

Body

**AUTHORITY FOR ADVANCE RULING No. GST-ARA-75/2020-21/B-40, Dated 31st March, 2022**  
**MAHARASHTRA AUTHORITY FOR ADVANCE RULING**  
**GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai - 400010,**  
**(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)**  
**BEFORE THE BENCH OF**  
**(1) Shri. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)**  
**(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)**

ARN No.		AD270221007335M
GSTIN Number, if any/ User-id		27ADMFS7563H1ZG
Legal Name of Applicant		M/s. Shri Venkateshwara Infrastructure J V
Registered Address/Address provided while obtaining user id		House No.2-230/6, Shakuntala Niwas, Padma Nagar, Barshi Road, Latur-413531
Details of application		GST-ARA, Application No. 75 Dated 12.02.2021
Concerned officer		Division Nanded, Commissionerate Aurangabad
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Works Contract
B	Description (in brief)(As per applicant)	The tax payer M/s. Shri Venkateshwara Infrastructure (JV) is having its registered office in Maharashtra. The said joint Venture has been allotted earthwork in embankment, cutting and bridge approaches etc. of Central Railway Department.
issue/s on which advance ruling required		It is composite Contract work which includes supply of material and service as per the Tender Value / Work Order of supply of goods which constitutes not more than 25% of the supply of material. The tax payer is carrying the works of earth works and bridge works allotted by the central railway department of central government.
Question on which advance ruling required		As reproduced in para 01 of the Proceedings below.

**PROCEEDINGS**

**(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)**

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by M/s. SHRI VENKATESHWARA INFRASTRUCTURE J V, the applicant, seeking an advance ruling in respect of the following questions.-

1. In view of the description of the work order of the Central Railway Department carried out by the tax payer, whether the Notification No. 31/2017-C. T. (Rate) dated 13.10.2017, in respect of composite supply of works contract the GST Rate @ 5% i.e. 2.50% CGST, 2.50% SGST as per sub clause (Vii) of the clause 119 of Section 2 of the CGST Act 2017 is applicable to the Tax Payer.?

## 2. What will be the GST Rate applicable to the tax payer as per attached work order?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

### 2. FACTS AND CONTENTION - AS PER THE APPLICANT FACTS:

The submissions made by M/s. Shri Venkateshwara Infrastructure J V, the applicant are as under:-

- 2.1 The applicant is a Joint Venture partnership firm having its registered office at Padma Nagar, Barshi Road, Latur and has been allotted earthwork in embankment, cutting and bridge approaches etc. of Central Railway Department. It is composite Contract work which includes supply of material and service as per the Tender Value / Work Order, supply of goods which constitutes not more than 25% of the supply of material.
- 2.2 The Tender allotted for Rs. 24,22,47,153/- vide Notification No. EW/187/R/4004, Dtd 25.09.2017, was enhanced after variations, (vide order no. Subsidy Agreement No. C.A. No. CAO(C)9841/ dtd. 25.06.2019), and the total gross value of Work Order as per Work Order dated 25.09.2017 and Variation Work Order Dated 25.06.2019 was Rs. 33,05,06,116/-, out of which Rs.29,41,40,231/- is earth work cost and cost of bridge work which includes supply of goods is Rs. 3,63,65,880/- the total percentage of the Earth work is 89% of the Work order amount and bridge work is 11% of the Total Work Order amount of Rs.33,05,06,116/-. As the Tax payer is fulfilling all the conditions late down in the notification number 31/2017 Central Tax (Rate) Dated 13.10.2017, the question relating to the GST Rate of 5% is being raised.
- 2.3 The Railway Department is Central Government Authority. Notification No. 31/2017 CTR dated 13.10.2017, specifies the condition for applicability of GST @ 5% for such types of works contract carried out by applicant and as such it is requested to allow the rate of GST @5% to applicant. **APPLICANT SUBMISSION DATED 28.07.2021:**
- 2.4 The applicant has been allotted a tender to undertake the above mentioned works in the section between Beed to Parli from Ch. 175000 to 185000 m under Ahmednagar-Beed-Parli Vajinath New Broad Gauge line project ('project') by the Central Railway Department.
- 2.5 With regard to the facts stated above, there are two notifications regarding classification of job work that qualify for inclusion of the services provided in the instant case:-

- Notification No. 12/2017 - CTR dt 28.06.2017 as amended by Notification No. 2/2018-CTR dt 25.01.2018; AND
- Notification No. 11/2017 - CTR dt 28.06.2017 as amended by Notification No. 31/2017 - CTR dated 13.10.2017.

To analyze applicability of said notifications, the concept of composite supply need to be evaluated.

#### Composite Supply

- 2.6 As per Section 8 (a) of the CGST Act, 2017, a composite supply comprising two or more supplies, one of which is a principal supply. Composite supply and Principal Supply are defined under Section 2(30) and Section 2 (90) of the CGST Act, respectively.
- 2.7 A supply of goods and/or services will be treated as composite supply if: it is a supply of two or more goods or services together; It is a natural bundle, i.e., goods or services are usually provided together in the normal course of business; and they cannot be separated. To undertake the impugned supply, natural bundle of supply of goods and/or services is inevitable. Thus, the works contract allotted to the applicant shall fall within the ambit of composite supply.
- 2.8.1 As per Notification No. 12/2017-CTR dt 28.06.2017 amended by Notification No. 2/2018-CTR dt 25.01.2018, GST rate applicable is Nil under Sr. No. 3A under HSN 9954 for "Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority."
- 2.8.2 In the instant case, it is seen from the Estimate Sheet enclosed with Tender Acceptance Letter that, cost of supply of services accounts for approximately 89% of total cost of the composite supply. Thus, supply of goods would constitute approximately 11% of the total value of the contract.
- 2.8.3 Since, the Contract/Transaction under consideration is Composite supply of works contract as defined in clause (119) of section 2 of the CGST Act, 2017, services are provided to the Central Government and the cost of services constitutes approximately 89% of the value of works contract, the benefit of exemption under Sr. No. 3A of HSN 9954 of the said notification can be extended to the activities undertaken by the applicant under the said contract.
- 2.9 As per Notification No. 11/2017-CTR dt 28.06.2017, amended by Notification No. 31/2017-CTR dt. 13.10. 2017, GST rate applicable is 5% under Sr. No. 3 (vii) under HSN 9954 for Composite supply of works contract involving predominantly earth work that is, constituting more than 75% of the value of the works contract provided to the Central/State Govt, Union territory, local authority, a Governmental Authority or a Government Entity."
- 2.10 The expression 'earthwork' has not been defined in the GST Act or GST Rules or any other notifications. The various dictionary meanings of the same are as under:-

**Wikipedia - as per Civil engineering use**

Typical earthworks include road construction, railway beds, causeways, dams, levees, canals, and berms. Other common earthworks are land grading to reconfigure the topography of a site, or to stabilize slopes.

#### **Merriam Dictionary**

1. An embankment or other construction made of earth especially: one used as a field fortification;
2. The operations connected with excavations and embankments of earth;
3. A work of art consisting of a portion of land modified by an artist.

#### **Wiktionary:**

Earthwork (Noun)

Any structure made from earth: especially an embankment or rampart used as a fortification.

#### **Webster Dictionary:**

1. Earthwork (noun)

Any construction, whether a temporary breastwork or permanent fortification, for attack ordinance, the material of which is chiefly earth

2. Earthwork (noun)

The operation connected with excavations and embankments of earth in preparing foundations of buildings, in constructing canals, railroads, etc.

It is clear from the above definitions that Earthwork includes both excavation and fortification.

2.11 In the instant case, the subsidiary agreement and the variation statement have detailed the works to be carried out by the Applicant under the given project which consists of activities such as Blasting/Cutting the Hard Rock, Removing of Excavated Stuff, Providing Steel Support, Cement Concreting etc. In view of the description of the activities in conjunction with the definitions elaborated above, the works of the Applicant would fall under the definition of Earthwork.

2.12 Further, the total contract value is for Rs. 33,05,06,116, in which the works are itemized into Part A to F. Out of those, Part A, B, C and F exclusively deal with Earthwork items amounting to Rs. 29,41,40,231 which constitutes 89% of the total contract by value. Thus, the major part of the contract involves earth work i.e. more than 75% of the work involves earth work.

2.13 In view of the above, in the subject case, all the pre-requisites of entry Sr. No. 3(vii) of HSN 9954 are satisfied, and therefore, the said work order qualifies for the benefit of said entry and GST would be applicable at the rate of 5%.

#### **General Rules of Interpretation**

2.14 As per the Explanatory Notes to the Scheme of Classification of Services, 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.

2.15 Entry Sr. No. 3A of HSN 9954, Notification No. 12/2017-CTR dt 28.06.2017 as amended, provides NIL GST rate, in general, for all composite supply of works contracts in which value of goods is not more than 25% of the total value of supply whereas Notification No. 11/2017-CTR dt 28.06.2017 as amended, provides 5% GST rate (Entry - Sr. No. 3(vii) of HSN 9954) for composite supply of works contract specifically consisting of earthwork more than 75% of the total value of supply.

2.16 In the subject case, since there is a specific entry for classifying the earthwork contracts and Applicant fulfils all the conditions of that entry, the same shall be preferred over the general entry. Accordingly, the works contract to be carried out by the Applicant would be classified under the specific entry Sr. No. 3(vii) of HSN 9954 having GST rate of 5%.

#### **Judicial Pronouncements**

2.17.1 In the case of M/s Soma Mohite Joint Venture (2020 (14) GSTL 667, the Appellate Authority for Advance Ruling held that the works contract for construction of tunnel and its allied works shall be covered under the term 'Earth Work' and therefore, shall be classified under Sr No 3(vii) -Chapter No. 9954 as per Notification No. 31/2017-C.T. (Rate) dated 13.10.2017.

2.17.2 In P K Agarwala's case (2019 (20) GSTL 605 (AAR GST)), the Appellant was given works contract for raising of western site tailing dam at Turamdih and since the major part of the contract i.e. more that 75% involved clearing of earth, excavation, supplying and laying of earth and impervious clay, it was held that such work order shall be covered within the term earthwork.

The applicant also relies on the decision given in the case of M/s KSC Buildcon Private Ltd.

2.17.3 In light of above discussion and judicial pronouncements, GST rate of 5% as per the entry Sr. No. 3(vii) of HSN 9954 under Notification No. 11/2017-CTR dt 28.06.2017 as amended, should apply in the subject case.

#### **Additional submissions dated 09.02.2022**

2.18 The tender allotted for Rs. 24,22,47,153 vide Notification No. EW/187/R/4004 dated 25.09.2017, was later enhanced to Rs. 33,05,06,116, vide work order subsidy Agreement No. C A No CAO 9841 dated 25 June 2019. Out of the same, cost of the earth work is Rs. 28,33,90,343/-(i.e., 86% of the work order) and cost of the bridge work is Rs.4,71,15,767/-(i.e., 14% of the work order).

#### **03. CONTENTION - AS PER THE CONCERNED OFFICER:**

##### **Officer Submission dated 09.03.2022:**

The impugned contract includes Earthwork and construction of bridge work and includes supply of two or more taxable supplies of goods or services or both, which are naturally bundled and supplied in conjunction with each other, hence, the said service seems to be falls under the category of Composite Supply as defined under Section 2(30) of CGST Act, 2017.

3.2 As per the calculation sheet submitted by the applicant, the total material cost of earth work including bridge work is Rs.4,71,15,767/- which is

14% of total cost of the work order (Gross Revised CAV) i.e. Rs.33,05,06,111/-. Accordingly, pure earth work cost is Rs.28, 33, 90,344/-, which is 86% of the total cost of the work order dated 26.09.2017.

3.3 The CGST rate for the intra-State supply of services as per item No.(vii) against Serial No.3 (HSN 9954 Construction Services) of Table under Notification No.11/2017-CTR dt 28.06.2017 as amended vide Notfn. No. 31/2017-CTR dt 13.10.2017 for the Composite supply of works contract defined in clause (119) of section 2 of the CGST Act, 2017 involving predominantly earth work (that is, constituting more than 75 percent of the value of the works contract) provided to the Central Government, State Government, Union territory, local authority, a Governmental Authority or a Government Entity is 5% GST, subject to the conditions as specified in Col. (5) of the said Table (i.e. provided that where the services are supplied to the 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).

3.4 The applicant has submitted site photos vide e-mail dated 07.02.2022 and copies of additional submissions and case citations / orders referred in the application. The citations are in respect of the similar issues, in which GST rate of 5% has been accepted by the Advance Ruling Authorities.

3.7 As the applicant is supplying Composite Supply of Works Contract as defined in clause (119) of section 2 of the CGST Act, 2017 involving predominantly earth work (that is, constituting more than 75 percent of the value of the works contract) provided to the Central Government, the GST rate for the intra-State supply seems to be applicable at 5% GST as per item No.(vii) against Serial No.3 (HSN 9954) of Table under Notification No.11/2017-CTR dated 28.06.2017 as amended vide Notification No. 31/2017-CTR dated 13.10.2017 and Notification No.11/2017-STR.

#### **04. HEARING**

4.1 Preliminary e-hearing in the matter was held on 26.10.2021. Authorized representatives of the Applicant, Shri. K. B. Kulkarni, STP, Shri. Vishal Sheth, CA and Shri. Sambhav Mehta, CA were present. The Jurisdictional Officer was absent.

4.2 The application was admitted and called for final e-hearing on 01.02.2022. The Authorized representatives of the applicant, Shri. Vishal Sheth, CA & Shri. K.B. Kulkarni, STP were present. Jurisdictional officer Shri. Ganesh Durgam, Superintendent, Division-Nanded, Commissionerate - Aurangabad was also present. Heard both the parties.

#### **05. DISCUSSIONS AND FINDINGS:**

5.1 We have perused the documents on records and have considered the submissions both oral and written made by the applicant as well as the written submissions made by the jurisdictional officer.

5.2 We observe that, the applicant has been allotted a tender to undertake the earthwork in embankment, cutting and bridge approaches and construction of minor bridges and RUBs in the section between Beed to Parli from Ch. 175000 to 185000 m under Ahmednagar-Beed-Parli Vajinath New Broad Gauge line project ('project') by the Central Railway Department. As per the submissions, the Tender allotted vide Notification dated 25.09.2017 is for Rs. 24,22,47,153/-, which has been enhanced, vide Work Order dated 25.06.2019, to Rs. 33,05,06,116/- out of which Rs. 29,41,40,231/- is earth work cost and cost of bridge work which includes supply of goods is Rs. 3,63,65,880/-. Thus, according to applicant's initial submissions, the total percentage of the Earth work is 89% of the Work order amount and bridge work is 11% of the Total Work Order amount of Rs.33,05,06,116/-. As per later submissions of the applicant, the cost of the earth work is Rs. 28,33,90,343/-(i.e., 86% of the work order) and cost of the bridge work is.4,71,15,767/-(i.e., 14% of the work order).

5.3 The applicant has produced statements showing itemized details of works/activities being carried out in the said contract. It is noticed that against the certain items, description is mentioned but, in the columns thereof the values are blank. However, the values shown against the remaining items are tallying with the submissions made by the applicant with respect to the total value of the contract.

5.4 The specific question raised by the applicant is, whether the impugned supply as per the subject Work Order received, is covered under Sr. No. 3 (vii) of Notification No. 11/2017 - CTR dated 28.06.2017 as amended by Notification no. 31/2017- Central Tax (Rate) dated 13.10.2017, attracting GST @ 5%.

5.5 The relevant clause (vii) of Sr. No. 3 of Notification No. 11/2017 - CTR dated 28.06.2017 as amended by notification no. 31/2017-Central Tax (Rate) dated 13.10.2017 is as under:-

Sr. No.	Chapter, Section or Heading	Description of Service	Rate %	Condition
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3	Heading 9954 (Construction services)	(vii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, involving predominantly earth work (that is, constituting more than 75per cent, of the value of the works contract) provided to the Central Government, State Government, Union territory, local authority, a Governmental Authority or a Government Entity.	2.5	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)
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5.6 The three conditions to be satisfied for the impugned supply to be considered under the above mentioned Sr. No 3 (vii) are:-

- (a) the supply should be a Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017,
- (b) such supply should be involving predominantly earth work (that is, constituting more than 75per cent, of the value of the works contract)
- (c) such supply should be provided to the Central Government, State Government, Union territory, local authority, a Governmental Authority or a Government Entity.

5.7.1 To answer the point at para 5.6 (a) above, we have considered the submissions made by the jurisdictional officer as well as the Work Order and Work Sheets submitted by the applicant

5.72. In the subject case, as per the impugned tender, the applicant is to undertake the earthwork in embankment, cutting and bridge approaches and construction of minor bridges and RUBs in the section between Beed to Parli from Ch. 175000 to 185000 m under Ahmednagar-Beed-Parli vajinath New Broad Gauge line project ('project') by the Central Railway Department. From the submissions made by the applicant, we find that in the subject case there is a supply of both, goods as well as services and therefore we have no hesitation in holding that the subject activity is a composite supply. Further, by way of fabrication, providing steel support, rock bolting, reinforcement, fixing of chain link, cement concreting, etc. there is a transfer of property like steel etc. Thus, we find that the impugned activity is a Composite supply of works contract as defined in clause (119) of section 2 of the CGST Act, 2017.

5.7.3.1 The second condition mentioned in para 5.6 (b) is that the said Composite supply of works contract as defined in clause (119) of section 2 of the CGST Act, 2017 should be involving predominantly earth work (that is, constituting more than 75 per cent of the value of the works contract).

5.7.3.2 The term "Earth Work "has not been defined under any GST provisions.

The Webster Dictionary defines Earth Work as an embankment or construction made of earth specially one used as a field fortification.

The Collins Dictionary defines Earth Work as "excavation of earth as in engineering construction; a fortification made of earth

The Wikipedia defines Earth Work as "Earth work are engineering works through the processing of parts of earth surface involving quantities of soil or unformed rocks.

5.7.3.3 After going through different definitions of earth work, we find that earthworks include the removal, moving or adding of large quantities of soil or rock from a particular area to another. They are done in order to make an area of suitable height and level for a specific purpose

5.7.3.4 In the subject case as per the submissions, the impugned activities conducted by the applicant majorly involve, the supply consists majorly of activities such as Blasting/Cutting the Hard Rock, Removing of Excavated Stuff, levelling the ground, Cement Concreting, rock bolting, construction of approach roads to bridges, earthwork filling in embankments, etc.

5.7.3.5 We rely upon the submissions made on the basis of site photographs etc. by the jurisdictional officer that the applicant is supplying Composite Supply of Works Contract as defined in clause (119) of section 2 of the CGST Act, 2017 involving predominantly earth work (that is, constituting more than 75 percent of the value of the works contract).

5.7.4.1 The third condition mentioned in para 5.6 (c) is that, the impugned supply should be provided to the Central Government, State Government, Union territory, local authority, a Governmental Authority or a Government Entity

5.7.4.2 The Railways are a department under the Railway Ministry, handled by a Minister elected to the Indian Parliament. Central Railway is a part of Indian Railways which is India's national railway system operated by the Ministry of Railways. The Railway network operates under the

Railway Board which has been formed by the Central Government. The main functions of the Railway board are towards the administration, technical supervision and direction of the country's railways, etc. The Indian Railways carry out the function of operating railways in the country, a function entrusted by the Central Government, and the Central Railway, being a division of Indian Railways also carries out the same function.

5.7.4.3 As per section 2(53) of the CGST Act, 2017, the term 'Government' means the Central Government.

As per clause (23) of section 3 of the General Clauses Act, 1897 the term 'Government' includes both the Central Government and any State Government.

As per clause (8) of section 3 of the said Act, the 'Central Government', in relation to anything done or to be done after the commencement of the Constitution, means the President.

As per Article 53 of the Constitution, the executive power of the Union shall be vested in the President and shall be exercised by him either directly or indirectly through officers, subordinate to him in accordance with the Constitution.

Further, in terms of Article 77 of the Constitution, all executive actions of the Government of India shall be expressed to be taken in the name of the President.

5.7.4.4 In view of the above, the Central Government means the President and the officers subordinate to him while exercising the executive powers of the Union vested in the President and in the name of the President.

5.7.4.5 We find that, in the subject case, in respect of the impugned tender 'for earthwork in embankment, cutting and bridge approaches and construction of minor bridges and RUBs in the section between Beed to Parli from Ch. 175000 to 185000 m for Ahmednagar-Beed Parli Vajinath New Broad Gauge Line Project' the offer of the applicant has been accepted by the Central Railway Department vide Letter Of Acceptance dated 25/26th September, 2017, by Shri V.K. Agrawal, Chief Engineer (Construction) Central for an on behalf of the President of India. Further, the subsidiary agreement No. C.A. No. CAO (C)/984/I dated 25.06.2019 is between the President of the Union of India (referred to as 'Railway') and the applicant and on behalf of the Railway, the subsidiary agreement is signed by the Chief Engineer (Const.), Central, CSTM, for and on behalf of the President of India.

5.7.4.6 Thus, in view of the discussions at para nos 5.7.4.3 to 5.7.4.5, we find that the Central railway Department, which has given the impugned work to the applicant, can be termed as Central Government. The status of Railways is that of Government only but it is a business entity. Hence, we find that, in the subject case, the applicant is making the impugned supply to Central Government.

5.8 In view of the above we find that the applicant is supplying Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, involving predominantly earth work (that is, constituting more than 75per cent, of the value of the works contract) and such supply is being provided to the Central Government, i.e. Central railways. Therefore, the impugned supply of the applicant is covered under the provisions of Sr. No. 3 (vii) of Notification No. 11/2017 - CTR dated 20.06.2017 as amended from time to time.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

#### **ORDER**

#### **(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)**

For reasons as discussed in the body of the order, the questions are answered thus -

**Question 1:-** In view of the description of the work order of the central railway department carried out by the tax payer, whether the notification no. 31/2017-Central Tax (Rate) dated 13.10.2017, in respect of composite supply of works contract the GST Rate @ 5% i.e. 2.50% CGST, 2.50% SGST as per sub clause (vii) of the clause 119 of Section 2 of the CGST Act 2017 is applicable to the Tax Payer?

**Answer:-** Answered in the affirmative.

**Question 2:-** What will be the GST Rate applicable to the tax payer as per attached work order?

**Answer:-** The GST rate applicable to the applicant is 5% (2.5% each of CGST and SGST) or 5% IGST.

PLACE:- Mumbai

DATE:- 31/03/2022

RAJIV MAGOO

(MEMBER)

T. R. RAMNANI

(MEMBER)