M/s. DEC Infrastructure and Projects (I) Pvt. Ltd.

Authority for Advance Ruling — Andhra Pradesh

AAR No. 02/AP/GST/2020 dated:17.02.2020 Dated **17.02.2020**

Q Questions Before the Authority

- Whether the work of APIIC executed by the applicant after 22.08.2017 (construction of office/IT space building at IT Park, Mangalgiri) falls under the 18% rate of tax or the 12% rate of tax?
- If the work falls under the 18% rate, can the advance ruling authority guide APIIC to reimburse the GST amount to the construction agency?
- If the work falls under the 12% rate, can the applicant claim refund from the CGST and SGST authorities of the GST paid in excess while filing returns at 18%?

F Facts

The applicant, a construction contractor, executed a building construction work for APIIC at IT Park, Mangalgiri under an agreement dated 16.06.2016. It paid GST at 18% on the bills, but APIIC did not reimburse GST on bills raised after 01.11.2017 following a State memo directing departments not to add GST to works contract bills. After G.O.Ms. No.58 dated 08.05.2018 treated Government works executed after 22.08.2017 as attracting 12%, APIIC took the position that it would pay GST only at 12%.

H Ruling

Q1: Rate applicable to APIIC work executed after 22.08.2017 (18% or 12%)	**SAC 9954, construction services; rate 18% (9% CGST + 9% SGST)**	Entry (ii) of serial No.3 of Notification No.11/2017-CT(Rate) dated 28.06.2017. The 12% concession under Notification No.24/2017 was held unavailable because the applicant did not show the building was for non-business use.
Q2: Whether the authority can direct APIIC to reimburse GST to the contractor	**Not under the purview of Section 97(2) CGST Act, 2017**	No ruling given on the reimbursement question.
Q3: Whether refund of excess GST paid at 18% can be claimed from CGST/SGST authorities	**Not under the purview of Section 97(2) CGST Act, 2017**	Moot in light of the 18% answer to Q1; no ruling on refund procedure.

The authority held that the construction work is a composite works contract classifiable under SAC 9954 (construction services) and taxable at **18% (9% CGST and 9% SGST)** under entry (ii) of serial No.3 of Notification No.11/2017-Central Tax (Rate). APIIC is a Governmental Entity, but the applicant produced no evidence that the building was meant for use other than commerce or business, so the 12% concession under Notification No.24/2017 was not available. The second and third questions were held outside the scope of Section 97(2) of the CGST Act.

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

R Reasoning

The authority first treated the contract as a works contract under Section 2(119) CGST Act, which is a composite supply of services under Schedule II, serial 6(a). It then read the definition of Governmental Entity in Notification No.11/2017 as amended by Notification No.31/2017 and found APIIC qualifies, since the Government of Andhra Pradesh holds 100% of its shares. Relying on APIIC's Annual Report, which describes its business of land development, sale and allotment, it found APIIC's activities to be business activities. Because the applicant did not establish non-business use of the building, the concessional 6%+6% rate under entry (vi) of Notification No.24/2017 was not available, and the 18% rate applied.

P Provisions Relied On

- Section 2(119) CGST Act, 2017 / APGST Act, 2017 (definition of works contract)
- Schedule II, serial No.6(a) CGST Act, 2017 / APGST Act, 2017
- Notification No.11/2017-Central Tax (Rate) dated 28.06.2017, serial No.3 entry (ii), and paragraph 4 clauses (ix) and (x) (defi…
- Notification No.31/2017-CT(Rate) dated 13.10.2017 (amending the definitions)
- Notification No.24/2017-CT(Rate) dated 21.09.2017, entry (vi) (concessional 6% CGST rate for construction for government e…
- Notifications No.20/2017, 24/2017, 31/2017, 46/2017 and 01/2018 (amendments to Notification No.11/2017)
- Section 97(2) CGST Act, 2017 / APGST Act, 2017 (scope of advance rulings)
- Section 98(1) and 98(4) CGST Act, 2017 / APGST Act, 2017
- Section 100 APGST Act, 2017 (appeal to Appellate Authority)

! For the Practitioner

A practitioner dealing with State or APIIC works contracts can cite this ruling for the proposition that a works contract for a government entity's commercial-purpose building attracts 18% unless the non-business use is proved with documents. The ruling is sensitive to APIIC's business profile, so a different project with documented non-commercial use could be treated differently. It does not decide whether the contractor can recover GST from APIIC, nor does it settle the refund route, since both questions were rejected as outside Section 97(2).

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 -> aar no.2-2020 dec infrastructure and projects i.pdf

Prepared 18-11-2026.

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