M/s SICE-VAAAN Joint Venture, KLP0020504, Kalyspo Court, Jaypee Greens Wish Town, Sector 128, Gautam Buddha Nagar, Uttar Pradesh - 201304 (GSTN: 09ABAAS1466J1Z9)

Authority for Advance Ruling — Uttar Pradesh

Order No. 39, dated 06.09.2019 (Authority for Advance Ruling, Uttar Prad… Dated **06.09.2019**

Q Questions Before the Authority

- Whether the composite supply of works contract provided by the applicant to NHAI shall be classified under entry (vi) to serial no. 3 of Notification No. 11/2017-CT(R) dated 28 June 2017 (CGST Rate Notification), read with the UP Notification dated 30 June 2017 (UPGST Rate Notification), and be liable to effective GST at 12% including CGST and UPGST?
- Whether the composite supply of works contract provided by the applicant to NHAI shall also be classified under entry (iv) to serial no. 3 of the CGST Rate Notification, read with the UPGST Rate Notification, and be liable to effective GST at 12% including CGST and UPGST?
- Whether the rate of GST on services rendered by the sub-contractor to the main contractor (the applicant) would be 12%, in view of entries (vi) and (iv) of the CGST Rate Notification read with the UPGST Rate Notification, or 18%?

F Facts

The applicant is a joint venture between SICE, a Spanish company, and VAAAN Infra Private Limited, an Indian company. It holds a contract with NHAI for the development of the six-lane Eastern Peripheral Expressway through an Intelligent Transport System (ITS) installation project, covering the Advanced Traffic Management System, Toll Management System and Digital Transmission System. The scope is turnkey and includes design, supply, installation, testing and commissioning, together with four years of operation and maintenance of the ATMS. Under the general conditions of contract, plant and materials become NHAI's property on incorporation in the works or on payment, whichever is earlier.

H Ruling

Q I: classification of works contract to NHAI under entry (vi), serial 3	**Negative. Not classifiable under entry (vi) at 12%.**	The Authority held that entry (iv) is the more appropriate classification for ITS installation on the expressway.
Q II: classification of works contract to NHAI under entry (iv), serial 3	**Yes. Covered by entry (iv); effective GST at 12% (CGST and SGST).**	The order states the rate as CGST and SGST, while the question refers to UPGST. Installation of ITS is part and parcel of construction of road transportation for use by the general public.

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

Q III: GST rate on services of sub-contractor to the main contractor (applicant), 12% or 18%	**No ruling given.**	The question concerns input services supplied to the applicant by its sub-contractor, which the Authority held to be outside the scope of advance ruling under section 95(a).

The Authority ruled that the applicant's supply does not fall under entry (vi) so as to attract 12% GST on that basis. It held that installation of ITS is part and parcel of the construction of a road transportation system for use by the general public, and that the supply is **more appropriately classified under entry (iv)** of serial no. 3, at effective 12% GST (CGST and SGST). The Authority declined to rule on the rate applicable to the sub-contractor's services, holding that this question is **outside the preview of the Advance Ruling** .

R Reasoning

The Authority first held that ITS installation qualifies as a works contract under section 2(119) of the CGST Act, relying on the General Clauses Act definition of immovable property and the Supreme Court decision in Solid & Correct Engineering Works (2010) 252 ELT 481 (SC) on attachment to earth and permanence of annexation. It then found that the ITS system monitors the whole expressway and that the expressway opens to the public only once ITS is functioning. On that basis it treated ITS installation as part of constructing a road transportation system for general public use, which points to entry (iv) rather than entry (vi). The Authority then rejected the sub-contractor rate question under section 95(a), which limits advance rulings to supplies undertaken or proposed by the applicant.

P Provisions Relied On

- CGST Act 2017, section 2(30) (definition of composite supply)
- CGST Act 2017, section 2(119) (definition of works contract)
- CGST Act 2017, section 95(a) (definition of advance ruling)
- CGST Act 2017, section 97(2) and section 100(1), as referred to in section 95(a)
- Notification No. 11/2017-CT(R) dated 28 June 2017, serial no. 3, entries (iv) and (vi)
- UP Notification No. KA.NI.-2-842/XI-9(47)/17-U.P. Act-1-2017-Order-(09)-2017 dated 30 June 2017 (UPGST Rate Notification)
- General Clauses Act (cited in the order as 1987), definition of immovable property
- Solid & Correct Engineering Works, (2010) 252 ELT 481 (SC)

! For the Practitioner

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The order helps contractors executing ITS or similar intelligent transport installations on public roads, toll plazas and expressways. It indicates that such works, where the road is open to the general public, fall under entry (iv) at 12% rather than entry (vi). It does not decide the rate on sub-contracted services, so a main contractor still needs a separate basis for that rate. Under general advance-ruling law, the ruling binds only the applicant and the jurisdictional officers, so its value to other taxpayers is persuasive only.

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 -> up_aar_39_06.09.2019_svjv.pdf

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