M/s Brightstone Developers Private Limited

Authority for Advance Ruling — Karnataka

Advance Ruling No. KAR ADRG 108/2019, dated 30th September, 2019 Dated **30.09.2019**

Q Questions Before the Authority

- Whether the supply of turnkey Engineering, Procurement & Construction (EPC) contract for construction of a solar power plant, wherein both goods and services are supplied, can be construed to be a composite supply in terms of Section 2(30) of the CGST Act, 2017?
- Whether the supply of 'Solar Power Generating System' is taxable at 5% GST?

F Facts

The applicant, a GST-registered private limited company, proposes to enter into turnkey EPC contracts with developers to set up solar power plants, together with operation and maintenance and transmission line work. Under a single contract price, goods (modules, inverters, transformers, switchgear and similar items) are said to be about 80-85% of the value and services the balance. The applicant contended that the plant is movable and that the contract is therefore a composite supply taxable at 5% as a supply of goods.

H Ruling

Whether the turnkey EPC contract for a solar power plant, supplying both goods and services, is a composite supply under Section 2(30) of the CGST Act	**Yes. It can be construed as a composite supply under Section 2(30) of the CGST Act, 2017.**	The authority found that goods and services are naturally bundled and supplied in conjunction in the ordinary course of business, with one principal supply.
Whether the supply of 'Solar Power Generating System' under the EPC contract is taxable at 5% GST	**No. The 5% rate was not accepted for the contract as a whole. The contract is a works contract, taxed at 9% CGST and 9% KGST up to 31.12.2018.**	From 01.01.2019 the contract is taxable on values worked out separately for goods and for services: goods under entry 234 of Schedule I of Notification 1/2017 (5%) and services under entry 38 of Notification 11/2017 as amended by Notification 27/2018, with the explanation in Notification 24/2018 applying to values. The ruling para 2 prints the Notification as 11/2019, which appears to be a typographical error for 11/2017.

The authority held that the turnkey EPC contract, supplying both goods and services, can be construed as a composite supply under Section 2(30) of the CGST Act. It further held that the contract is a works contract under Section 2(119), because the completed plant is immovable property, so the 5% rate claimed by the applicant was not accepted. For the period up to 31.12.2018 the contract attracts 9% CGST and 9% KGST, and from 01.01.2019 the value must be split between goods and services under the applicable entries.

R Reasoning

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

The authority accepted that goods and services are naturally bundled under a single turnkey contract, so Section 2(30) is satisfied. It rejected the applicant's view that the plant is movable: it held that the plant as completed is immovable property, since the components cannot be removed without cannibalisation, and the contract therefore falls within the Section 2(119) definition of works contract. Because the contract is a works contract, the concessional entry for goods under Notification 1/2017 was not applied to the whole contract. The authority distinguished the Giriraj Renewable Energy ruling on the ground that its contract terms were different.

P Provisions Relied On

- Section 2(30) of the CGST Act, 2017 (composite supply)
- Section 2(90) of the CGST Act, 2017 (principal supply)
- Section 2(74) of the CGST Act, 2017 (mixed supply)
- Section 2(119) of the CGST Act, 2017 (works contract)
- Section 8 of the CGST Act, 2017 (tax liability on composite and mixed supplies)
- Section 3(26) and 3(36) of the General Clauses Act (immovable and movable property)
- Section 3 of the Transfer of Property Act (attached to the earth)
- Section 97 and Section 98(4) of the CGST Act and KGST Act, 2017
- Rule 104 of the CGST Rules and KGST Rules, 2017
- Notification No. 1/2017 Central Tax (Rate), Schedule I, entry 234
- Notification No. 11/2017 Central Tax (Rate), entry 3 (works contract, item (ii)) and entry 38, as amended by Notification No. 2…
- Notification No. 24/2018 Central Tax (Rate), explanation to entry 234

! For the Practitioner

This ruling is useful for practitioners advising on EPC contracts for solar plants, where it confirms that the contract is a composite works contract and not a supply of movable goods at 5%. It also sets out how the rate was split from 01.01.2019, which affects the value apportionment. It does not decide the position for solar supplies made on a pure goods basis or for plants that are genuinely movable, and it binds only the applicant. Note that the authority treated the applicant's movable-property argument as rejected on the facts of this contract.

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_aar_108_2019_30.09.2019_bdpl.pdf

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