# 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**

## Q Questions Before the Authority

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

## F Facts

The applicant, a construction contractor, was awarded a contract by the Andhra Pradesh Industrial Infrastructure Corporation (APIIC) on 16.06.2016 to build office and IT space at an IT park in Mangalgiri. The applicant charged and paid GST at 18% on its bills, but APIIC did not reimburse GST for bills raised after a Government memo of 13.09.2017 directed departments not to add GST to works contract bills. After G.O.Ms. No.58 dated 08.05.2018 stated that Government works executed from 22.08.2017 attract 12% GST, APIIC took the position that it would pay only 12%.

## H Ruling

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|---|---|---|
| **Rate of GST on APIIC works executed after 22.08.2017** | **SAC 9954, 18% (9% CGST + 9% SGST)** | Classified under 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 CT (Rate) dated 21.09.2017 was not available because the applicant did not show the building was meant for non-business use. |
| **Whether the advance ruling 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 reimbursement by APIIC. |
| **Whether the applicant can claim refund of excess GST paid at 18% from CGST and SGST authorities** | **Not under the purview of Section 97(2) CGST Act, 2017** | Stated as a consequence of the 18% finding; no ruling given on refund. |

The authority held that the work is a composite works contract classifiable under SAC 9954 (construction services) and attracts **18% (9% CGST + 9% SGST)** . Although APIIC is a Government Entity, the activity was held to be business in nature, and the applicant produced no evidence that the building was meant for non-business use, so the concessional 12% rate was not available. The authority declined to rule on whether APIIC must reimburse GST or on refund of excess tax, holding both outside the scope of Section 97(2).


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

## R Reasoning

The authority first examined whether APIIC is a Governmental Authority or Governmental Entity under para 4(ix) and (x) of Notification No. 11/2017 CT (Rate), as amended by Notification No. 31/2017, and found it to be a Government Entity because the Government holds 100% of its shares. It then looked at APIIC's annual report, which showed revenue from land sales, house sales and interest, and a statement that APIIC passes on costs to end clients, and concluded its activities are business activities. Because the applicant gave no documentary proof that the building was for use other than commerce, industry or business, the 12% concession under Notification No. 24/2017 failed. The authority treated the works contract as a composite supply under Section 2(119) and Serial No. 6(a) of Schedule II, and held that the refund and reimbursement questions fell outside Section 97(2).

## P Provisions Relied On

- Section 97(2) of the CGST Act, 2017 and corresponding APGST Act provision
- Section 98 of the CGST Act, 2017 and APGST Act, 2017
- Section 2(119) of the CGST Act, 2017 (definition of works contract)
- Schedule II, Serial No. 6(a), CGST Act, 2017 (works contract treated as supply of services)
- Notification No. 11/2017 CT (Rate) dated 28.06.2017, serial No. 3 entry (ii), and para 4(ix) and (x) (Governmental Authority an…
- Notification No. 24/2017 CT (Rate) dated 21.09.2017, entry (vi) (concessional 12% for construction services to Government e…
- G.O.Ms. No. 58 dated 08.05.2018 (Andhra Pradesh Government, as quoted by the applicant)

## ! For the Practitioner

A practitioner advising a contractor on a works contract with a State-owned body can use this order to show that a fully Government-held entity like APIIC is a Government Entity, but that its business-oriented projects still attract the 18% rate unless the contractor proves non-business end use. The order does not decide whether a Government employer must reimburse GST, nor does it allow refund of tax already paid at 18%; those issues need separate remedies before the proper officers or the courts. Read the full order before relying on the classification reasoning, since the scan limits the precision of some references.

### 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 -> ap_aar_02_2020_17.02.2020_decippl.pdf

Prepared 18-11-2026.

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