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Authority for Advance Ruling — Karnataka

Advance Ruling No. KAR ADRG /121/2019, dated 30th September 2019 (t… Dated **30.09.2019**

Q Questions Before the Authority

- Whether the proposed activity of setting up data centre facilities, as explained, qualifies as a 'works contract' under Section 2(119) of the Central Goods and Services Tax Act, 2017 and Section 2(119) of the Karnataka Goods and Services Tax Act, 2017.
- What is the rate of GST applicable on the proposed activities.

F Facts

The applicant, which is engaged in sale of IT products and services, proposes to set up data centre facilities for clients including government agencies. Under a draft statement of work, it would either execute the entire project or only a part of it, such as civil, mechanical or electrical works, and would convert a cold shell or an existing building into a fully operational data centre for a single consolidated fee. The scope covers interior and exterior finishing, mechanical and electrical installations, building management products, and obtaining statutory approvals.

H Ruling

Whether the proposed setting up of data centre facilities qualifies as 'works contract' under Section 2(119) CGST Act and Section 2(119) KGST Act	**Yes, it qualifies as a works contract**	The Authority found the contract indivisible, involving both supply of goods and services, and related to immovable property. The applicant's argument that works contract extends to plant and machinery was rejected.
Rate of GST applicable on the proposed activities	**9% CGST and 9% SGST, as per Entry No. 3(ii) of Notification 11/2017-Central Tax (Rate) dated 28 June 2017**	Paragraph 10 of the order states that composite supply of works contract is liable to GST at 18% under Sl. No. 3, which is the aggregate of the 9% CGST and 9% SGST. The operative ruling cites Entry 3(ii).

The Authority ruled that the proposed setting up of data centre facilities qualifies as a works contract under Section 2(119) of both the CGST and KGST Acts. It held that the rate applicable is 9% CGST and 9% SGST under Entry No. 3(ii) of Notification 11/2017-Central Tax (Rate) dated 28 June 2017. The Authority rejected the applicant's argument that the works contract concept extends to plant and machinery so as to make the related input tax credit eligible.

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

R Reasoning

The Authority accepted that the applicant's activities, including civil, mechanical, electrical and building management works, constitute a single indivisible contract for supply of goods and services. It held that the activities relate to immovable property because the refurbishment of the building is permanent and the works cannot be dismantled without substantial damage. Relying on Section 17(5)(c), the applicant argued that works contract should extend to plant and machinery, but the Authority held that the term works contract is clearly defined with reference to immovable property. It also reasoned that equipment fixed to a foundation for stability lacks the permanence of a building, so the inference drawn from Section 17(5) was erroneous. Accordingly, the rate was taken from the works contract entry in the notification.

P Provisions Relied On

- Section 2(119) of the CGST Act, 2017 (definition of works contract)
- Section 2(119) of the KGST Act, 2017 (corresponding definition)
- Section 17(5)(c) of the CGST Act, 2017 (considered and rejected as a basis for extending works contract to plant and machin…
- Notification 11/2017-Central Tax (Rate) dated 28 June 2017, Entry No. 3(ii) and Sl. No. 3 (rate for composite supply of works…
- Sections 97 and 98 of the CGST Act and the corresponding KGST provisions, and Rule 104 of the CGST Rules (procedural b…
- Section 2(36) of the General Clauses Act, 1987 and Section 3 of the Transfer of Property Act, 1882 (relied on by the applicant…

! For the Practitioner

This ruling is useful for practitioners advising on turnkey data centre, civil-electrical-mechanical fit-out, or similar building projects, because it treats such contracts as works contracts at 9% CGST and 9% SGST, provided the activities relate to immovable property. It also shows the Authority's view that plant and machinery are not covered by the works contract concept for credit purposes. The ruling binds only the applicant and does not settle the wider question of how a works contract is to be classified for equipment-heavy projects, or whether input tax credit is available on such projects. Note the apparent inconsistency between the 18% stated in paragraph 10 and the 9%+9% in the operative ruling, which should be checked against the full order before reliance.

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_121_2019_30.09.2019_hpeipl.pdf

Prepared 12-11-2026.

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