M/s. SHREEJI INFRASTRUCTURE INDIA P.LTD.

Authority for Advance Ruling — Madhya Pradesh

Order Number 15/2018, dated 18-10-18 (Case Number 18/2018; Order No.… Dated **18.10.2018**

Q Questions Before the Authority

- Whether Madhya Pradesh Power Generation Company Limited (MPPGCL) is a 'Government Entity' for the purposes of the GST law.
- If yes, whether the works contract service of construction of 599 residential quarters allotted to the applicant under the tender will be charged GST at 12% (6% CGST + 6% SGST) under entry 3(vi)(c) of Notification No. 11/2017-CT (Rate), or at 18% (9% CGST + 9% SGST).
- Otherwise, if the works contract service is not covered under entry 3(vi)(c) on the facts of the applicant, what is the applicable rate of GST.

F Facts

The applicant won a lump-sum turnkey contract from MPPGCL, a state-owned power generator, for a colony at Siveria near the Shri Singaji Thermal Power Project Stage-II, including about 599 staff quarters along with roads, water, sewerage and electrification works. The applicant billed MPPGCL at **18% (9% CGST + 9% SGST)** under SAC 9954, while MPPGCL paid only at 12% on the view that the work fell within the concessional works-contract entry for government entities. The dispute therefore turns on whether MPPGCL is a government entity and whether the staff housing was procured in relation to a work entrusted to it by the State.

H Ruling

Whether MPPGCL is a Government Entity for GST law	**Yes, a Government Entity**	As defined in Notification No. 31/2017-Central Tax (Rate); established by the State Government with 100% shareholding and control, to carry out a function entrusted by the State Government.
Rate for works contract for construction of 599 residential quarters allotted by MPPGCL	**18% GST (9% CGST + 9% SGST), SAC 9954**	Concessional 12% under entry 3(vi)(c) of Notification No. 11/2017-CT (Rate) not available because the proviso for supply to a government entity is not met; the housing is not a work entrusted to MPPGCL by the State Government.
Applicable rate if entry 3(vi)(c) is not available	**Covered by the 18% rate in row 2 (SAC 9954)**	Answered by ruling para ii; the order does not separately address an alternative rate.

The Authority held that MPPGCL is a Government Entity under Notification No. 31/2017-Central Tax (Rate) because it was established by the Government of Madhya Pradesh, which holds 100% shareholding and exercises full control. It further held that the construction of the 599 residential quarters is **not covered by the concessional 12% rate** , so the works contract attracts GST at 18% (9% CGST + 9% SGST) under SAC 9954.

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

R Reasoning

The Authority accepted that MPPGCL meets the definition of Government Entity, since the State Government created it, holds all its shares and controls its activities. It then turned to the proviso to entry 3(vi)(c), which requires that services supplied to a government entity be procured by that entity in relation to a work entrusted to it by the Central or State Government. It found that the principal work entrusted to MPPGCL is power generation, and that civil construction of staff housing has no bearing on that work. It noted that the concessional rate is meant for works entrusted to government entities for public interest, and that extending it to all activities of such an entity would defeat its purpose. It agreed with the departmental opinion of the Joint Commissioner, CGST and Central Excise, Jabalpur.

P Provisions Relied On

- Section 97(2)(b) of the CGST Act, 2017 and corresponding MPGST Act, 2017 provision (applicability of exemption notification)
- Section 98 of the CGST Act, 2017 (proceedings of the Authority for Advance Ruling)
- Section 103(2) and Section 104(1) of the CGST Act, 2017 (binding nature and voiding of ruling)
- Clause (119) of Section 2 of the CGST Act, 2017 (composite supply of works contract)
- Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, Chapter 99, Heading 9954, entry 3(vi)(c) and its proviso
- Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, entry 3(ii) at 9% CGST (as applied by the Authority to the 18%...
- Notification No. 31/2017-Central Tax (Rate) dated 13.10.2017, definition of 'Government Entity'
- Corresponding notifications under the MPGST Act, 2017

! For the Practitioner

A practitioner dealing with a government-owned company as customer should note that the Authority treats such an entity as a Government Entity, but that status alone does not carry the 12% works contract rate. The concessional rate for works supplied to a government entity requires that the work be procured in relation to a work entrusted to that entity by the government, so ancillary construction such as staff housing will generally be taxed at 18%. The ruling does not decide the position for works that are directly linked to a government entity's entrusted function, and it binds only the applicant and the department under Section 103(2) until declared void.

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 -> 15-2018_siipl.pdf

Prepared 26-10-2026.

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