Nikhil Comforts (appellant; GSTIN 27AAAFN0812H1ZP)

Appellate Authority for Advance Ruling — Maharashtra

Order No. MAH/AAAR/SS-RJ/16/2019-20 dated 11.11.2019 (appeal no. M… Dated **11.11.2019**

Q Questions Before the Authority

- Whether the transaction (supply and installation of VRF air-conditioning units, piping, drain piping, MS stands, cabling and electrical works under a contract with GSIDC) is a works contract liable to CGST/SGST/IGST under Sr. No. 3, item 3 of Notification No. 20/2017 (Central Tax Rate) dated 22.08.2017.
- Alternatively, whether the transaction is a composite supply liable to tax at the rate applicable to air conditioners, the principal goods, under Schedule IV, Sr. No. 119 of Notification No. 1/2017 (Central Tax Rate) dated 28.06.2017. (The question as printed on page 2 of the scan refers to a rate of 14%; the order's own analysis at para 49 applies 28%.)

F Facts

Nikhil Comforts, a partnership firm in Mumbai, entered into an agreement dated 21.08.2018 with Goa State Infrastructure Development Corporation Ltd (GSIDC) for additional air-conditioning work at the new building of the Directorate of Education at Porvorim, Goa. The scope covers supply, installation, testing and commissioning of VRF indoor and outdoor units, refrigerant and drain piping with insulation, MS stands, cabling and associated electrical works, for a total BOQ value of Rs 55,29,555. The appellant contended that the resulting system is an immovable air-conditioning plant that cannot be sold as such, and so is a works contract.

H Ruling

Q1: Is the contract a works contract under Sr. No. 3, item 3 of Notification 20/2017-CT(R)?	**No. Not a works contract.**	The contract does not lead to immovable property. The equipment is movable in the sense that it can be dismantled and re-erected elsewhere without destruction, and the attachment is only for stability and beneficial enjoyment of the units.
Q2: Is the transaction a composite supply taxable at the rate for air conditioners, the principal supply?	**Yes. Composite supply with air conditioner units as principal supply, taxable at 28% under Schedule IV, Sr. No. 119 of Notification 1/2017-CT(R) dated 28.06.2017.**	The supply of goods (about Rs 28.9 lakh of equipment within the total) and the installation services are naturally bundled and dependent on each other, so the goods element is the principal supply and the 28% rate applies to the whole contract.

The Appellate Authority upheld the AAR's ruling on both questions. It held that the contract does not create immovable property and therefore is not a works contract under section 2(119) of the CGST Act. It held that the arrangement is a composite supply in which the principal supply is goods (air conditioner units), taxable at 28%.

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

R Reasoning

The Authority applied the Supreme Court's permanency and marketability-related tests from Sirpur Paper Mills, Solid and Correct Engineering Works, and Quality Steel Tubes, and the statutory meaning of immovable property in section 3 of the Transfer of Property Act and section 3(26) of the General Clauses Act. It held that the fixing of the units to the ceiling and walls is for their beneficial enjoyment and does not annex them to the earth. It found that the Blue Star and Voltas decisions, and CBEC circular 37B/58/1/2002-Cx, rest on the excise marketability test and do not govern the CGST position. It then found that goods form the bulk of the contract value and that supply and installation are naturally bundled, so the composite-supply analysis applies and the principal supply is air conditioners.

P Provisions Relied On

- Section 2(119) of the CGST Act (definition of works contract)
- Section 3 of the Transfer of Property Act, 1882 (attached to the earth)
- Section 3(26) and 3(36) of the General Clauses Act, 1897 (immovable and movable property)
- Notification No. 20/2017-Central Tax (Rate) dated 22.08.2017, Sr. No. 3, item 3 (works contract rate entry, cited by the appell…
- Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, Schedule IV, Sr. No. 119 (air conditioners)
- Chapter heading 8415 (air conditioning machines)
- Supreme Court: Sirpur Paper Mills; Commissioner of Central Excise v. Solid and Correct Engineering Works (2010); Triveni E…
- CBEC circular 37B/58/1/2002-Cx dated 15.01.2002 (considered and held not binding)

! For the Practitioner

The order is useful for practitioners who need to know that a VRF or central air-conditioning supply under a government contract may be treated as a supply of goods with bundled installation, not a works contract, even where the units are fixed and must be dismantled to move. It settles that the excise-era marketability test is not decisive under the GST analysis and that the permanency test from Solid and Correct governs. It does not decide the rate position for works contracts generally, and it does not address whether input tax credit or the rate for a different system design would differ. Counsel should verify the 14% versus 28% wording in the question against the original AAR order before relying on the rate analysis.

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 -> mah_aaar_ss-rj_16_2019-20_11.11.2019.pdf

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