



**TELANGANA STATE AUTHORITY FOR ADVANCE RULING**  
**CT Complex, M.J Road, Nampally, Hyderabad-500001.**  
**(Constituted under Section 96(1) of TGST Act, 2017)**

**Present:**

**Sri S.V. KasiVisweswaraRao, Additional Commissioner (State Taxes)**  
**Sri SahilInamdar, I.R.S., Additional Commissioner (Central Taxes)**

**A.R.Com/13/2023**

**Date:13.11.2023**

**TSAAR Order No.23/2023**

**[ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017  
AND UNDER SECTION 98(4) OF THE TEALANGANA GOODS AND SERVICES TAX ACT,  
2017.]**

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1. M/s. Immense Construction Company, Plot No.105, Sunrise Homes Colony, Upperpally, Rajender Nagar, Ranga Reddy, Telangana - 500048 (36ADZPG2112K1ZD) has filed an application in FORM GST ARA-01 under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules.
2. At the outset, it is made clear that the provisions of both the CGST Act and the TGST 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 TGST Act. Further, for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.
3. It is observed that the queries raised by the applicant fall within the ambit of Section 97 of the GST ACT. The Applicant enclosed copies of challans as proof of payment of Rs. 5,000/- under SGST and Rs. 5,000/- under CGST towards the fee for Advance Ruling. The Applicant has declared that the questions raised in the application have neither been decided nor are pending before any authority under any provisions of the CGST/TGST Act'2017. The application is, therefore, admitted after examining it and the records called for and after hearing the applicant as per section 98(2) of TGST Act'2017.
4. **BRIEF FACTS OF THE CASE:**
  - 4.1 The Applicant M/s Immense Construction Company is a Firm registered under the Goods and Services Tax Act, 2017;
  - 4.2 It undertakes Contracts/ Sub-Contracts of the entire work for. Operation and Maintenance of Water Supply Projects / Sewerage Projects/Facilities;
  - 4.3 The Applicant has been awarded a contract by M/s. THE INDIAN HUME PIPE COMPANY LTD. (herein after referred to as "Principal Contractor") vide Letter No. IHP-HIM/ Balkonda: TDWSP/O&M/Amendment-1/2022-23 dated 23 May, 2022;
  - 4.4 The Contract so awarded as mentioned above, is a sub-contract awarded by the Principal Contractor out of the Original Contract as received by them from State of Telangana, Mission Bhagiratha.

- 4.5** As per the Contract dated 13/01/2023 awarded by Mission Bhagiratha the Principal Contractor shall undertake Operation and Maintenance Contract with the State Government of Telangana in respect of water pipe lines meant for providing drinking water to Balkonda, Armoor, Nizamabad, Kamareddy and part of Yellareddy Constituencies from SRSP reservoir, Nizamabad district including 1) CPWSS to Armoor& Other habitations 2) CPWS to Balkonda& other habitations 3) CPWS to Kamareddy& other habitations of SRSP Balkonda segment for Financial Year 2021-2022. Copy of the agreement is attached herewith and marked as Annexure-1
- 4.6** The sub contract agreement as carved out of the Principal Contract clearly indicates scope of the work to be undertaken and obligations of such sub-contractor. Further, the conditions of sub- contract provides that sub-contract agreement is liable to termination if the work is not executed and maintained as per Guidelines of Mission Bhagiratha, as agreed by client viz State Government of Telangana.
- 4.7** In the Contract so executed by the Principal Contractor, total value of supply of Goods constitutes not more than 25% of the Sub- Contracted value (as can be verified from the Contract so awarded) and therefore exempted from payment of GST in terms of entry 3A in Notification No 12/2017 - Central Tax (Rate) as amended by Notification No. 2/2018 Central Tax (Rate) dated 25/01/2018; and
- 4.8** Further, the Sub Contract so executed between the Applicant and the Principal Contractor, is only for supply of Man Power – which is Pure Service and hence exempted from payment of GST in terms of Entry 3 in Notification No 12/2017 - Central Tax (Rate) as amended by Notification No. 2/2018 - Central Tax (Rate) dated 25/01/2018.
- 4.9** The Applicant presented its Interpretation of Law for each of the above questions, here under.
- a) That services provided by the Applicants are Pure Services;
  - b) That these services are ultimately provided to the State Government of Telangana;
  - c) That these services are in relation a function entrusted to a Municipality under Article 243W of the Constitution (the present work falls under Serial No. 5 of 12th Schedule being water supply for domestic purpose);
  - d) That the services are covered by the Entry No. 3 of Notification No 12/2017 Central Tax (Rate) dated 28/06/2017;
  - e) That the Applicant draws support from Circular No. 147/16/2011-Service Tax dated 21st October, 2011 issued under the erstwhile Service Tax regime wherein under similar situations the Department had clarified that the services provided by the sub-contractors to the main Contractors in relation to those very Projects which are classifiable as Infrastructure Projects Works Contract Services, then they too will get the benefit of exemption so long as they are in relation to the very same Infrastructure Projects I.e. WCS;
  - f) That the Applicant also draws support from the observations of the Hon'ble Apex Court in the case of State of Andhra Pradesh vs. Larsen and Toubro 17 VST 1(SC) wherein it was submitted by the Company and upheld by the Court that the transfer of property in goods, as effected by the sub-contract, resulted in direct sale to the Contractee and consequently it did not Involve multiple sales either in favour of the main contractor or in favour of the Contractee.
- 4.10** As the Applicant is provider of Pure Service – they are of the opinion that:
- i. the said transaction is covered by Notification No. 12/2017- Central Tax (Rate), dated 28th November, 2017 as amended by Notification No 2/2018 25/01/2018 under Entry 3;
  - ii. the said transaction is exempted from Tax;
- 4.11** Company Background:

Immense Construction Company is a 10 years 1 month old Proprietorship Firm incorporated on 14-Aug-2013. The major activity of Immense Construction Company is Services, Subclassified into Civil engineering and is primarily engaged in the Other civil engineering projects. Immense Construction Company is classified as Small enterprise in the financial year 2022-23.

5. **QUESTIONS RAISED:**

Questions on which Advance Ruling is required

- a. Whether the supply of Services by the Applicant to M/S. THE INDIAN HUME COMPANY LTD. is covered by Notification No. 12/2017- Central Tax (Rate), dated 28th November, 2017 as amended by Notification No 2/2018 - Central Tax (Rate) dated 25/01/2018;
- b. If the supplies as per Question (a) are covered by Notification No. 12/2017 Central Tax (Rate), dated 28th November, 2017 as amended by Notification No 2/2018 Central Tax (Rate) dated 25/01/2018, then what is the applicable rate of Tax under the Goods and Services Tax Act, 2017 on such Supplies; and
- c. In case if the supplies as per Question (a) are not covered by the Notification supra then what is the applicable rate of tax on such supplies under the Goods and Services Tax Act, 2017.

6. **PERSONAL HEARING:**

The authorized representatives reiterated their averments in the application submitted and averred as follows:

1. That, they are sub-contractors to Indian Hume Pipe Company Limited who are executing contract to Panchayat Raj Department for Mission Bhagiratha for Operation & Maintenance of pipelines. That this contract does not involve transfer of property in goods more than 25% and therefore that they are governed by the Telangana Government Memo No. A2/TDWSCL/Payments/ Workshop/2017-18, Dt: 05-08-2020, wherein it is clearly held that "The O & M Contracts where pure services are involved or composite works contract having Goods component not more that 25% will fall under NIL rated services. In case of supply of works contract services where the goods component is more than 25% will fall under 12% rate." This memo follows the Notification No.2 of 2018 dt: 25-01-2018, wherein the new entry 3A for chapter 99 stipulate that such contract are taxed at NIL rate.
2. That, the applicant herein being a sub-contractor to the IHP is eligible for the said exemption under GST.
3. During the course of hearing the applicant was requested to file relevant documentary evidence, i.e.,
  - a. The latest purchase order for the year 2023-24.
  - b. Evidence of privity of contract wherein the contractee is in know of the involvement of applicant in the execution of the contract.
4. Further, the Authorised Representative/Applicant M/s. Immense Construction Company, Rangareddy, reiterated that their case /Similar Case is not pending in any proceedings in the applicant's case under any of the provision of the Act and have not already decided in any proceedings in the applicant's case under any of the provisions of the Act.

7. **DISCUSSION & FINDINGS:**

During the course of hearing the applicant was requested to file relevant documentary evidence, i.e.,

- a. The latest purchase order for the year 2023-24.

- b. Evidence of privity of contract wherein the contractee is in know of the involvement of applicant in the execution of the contract.

The applicant has not filed the evidence in complete shape which are required by AAR till date. Therefore, the orders are made based on the material appended to this application.

The basic enquiry in this proceedings will be regarding:

1. Whether the supply of works contract services by a contractor and his procurement works contract services constitute two independent taxable events under the CGST Act.
2. Whether an exemption extended to a contractor supplying works contract services is applicable to his procurement of works contract.

The Notification No. 12/2017-Central Tax (Rate), Dt. 28-06-2017 was amended vide Notification 2/2018-Central Tax (Rate), Dt. 25-01-2018 to include entry 3A in order to exempt works contract with value of supply of goods less than 25% when the said supply is made to the Central Government, State Government or Local Authority etc., if the activity is related to any function entrusted under article 243G or 243W of the Constitution of India.

The above exemption was granted under Sec 11 (1) of the CGST Act. The exemption is not a general exemption but subject to conditions specified therein. The condition is that the supply has to be made to Central Government, State Government or Local Authority etc. However there is no mention of sub-contractors making supply of such services to a contractor who inturn is making supplies under entry 3A of Notification 12/2017 as amended above. The Hon'ble Apex Court of India in the case of HemrajGordhandasVs H.H. Dave AIR 1970 SC 755 held that exemption notification cannot be given an extended meaning in order to enlarge the scope of exemption granted by the notification. The Hon'ble Apex Court in the case of CCE VsGinniFlaments 2005 (181) ELT has held that exemption notification has to be read strictly so far as the eligibility is concerned and the conditions stipulated there in cannot be ignored.

It is also seen that in Notification 1/2018-Central Tax (Rate), Dt. 25-01-2018, which is an amendment to Notification 11/2017, the Government intends to bring the rates of main contractor and sub-contractor at par while they are providing their services to Central Government, State Government, or Local Authority under entry. Thus against Serial no.3 in Col.3 for item (ix) and (x) the sub-contractors are included in the entry for claiming lower rate of tax provided that their services have been procured by the main contractor in relation to a work interested to it by the Central Government, State Government, Union Territory, or Local Authority as the case may be.

Though the CGST Act, does not define a sub-contractor, however Notification 11/2017 as amended makes a mention of sub-contractor whose services are procured by a main contractor. Thus the Scheme of the Act clearly identifies a sub-contractor as a supplier of works contract services to the main contractor.

This concept is at total variance with the concept existing in the earlier "Sales Tax Regime" where in the taxable event was transfer of property in Goods from contractor to the contractee; and the sub-contractor was recognized as a taxable person having privity in the contract between a main contractor and the contractee. Hence in the Sales Tax Regime, there was no supply of services i.e., deemed sale from the sub-contractor to the main contractor but there was a single sale by both of them to the contractee. Therefore, the Hon'ble Supreme Court of India has held in the case of State of Andhra Pradesh vs. Larsen and Toubro (2008) 17 VST 1(SC) that there is a single transfer of property in Goods to the contractee from the "contractor and sub-contractor", and that there are no two taxable events.

This is not a Stare dicesis for the CGST/SGST Acts as the taxable event is not transfer of property in Goods under these Acts but it is a supply of service. The supply of services in GST regime by a sub-contractor to a main contractor is a distinct taxable event. This is evident from the amended Notification 11/2017 which enumerates the service supplied by subcontractor to the contractor as a separate taxable event and prescribes a specific rate of tax.

Though the Notification 12/2017 as amended by Notification 2/2018-Central Tax (Rate), Dt. 25-01-2018 exempt works contract with value of supply of goods less than 25% when the said supply is made to the Central Government, State Government or Local Authority etc., it does not make any mention of the supplies made by the sub-contractor to the works contractor as was done in Notification 11/2017.

In this connection it is to inform that tax laws are to be strictly construed. It was held in Cape Branch Syndicate v. Inland Revenue Commissioners 1921 (1) KB 64, by Rowlatt J. that in taxation laws "One has to look merely at what is clearly stated. There is no room for any intentment. There is no equity about a tax. There is no presumption as to a tax. There is nothing to be read in. There is nothing to be applied. One can look fairly at the language used". This principle applied in catena of case laws by the Hon'ble Apex Court which includes, Baidyanath Ayurved Bhavan v. Excise Commissioner - (1971) 2 SCR 590 AIR 1971 SC 378 (1971) 1 SCC 4=110 ELT 363 (SC 3 member bench) ShrimatiTarulataSyam v. CIT AIR 1977 SC 1802 (1977) 3 SCC 305 = 108 ITR 345 (SC) Federation of Andhra Pradesh Chambers v. State of Andhra Pradesh 2000(6) SCC 550-AIR 2000 SC 2905 -247 ITR 36-115 Taxman 143 (SC 3 member bench) CIT v. Shahzada Nand-AIR 1966 SC 1342 (1966) 60 ITR 392 (SC) CCEv. Kisan Sahakari Chinni Mills 2001 (132) ELT 523=125 STC 432 (2001) 6 SCC 697 (SC) Eureka Forbes v. State of Bihar (2011) 7 GST 1 (SC) MahimPatram P Ltd. TUOI (2007) 7 STT 136 (2007) 3 SCC 668 7 STR 110=6 VST 248 (SC) "State of Rajasthan v. Khandaka Jain AIR 2008 SC 509 Ajmera Housing Corpnv. CIT (2010) 8 SCC 739-193 Taxman 193=326 ITR 642 (SC) CCE 1.Doaba Steel Rolling Mills (2010) 14 SCC 751-269 ELT 298 (SC) Ranbaxy Laboratories Ltd. v. UOI(2011) 10 SCC 292-33 STT 326-15 taxmann.com 95-273 ELT 3 (SC) CIT v. Calcutta Knitwears (2014) 6 SCC 444 = 223 Taxman 115 43 taxmann.com 446-362 ITR 673 (SC) PradipNath Gala STO (2015) 80 VST 375 (SC 3 member bench) Voltas Ltd. v. State of Gujarat (2015) 7 SCC 527-51 GST 357-57 taxmann.com 16=80 VST 12 (SC3 member bench) Shabina Abraham v. CCE (2015) 10 SCC 770 = 52 GST 30=61 taxmann.com 95 = 322 ELT 372-83 VST 450 (SC) CCE v. Larsen and Toubro Ltd. (2015) 52 GST 1 = 60 taxmann.com 354 = 84 VST 403 (SC)=(2016) 1 SCC 170 CC v. Dilip Kumar & Co. (2018) 9 SCC 1=95.

Thus the issues identified by the AAR to be addressed at the beginning of the discussion are answered as follows:

1. Whether the supply of works contract services by a contractor and his procurement works contract services constitute two independent taxable events under the CGST Act.  
Under the scheme of the CGST Act there are two independent taxable events, one between the sub-contractor and the main contractor and the next between the main contractor and the contractee.
2. Whether an exemption extended to a contractor supplying works contract services is applicable to his procurement of works contract.  
As the exemption notification have to be strictly construed, the exemption extended to a works contractor is not applicable for his procurement of works contract.

Therefore in sum and substance the exemption extended to a works contractor supplying the works contract services to Government or local bodies is not extendable to a taxable person who is supplying services to such works contractor in absence of any entry or notification under Sec11 (1) of the CGST Act.

#### **8. In view of the foregoing, we rule as follows:**

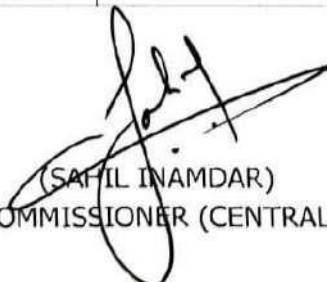
In view of the above discussion, the questions raised by the applicant are clarified as below:

Questions	Ruling
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a. Whether the supply of Services by the Applicant to M/S. THE INDIAN HUME COMPANY LTD. is covered by Notification No. 12/2017- Central Tax (Rate), dated 28th November, 2017 as amended by Notification No 2/2018 - Central Tax (Rate) dated 25/01/2018;	No
b. If the supplies as per Question a are covered by Notification No. 12/2017 Central Tax (Rate), dated 28th November, 2017 as amended by Notification No 2/2018 Central Tax (Rate) dated 25/01/2018, then what is the applicable rate of Tax under the Goods and Services Tax Act, 2017 on such Supplies; and	Not applicable
c. In case if the supplies as per Question a are not covered by the Notification supra then what is the applicable rate of tax on such supplies under the Goods and Services Tax Act, 2017.	9% CGST+ 9% SGST



(S.V. KASI VISWESWARA RAO)  
(ADDL. COMMISSIONER (STATE TAXES))



(SAFIL INAMDAR)  
(ADDL. COMMISSIONER (CENTRAL TAXES))

**[under Section 100 (1) of the CGST/TGST Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this order]**

To  
M/s. Immense Construction Company,  
Plot No.105, Sunrise Homes Colony,  
Upperpally, Rajender Nagar,  
Ranga Reddy, Telangana - 500048

Copy submitted to :

1. The Commissioner (State Taxes) for information.
2. The Commissioner (Central Taxes), Hyderabad Commissionerate, 4th Floor, GST Bhavan, Hyderabad, Telangana - 500004.

Copy to:

3. The Superintendent(Central Taxes),Karwan Range.