2022
Jurisdictional officer/concerned officer	Deputy Commissioner of State Tax (AUR-AUI- E-001), Aurangabad Division

(Proceedings under Section 101 of the Central Goods and Services Tax Act, 2017 and  
Section 101 of the Maharashtra Goods and Services Tax Act, 2017)

1. At the outset, we would like to make it clear that the provisions of both the Central GST Act, 2017 and the Maharashtra GST Act, 2017 are same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central GST Act, 2017 would also mean a reference to the same provisions under Maharashtra GST Act, 2017.

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2. The present appeal has been filed under Section 100 of the Central GST Act, 2017 (hereinafter also referred to as 'the CGST Act') read with Section 100 of the Maharashtra GST Act, 2017 (hereinafter also referred to as the 'MGST Act') by Sterlite Technologies Limited ("), a company incorporated under the Companies Act, 1956, having its registered office at E-1, E-2, E-3, MIDC Waluj, Aurangabad, Maharashtra-431136. (Hereinafter also referred to as 'the Appellant') against the advance Ruling No. GST-ARA-80/2019-20/8-25 dated 18.02.2022.

### BRIEF FACTS OF THE CASE

3.1 The Appellant is registered under the GST Acts bearing GSTIN 27AACES8719B1ZC. The activities of Applicant involve manufacture of telecom products such as optic fiber, optic fiber cable, etc. and services in relation to laying of these optic fiber cables (either underground or hung overhead) to create a network, setting up of control centres, installation of equipment, commissioning of network and other ancillary activities that may be necessary for creation of network infrastructure for its customers in the telecom industry.

3.2 Indian Navy, governed by Ministry of Defence (Navy), intended to establish a countrywide IP/MPLS based multiprotocol converged network / Naval Communication Network (collectively referred as "network"); as core infrastructure for supporting strategic and operational needs of Navy. Setting up of these networks have been awarded by Navy to Bharat Sanchar Nigam Limited ("BSNL"); which in-turn has floated a tender (Tender No. CA/CNP/NCN-EQPT/T-464/2014 dt 31.01.2014) inviting detailed bids for the same. Purchase order (PO No. CT/PO/31/2018-19 dt 15.10.2018) was placed by BSNL to the appellant having address IFFCO Tower, 3<sup>rd</sup> floor, Plot No 3, Sector 29, Gurugram-122002 bearing subject "*Procurement, Supply, Installation, Implementation, Commissioning and Maintenance support of Country wide Next Generation IP MPLS Network for Indian Navy on turnkey basis*"

3.3 The network to be so created mainly involves stepwise following key activities:

- Construction of buildings and civil structures necessary to house data centres, nearline data centres, disaster recovery station, satellite data centre and connectivity equipment at Naval Ports across mainland and coastal region in India.
- Installing rack, stack in the building and other civil infrastructures necessary to house the equipment and enable operation of all the Centres/ports.
- Assemble/install all equipment and powering it up by connecting with power supply and backup generators.

- Interconnecting and configuring all the equipment in all the data centres, near line data centres, disaster recovery station, satellite data centre, etc. with each other to enable information exchange across the network as desired.

3.4 Relevant clauses of the contract which stipulate the requirement of a civil work to be undertaken by the Applicant to house the said network as submitted by the appellant are that,

**a. Network Architecture should consist of Tier I,** which would interconnect 11 major locations of the Indian Navy across the country over defence owned OFC and DWDM network infrastructure. Tier II. The remaining 33 locations of the Indian Navy would be connected over defence owned OFC and DWDM network infrastructure. **And, Tier III** consists of the regional metro aggregation network at Delhi, Mumbai, Vizag, Kochi, Goa, Chennai and Port Blair. The regional metro aggregation network for Tier III shall be present at few locations at various metro cities across the country. These locations would be connected over a DWDM infrastructure that the appellant will have to provide.

**b. Civil Infrastructure:** A central building would be built at the very site to house Type 1/Type 2/Type 3 Infrastructure, Tele presence / Networking / Optic fibre Equipment, Staging area and other operational and administrative buildings. The scope of work includes civil construction, water supply, sanitary and plumbing, electrical installation, landscaping, air conditioning, roads, and firefighting and interior works. All buildings .....

**c.** Along with the building following additional infrastructure for the complex is also required to me made by appellant:

(i) A power room to house the silent generators also needs to be constructed.

(ii) Approach road to building within Naval Station, Provision of security lights around the complex, Security Cameras inside and outside building, Guard post including rest room, Automatic Barrier at main/emergency gates. Access Control Mechanism at entrances to the building, Smoke detector, provisioning of small firefighting appliances, PA system.

(ii) Underground electrical wiring as per the requirement. All switches, cut out, CBS and wires, cables are to be supplied and fitted. All electrical fittings including air conditioners, fans, tube lights, CEL, exhaust fans, call bells, lightning arrester etc. is to be provided and fitted. False roofing with 2'X2' meshed tube light fittings and wall panelling with synthetic enamel paints.

(iii) Provisioning of DG sets along with control panel, day tank and other accessories required for operation of the power plant. DG Sets should be in weather proof shelters. Electrical wiring and associated equipment from power house to UPS room.

3.5 The said network comes into existence when the building, civil structures are erected, and all the equipment are installed and interconnected with each other through its data centres, near

line data centres, disaster recovery station, etc. Such network cannot be moved to another place in 'as is' form, but it requires the optic fiber cables to be disengaged, existing civil structures to be demolished, all the equipment to be removed and undertake altogether a fresh activity to re-erect the civil structure and re-install all the necessary equipment and re-engage the same with the optic fiber cables at such other place.

### **3.6 Previous Application for Advance Rulings:**

3.6.1 The appellant had filed an application for Advance Ruling before the Maharashtra Authority for Advance Ruling vide Application reference number AD080120002058T dated 14.01.2020 to determine following questions:

- i. *Whether the supply of goods or services for 'setting up of network' would qualify as 'works contract' as defined in Section 2(119) of the CGST Act?*
- ii. *If supplies contemplated as per the contract with BSNL are not treated as works contract, can these continue to qualify as composite supply? if yes what is the principle supply?*
- iii. *What is the rate of tax applicable to the supplies made under the contract?*

3.6.2 In pursuance of the aforesaid questions, the Appellant claimed that creation of said network fulfils all other ancillary parameters necessary for an activity to qualify as works contract. The Appellant also referred to Notification No. 11/2017-Central Tax (rate) dated June 28, 2017 [as amended from time to time] and submitted that the works contract to be undertaken by it is covered under Entry No. 3(vi)(a) of the rate Notification to attract GST at the rate of 12%.

3.6.3. However, the Authorities vide Its **Order No. GST-ARA-106/2018-19/B-34 dated March 28, 2019** ruled as under:

- i. The supply of goods or services for 'setting up of network' would qualify as a composite supply of 'works contract' as defined under Section 2(119) of the CGST Act.
- ii. Activities of the Appellant are covered by sub-clause (ii) of Entry No. 3 of the Rate Notification and attract GST at the rate of 18%

3.6.4 The appellant agrees with observation made by AAR in respect of question no. 1 that the supply rendered by them to BSNL are in nature of Composite Supply of 'works contract' as defined under Section 2(119) of the CGST Act.

3.6.5 Meanwhile, the Rate Notification was amended vide Notification **No. 3/2019 Central Tax (Rate) dated March 29**, whereby Entry No. 3(ii) as referred in the Previous Order was omitted with effect from April 01, 2019. As the amendment Notification deleted Entry No. 3(ii) of the Rate Notification, the activities of Appellant necessitate an analysis **qua** other relevant entries of the Rate Notification. As a result, the Appellant preferred afresh Application before

the Authority for Advance Ruling on 18.12.2019 to ascertain whether the activities of the Appellant are covered under Entry No. 3(vi)(a) of the Rate Notification.

3.6.6 Consequently, the Authorities **vide its Order No. GST-ARA-80/2019-20/B-34 dated February 18, 2022** ruled that the activities undertaken by the Appellant would fall under residual Entry 3(xii) and attract GST@18%. However, appellant aggrieved with ruling given that their instant supply is not covered under Entry No. 3(vi)(a) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. Hence, the present appeal has been filed before this forum.

3.7 However, it may be noted that the Rate Notification has been further amended **vide Notification No. 15/2021-Central Tax (Rate) dated November 18, 2021 (effective from January 1, 2022)** whereby the concessional rate of 12% for specific works contract services provided to Government authority and Government entity including the subject Entry 3(vi)(a) have been withdrawn. Accordingly, the present appeal has been filed for the interim period April 1, 2019 to December 31, 2021.

#### **GROUND OFS OF APPEAL**

4. The appellant in its Appeal has, *inter-alia*, mentioned the following grounds of Appeal:

4.1 That the Appellant has not filed an appeal against the Previous Ruling as the Ruling was ineffective due to change in the Rate Notification. In any event, non-filing of an appeal does not mean deemed acceptance of the decision. Accordingly, the basis adopted by AAR while pronouncing the Ruling is not apt and shall be set aside. In this regard, reference is made to the Hon'ble Supreme Court judgment in the case of **Government of W.B. Vs. Tarun K. Roy and Others [(2004) 1 SCC 347]**, wherein it was discussed that non-filing of an appeal shall not be a ground for not considering the matter on merits. The aforesaid stand was also discussed in the case of **COMMISSIONER OF CENTRAL EXCISE, RAIPUR VS. HIRA CEMENT [2006 (194) E.L.T. 257 (S.C.)]**.

4.2 That the entry 3(ii) of the Rate Notification 11/2017 which was ruled by first Advance ruling has been omitted by way of Amendment Notification. Accordingly, based on Section 103, the Previous Order is not binding and not applicable to the extent of applicable GST rate on the transaction, thus the Appellant has not filed an appeal against the Previous Order.

#### **4.3 ON MERITS:**

4.3.1 That the fresh application dated 18.12.2019 shall be looked into independently instead of correlating the same with previous application dated 02.01.2019. It is submitted that every

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Advance Ruling application shall be looked at separately on its merits irrespective of the rulings of the previous orders of the same assessee.

4.3.2 The second order ruled that supply of the Appellant would get covered under the residual Entry No. 3 (xii) of the Rate Notification and liable for GST@ 18%, whereas appellant continues to claim that the subject composite supply of works contract services is falling under entry No. 3 (vi) of the Notification No. 11/2017 - CENTRAL TAX (RATE) dated 28.06.2017, which prescribes total GST rate of 12%. In support of claim the appellant relied upon the entry 3(vi)(a), which is reproduced below:

Sr. No.	CHAPTER, SECTION OR HEADING	DESCRIPTION OF SERVICE	RATE (PERCENT)	CONDITION
3	Heading 9954 (Construction services)	<u>(vi) Composite supply of works Contract as defined in clause (119) of Section 2 of the central Goods and Service Tax Act, 2017 other than that covered by items (i), (ia) (ib), (ic), (id), (ie) and (if) above, provided to the Central Government, State Government, Union Territory authority local governmental Authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of-</u> <u>(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;</u> <u>(b) ....</u>	6%	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be

4.3.3 The appellant submitted that, on a bare perusal of the above entry, the qualifying test to cover any supplies under said entry are following,

- Recipient must be either of Central Government, State Government, Union Territory, a local authority, a governmental authority or a **Government Entity**.
- The works contract must result in construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a 'civil structure' or any other **Original** works.
- Resultant civil structure or any other Original works must be used predominantly for other than commerce, industry, or any other business or profession.

4.3.4 The appellant submits that the term Government Entity is defined in clause 4 (x) of the Explanation appended to Notification (Tax Rate) 11 of 2017 dated 28/06/2022, which is as under:

“Government Entity means an Authority or a board or any other body, -

(i) Set up by an Act of Parliament or a State Legislature; or

(ii) Established by any Government

With 90% or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority”

The BSNL, which is set up by Central Government itself. Further, the Central Government continues to hold 100% equity in BSNL. This fact is evident from the annual report published by BSNL. The BSNL fulfils the necessary criteria set out under clause 4 (x) of the Explanation appended to the said Notification and thus, qualifies as Government Entity. The subject supply of services by appellant is to be made to BSNL. Consequently, activities of the Appellant also fulfil the condition of 'making supply to Government Entity as stipulated in Entry No. 3(vi) of the rate Notification.

4.3.5 The Appellant further submitted that the term 'original works' as referred in Entry No. 3(vi)(a) is neither defined under Rate Notification nor under the CGST Act. In these circumstances, the Appellant refers to the Notification No. 12/2017 Central Tax (Rate) dated June 28, 2017 ("Notification No. 12/2017") having persuasive value which inter alia defines the term 'original works' under clause 2(zs) as under.:

“(zs) "original works" means-all new constructions;

(i) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(ii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;”

4.3.6 The Appellant submits that, although the definitions provided in paragraph 2 of the said Notification are applicable only for the purpose of the Notification No. 12/2017. Both, the Rate Notifications, i.e., Notification 11 /2017 as well as Notification No. 12/2017 are issued by the Central Government in exercise of its powers conferred under CGST Act. As the contents of both these notifications form part of the same statutory framework. This provisions bear persuasive force to determine the scope of an identical term viz. 'original works' as used in Entry No. 3(vi)(a) of rate Notification 11/2017.

4.3.7 The appellant has referred to ruling Rajasthan Authority for Advance Ruling in the Application of Tata Projects Limited - SUCG Consortium wherein the Authorities deliberated Applicability of Entry No. 3(vi)(a) of rate Notification to the activities of the Appellant therein and referred to Notification No. 12/2017 to Rule that recipient of service viz. Jaipur Development Authority qualified as 'Governmental Authority'. The appellant also referred to the definition of 'original works' as provided in the Service Tax (Determination of Value) Rules, 2006, which is identically worded as in 12/2017.

4.3.8 In view of the above, the Appellant further submits that the term 'original works' as defined in Notification No. 12/2017 as well as Service tax valuation rules inter alia covers activities in the nature of erection, commissioning, Installation of machinery or structure.

4.3.9 At this juncture, the Appellant also referred to the scope of contract which inter alia necessitates the Appellant to build structures in the form of buildings, roads, etc. to undertake the activity of installing the equipment therein. For that appellant relied on the relevant extracts of the contract as cited in clause 3.4 herein before.

4.3.10 Without prejudice to the above, the appellant also referred to the meaning of the term 'original works' in its common parlance.

*The 'Oxford Advanced Learner's Dictionary explains the term 'original' to mean 'existing at the beginning' while the term 'works' is explained to mean activities or putting efforts to use materials and achieve a desired result. Relevant portion of the dictionary is reproduced below.*

*Original, Adj.:*

*1 [only before a noun] existing at the beginning of a particular period, process or activity*

*Works,*

*HAVE RESULT/EFFECT 10 [VN] to cause or produce something as a result of efforts;*

*USE MATERIAL 11 [VN] sth (in to sth) to make a material into a particular shape or form by pressing, stretching, hitting it, etc.*

*EFFORT 6 [U] the use of physical strength or mental power in order to do or make something*

*PRODUCT OF WORK 7 [U] a thing or things that are produced as a result of work*

4.3.11 In view of the above, the term 'original works' together would refer to an activity of creating something that is being brought to existence at the first instance. Having derived the meaning of 'original works' in common parlance, the Appellant refers to the scope of contract which requires it to perform activities to bring structures in the form of buildings, roads, etc. into existence. The Appellant therefore submits that since its activities result in bringing a new structure into existence, these activities indeed qualify as 'original works' as referred in Entry No. 3(vi)(a) of the Rate Notification.

4.3.12 Furthermore, reference is drawn to the Advance Ruling by West Bengal Authority and Tamil Nadu Authority in case of ABB India Limited and ST Engineering Electronics Limited respectively wherein it was pronounced that the term 'original works' is wide enough to cover within its ambit all activities which include new constructions involving every type of additions/alterations on the land that are required to make the structure workable. It was also discussed that the term erection/commissioning/installation of plant, machinery, equipment or structures which are not in the nature of repairs/maintenance shall qualify as 'original works'. In the present facts, the set-up built by the Appellant requires re-erection of civil structure along with re-installation of the all necessary equipment which would squarely fall under the term 'original works'.

4.3.13 The Appellant submits that the network to be set up by the Appellant is eventually intended to be used for various activities relating to defence. This purpose is evident from various clauses of the contract itself, few of which are reproduced below for ready reference:

**SECTION 1, PART A**

*1.1 Overview of the Tender: - The tender is intended to setup a Next Generation Network which will support net-centric operations a key enabler for the administrative operations/ war fighting operations of the Indian Navy*

*1.2 Scope: - Plan and Design a secure and reliable Navy-wide voice, video and data networking environment that meets the war fighter's needs to enable information exchange across the full septum of current and future naval operations.*

*1.6 QoS:- The network elements or nodes must be able to provide a reliable QoS for all applications that are transported across the network infrastructure. Network quality of service (QoS) that meets war fighter requirements needs to be implemented on the Network to facilitate monitoring and dynamic reallocation of priorities*

*1.7 Adaptability: - The processes, architecture, design approaches should be adaptable, permit timely cost-effective introduction of new technologies, including the reconfiguration of the existing networks and capabilities themselves to meet war fighter or business user mission requirements.*

**SECTION 3, PART A**

*31. 1 Level of the Maintenance The spares held by the bidder shall be over and above spare equipment being procured by the Buyer as technical/War Reserve. The bought out spare equipment shall be used only at the discretion of the Buyer, in case of a severe emergency*

4.3.14 In view of the above, as the network is intended to be used for war fighting operations of Indian Navy, the works contract required therefore is set up with the predominant purpose of defence. In such a case, the states 'works contract' is indeed undertaken for a predominant purpose other than commerce, industry, business or profession as excluded under Entry No. 3(vi)(a) of rate Notification.

4.3.15 Accordingly, activities of the Appellant fulfil all the conditions stipulated under Entry No. 3(vi)(a) of the Rate Notification and are duly covered thereunder. This position of law is supported by the cardinal principal of law that if an activity is covered by specific description of an entry, then the same ought to be covered by said specific entry. Reliance in this regard is placed on the decision of Hon'ble High Court of Gauhati in case of CCE v. Jellalpore Tea Estate, [2011 (268) E.L.T. 14 (Gau.)] wherein the Hon'ble Court held that "what is required to be done in a manner prescribed by law, ought to be done in that manner only or not at all.". Reliance in this regard is also placed on the decision of the Larger Bench of Hon'ble Tribunal in the case of M/s. Avis Electronics Pvt. Ltd., [2000 (117) E.L.T. 571 (Tri. -LB)]

4.5 Consequently, activities of the Appellant ought to be covered under Entry No. 3(vi)(a) of the Rate Notification. Accordingly, these activities are required to assessed for GST at the rate of 12% as prescribed under said Entry No. 3(vi)(a) of rate Notification. It is also submitted that the Ruling, being silent on the additional submissions, is bad in law and is therefore liable to be modified as prayed for in the present Appeal.

### **PERSONAL HEARING**

5.1 A personal hearing in the matter was held on 10.11.2022. Shri. Rohit Jain, Advocate, Shri. Srinivas Kali, Sterlite, Head, Taxation and Shri. Vivek Baj, Advocate appeared for personal hearing on behalf of the Appellant. During the personal hearing, he reiterated the aforesaid grounds of appeal and also made a written submission pertaining to the grounds of appeal like copies of relevant Tax Rate Notifications, copy of purchase order along with relevant extracts of contract, photographs of earth breaking ceremony, etc.

5.2 The Appellant, during personal hearing, also submitted the copies of judgments of Hon'ble SC and HC pertaining to interpretation of issues like applicability of residual entry, non-applicability of estoppel to taxation matters and binding precedent of decision not challenged. These decisions are hereinafter discussed at points wherever applicable.

**5.3 Submission of the Proper Officer:**

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The Proper Officer was present during the personal hearing. He submitted that the subject activity of the applicant is composite supply of works contract, since it includes supply of both, goods and services. It was covered under entry 3 (ii) of the notification no. 11/2017 CGST (rate) dated 28.06.2017 and thereafter with effect from 01.04.2019 the said activities are covered under sr. no. 3(xii) as amended by notification no. 03/2019 CGST (rate) dated 29<sup>th</sup> March 2019, taxable at the rate of 18%.

### **DISCUSSION & FINDINGS**

**6.1** We have carefully gone through the Appeal papers filed by the Appellant and submission made by appellant and proper officer during personal hearing held on 10.11.2022. The entire issue in appeal revolves around the applicability of Entry No. 3(vi) (a) of Notification No 11/2017-Central Tax (Rate) (as amended from time to time). Therefore, it would be necessary to see the reasons in both orders denying the benefit of concessional tax rate of 12%. The first order of MAAR, dated 28.3.2019 has denied concessional rate of 12% under entry 3(vi)(a) on the grounds that the subject contract does not envisage original works and it is also seen that the contract is not in respect of a civil structure. The second order of the MAAR relied on its earlier order and ruled that on deletion of entry 3 (ii) of Notification No. 11/ 2017- Central Tax (Rate) the impugned activity would get covered under respective residual entry i.e. Sr. No. 3 (xii) of said Notification as amended by Notification No 03/2019 CGST (Rate) dated 29<sup>th</sup> March, 2019. Secondly, AAR also placed reliance on the assumption that the appellant had accepted the earlier (first) ruling of this Authority. The MAAR ruled that applicable tax rate on said impugned activity would be 18%.

#### **6.2 Discussion on Merit Issue of Tax Rate**

For the sake of brevity, Entry No. 3(vi)(a) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended is reproduced below:

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (percent)	Condition
3	Heading 9954 ( Construction Service)	(vi) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above, provided to the Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity by way of construction, erection, commissioning,	6	<b>Provided</b> that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a

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Sl. No.	Chapter, Section or Heading	Description of Service	Rate (percent)	Condition
		installation, completion, fitting out, repair, maintenance, renovation, or alteration of - (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession; (b) ..... (c) .....  <b>Explanation -</b> For the purposes of this item, the term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.		work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be

Notes: i. Entry 3(vi) was inserted (in principal Notification No. 11/2017) vide notification No. 24/2017 – Central Tax (Rate) dt 21.09.2017

ii. "Government Entity" and Condition in column (5) was inserted vide Notification No. 31/2017 – Central Tax (Rate) dt 13.10.2017

iii. "Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, provided" substituted in place of "services provided" vide Notification No 46/2017-CENTRAL TAX (RATE) dt 14.11.2017

iv. Explanation was inserted vide Notification No. 17/2018 dt 26.7.2018

v. "other than that covered by items (i), (ia), (ib), (1c), (id), (ie) and (if) above" inserted vide Notification No 3/2019-CENTRAL TAX (RATE) dt 29.03.2019

vi. "Government and Government Authority" omitted vide Notification No. 22/2021- Central Tax (Rate) dated 31.12.2021 (w.e.f. 1.1.2022)

vi. Entry 3(vi) omitted vide Notification No 3/2022-CENTRAL TAX (RATE) dt 13.7.2022 (w.e.f. 18.7.2022)

The aforementioned Entry stipulates some conditions to make eligible any work to fall under this entry, which are as following:

a. It must be a composite supply of works contract as defined in section 2(119) of the CGST Act, 2017 other than residential and commercial apartments;

b. It must be provided to the Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity;

c. The contract should be by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of a civil structure or any other original works;

d. The civil structure or original works must be meant predominantly for use other than for commerce, industry, or any other business or profession; and

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e. Where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union Territory or a local authority, as the case may be.

6.3 We find that there is no dispute in both rulings of MAAR in respect of question no. 1 that the supplies rendered by the appellant to BSNL are in nature of Composite Supply of Works Contract. For the sake of reference, question and reply from first ruling is reproduced as follows:

*Question: - Whether the supply of goods or services for 'setting up of network' would qualify as 'works contract' as defined in Section 2(119) of the CGST Act?*

*Answer: - The supply of goods or services for 'setting up of network' would qualify as a Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017.*

6.4 Thus, the only dispute to be decided is whether the said composite supply of works contract is covered under Entry No. 3(vi)(a) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 (as amended) or not. The first ruling has concluded that all the conditions prescribed implicitly by Entry No. 3(vi)(a) of the Notification No.11/2017- Central Tax (Rate) dated 28.06.2017, as amended, are satisfied by the applicant except one, viz. that the contract should be by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of a civil structure or any other original works. Whereas, second ruling concluded that it is accepted by the appellant as appeal was not filed against it. In view of this findings of MAAR we find it suitable to delve into the pre-requisite conditions or requirements in order to fit the supplies in **entry No 3(vi) (a) (i.e. 12%) of Notification 11/ 2017- Central Tax (Rate). These conditions vis a vis facts of the case are as follows.**

**6.5. Composite supply of works contracts as defined in section 2(119):**

In an answer to the question 1, first order of the AAR has held that supply of goods or services for 'setting up of network' would qualify as a Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017.

**6.6 Requisite Supply to BSNL, whether Government Entity:**

Evidently Central Government holds 100% equity of BSNL, as evident from annual report submitted by the appellant. Bharat Sanchar Nigam Limited (BSNL) is one of the Navartana corporation of the Government of India. From the "About us" at website (link [https://www.bsnl.co.in/opencms/bsnl/BSNL/about\\_us/company/about\\_bsnl.html](https://www.bsnl.co.in/opencms/bsnl/BSNL/about_us/company/about_bsnl.html)) BSNL was incorporated on 15th September 2000. It took over the business of providing of telecom

services and network management from the erstwhile Central Government Departments of Telecom Services (DTS) and Telecom Operations (DTO), with effect from 1st October' 2000 on going concern basis. The company provides telecom services throughout the country excluding Delhi & Mumbai. BSNL is a 100% Govt. of India owned Public Sector Undertaking with an authorized share capital of Rs. 40,000 crore and paid-up capital of Rs. 12,500 crores comprising of Rs. 5,000 crores of Equity and Rs.7,500 crores of Preference shares capital. BSNL is a technology-oriented integrated telecom service providing company which provides complete bouquet of telecom services: .....". Thus, BSNL qualifies to be held as Government Entity for the purpose of Entry No. 3(vi)(a).

**6.7 Said works contract services should be for a civil structure or any other original works:**

The term "original works" has been defined in clause (zs) of para 2 of Notification No. 12/2017 -Central Tax (Rate). Though this definition is given in relation to the Notification No. 12/2017 -Central Tax (Rate), the same has persuasive value and can be adopted in relation to Notification No. 11/2017 - Central Tax (Rate) also. On careful examination of the above definition, it is seen that only "all new constructions, erection, commissioning or installation of plant & machinery, equipment or structures" are treated as original works. During personal hearing, appellant has submitted "Firm Price Schedule" issued by BSNL, which clearly shows material (indigenous & imported) and services costs. The tender is intended to setup a Next Generation Network, which will support net-centric operations, a key enabler for the administrative operations/ war fighting operations of the Indian Navy. Thus, requirement of Navy is of robust and zero failure network infrastructure.

The supply of material and services for setting up of network, supply of satellite connectivity vehicle and training service being made in pursuance of setting up and effective operation of the network as a turnkey contract where contractor undertakes holistic responsibility of all the activities relating to the contract. The activities of Applicant inter-alia involve manufacture of telecom products such as optic fiber, optic fiber cable, etc. and services in relation to laying these optic fiber cables (either underground or hung overhead) to create a network, setting up of control centres, installation of equipment, commissioning of network and other ancillary activities that may be necessary for creation of network infrastructure for its customers in the telecom industry. The scope of these activities is contractually stipulated and are typically recognized as a 'turnkey contract'. Therefore, it is clear that supply under consideration meets criteria of "civil structure or any other original works"

**6.8 The civil structure or original works is meant predominantly for use other than for commerce, industry, or any other business or profession:**

6.8.1 We find that from the contract terms submitted that contract is for a secure and reliable Navy-wide voice, video and data networking environment that meets the war fighter's needs to enable information exchange across the full spectrum of current and future naval operations. Attention is invited towards "any works contract that is meant for the purpose other than ...". This makes it clear that ultimate contractual beneficiary must have usage other than for commerce, industry, or any other business or profession. Here use of the created infrastructure is important and not the entity/contractor to whom it is supplied (BSNL) by sub-contractor to contractor, thereafter to contractee - Navy.

6.8.2 Judgment in the case of *M/s Avis Electronics Private Limited* (cited supra) deals with availment of credit based on original copy of invoice and interplay of duplicate invoice. Hence, said judgment is not seen related to the issue at hand.

6.8.3 As the network is intended to be used for war fighting operations of Indian Navy, the works contract required therefore is set up with the predominant purpose of defence. In such a case, said works contract is undertaken for a predominant purpose other than commerce, industry, business or profession.

**6.9. In case supply is to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union Territory or a local authority:**

6.10. In this case, supply is to BSNL which is held in aforesaid paras as a Government Entity. Hence, for entry at Sr No 3(vi) this condition given in column (5) is applicable in present case. The Navy (under the Ministry of Defence, a central government ministry) has entrusted the BSNL, by agreement, works contract to supply, install, commission next generation network along with all materials, civil structure, equipment, satellite connectivity, routers, switches and services to make entire setup to establish network for Indian Navy. BSNL has procured these services in relation to work entrusted by the Indian Navy (central government).

6.11. Judgments in the case of *Parle Agro* and *A R Thermosets* (both cited supra) are duly considered. Basically, both deal with applicability of specific entry rather than residual entry.

6.12. It may be noted that the Notification No 11/2017 has been further amended vide Notification No. 22/2021-CENTRAL TAX (RATE) dated 31.12.2021 (w.e.f. 1.1.2022) by which concessional rate of 12% for specific works contract services provided to Government authority and Government entity have been withdrawn. Said principal notification is further amended vide Notification No 3/2022-CENTRAL TAX (RATE) dt 13.7.2022 w.e.f. 18.7.2022 by which, inter-alia, Entry at Sr No 3(vi) is omitted.

**6.13. Discussion about other grounds**

6.13.1 Appellant has cited Hon'ble Supreme Court judgment in the case of Government of W.B. Vs. Tarun K. Roy and Others [(2004) 1 SCC 347] wherein it was discussed that filing of an appeal shall not be a ground for not considering the matter on merits. We have considered submission and accordingly personal hearing is granted and matter is discussed on merits.

6.13.2 Further, it is submitted that first ruling is not binding because of change in law and cited section 103 in their support. We have considered the submission and we held that in view of provision of section 103(1), advanced ruling pronounced shall be binding on the applicant and the jurisdictional officer, if it is not assailed by filing appeal against it. Because, till 31.03.2019 since entry 3(ii) was in force, applicability of the ruling holds good till change of law i.e., 31.03.2019.

6.13.3 In view of submissions made and after careful consideration, we agree to the submission that every advance ruling application must be heard and decided separately.

6.13.4 In *Bal Pharma* case (cited supra), Hon SC held that doctrine of promissory estoppel may not be applicable in tax matter. But revenue can take different position, if distinguishing features of case are demonstrated. In present matter, both AARs do not differentiating feature, hence, said case law is not applicable in present case. Case of *Jayaswal Neco* (cited supra) has no direct relation with the subject matter of the present case. However, we are of the opinion that second ruling should have ruled on merit as to applicability of the claimed notification entry. Other 3 cited cases - *Tarun K Roy*, *Hira Cement*, *C K gangadharan* – for reason of non-filing of appeal cannot be ground for denying benefit.

7. In view aforesaid discussion, we find that supply of services made by appellant to the BSNL is fulfilling all the requirements and conditions of the entry at serial number 3 clause (vi)(a). Appellant has specifically mentioned (in his AAAR application at para 1.15) the period of application as a 1.4.2019 to 31.12.2021. As per provision of section 103, advanced ruling pronounced shall be binding on the applicant and the jurisdictional officer, if it is not assailed by filing appeal against it. Hence, there is binding effect of the first order of advance ruling till 31<sup>st</sup> March 2019, which classified the said supply under entry No 3(ii) taxable at 18%.

### ORDER

In view of the above discussions and findings, we find that the appeal filed by the appellant is allowed and second order of ARA (Maharashtra Advance Ruling No GST-ARA-80/2019-20/B-25 dt 18.02.2022) is modified accordingly. The supply under the contract from 1.4.2019 to 31.12.2021 are held as falling under entry at serial number 3(vi)(a) of Notification No.

11/2017-Central Tax (Rate) dated 28.06.2017 and accordingly taxable at 6% under CGST and 6% under SGST or 12% under IGST Act.



(RAJEEV KUMAR MITAL)

MEMBER



(Dr. D.K SRINIVAS)

MEMBER

Copy to the:

1. Appellant;
2. AAR, Maharashtra
3. Pr. Chief Commissioner, CGST and Central Excise, Mumbai Zone.
4. Commissioner of State Tax, Maharashtra.
5. Deputy Commissioner of State Tax (AVR-AVI-E-005) Aurangabad Division.
6. Web Manager, WWW.GSTCOUNCIL.GOV.IN
7. Office copy.