Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Limited

Authority for Advance Ruling — Madhya Pradesh

Order No. 16/2018 dated 18-10-18 (Case No. 19/2018) Dated **18.10.2018**

Q Questions Before the Authority

- Whether clause (vi)(a) of Sr. No. 3 of the table to Notification No. 11/2017-Central Tax (Rate) dated 28 June 2017 applies to the works contract services the applicant receives from vendors for supply and erection work under various electrification projects (s. 97(2)(b) of the CGST/SGST Act).
- The determination of the applicant's liability to pay GST on those works contract services (s. 97(2)(e) of the CGST/SGST Act).

F Facts

The applicant is a distribution utility engaged in rural and urban electrification and is registered under GSTIN 23AADCM6799G2ZA. It procures works contract services from vendors for supply and erection of material under schemes such as DDUGJY, IPDS, Saubhagya Yojana, ADB-funded projects, SSTD and FSP. The applicant is wholly owned by M.P. Power Management Co. Ltd., which is in turn wholly owned by the Government of Madhya Pradesh.

H Ruling

Whether the concessional 12% rate under clause (vi)(a) of Sr. No. 3 of Notification 11/2017-CT(Rate), read with Notification 24/2017-CT(Rate) and 31/2017-CT(Rate), applies to the works contract services received	**Not entitled to the concessional 12% (6% CGST + 6% SGST) rate**	Denied because the works are undertaken for business purpose, not for use other than commerce, industry or business, and the works are not within the concessional categories.
Applicable GST rate on the works contract services received by the applicant (liability to pay tax)	**18% (9% CGST + 9% SGST)**	The contract falls under works contract and entry (ii) of Sr. No. 3 of Notification 11/2017-CT(Rate), as read by the Authority.

The Authority held that the applicant is a Government Entity under Notification No. 31/2017-Central Tax (Rate), but that the applicant is **not entitled** to the concessional 12% rate (6% CGST and 6% SGST) for the said projects. The applicable rate of tax on the works contract services is **18%** (9% CGST and 9% SGST).

R Reasoning

The Authority first found that the applicant is a Government Entity under the definition inserted by Notification 31/2017-CT(Rate), because the Government of Madhya Pradesh has full control through the holding chain and the applicant carries out a function entrusted by the State. It then held that the concession under Notification

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

24/2017-CT(Rate) is available only for construction of structures meant predominantly for use other than commerce, industry or any other business, and that the electrification works here were undertaken for **business purpose** as the applicant's Memorandum of Association shows it is in the business of electrical energy distribution and sale. The Authority relied on s. 2 for the definition of works contract and on Schedule II, entry 6, under which a composite works contract supply is a supply of services. Because the contract is a works contract within entry (ii) of Sr. No. 3 of Notification 11/2017-CT(Rate), the 18% rate applies.

P Provisions Relied On

- Section 97(2)(b) and 97(2)(e) of the CGST Act and MPGST Act, 2017
- Section 98 of the CGST Act and MPGST Act, 2017
- Section 2 (definition of works contract), CGST Act and MPGST Act, 2017
- Schedule II, entry 6, CGST Act and MPGST Act, 2017
- Section 103(2) and Section 104(1) of the GST Act (validity and voidness of the ruling)
- Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, Sr. No. 3, clause (vi)(a) and entry (ii), as amended
- Notification No. 24/2017-Central Tax (Rate) dated 21.09.2017, inserting entry (vi) for 6% concessional rate
- Notification No. 31/2017-Central Tax (Rate) dated 13.10.2017, definition of Government Entity
- Amending notifications 20/2017 (22.08.2017), 46/2017 (14.11.2017) and 01/2018 (25.01.2018), as listed in the order

! For the Practitioner

A practitioner advising a state-owned power utility or other government-controlled entity should note that Government Entity status under Notification 31/2017 is not by itself enough for the 12% concession under Notification 24/2017. The works must also be predominantly for non-business use, and works carried out in the course of the entity's commercial objects will attract 18%. The ruling binds only the applicant and its jurisdictional officers under s. 103 and does not decide the position for other utilities or for works with different end use.

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 -> 16-2018_mppkvvcl.pdf

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