# M/s Maxwell Electrical Engineers, No 4, 9th Main, Near Venkateswara Temple, Vasanthnagar, Bengaluru - 560052 (GSTIN 29AARFM1680P1ZC), a proprietorship concern

Authority for Advance Ruling — Karnataka

**Advance Ruling No. KAR ADRG 43/2019, Dated: 17th September 2019 (li…** Dated **17.09.2019**

## Q Questions Before the Authority

- Whether the rate of tax in Sl. No. 3(vi)(a) of Notification 11/2017-CGST (Rate), as amended, applies to the applicant's works contract services as main contractor, or whether the rate in Sl. No. 3(ix) applies to it as a subcontractor.
- If neither Sl. No. 3(vi)(a) nor Sl. No. 3(ix) applies, what are the reasons for non-applicability and which entry of the notification determines the applicable rate.
- If the notification itself is not applicable, under which service the activity has to be taxed and at what rate.

## F Facts

The applicant undertakes works contracts covering design, erection, testing and commissioning of 11 kV HT/LT lines and 25 KVA transformers, along with related pre-commissioning activities. Its customers include Chamundeshwari Electricity Supply Corporation Ltd (CESC), Bengaluru Electricity Supply Company Ltd (BESCOM) and projects under the Ganga Kalyana scheme. The applicant contended that it works as principal contractor for State-controlled entities and charged 6 percent CGST and 6 percent KGST under Sl. No. 3(vi)(a).

## H Ruling

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| **Q1: Applicable rate for the works contract as main contractor (Sl. No. 3(vi)(a) versus Sl. No. 3(ix))** | **9% CGST and 9% KGST, under item (ii) of Sl. No. 3 till 28.03.2019 and under item (xii) of Sl. No. 3 from 29.03.2019** | The authority did not accept the 6% rate under item (vi)(a) because the recipient's objects are commercial. The order does not separately rule on the subcontractor entry (ix). |
| **Q2: Effect of the amendments to Notification 11/2017-CTR (Rate) and the applicable entry** | **The amendments have no effect on taxability. Item (ii) of Sl. No. 3 applies till 28.03.2019 and item (xii) of Sl. No. 3 applies from 29.03.2019** | The authority states that the transactions are not covered under item (vi) of Sl. No. 3. |


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

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| **Q3: Service classification and rate if the concessional entry is not applicable** | **Composite supply of works contract (construction services) at 9% under Sl. No. 3, heading 9954** | The order identifies the service as a composite supply of works contract under clause (119) of section 2 of the CGST Act, 2017, falling under the construction services entries. |

The authority held that the composite works contract is taxable at 9 percent CGST and 9 percent KGST under item (ii) of Sl. No. 3 of Notification 11/2017-CTR up to 28.03.2019, and at the same rate under item (xii) from 29.03.2019 onwards. The applicant is not eligible for the concessional 6 percent rate under item (vi)(a) because the recipient, CESC, is a Government Entity but its memorandum of association shows that its main objects are commercial, so the works are not predominantly meant for use other than commerce or business. The amendments to the notification do not change the taxability of the applicant's transactions.

## R Reasoning

The authority accepted that CESC is a Government Entity because the Governor of Karnataka, through the Additional Chief Secretary, holds more than 90 percent of its equity, which satisfies the first condition in the explanation to the notification. It rejected the second condition, that the work must be predominantly for use other than commerce, industry or any other business, after examining CESC's memorandum of association, whose objects centre on distribution, purchase, sale and trading of electricity. On that basis the works are predominantly meant for commerce, so item (vi)(a) fails. The authority then placed the supply under the construction services entries of Sl. No. 3 at 9 percent, relying on the composite works contract definition in section 2(119) of the CGST Act.

## P Provisions Relied On

- Section 97 of the CGST Act, 2017 and the corresponding KGST Act, 2017 provision (advance ruling application)
- Section 98(4) of the CGST Act, 2017 and Section 98(4) of the KGST Act, 2017 (order under sub-section (4))
- Rule 104 of the CGST Rules, 2017 and the KGST Rules, 2017
- Section 2(119) of the CGST Act, 2017 (definition of composite supply of works contract)
- Notification 11/2017-Central Tax (Rate) dated 28.06.2017, Sl. No. 3, items (ii), (iii), (vi)(a), (ix), (xii), and explanation (x) defini…
- Amending notifications 20/2017 dated 22.08.2017, 24/2017 dated 21.09.2017, 31/2017 dated 13.10.2017, 1/2018 dated 25.0…

## ! For the Practitioner


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This ruling is useful for electrical and utility contractors working for State-controlled distribution companies. It shows that state ownership alone does not secure the 6 percent works contract rate. The recipient's objects must also show the work is not predominantly for commerce or business. It does not decide the position for other government entities or for subcontractors under items (ix) and (x), since the order does not rule on those entries separately. The order also names the recipient inconsistently as Chamundeshwari Electrical Supply Company in paragraph 3 and Chamundeshwari Electricity Supply Corporation in paragraph 7.10, so the party's correct name should be checked against the contract before reliance.

## 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_43_2019_mee_17.09.19.pdf

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