

**THE AUTHORITY FOR ADVANCE RULING
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Advance Ruling No.KAR ADRG 43/2021

Dated : 30-07-2021

Present:

1. Dr. M.P. Ravi Prasad
Additional Commissioner of Commercial Taxes Member (State)
2. Sri. Mashhood Ur Rehman Farooqui,
Joint Commissioner of Customs & Indirect Taxes Member(Central)

1.	Name and address of the applicant	M/s. Aishwarya Earth Movers, Raghurama Uppangala, PWD Contractor, Class-1, Karmala, Bolwar, Puttur, Dakshina Kannada-574201.
2.	GSTIN or User ID	29AAHPU7408H1Z8
3.	Date of filing of Form GST ARA-01	18-03-2021
4.	Represented by	Sri Shivayogiswamy, Advocate and Duly Authorised Representative
5.	Jurisdictional Authority - Centre	The Commissioner of Central Taxes, Mangalore GST Commissionerate
6.	Jurisdictional Authority - State	ACCT, LGSTO-265, Puttur
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000-00 under CGST Act & Rs.5,000-00 under SGST Act vide CIN CNRB21032900069704 dated 09/03/2021

**ORDER UNDER SECTION 98(4) OF CGST ACT, 2017
AND UNDER SECTION 98(4) OF KGST ACT, 2017**

M/s Aishwarya Earth Movers, (called as the 'Applicant' hereafter), Raghurama Uppangala, PWD Contractor, Class-1, Karmala, Bolwar, Puttur, Dakshina Kannada-574201 having GSTIN 29AAHPU7408H1Z8, have filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 read with Rule 104 of the CGST Rules, 2017 and Section 97 of the KGST Act, 2017 read with Rule 104 of the



Aishwarya Earth Movers

KGST Rules, 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The Applicant is a proprietary concern registered under the provisions of the Goods and Services Tax Act. The applicant has sought advance ruling in respect of the following question:

i. *Whether the applicant is liable to collect and pay goods and services tax on amount received from the PWD Department as per revised estimate in respect of work namely "Construction of bridge across Kumaradhara river on Kudmar Shanthimogru Sharavoor Alankar Road at KM 1.20 in Shanthimogaru of Puttur taluk?*

ii. *Whether the applicant is liable to collect and pay goods and services tax on amount received from the Executive Engineer, Public Works, Inland Water Transport Department, Mangalore Division or*

iii. *whether the PWD Department is liable to pay Goods and Service Tax under the GST Act or VAT Tax under Karnataka Value Added Tax Act?*

3. **Admissibility of the application:** The question is about "Determination of Time and Value of Supply of Goods or Services or Both" and hence is admissible under Section 97(2)(c) of the CGST Act 2017.

BRIEF FACTS OF THE CASE

4. The applicant furnishes some facts relevant to the issue:

4.1 The applicant is a PWD Contractor, Class-I and registered under the provisions of the GST Act. During the year 2015-16, the applicant's tender bid was accepted for construction of bridge across Kumaradhara river on Kudmar Shanthimogaru Sharavoor Alankar Road at Ch 1.2 KM in Shanthimogaru of Puttur Taluk, Dakshina Kannada District.

4.2 The applicant has stated that up to 30.06.2017, the PWD Department was disbursing the tender contract bill amounts by deducting tax amounts at the rate of 4% under the KVAT Act.

4.3 The applicant further submitted that after completion of construction of bridge and the approach road as per the tender contract agreement, the same was handed over to the PWD Department vide letter and the same was accepted and taken over by them.

4.4 The applicant further states that after handing over the said Bridge, revised estimate was approved by the PWD Department vide its letter dated 15-06-2020 and 11-06-2020. Consequently, the applicant has also executed supplementary



agreements on 15-06-2020. Subsequently, the PWD Department has paid part of the contract amounts of Rs.5,56,285/- and Rs.1,48,26,658/- on 29-12-2018.

4.5 The applicant further submitted that for the said contract amount at Rs.1,48,26,658/-, the PWD Department has deducted TDS at the rate of 1% under CGST Act and 1% under SGST Act. In view of the fact that PWD Department is liable to pay the tax at the rate of 12% (6% under CGST and 6% under SGST Act), the applicant states that he had rejected the said TDS certificate.

5. APPLICANT'S INTERPRETATION OF LAW:

5.1 Section 142(2)(a) of the GST Act, states as under

"where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised upwards on or after the appointed day, the registered person who had removed or provided such goods or services or both shall issue to the recipient a supplementary invoice or debit note, containing such particulars as may be prescribed within thirty days of such price revision and for the purposes of this Act such supplementary invoice or debit note shall be deemed to have issued in respect of an outward supply made under this Act"

and as per Section 13(1)(c) of the GST Act, the time of supply will be the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply.

5.2 From the perusal of the above provisions of law under the CGST Act, it is ascertained that where the price of any goods or services or both is revised upwards on or after the appointed day, the registered person who had removed or provided such goods or services or both shall issue to the recipient a supplementary invoice or debit note containing such particulars as may be prescribed within thirty days of such price revision and for the purposes of GST Act such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under the GST.

6. The applicant also states that he has obtained an opinion from the Chartered Accountant regarding the applicability of GST. Subsequently, he states that he had requested the PWD Authorities, vide his letter dated 11.11.2020, to pay the GST amount of 12% on the bills submitted by him by enclosing the opinion of the Chartered Accountant. In response to the applicant's said letter, the PWD Department addressed a letter dated: 01.12.2020 to the Local Goods and Service Tax Office-270, Mangalore, requesting for clarification of payment of tax under the GST Act. Subsequently, the applicant had written another letter dated 22.02.2021 to the PWD department narrating the liability.



7. In view of the facts and grounds narrated above, the applicant is desirous of obtaining an advance ruling in respect of “determination of time and value of supply of goods or services or both” and whether

- (a) the applicant is liable to collect and pay GST on the amount received from the PWD Department as per revised estimates in respect of work executed prior to 01.07.2017?
- (b) the applicant is liable to collect and pay GST on the amount received from the Executive Engineer, Public Works, Inland Water Transport Department, Mangalore Division towards tax invoice raised bearing No.026 dated 01.04.2018 and on the amount received from the Executive Engineer, ZPPRED Division, Mangalore towards Tax Invoice No.038 and 039 dated 25.01.2019 and 040 dated 22.02.2019 and 042 dated 01.05.2019? or
- (c) the PWD Department is liable to pay GST under the GST Act or VAT under KVAT Act?

8. This office has received comments from the Office of the Commissioner of Central Excise and Central (GST) Tax and the same is reproduced below:

- i. The applicant is holder of GSTIN 29AAHPU7408H1Z8 which is under the administrative control of State GST i.e., LVO 265 (Puttur).
- ii. Upto 30-06-2017, the PWD department has deducted the amounts at the rate of 4% under KVAT Act.
- iii. As per the contract, the applicant has completed construction of bridge and the approach road and handed it over to the PWD prior to 01-07-2017. The revised estimate was approved by the department after 01-07-2017 and the applicant has executed supplementary agreements after 01-07-2017.
- iv. The miscellaneous transitional provision is appended below: As per Section 142(2)(a) of the GST Act,

“where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised upwards on or after the appointed day, the registered person who had removed or provided such goods or services or both shall issue to the recipient a supplementary invoice or debit note, containing such particulars as may be prescribed within thirty days of such price revision and for the purposed of this act such supplementary invoice or debit note shall be deemed to have issued in respect of an outward supply made under this Act”

- v. The applicant has enclosed the C.A’s opinion which also states that the liability to discharge the tax is on the applicant. This contention appears to be correct.
- vi. After the completion of construction of bridge and approach road, the same was handed over to PWD on 01.06.2017 which was accepted on 11.7.17. After handing over the bridge, revised estimate was approved by the PWD Department by its letter dated 15.06.2020 and on 07.06.2020, consequently the applicant has also executed supplementary agreements on 15.06.2020.
- vii. Subsequently, the department has paid part of the contract amounts of Rs.5,56,285/- and Rs.1,48,26,658/-. It is submitted that while remitting the contract amount of Rs.1,48,26,658/-, the PWD Department has deducted TDS at the rate of 1% under CGST Act and 1% under SGST Act. Applicant held a view that the department is liable to pay



tax at the rate of 12% (6% under the CGST Act and 6% under the SGST Act), and hence the applicant has rejected the said TDS amount.

- viii. From the details provided and the note of the C.A., it appears that the liability to GST is on the taxpayer himself and not on the PWD Department. The applicant GST can be recovered from the PWD department by the taxpayer. The deduction of 2% GST as TDS appears to be in order. The same can be utilised by the taxpayer to discharge his tax liability.
- ix. As regards to the price revision issue raised at regarding the 'time of supply' in the context of Section 13 of the CGST Act, 2017, it appears the same would be as per section 13(5), which reads as under
 "(5) where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall – (a) in a case where a periodic return has to be filed, be the date on which such return is to be filed; or (b) in any other case, be the date on which the tax is paid."
- x. In view, of the above, it appears that the appellant is liable to discharge applicable GST and recover the same from PWD. The time of supply would be treated as the time when the return is filed/ payment is made.
- xi. As regards the supplementary agreements of 15.06.2020, no comments can be offered on the issue of time of supply as insufficient details are provided. It is not known whether the contract is in relation to fresh additional work or it pertains to the construction of bridge and approach road which is already constructed and handed over to PWD in June 2017."
- xii. In view of what is stated above, it appears that the appellant is liable to discharge applicable GST and recover the same from PWD. The time of supply would be treated as the time when the return is filed or payment is made.

PERSONAL HEARING/PROCEEDINGS HELD ON 30-06-2021

9. Sri Shivayogiswamy, Advocate & Authorised Representative of the applicant appeared for personal hearing proceedings held on 30-06-2021 and reiterated the facts narrated in their application.

FINDINGS & DISCUSSION

10. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and KGST Act, 2017 are in *pari-materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

11. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made by applicant and his authorized representatives during the hearing. We have also considered the issues involved on which advance ruling is sought by the applicant, relevant facts and the applicant's interpretation of law.



12. As could be seen from the documents submitted by the applicant, especially FORM P.W.G.33 (Revised) – Running Account Bill dated 23.06.2020- the applicant has executed the construction of a bridge and approach road under the name “Construction of bridge across Kumaradhara river on Kudmar Shanthimogaru- Sharavoor-Alankar Road at CH 1.20 KM in Shanthimogaru of Puttur Taluk, Dakshina Kannada District KPWD/2011-12/BG/WORK_INDENT 10945” with an estimated amount of Rs.940.00 lakhs and the reference agreement is DAR No.589/2014-15 dated 30.03.2015 and date of written order to commence work was 30.03.2015 and date of actual completion of work is 11.07.2017. Further, it could be seen that the value was revised to Rs.15,05,00,346-00 and the payments were made worth Rs.1,48,26,658-00 by the PWD Division, Mangalore (The Executive Engineer, Public Works, Inland Water Transport Department, Mangalore Division, Mangalore).

13. The applicant has produced the copies of the supplemental agreements entered as under:

- (a) the EIRL of the above work with the terms and conditions of the original agreement DAR No. 589/2014-15 and the EIRL amount of Rs.57,48,730/- dated 14.01.2016.
- (b) excess quantity (work slip) and excess item (EIRL) of the above work with the terms and conditions of original agreement DAR No.589/2014-15 for work slip amount of Rs.80,33,192.86 and an EIRL amount of Rs.3,75,35,594.19 dated 15.06.2020.

The Forward Slip for the (b) above, states that the work was sanctioned for an estimated amount of Rs.940 Lakhs and the revised estimate amount was Rs.15,54,67,483.75. The approximate value of work to be done under the original agreement was at 13,81,45,034.33 and the approximate value of work to be done under the supplemental agreement was at Rs.80,33,192.86 (Workslip amount) and Rs.3,75,35,549.19 (E.I.R.L. Amount). The applicant has not clearly stated whether these contracts were for new additional works or revised valuation of the earlier work done.

14. The applicant has produced the running account bill in which it is seen that the tender amount is at Rs.13,81,45,034.33. The total value of contract is written as Rs.15,05,00,346-00 and the previous payment was made Rs.13,32,09,924-00, withheld for want of LOC at Rs.24,63,764-00 and the balance paid as per the said running bill was at Rs.1,48,26,658-00. Be it what may be, it may be either new works in continuation of old contracted work or revised work.

15. The applicant has not produced the tax invoices raised except for one tax invoice bearing no.026 dated 01.04.2018 for a basic value of Rs.5,56,285-00 with CGST at Rs.33,377-00 @6% and SGST at Rs.33,377-00 @6%, totaling to Rs.6,23,039-00.



16. As could be seen from the above, the question before this Authority is only related to the payments of Rs.1,48,26,658-00 and Rs.5,56,285-00. If these are additional supplies made as per different agreements though pertaining to the same contract, then they would be liable to GST as they would be emanating from separate agreements, though as a part of the same bridge.

17. Section 142 (2)(a) of the GST Act reads as under:

“(2)(a) where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised upwards on or after the appointed day, the registered person who has removed or provided such goods or services or both shall issue to the recipient a supplementary invoice or debit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under this Act;”

17.1 From the above, it is clear that he has issued invoices for the above transactions after the appointed date and the above invoices should be deemed to have been issued in respect of an “outward supply made under the GST Act”. Hence the turnovers on which the question is raised by the applicant are deemed to be the turnovers under the GST Act and not under the VAT Act.

17.2 From the above discussion, it can be said that the above turnovers are liable to tax at the appropriate rates under the GST Act. There is no question of the same being taxed under the earlier KVAT Act. Hence, the applicant is liable to charge GST on the said amount and is entitled to collect the same from the recipient of the service. The TDS amount deducted by the Department could be utilised by the applicant while making the payment of the liability but that does not preclude him from paying the tax.

18. Regarding the time of supply, it is clear that Section 142(2)(a) of the CGST Act requires the applicant to issue a tax invoice within 30 days from the date of price revision and if the tax invoice is issued within the stipulated time limit, then the date of issue of invoice would be the time of supply for the additional price revision and in case the tax invoice is not issued within the stipulated time, then the time of supply would be the date of price revision. In case where the payment is received earlier to these dates, then the date of receipt of payment would be the time of supply as per Section 13 of the CGST Act.

19. In view of the foregoing, we rule as follows



RULING

i. The applicant is liable to collect and pay GST at the rate of 12 % (CGST @ 6% and KGST @ 6%) as per Section 142(2) (a) of the GST Act on the amount received from the Public Works Department as per revised estimate in respect of work namely "Construction of bridge across Kumaradharariver on Kudmar Shanthimogru Sharavoor Alankar Road at KM 1.20 in Shanthimogaru of Puttur taluk, subject to the condition that the amount is related to price revision of the contract entered prior to the appointed date.

ii. Yes, the applicant is liable to collect and pay goods and services tax on amount received from the Executive Engineer, Public Works, Inland Water Transport Department, Mangalore Division.

iii.

(Dr. M.P. Ravi Prasad)

Member

MEMBER

Karnataka Advance Ruling Authority

Place : Bengaluru
Date : 30-07-2021

(Mashhood Ur Rehman Farooqui)

Member

MEMBER

Karnataka Advance Ruling Authority
Bengaluru - 560 009

To,
The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Central Tax, Mangalore GST Commissionerate, Mangalore.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-265, Puttur.
5. Office Folder.

