M/s Manipal Energy & Infratech Ltd, Udayavani Building, Udayavani Road, Manipal 576104 (GSTIN 29AAHCM0173A1ZT). Appellant, represented by Shri Ravi Raghavan and Ms Sandhya Sarvode, Advocates

Appellate Authority for Advance Ruling — Karnataka

Order No. KAR/AAAR-14-F/2019-20, dated 17-02-2020 (appeal against Ad… Dated **17.02.2020**

Q Questions Before the Authority

- Whether the composite supply of works contract by the appellant to the electricity distribution companies BESCOM, MESCOM and HESCOM (construction, erection, commissioning, installation, completion and similar works) is eligible for the 12% GST rate under entry 3(vi)(a) of Notification No. 08/2017-Integrated Tax (Rate), as the appellant contends, or is liable to 18% under the residual works contract entry.

F Facts

The appellant, a civil and electrical infrastructure contractor, was awarded turnkey and rate contracts by MESCOM, BESCOM and HESCOM. The works included strengthening distribution networks under IPDS and DDUGY, extending 11 KV HT and LT lines, and erecting distribution transformers. The appellant sought to be taxed at 12% on the footing that the distribution companies are Government Entities and instrumentalities of the State. The Advance Ruling Authority had held that the rate was 18%, and the appellant appealed.

H Ruling

Whether works contract supplied to BESCOM, MESCOM and HESCOM qualifies for 12% under entry 3(vi)(a) of Notification 08/2017-IT(Rate)	**No. Not eligible for 12%. Advance Ruling upheld and appeal dismissed. Rate of 18% applies as held in the Advance Ruling.**	Decided on two grounds: the distribution companies are not 'State' under Article 12, and their works are predominantly for commercial use. The order does not separately restate the 18% rate; that comes from the Advance Ruling it upholds.

The Appellate Authority dismissed the appeal and upheld the Advance Ruling, so the appellant is not eligible for the 12% rate under entry 3(vi)(a). It held that the distribution companies, although Government Entities, are not 'State' under Article 12 of the Constitution. It also held that their works are predominantly for commercial use, so the non-commercial-use condition in entry 3(vi)(a) is not met. The 18% rate stands as determined in the Advance Ruling order.

R Reasoning

The authority treated the works as a composite supply of works contract under section 2(119) of the CGST Act and accepted that the distribution companies are Government Entities under clause (ix) of para 4 of the rate notification. It then examined whether they are 'State' under Article 12, relying on the test that the body must

share sovereign power and be subject to deep and pervasive governmental control, and held they do not qualify. Because entry 3(vi)(a) requires the works to be predominantly for use other than for commerce, industry or business, the authority also looked at the companies' principal aims, which it found to be commercial, and concluded the 12% benefit was not available. The Explanation to entry 3(vi), which excludes activities of Central or State Governments and local authorities acting as public authorities, was held not to apply.

P Provisions Relied On

- Section 2(119) of the CGST Act, 2017 (composite supply of works contract)
- Section 100 of the CGST Act, 2017 and KGST Act, 2017 (appeal)
- Section 101 of the CGST Act, 2017 and KGST Act, 2017 (appellate ruling)
- Notification No. 08/2017-Integrated Tax (Rate) dated 28-06-2017, entry Sl. No. 3(vi)(a), heading 9954, with the Explanation a…
- Clause (ix) of para 4 of Notification No. 08/2017-IT(Rate) (definition of Government Entity)
- Amending notifications No. 24/2017-IT(R) dated 21-09-2017 and No. 17/2018-CT(R) dated 26-07-2018
- Article 12 of the Constitution of India (definition of 'State')
- Entry 38, List III, Seventh Schedule (electricity)

! For the Practitioner

A practitioner can use this order to show that a Government Entity contractor is not automatically within the 12% entry for works contracts. The non-commercial-use condition will be tested against the purpose of the procuring entity, and the Article 12 argument did not succeed on these facts. The order does not decide the question for Government-owned bodies generally, nor for works commissioned by Central or State Governments directly. Its commercial-use finding rests on public-domain material about the companies and may be contested on appeal to the higher forum.

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_14f_2019-20_manipalenergyinfratechltd.pdf

Prepared 18-11-2026.

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