

	KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM	
---	--	---

BEFORE THE AUTHORITY OF: Dr.S.L. Sreeparvathy, IRS &
: Shri Abraham Renn S. IRS

Legal Name of the applicant	URALUNGAL LABOUR CONTRACT CO-OP SOCIETY LTD
GSTIN	32AAAAU0170E1Z4
Address	10/323, Madapally College, Vatakara, Kozhikode, Kerala, 673102
Advance Ruling sought for	Whether the works contract service provided to Malabar Cancer Centre is to be billed at 12% GST or to be billed at 18% GST?
Date of Personal Hearing	26/10/2021
Authorized Representative	Mr. Shaju Srakeentavida

ADVANCE RULING No.KER/141 /2021 Dtd 27.06.2022

1. M/s. Uralungal Labour Contract Co-operative Society Ltd [ULCCS] **(hereinafter referred to as the applicant)** is registered under the Kerala Co-operative Societies Act, 1969. The applicant is primarily engaged in the construction of roads, bridges and other public infrastructure for the Government and other institutions and is an accredited agency for the Government of Kerala.
2. At the outset, it is clarified that the provisions of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act) and the Kerala State Goods and Services Tax Act, 2017 (hereinafter referred to as KSGST Act) are the same except for certain provisions. Accordingly, a reference hereinafter to the provisions of the CGST Act, Rules and the notifications issued there under shall include a reference to the corresponding provisions of the KSGST Act, Rules and the notifications issued there under.



3. The Applicant requested an advance ruling on the following:

Whether the works contract service provided to Malabar Cancer Centre is to be billed at 12% GST or to be billed at 18% GST?"

4. Contentions of the Applicant:

4.1. The applicant submits that they have entered into an agreement with the Director, Malabar Cancer Centre [MCC] Thalassery, Kannur established as a charitable society registered under the Societies Registration Act (21 of 1860) for the construction and extension of site and building. MCC is an autonomous institution under Health and Family Welfare Department, Government of Kerala, started with an aim to establish a comprehensive cancer centre, providing the much-required oncology care to the general public. The control and management of the society are vested in the Governing Body consisting of 23 members with the Hon'ble Chief Minister of Kerala as the Chairman. The routine activities are controlled by the Department of Health and Family Welfare, Government of Kerala. The members of the Governing Body and Executive Committee are functioning by virtue of their official positions. MCC is providing a full spectrum of oncological care as an autonomous not-for-profit institution funded by the State Government and other sources. Patients are categorized according to their economic status, and accordingly it is expected that 20% of patients will be provided free services and about 60% on concessional rates.

4.2. In accordance with the Notification No.11/2017 - Central Tax (Rate) the applicant has issued GST invoice to MCC by showing 18% GST but it was disagreed by the Director by informing that MCC is an autonomous institution under Health and Family Welfare Department and only 12% GST is applicable to them.



5. Comments of the Jurisdictional Officer:

5.1. The application was forwarded to the jurisdictional officer as per provisions of subsection (1) of Section 98 of the CGST Act. The Jurisdictional Officer submitted that the applicant is a registered dealer on the rolls of that office bearing GSTIN-32AAAAU0170EIZ4. The statement of the applicant that Malabar Cancer Centre, Thalassery was established as a Charitable Society registered under the Societies Registration Act 21 of 1860. MCC is an autonomous institution under Health and Family Welfare Department, Government of Kerala, started with an aim to establish a comprehensive cancer care centre, providing the much-required oncology care to the general public. The control and management of the Society is vested in the Government Body consisting of 23 members with the Honourable Chief Minister of Kerala as the Chairman. The routine activities are controlled by Department of Health and Family Welfare, Government of Kerala. The members in the Governing Body and Executive Committee are functioning by virtue of their official positions. MCC is providing a full spectrum of oncological care as an autonomous not-for-profit institution funded by the State Government and other sources. Patients are categorized according to their economic status, and accordingly it is expected that 20% of patients will be provided free services and about 60% on concessional rates. This information has been confirmed with the details available in the web site of Malabar Cancer Centre (mcc.kerala.gov.in) and found correct.

5.2. 'Government Entity' as defined under Notification No. 12/2017-C.T.(Rate) dated 28.6.2017 as amended effective from 13.10.2017 is given below.

(x) Government Entity means an authority or a board or any other body including a society, trust, corporation,-



- (i) set up by an Act of Parliament or State Legislature; or
- (ii) established by any Government, with 90 per cent 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.

5.3. The Government of Kerala, has full control over the activities of MCC and it qualifies to be called and termed as a 'Government Entity' for the purpose of GST law, as it fulfills the necessary and sufficient conditions laid down under the notification supra.

5.4. Sl. No.3 (vi) of the Notification No. 11/2017 - Central Tax (Rate) dated 28-06-2017 is given as under;

<p>(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, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -</p> <p>(a) a civil structure or any other original works</p>	<p>6</p>	<p>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</p>
---	----------	--



<p>meant predominantly for use other than for commerce, industry, or any other business or profession;</p> <p>(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or</p> <p>(c) a residential complex meant predominantly for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.</p> <p>Explanation:- For the purposes of this item the term 'business' shall not include any activity or transaction undertaken by the Central Government, State Government or any Local authority in which they are engaged as public authorities</p>		
---	--	--

5.5. The above mentioned Serial No. 3(vi) provides for concessional rate of GST of 12% subject to condition provided under Column (5) of the above table, which reads as under:

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.

5.6. The advance ruling was sought on the issue which was related to the issue of construction of Directors Bungalow and construction of staff or faculty quarters in the IIT Campus, Bhubaneswar. The Advance Ruling Authority of Odisha found that [ORDER NO.01/ODISHA-AAR/2020-2021/ DATED 11-02-2020] the IIT Campus, Bhubaneswar would rightly fall under the definition of Government entity but the intention of the Legislature has been to allow concessional rate to such work which has been entrusted to a Government entity for public interest in general, but extrapolating and extending this concessional rate to any or all activities of IIT, Bhubaneswar will not only be unwarranted but also defeat the very purpose of concessional rate. Thus the AAR ruled that construction of Directors Bungalow and construction of staff / faculty quarters is out of purview of concessional rate provided under Notification No. 11/2017 - CT (Rate) dated June 28, 2017 and would attract 18% GST.

5.7. Thus the composite supply of works contract as defined in clause (119) of Section 2 of the CGST Act, 2017 which squarely fall within the ambit of the scope of work entrusted to MCC by Government of Kerala shall be entitled to a concessional rate under Sl No. 3(vi) to Notification No. 11/2017-CT (Rate) Accordingly, each and every supply under the subject contract shall be treated separately for determining the rate of tax under the CGST Act, 2017 read with the provisions of the GST Tariff and respective exemption notifications.

6. Personal Hearing:

The applicant was granted opportunity for personal hearing on 26.10.2021. Shri Shaju Srakeentavida represented the applicant in the personal hearing. The representative reiterated the contentions made in the application and requested to issue a ruling based on the submissions in the application.



7. Discussion and Findings:

7.1. The matter was examined in detail. The issue to be determined is the rate of GST applicable on the services provided by the applicant to Malabar Cancer Centre. It is stated by the applicant that the services provided are for the construction and extension of the site and building. It is further stated by the applicant that they have raised invoice with 18% GST but it was objected by Malabar Cancer Centre on the ground that they are an autonomous institution under the State Government and hence only 12% GST is applicable on the said services received by them.

7.2. The relevant entry prescribing the rate of GST applicable on the construction services provided to the Central Government or State Government or Local Authority or Governmental Authority or Government entity is Sl No. 3(vi) of the Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 which reads as follows;

	Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
1	2	3	4	5
3.	Heading 9954 (Construction services)	(vi) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, 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	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



		<p>installation, completion, fitting out, repair, maintenance, renovation, or alteration of -</p> <p>(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;</p> <p>(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or</p> <p>(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.</p>		<p>Central Government, State Government, Union territory or local authority, as the case may be</p>
--	--	--	--	---

Explanation.- 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.

7.3. The concessional rate of GST prescribed under the above entry is applicable to the supply of specified work contract services provided to Central Government or State Government or Local Authority or Governmental Authority or Government entity. The specified works contract services are supply by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of (i) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession or (ii) a structure meant predominantly for use as an



educational, a clinical, or an art or cultural establishment or (iii) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the CGST Act.

7.4. Therefore, the conditions to be fulfilled for a supply to be eligible for the concessional rate under the above entry are; (i) the supply must be a composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017; (ii) the supply must satisfy any of the specified descriptions and (iii) the supply must be provided to the Central Government or State Government or Local Authority or Governmental Authority or Government entity.

7.5. Accordingly, it is to be examined whether the service rendered by the applicant falls under the category of works contract service as per the CGST Act. Section 2 (119) of the CGST Act defines the term “works contract” as follows; ‘works contract’ means a contract for building construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract. From the definition it is clear that the term works contract under GST is restricted to contract for construction, fabrication etc of any immovable property. The facts submitted by the applicant reveals that the applicant had entered into an agreement with Malabar Cancer Centre for the construction and extension of site and building. Hence the service rendered by the applicant falls under the ambit of definition of works contract under the CGST Act.

7.6. The next issue to be determined is whether the supply of works contract services fall under any of the specified descriptions mentioned in the above entry. The term “clinical establishment” is defined in Para 2 (s) of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 as “clinical



establishment” means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases. Malabar Cancer Centre being established and engaged in oncology care and treatment squarely falls within the above definition of clinical establishment and accordingly the works contract services rendered by the applicant falls within the description specified in sub-item (b) of the above said entry.

7.7. The next question to be decided is whether Malabar Cancer Centre is a governmental authority or a government entity. As per Para 4 (ix) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017;

“Governmental authority” 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 ninety per cent or more participation by way of equity or control, to carry out any function entrusted to a municipality under Article 243W of the Constitution or to a Panchayat under Article 243G of the Constitution.

7.8. The functions entrusted to a municipality under the Twelfth Schedule to Article 243W of the Constitution are: (a) Urban planning including town planning; (b) Regulation of land-use and construction of buildings; (c) Planning for economic and social development; (d) Roads and bridges; (e) Water supply for domestic, industrial and commercial purposes; (f) Public health, sanitation conservancy and solid waste management; (g) Fire services; (h) Urban forestry, protection of the environment and promotion of ecological aspects; (i) Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded; (j) Slum improvement and upgradation; (k) Urban poverty alleviation; (l) Provision



of urban amenities and facilities such as parks, gardens, playgrounds; (m) Promotion of cultural, educational and aesthetic aspects; (n) Burials and burial grounds; cremations, cremation grounds; and electric crematoriums; (o) Cattle pounds; prevention of cruelty to animals; (p) Vital statistics including registration of births and deaths; (q) Public amenities including street lighting, parking lots, bus stops and public conveniences; (r) Regulation of slaughter houses and tanneries.

7.9. The functions entrusted to a Panchayat under the Eleventh Schedule to Article 243G of the Constitution are: (i) Agriculture, including agricultural extension; (ii) Land improvement, implementation of land reforms, land consolidation and soil conservation; (iii) Minor irrigation, water management and watershed development; (iv) Animal husbandry, dairying and poultry; (v) Fisheries; (vi) Social forestry and farm forestry; (vii) Minor forest produce; (viii) Small scale industries, including food processing industries; (ix) Khadi, village and cottage industries; (x) Rural housing; (xi) Drinking water; (xii) Fuel and fodder; (xiii) Roads, culverts, bridges, ferries, waterways and other means of communication; (xiv) Rural electrification, including distribution of electricity; (xv) Non-conventional energy sources; (xvi) Poverty alleviation programme; (xvii) Education, including primary and secondary schools; (xviii) Technical training and vocational education; (xix) Adult and non-formal education; (xx) Libraries; (xxi) Cultural activities; (xxii) Markets and fairs; (xxiii) Health and sanitation, including hospitals, primary health centres and dispensaries; (xxiv) Family welfare; (xxv) Women and child development; (xxvi) Social welfare, including welfare of the handicapped and mentally retarded; (xxvii) Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes; (xxviii) Public distribution system; (xxix) Maintenance of community assets.



7.10. Malabar Cancer Centre, a society registered under the Societies Registration Act is established by the State Government under the administrative control of the Department of Health and Family Welfare as a comprehensive cancer centre to provide oncology care and treatment to the general public. The control and management of Malabar Cancer Centre is vested in the Governing Body consisting of 23 members of which the Hon'ble Chief Minister of Kerala is the Chairman. The members of the Governing Body and Executive Committee hold their position by virtue of their official positions in the Government of Kerala and also as nominated by the State Government. Further, public health is a function entrusted to a Municipality as well as to a Panchayat under Article 243W and Article 243G respectively of the Constitution. Therefore, it is evident that Malabar Cancer Centre is a society established by the State Government with 100 per cent participation by way of equity or control, to carry out the function of public health a function entrusted to a municipality as well as a panchayat under Article 243W and Article 243G respectively of the Constitution and accordingly falls within the definition of governmental authority under Para 4 (ix) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017.

7.11. Based on the discussion above, we conclude that the services rendered by the applicant to Malabar Cancer Centre as detailed in the application are eligible for the concessional rate of tax of 12% [6% - CGST+ 6% - SGST] prescribed in the entry at Sl No. 3(vi) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as Malabar Cancer Centre is a governmental authority as per definition of governmental authority in Para 4 (ix) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017. However, consequent to the issue of Notification No. 22/2021 Central Tax (Rate) dated 31.12.2021 amending the entry at Sl No. 3 (vi) of the Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 with



effect from 01.01.2022 the concessional rate in terms of the said entry at SI No. 3 (vi) shall be applicable only till 31.12.2021 and thereafter from 01.01.2022, the applicant shall be liable to pay GST at the rate of 18% [9% - CGST + 9%- SGST] as per entry at SI No. 3 (xii) of the Notification No. 11/2021 Central Tax (Rate) dated 28.06.2017.

Given the observations stated above, the following rulings are issued:

RULING

1. Whether the works contract service provided to Malabar Cancer Centre is to be billed at 12% GST or to be billed at 18% GST?

Ruling: The works contract services provided by the applicant to Malabar Cancer Centre are liable to GST at the rate of 12% [6% - CGST+ 6% - SGST] as per entry at SI No. 3 (vi) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 till 31.12.2021 and thereafter from 01.01.2022 onwards will be liable to GST at the rate of 18% [9% - CGST + 9%- SGST] as per entry at SI No. 3 (xii) of the Notification No. 11/2021 Central Tax (Rate) dated 28.06.2017.


Sreeparvathy S.L.
Joint Commissioner of Central Tax
Member


Abraham Renn S.
Additional Commissioner of State Tax
Member

To,
M/s. URALUNGAL LABOUR CONTRACT CO-OP SOCIETY LTD.
10/323, Madapally College, Vatakara,
Kozhikode, Kerala - 673102.

Copy to,



1. The Chief Commissioner of Central Tax and Central Excise, Thiruvananthapuram Zone, C.R.Building, I.S.Press Road, Cochin- 682018. [E-mail ID: cccocoin@nic.in; ccu-cexcok@nic.in]
2. The Commissioner of State Goods and Services Tax Department, Tax Towers, Karamana, Thiruvananthapuram - 695002.
3. The State Tax Officer, Vadakara Circle, Kozhikode. [E-mail ID: kkdspl1.ctd@kerala.gov.in]