M/s Gowri Infra Engineers pvt. Ltd. (called 'Gowri Infra Engineers Private Limited' in the body of the order)

Authority for Advance Ruling — Karnataka

Advance Ruling No. KAR ADRG 38/2019 Dated **16.09.2019**

Q Questions Before the Authority

- Whether the activity undertaken by the applicant is covered under section 2(119) of the CGST Act, 2017 read with point 6 of Schedule II of the CGST Act and the KGST Act and the IGST Act.
- Whether Bangalore Development Authority is a Government Authority as per the provisions of GST Law.
- Whether the transaction is covered under point 3(ii) of Notification No. 11/2017 - Central Tax (Rate) dated 28.06.2017 as amended.
- Whether the transaction is covered under point 3(iv) of Notification No. 11/2017 - Central Tax (Rate) dated 28.06.2017 as amended.
- Whether the transaction is covered under point 3(v) of Notification No. 11/2017 - Central Tax (Rate) dated 28.06.2017 as amended.
- Whether the transaction is covered under point 3(vi) of Notification No. 11/2017 - Central Tax (Rate) dated 28.06.2017 as amended.

F Facts

The applicant is a civil construction and works contract company that was allotted, through a tender, the construction of residential complexes and row houses by Bangalore Development Authority (BDA) at two sites, one at Kengeri Hobli and one at Alur Phase II, Dasanapura Hobli, Bangalore North. The applicant executed the works through various sub-contractors. The applicant argued that the work was for a Government Authority and was therefore liable at the concessional rate, and that BDA's activities are sovereign and not for profit.

H Ruling

Whether the activity is a works contract covered under section 2(119) of the CGST Act	****Yes. It is a works contract service under section 2(119).****	The authority found the project involves both goods and services in relation to immovable property for construction of a civil structure.
Whether BDA is a Government Authority / Government Entity under GST law	****Yes. BDA is a Government Entity.****	The authority relied on the State's control over BDA under section 3(3) of the BDA Act, 1976 and on the definition of Government Entity in para 2(zfa) of the notification.
Whether the transaction is covered under entry 3(ii), 3(iii), 3(iv), 3(v) or 3(vi) of Notification 11/2017 CT(Rate)	****Covered under entry 3(vi)(a) at 6% CGST and 6% SGST. Not covered under entry 3(ii), 3(iv) or 3(v).****	Clause (a) applies because the works are predominantly for use other than commerce, industry or business, and the services were procured by a Government Entity in relation to a work entrusted to it by the State. The order records the same result under the Karnataka notification (FD 48 CSL 2017).

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

The authority ruled that the applicant's activity is a works contract service under section 2(119) of the CGST Act. It held that BDA is a Government Entity under the GST law. It further held that the supply is covered under clause (a) of entry 3(vi) of Notification No. 11/2017 - Central Tax (Rate), and not under entries 3(ii), 3(iv) or 3(v). The same treatment was applied under the corresponding Karnataka notification.

R Reasoning

The authority held that the applicant's activity is a works contract under section 2(119) because it involves construction of immovable civil structures. It found BDA to be a Government Entity because the State controls its constitution and functions under section 3(3) of the BDA Act. It then examined entry 3(vi) of Notification 11/2017 CT(Rate) and held that clause (a) applied, since the residential projects are predominantly for use other than commerce, and the proviso was met because the BDA work was entrusted by the State. The authority rejected entries 3(ii), 3(iv) and 3(v), noting that the housing was a general public residential project and not one under the listed affordable housing schemes. The order itself contains an internal inconsistency: para 8 records the applicant's view of 12% (6% plus 6%), while the ruling and para 10.9.4 apply 6% CGST and 6% SGST.

P Provisions Relied On

- Section 2(119) of the CGST Act, 2017 (works contract)
- Section 3(3) of the Bangalore Development Authority Act, 1976 (composition of the Authority)
- Notification No. 11/2017 - Central Tax (Rate) dated 28.06.2017, entry 3(vi), clauses (a), (b) and (c), with the proviso on procur…
- Para 2(zfa) of Notification No. 11/2017 - Central Tax (Rate) (definition of Government Entity)
- Notification No. 46/2017 - Central Tax (Rate) dated 14.11.2017 (amendment to entry 3(vi))
- Notification No. FD 48 CSL 2017 dated 29.06.2017 under the Karnataka GST Act, 2017 (entry 3(vi)(a)); date partly legible
- Entries 3(ii), 3(iv) and 3(v) of Notification No. 11/2017 - Central Tax (Rate) (considered and rejected)

! For the Practitioner

This ruling is useful to contractors executing works for BDA or similar State-controlled bodies, since it treats BDA as a Government Entity and places the works under entry 3(vi)(a) at the 6% plus 6% concessional rate. It does not decide whether the rate would apply to projects for other bodies, or where the State has not entrusted the work to the entity. The order is internally inconsistent on the headline rate (para 8 mentions 12%), so the operative rate should be checked against the ruling and the notification text before reliance. Procurement conditions and the entrustment proviso should be verified in each 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_38_2019_gowriinfraenigneering.pdf

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