M/s KPC Projects Limited (31-15-29, Katuri Vari Street, Machavaram Down, Vijayawada-520004; GSTIN 37AACCK7073N1ZZ)

Authority for Advance Ruling — Andhra Pradesh

AAR No. 42/AP/GST/2019 Dated **25.11.2019**

Q Questions Before the Authority

- Applicability of the GST rate for construction of the Millennium Tower at Madhurawada, Visakhapatnam, for the Information Technology and Communication Department, Government of Andhra Pradesh, through nodal agency APIIC, under works contract service.
- If GST is payable at 12%, whether a refund claim may be submitted in RFD-01.

F Facts

APIIC awarded the applicant a work order (Agreement No.09/CE-II/APIIC/2016-17, dated 02.06.2016) for construction of the Millennium Tower at Plot Nos. 16 and 17 (4.00 acres), Hill No.3, Madhurawada, for the IT&C Department, with APIIC acting as nodal agency; the awarded value is Rs.85,80,31,302. The applicant charged and paid GST at 18% on RA bills until October 2017 and discharged that liability through GSTR-3B. From November 2017 APIIC stopped releasing GST amounts, stating that it would do so once the applicable rate was clarified, and the applicant has continued to discharge 18% itself.

H Ruling

Applicable GST rate for the Millennium Tower construction contract with APIIC (works contract)	**18% (9% CGST + 9% SGST)**	Classified under SAC 9954 and entry (ii) of serial No.3 of Notification 11/2017-CT (Rate). The 12% concession under Notification 24/2017 is not available because the building is for SMEs and Startups, which the authority treats as business use. The applicant gave no proof of non-business use.
Whether a refund claim may be submitted in RFD-01 if GST is payable at 12%	**Not expressly answered in the RULING**	Since the authority held 18% applies and not 12%, the refund question does not arise on the order's own reasoning. No separate finding on RFD-01 is recorded.

The activity is a composite supply of works contract under section 2(119) of the CGST Act, and APIIC is a Government Entity under para 4 of clause (x) of Notification 11/2017-CT (Rate) as amended by Notification 31/2017-CT (Rate). The 12% concessional rate under Notification 24/2017-CT (Rate) is not available because the building is meant for accommodating SMEs and Startups, which are for commerce, industry or other business. The applicable rate is **18% (9% CGST and 9% SGST)** under SAC 9954 and entry (ii) of serial No.3 of Notification 11/2017-CT (Rate). The order does not expressly answer the refund question.

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

R Reasoning

The authority held that APIIC was formed under G.O. No.831 (1973) and that the State Government with its nominees holds 100% of its shares, per the 41st Annual Report for 2013-14, so APIIC is a Government Entity under para 4 of clause (x) of Notification 11/2017 as amended. On the concessional entry for construction for government entities, it held that the applicant had not shown the building was for use other than commerce, industry or business, relying on APIIC's annual report, which records land-conversion charges to be passed on to end clients, and on the SME and Startup purpose. Applying the composite works contract definition in section 2(119), it classed the supply under SAC 9954 and taxed it at the general 18% rate under entry (ii) of serial No.3 of Notification 11/2017.

P Provisions Relied On

- Section 2(119) of the CGST Act, 2017 (works contract definition)
- Schedule II, entry 6(a) of the CGST Act, 2017 (works contract treated as a supply of services), as cited in the order
- Notification 11/2017-Central Tax (Rate) dated 28.06.2017, serial No.3 entry (ii), and para 4 of clause (x) (Government Entity)
- Notification 31/2017-Central Tax (Rate) dated 13.10.2017 (amending clauses (ix) and (x))
- Notification 24/2017-Central Tax (Rate) dated 21.09.2017, entry (vi) (12% concessional rate for construction for government e…
- Notification 20/2017-Central Tax (Rate) dated 22.08.2017, serial 3(vi), as cited by the jurisdictional officer
- Section 97(2) and Section 98 of the CGST/APGST Act, 2017
- Section 15 and Rule 35 of the CGST Act, 2017 (cited by the applicant on valuation)

! For the Practitioner

A practitioner advising a contractor on government or nodal-agency construction work for IT or SME infrastructure can cite this ruling for the position that the 12% (or 6% CGST plus 6% SGST) concession under Notification 24/2017 fails where the building is for SMEs or Startups, so 18% applies. It also treats APIIC as a Government Entity for these purposes. The order does not decide the refund mechanics under RFD-01, and as an advance ruling it binds only the applicant and the jurisdictional authorities. Its reasoning on the purpose condition rests on the applicant's failure to produce evidence, so a different factual record could support a different result.

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.42-2019_kpc_project_limited.pdf

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