M/s. The Indian Hume Pipe Company Limited

Authority for Advance Ruling — Tamil Nadu

ORDER No.07/AAR/2020 DATED: 31.01.2020 Dated **31.01.2020**

Q Questions Before the Authority

- Whether Notification No.12/2017-CT(R), as amended by Notification No.02/2018-CT(R) dated 25.01.2018 S.No.3A, is applicable to the operation and maintenance part of contract(s) entered prior to implementation of GST?
- Whether Notification No.12/2017-CT(R), as amended by Notification No.02/2018-CT(R) dated 25.01.2018 S.No.3A, is applicable to the operation and maintenance part of contract(s) entered post implementation of GST?

F Facts

The applicant holds contracts with the Tamil Nadu Water Supply and Drainage Board (TWAD) for combined water supply schemes. Each contract has two parts: Section I for construction, including head works, sumps, pump rooms, and pipe laying with commissioning, and Section II for paid operation and maintenance for a fixed period. The applicant said the construction part of two contracts was completed before GST, and that its maintenance obligations fall under GST. It also said the goods content of maintenance work is small and labour is over 75 per cent of the maintenance amount.

H Ruling

O&M part of Agreement No. CE/TNJ/28/2013-14 dated 03.03.2014 (Q1 and Q2)	**Exemption applicable. Nil rate under **Sl.No. 3A** of Notification 12/2017-CT(Rate), as amended by Notification 02/2018-CT(R) dated 25.01.2018, and the corresponding SGST exemption under Sl.No. 3A of G.O.(Ms) No.73 dated 29.06.2017**	Applies only to the extent bills or invoices were raised after 25.01.2018, and only where the value of goods in each such bill does not exceed **25 per cent** of the value of supplies in that bill. Break-up of goods and other supplies must be shown in the bills.

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

O&M part of Agreement No. CE/CBE/16/2017-2018 dated 05.07.2017 (Q1 and Q2)	**Exemption applicable. Nil rate under Sl.No. 3A of Notification 12/2017-CT(Rate), as amended by Notification 02/2018-CT(R), and the corresponding SGST exemption under Sl.No. 3A of G.O.(Ms) No.73**	Applies provided the value of goods involved in each bill does not exceed 25 per cent of the value of supplies undertaken in that bill. The order does not state a specific date cut-off for this contract.

The authority held that the operation and maintenance part of the composite supply is taxable, and that the exemption under Sl.No. 3A of Notification 12/2017-CT(Rate) is available for those contracts only if conditions are met. The exemption applies to bills or invoices raised after 25.01.2018, and only where the value of goods in each bill does not exceed 25 per cent of the value of the supply. The authority did not rule on contract CE/TNJ/07/2013-14 because the applicant did not furnish RA bills or payment details for it.

R Reasoning

The authority first treated the post-construction maintenance as a composite supply under Section 2(30) of the CGST Act and found it taxable, relying on the time-of-supply rules in Section 13(2). For Contract 2 the maintenance was billed from RA bill 29 dated 28.03.2018, and for Contract 3 it was not yet billed. Under the amended definition of 'governmental authority' in Notification 12/2017, TWAD was held to be a governmental authority, because it was set up by a State Legislature Act and is entrusted with water supply functions under Articles 243G and 243W. The authority then applied the four conditions of Sl.No. 3A: time of supply after 25.01.2018, goods not exceeding 25 per cent, a qualifying recipient, and a function under the Eleventh or Twelfth Schedule. Because the goods break-up was not furnished, it made the exemption conditional on the bill-wise test.

P Provisions Relied On

- Section 7, CGST Act 2017 (meaning of supply)
- Section 2(30), CGST Act 2017 (composite supply)
- Section 13(2), CGST Act 2017 (time of supply of services)
- Section 31(2), CGST Act 2017 (invoice period, referred to in Section 13)
- Notification No.12/2017-CT(Rate) dated 28.06.2017, Sl.No. 3A, as amended by Notification No.02/2018-CT(Rate) dated 25.0…
- Explanation 2(zf) to Notification 12/2017-CT(Rate), as substituted by Notification No.32/2017-CT(Rate) dated 13.10.2017
- Explanation to Clause (16) of Section 2, IGST Act 2017 (governmental authority)
- Articles 243G and 243W of the Constitution, and the Eleventh and Twelfth Schedules
- Tamil Nadu Water Supply and Drainage Board Act, 1970
- G.O.(Ms) No.73 dated 29.06.2017 (SGST exemption), Sl.No. 3A

Rule 104 of CGST Rules 2017 (application fee)

Sections 98 and 100, CGST Act 2017 (advance ruling and appeal)

! For the Practitioner

This order is useful for a works contractor with a water or sewerage contract with a government body who wants the maintenance part taxed at nil rate. It sets out the four-part test for Sl.No. 3A and shows that the 25 per cent goods test is applied bill by bill. It does not decide the position for Contract CE/TNJ/07/2013-14, which was left unruled for lack of billing data. It also does not settle how the pre-GST construction part should be treated, and the authority's answers depend on the factual break-up of goods and labour in each bill.

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 -> tn_aar_07_2020_31.01.2020_tihpcl.pdf

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