AUTHORITY FOR ADVANCE RULING – CHHATTISGARH
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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.

Shri Rajesh Kumar Singh,
Additional Commissioner,
O/o Principal Commissioner,
CGST & Central Excise, Raipur (C.G)

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

Advance Ruling U/s 98 sought by M/s Dee Vee Projects Limited, Korba Chhattisgarh (GSTIN-22AAECD4619B2Z9) on the rate of tax applicable to the composite supply of works contract as defined in clause (119) of Section 2 of Central Goods and Services Act, 2017 and whether the amendment through Notification No. 20/2017 and 24/2017 will be effective from the date of Notification No.11/2017

Read :-Application dated 13/07/2020 from M/s Dee Vee Projects Limited, Korba Chhattisgarh (GSTIN-22AAECD4619B2Z9)

PROCEEDINGS

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

No.STC/AAR/03/2020/41 Raipur Dated 05./10/2020

M/s Dee Vee Projects Limited, Korba Chhattisgarh (GSTIN-22AAECD4619B2Z9) (hereinafter also referred to as the applicant) has filed an application U/s 97 of the Chhattisgarh Goods & Services Tax Act, 2017 seeking advance ruling on :-

1. What is rate of tax applicable to the composite supply of works contract as defined in clause (119) of Section 2 of Central Goods and Services Act, 2017 (the Act), undertaken by the supplier (applicant) i.e., whether the GST rate 18% or 12% is to be charged by the supplier?
2. If the GST rate 18% (9%CGST+9%SGST) as prescribed in serial no.3, against heading no.9954 (construction services), specified in Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017, is the rate applicable to the nature of works contract undertaken by the applicant, kindly clarify the following related aspects also:

The Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017 has been amended by:-

a. Notification No. 20/2017-Central Tax (Rate), dated 22nd August, 2017.
b. Notification No. 24/2017-Central Tax (Rate), dated 21stSeptember, 2017.

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Wherein the GST rate of 12% (6% CGST + 6% SGST) has been notified in respect of works contract as defined in clause (119) of Section 2 of The Act.

If so, whether the amendment through Notification No. 20/2017 and 24/2017 will be effective from the date of Notification No.11/2017 and whether it would be in order for the applicant (supplier) to charge GST at the rate of 12% (6% CGST+6% SGST) or is the GST rate 18%(9% CGST+ 9% SGST) applicable to the nature of works contract undertaken by the applicant?

2. Facts of the case:-

2.1.1 The applicant is engaged in works contract by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –

a) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or(iii) an art or cultural establishment.

b) a road, bridge, tunnel, or terminal for road transportation for use by general public;

c) a civil structure or any other original works pertaining to the "Beneficiary led individual house construction / enhancement" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana

d) railways, excluding monorail and metro;

e) 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.

2.1.2 Subsequently, the Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017 was amended by the following notifications:

i) Notification No. 20/2017-Central Tax (Rate), dated 22nd August, 2017

ii) Notification No. 24/2017-Central Tax (Rate), dated 21st September,2017

Based on aforesaid notification the applicant has charged and paid CGST at the rate of six percent. Similarly the SGST was also charged at the rate of six percent on the services provided in between July to September,2017.

2.2 Question is what will be the date of effectiveness of notification no.20/2017 and notification no. 24/2017 reducing the tax rate to 12% instead of 18%. As it mentioned in both the notifications that ***"In the said notification, in the Table, against serial number 3, for item (vi) in column (3) and the entries relating thereto columns (3),(4) and (5), the following shall be Substituted, namely....."***

3 Contentions of the Applicant:- The applicant's contention is as under :-

3.1 The serial number 3 of Notification Number 11/2017 dated 28th June,2017 relating to Construction Services was amended by Central government on recommendation of Council in public interest through notification Number 20/2017 dated 22nd August,2017 and 24/2017 dated 21st September,2017.

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3.2 Through this amendment notification the rate of tax for Works contract supplied to Central Government, State Government , Governmental authority , Local Authority was reduced from 18% (CGST 9% and SGST 9%) to 12% (CGST 6% and SGST 6%).However as per the wording of the amended notification (i.e.20/2017 and 24/2017) it substitutes notification no.11/2017 substituting rate of tax from 18% to 12%, so it is interpreted that the rate of GST is 12% w.e.f.1st July,2017.

3.3 Based on the said notifications, the applicant has charged the tax Component and collected and discharged GST Liability at Rate 12%(CGST 6% and SGST 6%) on invoices issued from 01st July,2017 itself, and with the presumption, that the rate of GST has been amended w.e.f. 1st July2017, as the intention of the Honourable GST Council.

3.4 As it is no where mentioned in the notifications itself the date of changes in Rate of GST or effectiveness of the Notification and the rate of GST be applicable, but with the conclusion of the 20th GST Council meeting on 5th August 2017 (a copy of the Details of Decision taken is being enclosed) and it was announced that the Tax Rate of GST on the above services is being reduced from 18% to 12%.

3.5 Again the 21st GST Council Meeting held on 9th September 2017 and corrected a lacuna left in the 20th GST Council Meeting regarding Works Contract Services as defined in Clause 119 of Section 2 of the GST Act.

3.6 In summary, it is the presumption and interpretation taken from the above episode that the Intention of the Honourable GST Council was only to reduce the Tax rate from very beginning from 18% to 12%.

4. Personal Hearing:-

Keeping with the established principles of natural justice, personal hearing in the matter was extended to the applicant and accordingly their authorized representative Shri Prakash Chand Agrawal, C.A. and Shri Vikash Agrawal Advocate appeared before the authority for hearing on 17/07/2020 and reiterated their contention. They also furnished a written submission dated 17/07/2020 which has been taken on record.

5. The legal position, Analysis and Discussion:-

5.1 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.

In response to the क्रमांक/राकअ/अविप्रा/03/2020/24 नवा रायपुर अटल नगर, दिनांक 03.09.2020 issued to the Assistant Commissioner, State Tax, Korba Circle-2, Chhattisgarh, the jurisdictional officer vide क्रमांक/रा.क–2/एक/2020/460 कोरबा दिनांक 06/अगस्त/2020 opined that since there is no other mention, the date of issue of Notification No. 20/2017-Central Tax (Rate), dated 22nd August, 2017 and Notification No. 24/2017-Central Tax (Rate), dated 21st September,2017 would be the effective date of the said Notification.

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5.2 For ease of reference, the text of all the three Notifications under question is reproduced as under:-

5.2(i) **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) of section 9, sub- section (1) of section 11, sub-section (5) of section 15 and sub-section (1) of section 16 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:-

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	-
4	**Section 6**	**Distributive Trade Services; Accommodation, Food and Beverage Service; Transport Services; Gas and**		

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5.2(ii) Serial number 3 of Notification Number 11/2017 dated 28th June, 2017 relating to Construction Services was amended by Central government on recommendation of Council in public interest through notification Number 20/2017 dated 22nd August,2017 and 24/2017 dated 21st September, 2017 as under :-

5.2(iii) **Notification No. 20/2017-Central Tax (Rate)** New Delhi, the 22nd August, 2017

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 9, sub-section (1) of section 11, sub-section (5) of section 15 and sub-section (1) of section 16 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 makes the following amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 690(E), dated the 28th June, 2017, namely:-

In the said notification, in the Table,-

(a) against serial number 3, for item (iii) in column (3) and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely:-

(3)	(4)	(5)
"(iii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied to the Government, a local authority or a Governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, - (a) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958); (b) canal, dam or other irrigation works; (c) pipeline, conduit or plant for *(i)* water supply *(ii)* water treatment, or *(iii)* sewerage treatment or disposal.	6	-
(iv) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and	6	-

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Services Tax Act, 2017, supplied by Way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,- (a) a road, bridge, tunnel, or terminal for road transportation for use by general public; (b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana; (c) a civil structure or any other original works pertaining to the "In-situ rehabilitation of existing slum dwellers using land as a resource through private participation" under The Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana, only for existing slum dwellers; (d) a civil structure or any other original works pertaining to the "Beneficiary led individual house construction / enhancement" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana; (e) a pollution control or effluent treatment plant, except located as a part of a factory; or (f) a structure meant for funeral, burial or cremation of deceased.		
(v) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way Of construction, erection, commissioning, or installation of original works pertaining to,- (a) railways, excluding monorail and metro; (b) a single residential unit otherwise than as a part of a residential complex; @ low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India; @ low cost houses up to a carpet area of 60 square metres per house in a housing project approved	6	-

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by the competent authority under- (1) the "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana; (2) any housing scheme of a State Government; (e) post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes; or (f) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.		
(vi) Construction services other than (i), (ii), (iii), (iv) and (v) above.	9	

Through this amendment notification the rate of tax for Works contract supplied to Central Government, State Government , Governmental authority , Local Authority was reduced from 18% (CGST 9% and SGST 9%) to 12% (CGST 6% and SGST 6%).

5.2(iv) **Notification No. 24/2017-Central Tax (Rate)** New Delhi, the 21st September, 2017

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 9, sub-section (1) of section 11,sub-section (5) of section 15 and sub-section (1) of section 16 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 makes the following amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.11/2017- Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 690(E), dated the 28th June, 2017, namely:-

In the said notification, in the Table, against serial number 3, for item (vi) in column (3) and the entries relating thereto, in columns (3), (4) and (5), the following shall be substituted, namely:-

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(3)	(4)	(5)
"(vi)Services provided to the Central Government, State Government, Union Territory, a local authority or a governmental authority 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) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or(iii) an art or cultural establishment; or (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. (vii) Construction services other than (i), (ii), (iii), (iv), (v) and (vi) above.	6	-

5.2(v) Thus the GST Rate on composite supply of works contract as defined in clause (119) of Section 2 of the Central Goods and Services tax Act, 2017 as per Notification No. 11/2017-Central Tax (Rate) dated-28/06/2017 under serial no. 3, Heading 9954 is 18% (9% CGST+9% SGST).

5.2(vi) Further as per Notification No. 20/2017-Central Tax (Rate) dated-22nd August, 2017 and Notification No. 24/2017-Central Tax (Rate) dated 21st September, 2017, the GST Rate on composite supply of works contract as defined in clause (119) of Section 2 of the Central Goods and Services tax Act, 2017 is 12% (6% CGST+6% SGST).

One of the established rules of interpretation was that unless explicitly stated, a piece of legislation is presumed not to be intended to have a retrospective operation. The principle of lex prospicit non respicit, which means that 'The Law looks forward and not backward', has been upheld in many judicial pronouncements. Normally, an enactment is prospective in nature. It does not affect that which has gone, or completed and closed up already. Ordinarily, the presumption with respect to an enactment is that, unless there is something in it to show that it means otherwise, it deals with future contingencies, and does not annul or affect existing rights and liabilities or vested rights, or obligations already acquired under some provisions of law although its effect is that it does not affect an existing right as well. If an enactment expressly provides that it should be deemed to have come into effect form a past date, it is retrospective in nature. If an enactment is intended to be retrospective in operation, and also in effect, the legislature expresses it in clear and unequivocal language in the enactment itself.

5.2 (vii) Thus the GST Rate on composite supply of works contract as defined in clause (119) of Section 2 of the Central Goods and Services tax Act, 2017 is 18% (9% CGST+9%

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SGST) till 21/08/2017 as stipulated under serial no. 3, Heading 9954 of Notification No. 11/2017-Central Tax (Rate) dated-28/06/2017. Thereafter, the GST Rate on composite supply of works contract as defined in clause (119) of Section 2 of the Central Goods and Services tax Act, 2017 is 12% (6% CGST+6% SGST) from 22/08/2017 as per serial no. 3, Heading 9954 of Notification No. 20/2017-Central Tax (Rate) dated-22nd August, 2017.

5.2(viii) The applicant has wrongly interpreted that the tax liability is @ 12% (CGST 6% and SGST 6%) from 01st July, 2017 itself whereas the effective date of the said Notification is the Notification date itself. Notification No. 11/2017-Central Tax (Rate) dated-28/06/2017 is applicable with effect from the notification date viz. 28/06/2017. Similarly Notification No. 20/2017-Central Tax (Rate) dated-22nd August, 2017 is applicable with effect from the notification date viz. 22/08/2017 and Notification No. 24/2017-Central Tax (Rate) dated 21st September, 2017 is applicable with effect from 21/09/2017.

6. 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/03/2020/42 Raipur Dated ....08../10/2020

The ruling so sought by the Applicant is accordingly answered as under:

RULING

i. The rate of tax applicable to the composite supply of works contract as defined in clause (119) of Section 2 of Central Goods and Services Act, 2017 is 18% (9% CGST+9% SGST) till 21/08/2017 as stipulated under Notification no. No. 11/2017-Central Tax (Rate) dated-28/06/2017 and is 12% (CGST 6% and SGST 6%) thereafter, with effect from 22/08/2017.

ii. The amendment to Notification no. No. 11/2017-Central Tax (Rate) dated-28/06/2017, made vide Notification No. 20/2017-Central Tax (Rate) dated-22nd August, 2017 and Notification No. 24/2017-Central Tax (Rate) dated 21st September, 2017 is effective with effect from 22/08/2017 and 21/09/2017 respectively and not from the date of Notification No. 11/2017-Central Tax (Rate) dated-28/06/2017.

-sd-

Sonal K. Mishra
(Member)

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8/10/20

MEMBER
ADVANCE RULING AUTHORITY
CHHATTISGARH, RAIPUR

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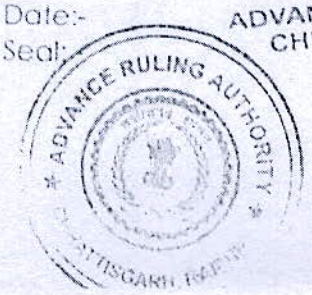
Rajesh Kumar Singh
(Member)

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8/10/2020

MEMBER
ADVANCE RULING AUTHORITY
CHHATTISGARH, RAIPUR

Place: - Raipur
Date:-
Seal:



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