Shri Kailash Chandra (Prop. Mali Construction), Mali Vas, Maandava, Mandwa, Sirohi-307001 (Rajasthan), GSTIN 08ALVPC2862Q1ZA (appellant before the Appellate Authority; the advance ruling applicant)

Appellate Authority for Advance Ruling — Rajasthan

Order No. RAJ/AAAR/--/2019-20 dated 15.05.2019 (order number partly ill… Dated **15.05.2019**

Q Questions Before the Authority

- Whether the activity of supply, design, installation, commissioning and testing of solar energy based water pumping systems is a supply of goods or a supply of services, and what rate of GST applies to it.
- Whether the benefit of the Explanation inserted in entry 234 of Notification No. 1/2017-Central Tax (Rate) by Notification No. 24/2018-Central Tax (Rate), and of entry 38 of Notification No. 11/2017-Central Tax (Rate) inserted by Notification No. 27/2018-Central Tax (Rate), is available to the appellant.

F Facts

The appellant bid for a PHED (Rajasthan Government) tender, Tender Document No. 17/2016-17, for designing, supplying, installing, commissioning and operating solar-powered bore well pumping systems with a de-fluoridation unit, on an ESCO and O&M basis for seven years. The appellant must also supply potable water free of cost to villagers during the O&M period. The advance ruling treated the work as a composite works contract at 12% (6% CGST and 6% SGST) under HSN 9954, and the appellant appealed against that rate.

H Ruling

Nature of the solar water pumping work (goods or services) and applicable GST rate, for a tender identical to Tender Document No. 17/2016-17, with time of supply after 31.12.2018	**Both supply of goods and supply of services, under entry 234 read with entry 38, at the rates prescribed in those entries. The order does not restate the percentages in its operative part. Para 16 of the order records the effective rate as 8.9% (5% on 70% of the value as goods, and 18% on 30% as services).**	The order has no separate RULING section with Q1 and Ans entries. This row is taken from the operative order at para 25. Time of supply must fall after 31.12.2018, and the tender must be identical to the one examined. The 12% rate of the advance ruling is set aside.

The Appellate Authority modified the advance ruling. For a tender identical to Tender Document No. 17/2016-17, the supply, design, installation, commissioning and testing of solar energy based water pumping systems, where

the time of supply falls after 31.12.2018, is both a supply of goods and a supply of services under entry 234 read with entry 38, at the GST rates prescribed under those entries. The authority held that the conditions of the amended entries were satisfied because the system was supplied with other goods (the de-fluoridation unit) and with taxable installation and commissioning services. The appeal was disposed of in those terms.

R Reasoning

The authority read entry 234 of Notification 1/2017-CT(Rate) (solar power based devices, as amended by Notification 24/2018) with entry 38 of Notification 11/2017-CT(Rate) (construction, installation and technical services for setting up solar power based devices, inserted by Notification 27/2018). It held that the Explanation applies only where the goods are supplied along with other goods and services, one of which is a taxable entry 38 service. It found that the de-fluoridation unit was other goods and that installation and commissioning were taxable services provided in relation to setting up the system, so the condition was met. It therefore held that the advance ruling had not applied these amendments and modified it accordingly.

P Provisions Relied On

- Section 100 of the CGST Act, 2017 and the corresponding section of the Rajasthan GST Act, 2017 (appeal to the Appellate A…
- Section 97(2) of the CGST/SGST Act, 2017 (clause under which the question was raised: determination of liability to pay tax…
- Section 101 of the CGST Act, 2017 and the corresponding Rajasthan provision (appellate order)
- Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017, entry 234 of Schedule I (2.5%), with the Explanation inserted by…
- Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, entry 38 (HSN 9954, 9983 or 9987), inserted by Notification N…
- HSN 9954, 9983 and 9987 (as cited in entry 38)

! For the Practitioner

This order is useful for any contractor bidding on solar water pumping or other solar-linked tenders. It confirms that the reduced-rate package under entries 234 and 38 can apply to such works where time of supply is after 31.12.2018, and that a de-fluoridation unit can count as the other goods required by the Explanation. It does not state the percentages in its operative part, so the rate must be checked against the notifications. It also does not decide the position for supplies before 31.12.2018, for different tender terms, or for works not connected to setting up the listed devices. Read the full order to confirm 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 -> aaar-raj-2-2019-20_kailash_chandra_mali_construction.pdf

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