M/s Vijai Electricals Limited, GSTIN No.37AAACV7259B1ZB, Lawsons Bay Colony, Visakhapatnam, AP 530017

Appellate Authority for Advance Ruling — Andhra Pradesh

Order /AAAR/AP/ 03(GST)/2019 In Application No.AAAR /05(GST)/2019, d… Dated **24.04.2019**

Q Questions Before the Authority

- Whether the works contract services rendered by M/s Vijai Electricals Ltd to APEPDCL are eligible for the concessional rate of GST and, if so, whether entry no. (vi)(a) of Notification No. 24/2017 Central Tax (Rate) is applicable, i.e., 12%.

F Facts

The appellant is engaged by APEPDCL, a state power distribution company, under works for underground cable networks in Visakhapatnam (Package-1 and Package-3, replacing the Zone-1 33/11 KV substation) on a turnkey basis. APEPDCL stated that it acts as project implementing unit for the APDRP (World Bank-funded) and that the assets belong to the Andhra Pradesh Government, so the works are non-commercial public utility works. The appellant sought the 12% rate (6% CGST and 6% SGST) on that basis.

H Ruling

Whether the works contract services to APEPDCL are eligible for the 12% concessional rate under entry (vi)(a) of Serial No. 3 of Notification No. 24/2017 Central Tax (Rate)	**Not eligible; the 12% concessional rate is not applicable**	The order does not state the applicable rate itself. The AAR had held 18% under Serial No. 3(ii) of Notification No. 11/2017 Central Tax (Rate), which the appellate order upholds by implication only. The order's ORDER section contains no separate Q/Ans structure.

The Appellate Authority upheld the Authority for Advance Ruling and held that the works contract services rendered by the appellant to APEPDCL are **not eligible for the concessional 12% rate** under entry (vi)(a) of Serial No. 3 of Notification No. 24/2017 Central Tax (Rate) dated 21-09-2017. The order does not restate the AAR's rate, but the AAR had applied 18% under Serial No. 3(ii) of Notification No. 11/2017 Central Tax (Rate), as described in the order. The clarifications from government officers relied on by the appellant were held to have no legal validity.

R Reasoning

The authority held that APEPDCL is a company incorporated under the Companies Act, 1956, carrying on the business of distribution and retail supply of electrical energy under its licence, so it is not a Central or State Government or local authority. The business exclusion in the explanation to Notification No. 17/2018 Central Tax (Rate) dated 26-07-2018 therefore does not help, because it covers only transactions undertaken by those government bodies. The services were classed as purely commercial even though the recipient is a government entity. Clarifications from the PMU, the Special Chief Secretary and the DM department were rejected as lacking any legal or statutory basis under the classification of services.

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

P Provisions Relied On

- Notification No. 24/2017 Central Tax (Rate) dated 21-09-2017, Serial No. 3, entry (vi)(a)
- Notification No. 20/2017 Central Tax (Rate) dated 22-08-2017 (cited in the appellant's plea)
- Notification No. 11/2017 Central Tax (Rate) dated 28-06-2017, Serial No. 3 entries (ii), (vi) and (xii) (cited in the AAR ruling an…
- Notification No. 17/2018 Central Tax (Rate) dated 26-07-2018, explanation to the term 'business'
- Notification No. 31/2017 Central Tax (Rate) dated 13-10-2017 (cited in the AAR ruling)
- GOMs No. 259 dated 29.6.2017, Revenue (CT.II) Department, Andhra Pradesh (state counterpart, as cited in the clarification)

! For the Practitioner

This order helps tax officers and advisers on works contracts where the recipient is a government-owned distribution company rather than a government department, because the business explanation in Notification 17/2018 does not extend to such companies. It does not settle whether works for the Central or State Government, or for a local authority, that are predominantly for non-commercial use attract 12%. Those questions turn on the facts of each contract and the entry-specific wording of the notifications.

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 -> ap_aaar_03_2019_24.04.2019_vel.pdf

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