M/s Giriraj Renewables Private Ltd. (GSTIN 29AACCE0525D1Z4), represented by Sri Mallaha Rao, Advocate

Appellate Authority for Advance Ruling — Karnataka

ORDER NO: KAR/AAAR/02/2018-19 dated 05.09.2018 (Karnataka Appella… Dated **05.09.2018**

Q Questions Before the Authority

- Whether the supply of a turnkey EPC contract for construction of a solar power plant, wherein both goods and services are supplied, can be construed as a composite supply under Section 2(30) of the CGST Act, 2017?
- If yes, whether the principal supply in such a case can be said to be a 'Solar Power Generating System', taxable at 5% GST?
- Whether the benefit of the concessional 5% GST rate on Solar Power Generating Systems and parts thereof would also be available to sub-contractors?

F Facts

The appellant is an EPC contractor that sets up solar power plants for project developers under a single lump-sum contract covering goods, erection, civil works and commissioning. Under the contract, the project owner imports the PV modules, the major component at about 60-70% of value, on High Sea Sale basis and then supplies them free of cost to the appellant at the plant site. The appellant supplies the remaining components and services.

H Ruling

Q1: Is the PV module naturally bundled with the rest of the EPC supply, so as to form a composite supply?	****No.** The PV module supply is not naturally bundled with the remaining components and erection, installation and commissioning services.**	The PV module is a distinct transaction, sold on High Sea Sale basis and then free-issued by the owner. The order does not give a separate rate for it. The order has no section labelled RULING; these rows are drawn from the operative paragraphs 30(a) to (d) and paragraph 29.
Q1 (continued): Is the owner's supply of the PV module a supply by the appellant?	****No.** The owner's High Sea Sale and free issue of the PV module is a distinct transaction separate from the contractor's supplies.**	The free issue without consideration is not a 'supply' under Section 7. The reason for the owner importing the module, namely customs duty exemption, was held to be irrelevant.

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

Q1/Q2: Is the remaining portion of the contract (balance goods plus erection, installation and commissioning services) a composite supply?	****Yes.** It is a composite supply, because the goods and services are naturally bundled.**	The tax liability is determined under Section 8 by the dominant nature of this remaining supply. If the dominant element is services, the services rate applies.
Q2: Can the principal supply be said to be a 'Solar Power Generating System' taxable at 5%?	****Not as framed.** The order does not apply a 5% rate to the whole contract. The rate follows the dominant nature of the remaining composite supply.**	The Authority held the 5% question irrelevant to the appellant's contract because the main equipment, the PV module, was not procured by the appellant. The order does not state a rate for the remaining supply.
Q3: Would the 5% concessional rate on solar power generating systems and parts be available to sub-contractors?	****Yes, for parts supplied as goods.** Sub-contractor supplies are independent supplies. Supplies of parts of an SPGS attract 5% under Sl. No. 234.**	If a sub-contractor's supply is itself composite, the rate of its dominant element prevails. The Authority upheld the Advance Ruling on this point.

The Appellate Authority held that the supply of PV modules is a distinct transaction, separate from the appellant's supplies, and is not naturally bundled with them. It held that the remaining portion of the contract, covering balance goods and erection, installation and commissioning services, is a composite supply, with the tax rate fixed by the dominant nature of that remaining supply. On sub-contractors, it held that their supplies are independent supplies, with the rate depending on the nature of each supply. The Advance Ruling was modified to this extent.

R Reasoning

The Authority applied the definitions of composite supply in Section 2(30), consideration in Section 2(31), goods in Section 2(52) and mixed supply in Section 2(74), together with Section 7 on the meaning of supply. It held that the PV module sale on High Sea Sale basis, and its free issue without consideration, are distinct from the contractor's supplies, so the PV module is not naturally bundled with them. Because the contract was held to be multistage, the Authority treated the remaining goods and services as a composite supply and applied Section 8, under which the rate of the dominant nature of that supply prevails. It upheld the Advance Ruling that sub-contractor supplies are independent supplies, relying on Sl. No. 234 of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 for parts of an SPGS. The appeal itself was held within time, the delay being condoned under paragraph 18.

P Provisions Relied On

- Section 2(30) CGST Act, 2017 (composite supply)
- Section 2(31) CGST Act, 2017 (consideration)
- Section 2(52) CGST Act, 2017 (goods)
- Section 2(74) CGST Act, 2017 (mixed supply)
- Section 7 CGST Act, 2017 (supply)

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Section 8 CGST Act, 2017 (tax liability on composite and mixed supplies)

Schedule I CGST Act, 2017 (referred to for exceptions to supply)

Sl. No. 234 of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017

Section 101 CGST/KGST Act, 2017 (appellate proceedings)

! For the Practitioner

This order is useful for EPC contracts for solar plants where the owner procures the PV module on High Sea Sale basis and free-issues it to the contractor, because it separates that module from the contractor's supply. It shows that the 5% rate will not automatically cover the whole contract, and that the remaining composite supply is taxed at the rate of its dominant element. It does not decide whether the 5% rate applies to a contractor who supplies the PV module itself, and it is limited to the facts of this contract. The appellant's reliance on the MNRE circular and the Andhra Pradesh High Court decision is not addressed in the operative findings.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> kar_aaar_02-2018-19-grpl.pdf

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