

Body

**AUTHORITY FOR ADVANCE RULING No. GST-ARA-66/2021-22/B-58, Dated 04th May, 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.		AD270222033343L
GSTIN Number, if any/ User-id		27AACCK7073N1Z0
Legal Name of Applicant		M/s. KPC Projects Ltd.,
Registered Address/Address provided while obtaining user id		M/s. KPC Projects Ltd., Plot No.64, Bldg No.3, High Lands, Lokhandwala Township, Akurli Road, Mumbai-400101.
Details of application		GST-ARA, Application No.66 Dated 22.02.2022
Concerned officer		MUM-VAT-D-716, NODAL-08
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Service Provision, Service Recipient
B	Description (in brief)(As per applicant)	Uttar Pradesh Rajkiya Nirman Nigam Ltd., ("UPRNN"), a Government of Uttar Pradesh Undertaking had floated online global open e- tenders for construction of 228 nos. staff quarters at D Nagar, Andheri (W), Mumbai, Maharashtra and the applicant was one of the bidders and got selected for the work and entered into a contract with UPRNN.
issue/s on which advance ruling required		> Classification of goods and/or services or both > Applicability of a notification issued under the provisions of the Act > Determination of the liability to pay tax on any goods or services or both
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. KPC Projects Ltd., the applicant, seeking an advance ruling in of the following questions.-

- 1.In view of the construction services provided by the applicant to UPRNN, is the applicant eligible to avail the concessional rate of GST at 12% as prescribed in of S. No. 3 (vi) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended?
- 2.If not, what is the appropriate rate and classification of GST to be charged by the applicant?

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:**

2.1 Uttar Pradesh Rajkiya Nirman Nigam Ltd., ("UPRNN"), a Government of Uttar Pradesh Undertaking had floated online global open e-tenders for construction of 228 nos. staff quarters at D Nagar, Andheri (W), Mumbai, Maharashtra which was awarded to M/s. KPC Projects Ltd., the applicant for providing the following works:

" Construction of 228 nos. Type-III Staff quarters at D Nagar, Andheri (W), Mumbai, Maharashtra"

2.2 The scope of present work order requires the applicant to construct the quarters for Employee State Insurance Corporation ("ESIC"), a statutory body under Ministry of Labour & Employment, Govt of India.

2.3 Applicant submits that, impugned activity is covered under Notification No.11/2017- CTR dtd 28.06.2017, as amended by Notification No. 24/2017- CTR dt 21.09.2017 & the rate of the GST is 12%.

2.4 The present work awarded to the applicant is by UPRNN for construction of 228 staff quarters for ESIC. The applicant is providing works contract services in the form as defined under Section 2 (119) of the CGST Act, 2017 which as per Sl. No. 6(a) of Schedule II of the CGST Act, 2017, shall be treated as a supply of service. Therefore, there is a supply by the applicant in the form of works contract to UPRNN.

2.5 The subject work involves works contract services for the installation, fitting out and construction of the staff quarters. Further, UPRNN is a wholly owned company by the Govt of Uttar Pradesh and satisfies the definition of Government Authority/Govt.Entity. In terms of Sl. No. 3 (vi) of Notification 11/2017- CTR dated 28.06.2017, as amended, composite supply of works contract provided to the Central Govt, State Govt, Union Territory, local authority, Governmental Authority or Govt Entity is eligible for the concessional rate of 6%.

2.6 The concessional rate of 6 % CGST under entry 3 (vi) would apply only in respect of three types of works mentioned in sub clauses (a), (b) and (c) of clause (vi) of S. No. 3, out of which sub clause

(a) reads as: "a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession".

Further, the explanation to the Sl. No. 3 (vi) to Notification no. 11/2017, added vide Notification No. 17/2018- Central Tax (Rate) dated 26.07.2018 states that: "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.

2.7 The activities undertaken by UPRNN for the present projects are not in the form of business, rather, they are staff quarters for ESIC wherein ESIC is a public authority. The ESIC staff quarters must be allowed for concessional rate of 12% (CGST+SGST) since they are for the use of officers and employees but, not for commercial purposes. The present activity cannot be treated as business since they functioning as a Governmental Authority and any activity or transaction entered into by them cannot be held as business. Therefore, there is no commercial activity or business or profession but the present contract is for a governmental authority. Therefore, the present contract must be allowed for the concessional rate of 12%.

2.8 The present contract is awarded by ESIC to the UPRNN which becomes the principal contractor & the applicant becomes the sub-contractor in the present scenario. Notification No. 01/2018- CTR read with Sl. No. 3(ix) of Notification No. 11/2017- CTR provides for a concessional rate of 6% GST.

2.9 ESIC must be considered as a local body as defined under Section 2 (69) of the CGST Act. The promulgation of Employees' State Insurance Act, 1948(ESI Act), by the Parliament was the first major legislation on social Security for workers in independent India. In view of Section 2(69) (c) of the CGST Act, the ESIC is a body entrusted by the Central Government in control of the ESIC fund and governed by the ESIC Act. Hence, ESIC should fall under the category "local authority" and UPRNN and the applicant are providing service to a local authority.

2.10 In view of the above, construction services provided by the applicant to UPRNN are eligible for concessional rate of 6% GST as per Sl. No. 3 (vi) of Notification No. 11/2017- CTR dated 28.06.2017.

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

### **OFFICER SUBMISSION DATED 25.04.2022-**

3.1 As per Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 and further amended by Notification No. 24/2017- Central Tax (Rate) dated 21.09.2017, the said taxpayer is liable to pay GST rate of 12 % till 31st December 2021.

3.2 But as per Notification No. 22/2021- Central Tax (Rate) dated 31.12.2021; the said taxpayer is liable to pay the GST at the rate 18 % w.e.f. 01.01.2022.

## **04 HEARING**

4.1 Preliminary hearing in the matter was held on 12.04.2022. Shri. Sai Makrand, Learned Advocate was present and made submissions. The Jurisdictional officer Shri. Vilas Naik, AC-MUM-VAT-D-716, NODAL-8 was also present. The jurisdictional officer to file written submission within a weeks' time. On request of applicant, the case was heard finally and kept for order. Application was heard.

## **05. OBSERVATIONS AND FINDINGS:**

5.1 We have perused the documents on record and considered the submissions made by the concerned parties to the issue.

5.2 M/s KPC Projects Ltd., the applicant has been awarded a Work Order for "Construction of 228 nos. Type-III Staff quarters at D Nagar, Andheri (W), Mumbai, Maharashtra", the scope of which requires the applicant to construct the quarters for Employee State Insurance Corporation ("ESIC"), a statutory body under Ministry of Labour & Employment, Govt of India.

5.3.1The applicant has submitted that, since they are rendering a Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, provided to the Uttar Pradesh Rajkiya Nirman Nigam Ltd., ("UPRNN"), a Govt of Uttar Pradesh Undertaking i.e. a Governmental Authority/Government Entity by way of construction of Staff Quarters for ESIC, it is construction of "a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession" and therefore, provisions of Sr. No. 3 (vi) to Notification No. 11/2017- CTR dt 28.06.2017 as amended, is applicable to their supply attracting concessional rate of GST @ 12%. Therefore, the relevant Sr.No. 3 (vi) mentioned above is reproduced as under:-

Sr. No.	Chapter, Section or Heading	Description of services	Rate (%)	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, 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- (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession; (b) .....; or (c) ..... 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.	6	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be

5.3.2 From the submissions made by the applicant, we find that in the instant case there is Composite supply of works contract provided to UPRNN, a Government Entity by way of construction of a Residential Quarters meant for the use of the employees of ESIC and therefore, it can be said that the supply is in respect of a 'civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession'.

5.3.3However we also find that, the above mentioned Rate Notification No 11/2017 has been further amended by Notification No. 15/2021 - CTR

dated 18.11.2021 (with effect from 01.01.2022) and in Sr. No 3, in column (3), in the heading "Description of Services", in item (vi), for the words "Union territory, a local authority, a Governmental Authority or a Government Entity" the words "Union territory or a local authority" have been substituted and that means the words "or a Governmental authority or a Government Entity" are omitted. Therefore, with effect from 01.01.2022, the impugned services supplied by the applicant will not be covered under Sr. No. 3 (vi) of Notification No. 11/2021 - CTR dated 28.06.2017 as amended from time to time.

5.3.4 During the course of the final hearing, the Authorised representative of the applicant informed this Authority that the impugned services are not being rendered at present and they will begin the construction as per the Work Order only in the future as a proposed activity.

5.3.5 Thus we find that the Sr. No. 3 (vi) mentioned above will not be applicable to the activity to be undertaken by the applicant at a future date. The Authorised representative of the applicant also agreed that the provisions of Sr. No. 3 (vi) will not be applicable to applicant's activities in view of the amendment brought about in Notification No. 11/2017-CTR dated 28.06.2017 vide Notification No. 15/2021 - CTR dated 18.11.2021 (with effect from 01.01.2022). However, this authority has been asked by the applicant to answer all its questions.

5.3.6 In view of the above discussion made in para nos 5.3.1 to 5.3.4, we hold that the applicant is not eligible to avail the concessional rate of GST at 12% as prescribed in of S. No. 3 (vi) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 for the impugned construction services provided by them to UPRNN.

5.4.1 The second question raised by the applicant is if the impugned service is not covered under Sr. No. 3(vi) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, then what is the appropriate classification and rate of GST to be charged by the applicant.

5.4.2 Since the impugned service is expected to commence only at a future date, in view of the amended Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, the impugned activity is not classifiable under Sr. No. 3 (vi) mentioned above and the said activity will be covered under the residuary clause (xii) of Sr. No. 3 of Notification No. 11/2017- mentioned above and the rate of GST to be paid by the applicant will be 18% of the taxable value.

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 question is answered thus -

**Question 1:** In view of the construction services provided by the applicant to UPRNN, is the applicant eligible to avail the concessional rate of GST at 12% as prescribed in of S. No. 3 (vi) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended?

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

**Question 2:** If not, what is the appropriate rate and classification of GST to be charged by the applicant?

**Answer:-** The impugned activity of the applicant is classifiable under Heading 9954 (Construction services), Sr. No 3 (xii) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended from time to time and the rate of GST will be 18% (CGST @ 9% and SGST/UTGST @ 9% or IGST @ 18%)

PLACE:- Mumbai

DATE:- 04/05/2022

RAJIV MAGOO

(MEMBER)

T. R. RAMNANI

(MEMBER)

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