M/S Manipal Energy & Infratech Ltd. (also referred to as Manipal Energy and Infratech Limited), Udayavani Building, Udayavani Road, Manipal - 576 104; GSTIN 29AAHCM0173A1ZT

Authority for Advance Ruling — Karnataka

Advance Ruling No. KAR ADRG 111/2019, Date: 30-09-2019 (as printed; t… Dated **30.09.2019**

Q Questions Before the Authority

- Whether entry 3(vi)(a) to Notification No. 8/2017 - Integrated Tax (Rate) is applicable for services provided to Electricity Supply Companies (wholly owned Government of Karnataka undertakings) by way of construction, erection, commissioning, installation, completion, etc., which attracts levy of 12%.

F Facts

The applicant undertakes civil, mechanical, electrical and substation construction, and operation and maintenance of water and effluent treatment plants. It won contracts from MESCOM, BESCOM and HESCOM, the state-promoted electricity distribution companies, for IPDS and DDUGJY distribution network strengthening, IP-set electrification, and rural electrification, all on a total turnkey basis. The applicant sought a ruling that these services fall under the 12% rate rather than the 18% works contract rate.

H Ruling

Whether services to MESCOM, BESCOM and HESCOM (construction, erection, commissioning, installation, completion, etc. under turnkey contracts) fall under entry 3(vi)(a) of the rate notification at 12%	**No. Not covered; not eligible for 12%; liable to 18% GST**	The ruling text cites entry 3(vi)(a) of Notification No. 12/2017-Central Tax (Rate) and of Notification No. 8/2017-Integrated Tax (Rate), both dated 28.06.2017. The findings elsewhere cite Notification No. 11/2017-Central Tax (Rate). The notification numbers are inconsistent within the order as printed. The denial rests on the fourth condition (predominant use for business).

The Authority ruled that the applicant's services to the electricity supply companies by way of construction, erection, commissioning, installation and completion are **not covered under entry 3(vi)(a)** of the relevant rate notification. The services are therefore not eligible for the 12% rate and are **liable to 18% GST** . The Authority accepted that the first three conditions and the fifth condition of the entry were met, but held that the fourth condition, that the works be meant predominantly for use other than for commerce, industry or any other business or profession, was not satisfied.

R Reasoning

The Authority went through the five conditions of entry 3(vi)(a) in turn. It accepted that the services were a composite works contract under section 2(119) of the CGST Act, that the recipients were Government Entities

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

established with 90 per cent or more government equity, that the contracts were procured in relation to work entrusted by the State or Central Government, and that the works were original works. On the fourth condition, it held that the distribution companies sell electricity for consideration and that electricity is goods, so they are engaged in business under section 2(17). The explanation excluding activities of government entities as public authorities was held not to apply, because the distribution companies are not the Central Government, a State Government or a local authority. The works were therefore predominantly used for business, and the 12% rate failed.

P Provisions Relied On

- Entry 3(vi)(a) of Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017 (as printed; the order also cites entry 3(vi)(a)…
- Entry 3(ii) of the rate notification (18% composite works contract), as cited by the applicant
- Section 2(119) of the CGST Act, 2017 (works contract)
- Section 2(17) of the CGST Act, 2017 (business), including its clauses (a) and (b)
- Clause (zs) of Notification No. 12/2017-Central Tax (Rate) (original works)
- Explanations (ix) and (x) of the rate notification (Governmental Authority and Government Entity)
- Explanation to entry 3(vi)(a) (exclusion of activities by Central Government, State Government or local authorities as public a…
- Heading 9954 of the Scheme of Classification of Services

! For the Practitioner

This is an adverse ruling for an EPC or turnkey contractor working for state electricity distribution companies, and it treats such work as liable to 18%. A practitioner should read the fourth-condition reasoning closely, because it turns on the distribution companies' electricity sales being treated as business. The order is binding only on the applicant and the jurisdictional authorities for this ruling. It does not decide whether the same reasoning would apply to other government entities or to works not connected with electricity sale, and the notification numbers in the order are inconsistent, so the cited entry should be checked against the notification itself before relying on it.

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 -> kar_aar_111_2019_30.09.2019_meil.pdf

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