

AUTHORITY FOR ADVANCE RULING – CHHATTISGARH
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Atal Nagar, District-Raipur (C.G.) 492002
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PROCEEDING OF THE AUTHORITY FOR ADVANCE RULING
U/s. 98 OF THE CHHATTISGARH GOODS AND SERVICES TAX ACT, 2017

Members Present are

Smt. Sonal K. Mishra

Joint Commissioner

O/o Commissioner, State Tax

(CGGST), Raipur, Chhattisgarh Chhattisgarh

Shri Rajesh Kumar Singh,

Additional Commissioner,

CGST, Raipur

Subject: -Chhattisgarh GST Act, 2017 – Advance Ruling U/s 98 Chhattisgarh GST Act, 2017 –

1. Advance Ruling U/s 98 sought vide Application dated 02/02/2022 from M/s Triveni Engicons Private Limited Flat No.- 3, B-Block, Mehta Bhawan, First Floor, Kalindi Kunj, Sarangarh Road, Raigarh, Chhattisgarh, 496001 (here in after referred to as the applicant) GSTIN-22AABCT4589R1ZN, regarding GST - seeking an advance ruling in respect of the following questions: -
 - i. What is the rate of tax for the works contract like supply of goods or services or both pertaining to Railways based on order received from M/s. RITES Ltd. (on behalf of SECL) for construction of railway infrastructure facilities for the proposed feeder line of East West Rail Corridor within the leasehold boundary of project for coal evacuation through Rail at Gevra Opencast of Gevra Area of SECL.
 - ii. Whether the work awarded can be covered under the definition of Works Contract as defined u/s 2(119) of the CGST Act, 2017?
 - iii. Whether the rate of GST for the construction of rail infrastructure facilities will be under Sl. No. 3(v)(a) OR Sl. No.3(xii) Notification No 11/2017-CT(Rate) dated 28/06/2017 as amended by various notifications as applicable (herein referred to as "the Rate Notification") under the GST Act.
 - iv. Whether the said work-can be considered as works contract pertaining to railways including monorail and metro?

Read: -Application dated 02/02/2022 from M/s Triveni Engicons Private Limited (here in after referred to as the applicant) Flat No.- 3, B-Block, Mehta Bhawan, First Floor, Kalindi Kunj, Sarangarh Road, Raigarh, Chhattisgarh, 496001 GSTIN-22AABCT4589R1ZN.

PROCEEDINGS

[U/s 98 of the Chhattisgarh Goods & Services Tax Act, 2017 (herein- after referred to as CGGST Act, 2017)]

No.STC/AAR/01/2022

Raipur Dated 02.05.22

- i. M/s Triveni Engicons Private Limited Raigarh, Chhattisgarh, 496001 GSTIN-22AABCT4589R1ZN [hereinafter also referred to as the applicant] has filed an application U/s 97 of the Chhattisgarh Goods & Services Tax Act, 2017



dated 02/02/2022 enclosing duly filled in Form ARA-01 (the application form for Advance Ruling) along with certain annexure and attachments seeking advance ruling as to- What is the rate of tax for the works contract like supply of goods or services or both pertaining to Railways based on order received from M/s. RITES Ltd. (on behalf of SECL) for construction of railway infrastructure facilities for the proposed feeder line of East West Rail Corridor within the leasehold boundary of project for coal evacuation through Rail at Gevra Opencast of Gevra Area of SECL; Whether the work awarded can be covered under the definition of Works Contract as defined u/s 2(119) of the CGST Act, 2017; Whether the rate of GST for the construction of rail infrastructure facilities will be under Sl. No. 3(v)(a) OR Sl. No.3(xii) Notification No 11/2017-CT(Rate) dated 28/06/2017 as amended by various notifications as applicable and the said work can be considered as works contract pertaining to railways including monorail and metro?

2. Facts of the case: -

2.1 That the applicant is a private incorporation involved in works contract services.

2.2 That the work has been awarded by M/s Rites Limited, which is a Public Sector Undertaking owned by the Ministry of Railways, Government of India. Further, the same is covered under Section 2(31) of the Railways Act, 1989.

2.3 That RITES LIMITED for and on behalf of South Eastern Coalfields Limited, (SECL), Gevra has awarded the following work to the applicant vide letter of acceptance issued on 25.10.2021;

"Earthwork in formation, minor bridges, P. Way Linking work including supply of Track Ballast, PSC sleepers, P.Way Fittings, Points and Crossings, Drain, Road, FOB Geotechnical investigation etc. in connection with the proposed feeder line of East West Rail Corridor within the lease hold boundary of Project for coal evacuation through rail at Gevra Opencast of Gevra Area of SECL"

2.4 That the scope of work of the applicant includes:

- a. Schedule A- Construction of Railway formation work.
- b. Schedule B-Construction of Minor bridges, Drain, Road & FOB.
- c. Schedule C-Supply of Cement & Reinforcement
- d. Schedule D-Supply of P-Way Fittings
- e. Schedule E-P-Way work
- f. Schedule F-Supply of PTS & Crossings
- g. Schedule G-Supply of Sleepers



- h. Schedule H-Geotechnical Investigation
- i. Schedule I-Unforeseen any other work require to be operated but not covered in the above Schedule (A to H)

2.5 That in support of their contentions they have provided a copy of the Letter of Acceptance issued by RITES LIMITED dated 25/10/2021, for and behalf of SECL vide e-Tender No. 31/OT/SECL-Gevra Cast/Civil/ &P.Way/PKG-II/21 dated 1.3.2021.

2.6 That the offer for work by the applicant has been accepted by RITES LIMITED for a contract price of Rs 150,31,61,099/- (Rupees One Fifty Crore Thirty one lakh Sixty one Thousand and Ninety nine only).

3. Contentions of the applicant: -

3.1 That they are providing works contract service as a contractor for original contract work pertaining to railways.

3.2 That according to Serial No. 3(v)(a) of Notification No. 11/2017 – CT (Rate) dated 28/06/2017, as amended from time to time, the composite supply of works contract as defined under section 2(119) of the GST Act, supplied by way of construction, erection, commissioning, or installation of original works pertaining to railways, including monorail and metro is taxable @ 12%.

Serial No. 3(xii) of Notification No. 11/2017 – CT (Rate) dated 28/06/2017, as amended from time to time, the composite supply of Construction services other than (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x) and (xi) above is taxable @18%

3.3 That original work, as defined under para 2(zs) of Notification No. 12/2017-CT (Rate) dated 28/06/2017, states:

(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;

Perusal of the detailed scope of work as per the tender document and brief scope of work indicates that the work awarded to the applicant comprises of laying of track, Box Culverts, Major Bridges, Supply of P-Way Materials work as per layout plan, Construction of side drain cutting area works.

Therefore, the applicant is of the understanding that all the said work as mentioned in the scope of work are in the nature of new work to be executed and,



thus, covered under the definition of original work as defined in clause (zs) of said Notification and the work awarded can be considered as original work.

Thus, it was the contention of the applicant that the scope of work as outlined by the applicant is that of works contract, as defined under Section 2(119) of the GST Act, fit to be called an "original work" and hence is taxable @12%.

3.4 Applicant further opined that in order to avail the reduced rate of GST levy @ 12% in terms of clause 3(v)(a) of the Notification No.11/2017-Central Tax (Rates), following conditions are required to be fulfilled: -

- (a) the work should be works contract
- (b) it should be an original work
- (c) the work should pertain to railways, including monorail and metro.

3.5 The said work has been awarded by M/s Rites Limited, which is a Public Sector Undertaking owned by the Ministry of Railways, Government of India. The work comprises of laying of track, Box Culverts, Major Bridges, Supply of P-Way Materials work as per layout plan, Construction side drain cutting area works.

3.6 That the term "railways" is not defined in the GST Act. However, Section 2(31) of the Railways Act, 1989 defines "railways" as-

(31) "railway" means a railway, or any portion of a railway, for the public carriage of passengers or goods, and includes—

(a) all lands within the fences or other boundary marks indicating the limits of the land appurtenant to a railway;

(b) all lines of rails, sidings, or yards, or branches used for the purposes of, or in connection with, a railway;

(c) all electric traction equipments, power supply and distribution installations used for the purposes of, or in connection with, a railway;

(d) all rolling stock, stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, roads and streets, running rooms, rest houses, institutes, hospitals, water works and water supply installations staff dwellings and any other works constructed for the purpose of, or in connection with, railway;

(e) all vehicles which are used on any road for the purposes of traffic of a railway and owned, hired or worked by a railway; and

(f) all ferries, ships, boats and rafts which are used on any canal, river, lake or other navigable inland waters for the purposes of the traffic of a



railway and owned, hired or worked by a railway administration, but does not include—

(i) a tramway wholly within a municipal area; and

(ii) lines of rails built in any exhibition ground, fair, park or any other place solely for the purpose of recreation;

The Railways Act, 1989, distinguishes between, but covers, Government Railway under Section 2(20) and Non-Government Railway under Section 2(25) of the Act.

Section 2(20) of the Railways Act, 1989:-

"Government railway" means a railway owned by the Central Government;

Section 2(25) of the Railways Act, 1989:-

(25) "non-Government railway" means a railway other than a Government railway;

It is concluded that the ambit of the term "**railways**" is wide under the Railways Act and includes scope for both Government and private administrations.

3.7 That, Article 366(20) of the Constitution states that—

366. Definition in this Constitution, unless the context otherwise requires, the following expressions have, the meanings hereby respectively assigned to them, that is to say

....
....

(20) railway does not include

(a) a tramway wholly within a municipal area, or

(b) any other line of communication wholly situate in one State and declared by Parliament by law not to be a railway;

Article 366(20) of the Constitution clearly states the exemptions under the definition of railways. The Parliament excludes by law, apart from the tramways, the lines of rails mentioned under Section 2(31)(ii) of the Railways Act, 1989, being rails built solely for the purpose of recreation.

Therefore, it is concluded that the construction of rail infrastructure facilities for the proposed **feeder line of East West Rail Corridor at Gevra Open cast of Gevra Area of SECL** that the applicant refers to, doesn't fall under the exemptions stated under Article 366(20) of the Indian Constitution and pertains to "railways".



3.8 That we hereby quote following rulings by AAR :

- **Ruling by the Authority for Advance Rulings, West Bengal-** 27/WBAAR/2018-19-Case No. 28 of 2018 dated 21.12.2018 in RE: RITES Limited, wherein it has been ruled: -

"that construction of a private railway siding for carriage of a coal and oil fuel to Raghunathpur TPS, as described in the agreement between the Applicant and DVC, is a composite supply of works contract taxable @12% under Serial No. 3(v)(a) of the Notification No.11/2017-Central Tax (Rates) dated 28.06.2017"

- **Ruling by the Authority for Advance Rulings, Karnataka-** 2019 (10) TMI 1134 in RE: M/s Quatro Rail Tech Solutions Limited, wherein it has been ruled:-

"4.8 Since, this involves the works related to railway, the contract can be said to be pertaining to Railways. The term "pertaining to Railway" is more expansive and included other establishments other than Indian Railways. Hence, the contract is pertaining to Indian Railways.

4.9 There is no stipulation in said entry that this contract must be executed to the Railways but is sufficient, that it must be pertaining to Railways and the supplier and the recipient in each of the contract is immaterial."

In the instant case, the work has been awarded by M/s Rites Limited, which is a Public Sector Undertaking owned by the Ministry of Railways, Government of India. Further, the same is covered under Section 2(31) of the Railways Act, 1989."

- **RULING HELD BY THE APPELLATE AUTHORITY FOR ADVANCE RULING, GUJARAT** IN RE OF SKG-JK-NMC Associates (JV), ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2021/18 DATED 28.06.2021, THE HON'BLE APPELLATE AUTHORITY HAS HELD THAT: -

"As per letter of acceptance issued by SPV to main contractor, work pertains to shifting of existing railway infrastructure and other utilities in connection with construction of High Speed Rail Project - As per tender and other documents, work allotted to appellant is with regard to railways - Various items of work as per documents pertain to railways only - Conditions stipulated in Entry 3(v)(a) of impugned notification are fulfilled - Impugned activity is works contract involving original work pertaining to railways - Therefore, reduced GST of 12 per cent would be applicable [Paras 13, 16 to 20].



Thus, on the basis of the foregoing submissions, the applicant through the instant application is seeking certainty and clarity with respect to his four questions as mentioned above under the CGST Act in order to avoid unnecessary litigation.

4. Personal Hearing:-

Keeping with the established principles of natural justice, personal hearing in the matter was extended to the applicant in person, as requested by them and accordingly, Shri Sandip Agrawal advocate and legal representative of the Applicant appeared before us for hearing on 09.03.2022 and reiterated their contention. He also furnished a written submission dated 13.01.2022 along with sample copies of work order which has been taken on record.

5. The legal position, analysis and discussion: -

At the very outset, we would like to make it clear that the provisions for implementing the CGST Act and the Chhattisgarh GST Act, 2017 [hereinafter referred to as "the CGST Act and the CGGST Act"] are similar and thus, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the CGGST Act, 2017. Now we sequentially proceed to discuss the issues involved in the ruling so sought by the applicant and the law as applicable in the present case.

6. Section 96 of CGST Act, 2017, Authority for advance ruling, stipulates as under: -

Subject to the provisions of this Chapter, for the purposes of this Act, the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory.

Section 97(2) of CGST Act, 2017 stipulates that: -

The question, on which the advance ruling is sought under this Act, shall be in respect of—

- (a) classification of any goods or services or both;*
- (b) applicability of a notification issued under the provisions of this Act;*
- (c) determination of time and value of supply of goods or services or both;*
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;*
- (e) determination of the liability to pay tax on any goods or services or both;*
- (f) whether applicant is required to be registered;*
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.*



Further 103 of CGST Act, 2017 stipulates about the ruling pronounced as under: –The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only –

- a. On the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;
- b. On the concerned officer or the jurisdictional officer in respect of the applicant.

Thus, in view of the above section 103 of CGST Act, 2017, the ruling so sought by the Applicant would be binding only on the Applicant and on the concerned officer or the jurisdictional officer as stipulated above.

7. Before getting in to the issues involved, we would first like to go through the relevant text of the issue in hand, as appearing at S.No. 3(v) of Notification No. 11/2017 Central Tax(Rate) dated 28.06.2017 as amended, vide Notification 01/2018 Central Tax(Rate) dated 25.01.2018. In the instant case the eligibility or otherwise of the benefit of said Notification no. 11/2017 Central Tax (Rate) provided under S.no. 3(v) ibid, to the applicant is the subject matter of this proceeding. For the sake of brevity the relevant text of the same is reproduced hereunder.

7.1 *Rate of GST on intra-State supply of specific services with Service Code Tariff (SAC)*

Government of India
Ministry of Finance
(Department of Revenue)
Notification No. 11/2017-Central Tax (Rate)

New Delhi, the 28th June, 2017

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1), [sub-section (3) and subsection (4)] 1 of section 9, sub-section (1) of section 11, sub-section (5) of section 15[,]2 sub-section (1) of section 16 [and section 148] 3 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby notifies that the central tax, on the intra-State supply of services of description as specified in column (3) of the Table below, falling under Chapter, Section or Heading of scheme of classification of services as specified in column (2), shall be levied at the rate as specified in the corresponding entry in column (4), subject to the conditions as specified in the corresponding entry in column (5) of the said Table:-



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TABLE

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
1	Chapter 99	All Services		
2	Section 5	Construction Services		
3	Heading 9954 (Construction services)	(i) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	9	-
		(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.	9	-
		(iii) construction services other than (i) and (ii) above.	9	-
		(iv)		
		(v) 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 supplied by way of construction, erection, commissioning, or installation of	6	-



		original works pertaining to,-		
		(a) railways, [including monorail and metro;		
		(b) a single residential unit otherwise than as a part of a residential complex;		
				

7.2 Thus from the above it gets abundantly clear that for availing the benefit as stipulated supra at 3(v)(a), all the conditions mentioned therein is to be necessarily fulfilled viz.

(i) the service should be under the Heading 9954 (Construction Service)

(ii) the supply should be a 'Composite Supply'

(iii) the work should be 'works contract' a, defined in Clause (119) of Section 2 of CGST Act and

(iv) The work should be 'by way of construction, erection, commissioning, or installation of "original works" "pertaining to railways", including monorail and metro.

7.3 On going through the Scheme of Classification of Services as provided in the Annexure to Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 supra, the SAC relating to the works of railways are as under: ▸

ANNEXURE : SCHEME OF CLASSIFICATION OF SERVICES

S. No.	Chapter, Section, Heading or Group	Service Code (Tariff)	Service Description
(1)	(2)	(3)	(4)
1	Chapter 99		All Services
2	Section 5		Construction Services
3	Heading 9954		Construction services
4	Group 99541		Construction services of buildings
5		995411	Construction services of single dwelling or multi dwelling or multi-storied residential buildings
6		995412	Construction services of other residential buildings such as old age homes, homeless shelters, hostels and the like



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7		995413	Construction services of industrial buildings such as buildings used for production activities (used for assembly line activities), workshops, storage buildings and other similar industrial buildings
8		995414	Construction services of commercial buildings such as office buildings, exhibition and marriage halls, malls, hotels, restaurants, airports, rail or road terminals, parking garages, petrol and service stations, theatres and other similar buildings
9		995415	Construction services of other non-residential buildings such as educational institutions, hospitals, clinics including veterinary clinics, religious establishments, courts, prisons, museums and other similar buildings
10		995416	Construction services of other buildings nowhere else classified
11		995419	Services involving repair, alterations, additions, replacements, renovation, maintenance or remodeling of the buildings covered above
12	Group 99542		General construction services of civil engineering works
13		995421	General construction services of highways, streets, roads, railways and airfield runways, bridges and tunnels
14		995422	General construction services of harbours, waterways, dams, water mains and lines, irrigation and other waterworks

Further, the 'Explanatory Notes to the Scheme of Classification of Service', indicates the scope and coverage of the Scheme of classification of service and is a guiding tool for classification of services, the Explanatory notes to SAC 995421 are as follows:

EXPLANATORY NOTES TO SCHEME OF CLASSIFICATION OF SERVICES UNDER GST

Preface

The Scheme of Classification of Services adopted for the purposes of GST is a modified version of the United Nations Central Product Classification.

2. The Explanatory notes for the said Scheme of Classification of Services is based on the explanatory notes to the UNCPD, and as recommended by the committee constituted for the purpose, is annexed.
3. The explanatory notes indicate the scope and coverage of the heading, groups and service codes of the Scheme of Classification of Services. These may be used by the assessee and the tax administration as a guiding tool for classification of services. However, it may be noted that where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description.



EXPLANATORY NOTES FOR SUPPLY OF SERVICES UNDER GST

[Chapter 99]

9954 Construction services :

This heading includes :

- i. General construction services for all complete constructions.
- ii. Specialized construction services i.e., services related to parts of buildings or civil engineering works, rather than the complete construction object.

.....

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

This service code includes construction services

- i. for formations of highways, including elevated highways, roads, streets, other vehicular and pedestrian ways and open car parks;
- ii. footpaths, traffic-calming structures, cycle tracks, etc.;
- iii. vehicular and pedestrian underpasses and overpasses;
- iv. construction or restoration of road surface and parking lots with asphalt, concrete, etc.;
- v. installation services of crash barriers, low separating walls, traffic signs, etc.;
- vi. creation, maintenance and signposting of tracks and paths;
- vii. painting services of markings on roads, parking lots and similar surfaces;
- viii. railway roadbeds for long-line and commuter rails, street tramways and underground or elevated urban rapid transit systems;
- ix. railway electrification structures including laying services of ballast and rails;
- x. installation services of switch gear, points and crossings;
- xi. construction services of control and safety systems for railway tracks;
- xii. construction services of funicular railways and cable car systems;
- xiii. construction services for airfield runways, including taxiways, aprons and related airport structures other than buildings;
- xiv. construction of bridges, highway, road and railway tunnels and tunnels for underground railway traffic

7.4 In the instant case under consideration, the applicant has submitted the copy of letter of acceptance dated 25.10.2021 issued by RITES LIMITED addressed to the applicant, for and behalf of SECL vide e-Tender No. 31/OT/SECL-Gevra Cast/Civil/ & P.Way /PKG-II/21 dated 1.3.2021. Besides this from the submissions as put forth by the applicant it is seen from the said letter of acceptance issued on 25.10.2021 that RITES LIMITED for and on behalf of South Eastern Coalfields Limited, (SECL), Gevra has awarded to the applicant the work of "Earthwork in formation, minor bridges, P. Way Linking work including supply of Track Ballast, PSC sleepers, P.Way Fittings, Points and Crossings, Drain, Road, FOB Geotechnical investigation etc. in connection with the



proposed feeder line of East West Rail Corridor within the lease hold boundary of Project for coal evacuation through rail at Gevra Opencast of Gevra Area of SECL".

SAC 995421 covers 'General Construction services of highways, streets, roads, railways, airfield runways, bridges and tunnels' which by their very nature relates to work of civil engineering and there exists all plausible reasons to link the same to the aforementioned work awarded to the applicant by RITES LIMITED. Therefore, the instant supply of the applicant gets aptly covered under SAC 9954 in general and more specifically under 995421. Thus, the basic requirement for eligibility to the said exemption as provided under S.no. 3(v) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended, of getting covered under SAC 995421 stands fulfilled.

7.5 Now coming to the second criteria as to whether the instant supply is a "Composite supply", we would first like to get in to the definition of Composite supply which stands defined under Section 2 (30) of the CGST Act as under:

"composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration.- Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

On perusal of the copy of letter of acceptance dated 25.10.2021 issued by RITES LIMITED supra, furnished by the applicant it is quite evident that the instant work allotted involves supply of goods viz. Supply of Cement & Reinforcement, Supply of P-Way Fittings, Supply of PTS & Crossings, Supply of Sleepers coupled with supply of services like P-Way work, Railway formation work, Geotechnical Investigation. Thus, there exist all reasonable grounds to hold that natural bundle of supply of goods and services are present and are supplied in conjunction with each other in the ordinary course of business. The supply thereof is construed to be made when the entire supply is made. Thus, we come to the considered conclusion that the second criterion of "composite supply" stands fulfilled in the case in hand.

7.6 Now we move on the third criterion of the work being "Works Contract", essential for availing the claimed exemption as provided under S.No. 3(v)(a) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended, vide Notification 01/2018 Central Tax (Rate) dated 25.01.2018.



We find that under the scheme of things as envisaged under GST law, the definition of "Works Contract" has been restricted to any work undertaken for an "Immovable Property" unlike the erstwhile VAT and Service Tax provisions where works contracts for movable properties were also considered. The Works Contract has been defined in Section 2(119) of the CGST Act, 2017 as "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." Thus, from the above it can be seen that the term works contract has been restricted to contract for building construction, fabrication etc. of any immovable property only. Any such composite supply undertaken on goods say for example a fabrication or paint job done in automotive body shop will not fall within the definition of term works contract per se under GST. Such contracts would continue to remain composite supplies, but will not be treated as a Works Contract for the purposes of GST. As per Para 6 (a) of Schedule II to the CGST Act, 2017, works contracts as defined in section 2(119) of the CGST Act, 2017 shall be treated as a supply of services. Thus, there exists a clear demarcation of a works contract as a supply of service under GST. Besides this, as per section 17(5) (c) of the CGST Act, 2017, input tax credit shall not be available in respect of the works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service. Thus, ITC for works contract also stands restricted and can be availed only by one who is in the same line of business and is using such services received for further supply of works contract service. For example, a building developer may engage services of a subcontractor for certain portion of the whole work. The subcontractor will charge GST in the tax invoice raised on the main contractor. The main contractor will be entitled to take ITC on the tax invoice raised by his subcontractor as his output is works contract service. However, in case the main contractor provides works contract service (other than for plant and machinery) to a company say in the IT business, the ITC of GST paid on the invoice raised by the works contractor will not be available to the said IT Company.

From the definition, a work shall be treated as Works Contract if that work is done for land or earth or for immovable property and there is transfer of property in goods involved in the execution of such contract. Immovable property by its very definition means that it cannot be moved and cannot be detached or dismantled from the land or earth and further that dismantling of the same would render it defunct / redundant. Immovable property would include in its ambit land and the things which are attached to or embedded in the land such as buildings, bridges etc. However not everything that is attached to the land would automatically constitute an immovable property. Whether the particular property is an immovable property or not is subject to the peculiar facts of each case. Hon'ble courts have pronounced various judicial



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7.7 The other prerequisite to be satisfied in the instant case is that the supply should be by way of 'construction, erection, commissioning, or installation of original works' pertaining to railways, including monorail and metro. Original work is defined in Para 2(zs) of the Notification No. 12/2017-C.T.(Rate) dated 28.06.2017 as follows: "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;

From the submissions before us by the applicant, and in view of the elaborate discussions above regarding the work undertaken by the applicant as is forthcoming from the "letter of acceptance" supra, it is seen that the work awarded to the applicant are 'Original work' as defined in the notification. Further, on a thorough look into the text of the claimed exemption as provided under S.no. 3(v)(a) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended, vide Notification 01/2018 Central Tax (Rate) dated 25.01.2018, we find that the entry at 3(v)(a) do not specify the class of service provider to whom it applies. The entry is specific to the composite supply of works contract pertaining to railways including monorail and metro. We would also like to cite reference to recommendation of the Fitment Committee to the 25th GST Council meeting and though the same was related to metro rail, the ratio of the said decision is squarely applicable in the case in hand for arriving at a decision. The said recommendation of the Fitment Committee to the 25th GST Council meeting (available in Volume -2 of the Agenda) which facilitated the downward revision of the GST rate from 18% to 12% for composite supply of works contract supplied by way of construction, erection, commissioning or installation of original works pertaining to Metro rail reads as under:

Discussion on Agenda Items Agenda Item 10: Issues recommended by the Fitment Committee for the consideration of the GST Council Agenda Item 10(ii): Recommendations on Services The Summary Sheet of the recommendations of the Fitment Committee on Services was circulated as Agenda Item 10(ii) in Volume - 1 of the Detailed Agenda Note. It was indicated therein that detailed justification for the recommendations will be circulated separately in Volume - 2 of the Detailed Agenda Note. 2. The detailed justification for the recommendations of the Fitment Committee on Services are attached as Annexure 1. 3. The recommendations of the Fitment Committee are placed before the Council for consideration and approval.



S.no	Represented By	Proposal	Justification	Comments of Fitment Committee
4	Hon'ble CM Maharashtra and Secretary, Ministry of Housing and Urban Affairs	Request to reduce the GST rate from 18% to 12% for composite supply of works contract supplied by way of construction, erection, commissioning or installation of original works pertaining to Metro rail.	Levy of high rate of GST adversely affects the financial position of metro companies. The metro companies facilitate easy and quick movement of people and has positive impact on economic growth, apart from reduction in traffic congestion, pollution, road and parking cost. Reduces both cost and time of travel and improves competitiveness of the city.	Services provided by way of construction, erection, commissioning, or installation of original works pertaining to monorail or metro were exempt till 1-3-2016. Thereafter, the said services provided under a contract entered into prior to 1-3-2016 were exempt. Exemption to the said services was withdrawn in Budget, 2016 with a view to minimize exemptions in the run up to GST as exemptions break ITC chain, increase cost and result in distorted tax structure. However, GST rate on most of the services provided to the Govt. which were exempted under service tax has been reduced from 18% to 12% so as to reduce cost of Govt. projects. Service



(Signature)

				of transportation of passengers by a monorail or metro rail has been exempted under GST so as to reduce the cost of supply of the said public transportation service to the public. Reduced rate of GST of 12% has been extended to services provided for construction of railways, road, bridge, tunnel or terminal for road transportation for use by general public vide notification No. 20/2017-CT(R) dated 22nd August, 2017. The same reduction in GST rate from 18% to 12% can be considered for construction of metro and monorail projects (construction, erection, commissioning or installation of original works). Fitment Decision Agreed
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7.8 Now coming to the aspect of "railways", it is seen that the term "railways" is not defined in the GST Act. It, however, is defined under Section 2(31) of the Railways Act, 1989, meaning "a railway, or any portion of a railway, for the public carriage of passengers or goods, and includes



(Signature)

- (a) All lands within the fences or other boundary marks indicating the limits of the land appurtenant to a railway;
- (b) All lines of rails, sidings, or yards, or branches used for the purpose of, or in connection with, a railway;
- (c) All electric traction equipment, power supply and distribution installations used for the purpose of, or in connection with, a railway;
- (d) All rolling stock, stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, roads and streets, running rooms, rest houses, institutes, hospitals, waterworks and water supply installations, staff dwellings and any other works constructed for purpose of, or in connection with, railway;
- (e) All vehicles which are used and any road for the purpose of traffic of a railway and owned hired or worked by a railway;
- (f) All ferries, ships, boats and rafts which are used on any canal, river, lake or other navigable inland waters for the purpose of the traffic of a railway and owned, hired or worked by a railway administration,

but does not include-

- (i) A tramway wholly within a municipal area; and
- (ii) Lines of rails built in any exhibition ground, fair, park, or any other place solely for the purpose of recreation.

Further the Railways Act, 1989, distinguishes between, but covers, Government Railway under Section 2(20) and Non-Government Railway under Section 2(25) of the Act. It, therefore, includes scope for railways under both Government and private administrations.

In the instant case as is forthcoming from the letter of acceptance dated 25.10.2021 furnished by the applicant, issued by RITES the subject of work allotted is mentioned as "e-Tender no. 31/OT/SECL/GEVRA-Open Cast/Civil & P.Way/PKG-II/21 dated 1.3.2021 for the work of "Earthwork in formation, Minor bridges, P.Way linking work including supply of Track ballast, PSC Sleepers, P.Way Fittings, Points & Crossings, Drain, Road, FOB Geotechnical Investigation etc. in connection with Project Management Consultancy work for the proposed feeder line of East West Rail Corridor within the Lease hold boundary of Project for Coal Evacuation through Rail at Gevra Opencast at Gevra Area of SECL". Further, the said letter of acceptance mentions that the offer of the applicant has been accepted by the competent authority of RITES LIMITED for & on behalf of SECL (South Eastern Coal Fields Limited).

Whether the phrase "public carriage of passenger or goods" prevents a proposed feeder line of East West rail Corridor from being included in the definition of



'railways' has repeatedly come up for judicial scrutiny involving the issue akin to the case in hand. The courts generally held that the phrase 'public carriage of passengers or goods' cannot be construed in such manner as to exclude from the ambit of 'railways' other works related to Railway.

[Cases relied upon: *DMRC v. Municipal Corporation of Delhi*, 2008 (103) DRJ 369 (Delhi High Court); *Commissioner, Central Excise, Raipur v. Anand Construction*, 2017 (51) S.T.R. 435 (CESTAT, Principal Bench, New Delhi); *SMS Infrastructure Ltd. v. Commissioner, Central Excise, Nagpur*, 2017 (47) S.T.R. 17 (CESTAT, West Zonal Bench, Mumbai)]

Art. 366(20) of the Constitution excludes from the ambit of 'railway' only (a) a tramway wholly within a municipal area and (b) any line of communication wholly situate in one State and declared by Parliament by law not to be a railway. The Parliament excludes by law, apart from the tramways, the lines of rails mentioned under Section 2(31)(ii) of the Railways Act, 1989, being rails built solely for the purpose of recreation. The term 'public carriage', therefore, cannot be given any meaning that may add more exclusion than specifically provided under Section 2(31)(ii) of the Railways Act, 1989.

It is also worthwhile to mention here that M/s South Eastern Coal Fields Limited, SECL a public sector undertaking would be the owner of the proposed feeder line of East West Rail Corridor being built for coal evacuation through rail at Gevra Opencast of Gevra area of SECL. The purpose of the carriage of coal is, therefore, not recreation, but producing public goods like electricity. It is, therefore, not excluded under Section 2(31)(ii) of the Railways Act, 1989. Further as per the details of M/s. RITES Ltd available in public domain online, it is seen that Rail India Technical and Economical Services limited (RITES Ltd.) is a Public Sector Undertaking wherein ownership of the Government of India (72.02% in equity shares) and is an engineering consultancy company, specializing in the field of transport infrastructure. Established in 1974 by the Government of India, the company's initial charter was to provide consultancy services in rail transport management to operators in India and abroad. RITES has since diversified into planning and consulting services for other infrastructure, including airports, ports, highways and urban planning.

As the proposed work involves the works related to railway network, the same can be said to be pertaining to Railways. The term "pertaining to Railways", as appearing at S.no. 3(v)(a) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended, vide Notification 01/2018 Central Tax (Rate) dated 25.01.2018 is more expansive and includes other establishments other than Indian Railways. Needless to mention here that there is no stipulation in the said entry claimed for exemption supra, that this work must be executed to the Railways but it is sufficient that it must be "pertaining to Railways", meaning therein that the supplier and the recipient is immaterial. Thus, we are of the considered opinion that the work being entrusted to the applicant through the said letter of acceptance dated 25.10.2021 by RITES Limited pertains to railways and accordingly this pre-requisite also stands fulfilled.



7.9 As regards the applicant's reference to the various rulings of Advance Ruling Authorities in their defense, we would again like to cite reference to section 103 of CGST Act, 2017 wherein it has been stipulated that the said rulings under the CGST Act, 2017 would be binding only on the applicant and on the concerned officer or the jurisdictional officer. Accordingly, the cited Advance Ruling are applicable only to the applicant parties and the ratio of the same cannot be generalized.

7.10 In view of the above discussions we are of the considered view that it would be appropriate to conclude that the benefit of the entry at Sl.no. 3(v)(a) would be eligible to M/s Triveni Engicons Private Limited Flat No.- 3, B-Block, Mehta Bhawan, First Floor, Kalindi Kunj, Sarangarh Road, Raigarh, Chhattisgarh, 496001 [GSTIN-22AABCT4589R1ZN], the applicant, subject to the fact that the works undertaken by them are 'Works Contract' as per Section 2 (119) of the Act and if so the applicable GST would be @ 12% effective from 25.01.2018.

8. Having regard to the facts and circumstances of the case and discussions as above, we pass the following order:-

ORDER

(Under section 98 of the Chhattisgarh Goods and Services Tax Act, 2017)

No.STC/AAR/06/2022

Raipur Dated5.2022

The ruling so sought by M/s Triveni Engicons Private Limited Flat No.- 3, B-Block, Mehta Bhawan, First Floor, Kalindi Kunj, Sarangarh Road, Raigarh, Chhattisgarh, 496001 [GSTIN-22AABCT4589R1ZN], the applicant is accordingly answered as under:

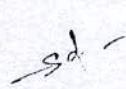
RULING

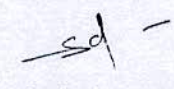
- i. For the proposed feeder line of East West Rail Corridor within the leasehold boundary of project for coal evacuation through Rail at Gevra Opencast of Gevra Area of SECL the rate of tax would be 12% [CGST @6% + CGGST @6%] as stipulated under entry No.3 (v)(a) of Notification No. 11/2017 amended vide Notification No.1/2018- Central Tax(rate) dated 25th January 2018, effective from 25.01.2018, provided the works undertaken by the applicant satisfies the definition of 'Works Contract' as defined in clause(119) of section 2 of the Central Goods and Service Tax Act, 2017.
- ii. The aforesaid work awarded to the applicant gets covered under the definition of Works Contract as defined u/s 2(119) of the CGST Act, 2017, provided the conditions stipulated under the definition of "Works contract", as defined in clause(119) of section 2 of the Central Goods and Service Tax Act, 2017 and as discussed herein above, gets established.
- iii. The rate of GST for the construction of rail infrastructure facilities under Sl. no. 3(v)(a) of Notification No. 11/2017 amended vide Notification



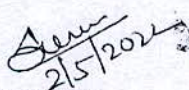
No.1/2018- Central Tax(rate) dated 25th January 2018, effective from 25.01.2018, would be 12% [CGST @6% + CCGST @6%], provided the works undertaken by the applicant satisfies the definition of 'Works Contract' as defined in clause(119) of section 2 of the Central Goods and Service Tax Act, 2017. Except for the above, in other cases for the said work the rate of tax would be 18% [CGST @9% + CCGST @9%] as stipulated under Sl. No.3 (xii) of Notification No 11/2017-CT (Rate) dated 28.06.2017 as amended by various notifications as applicable.

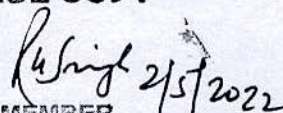
- iv. Yes, the aforesaid work as is forthcoming from the said letter of acceptance dated 25.10.2021 furnished by the applicant issued by RITES can be considered as pertaining to railways. As regards, it being "Works contract", as already held, the conditions stipulated therein under the definition of "Works contract", as defined in clause(119) of section 2 of the Central Goods and Service Tax Act, 2017 of the property must get established.


Sonal K. Mishra
(Member)


Rajesh Kumar Singh
(Member)



TRUE COPY

25/10/2021
MEMBER
ADVANCE RULING AUTHORITY
CHHATTISGARH, RAIPUR

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