M/S NIKHIL COMFORTS

Authority for Advance Ruling — Maharashtra

NO.GST-ARA-127/2018-19/B-59, Mumbai, dated 24/05/2019 (the serial nu… Dated **24.05.2019**

Q Questions Before the Authority

- Whether the transaction (supply, installation, testing and commissioning of VRF indoor and outdoor units of air-conditioning, under an agreement with GSIDC for additional air-conditioning work at the Directorate of Education building, Porvorim, Goa) is a 'works contract' liable to CGST/SGST/IGST under Sr. No. 3, item No. 3 of Notification No. 20/2017 (Central Tax Rate) dated 22/08/2017.
- Alternatively, whether the transaction is a composite supply liable to CGST at 14%, the principal goods being air-conditioners, which fall under Schedule IV, Sr. No. 119 of Notification No. 1/2017 (Central Tax Rate) dated 28/06/2017.

F Facts

The applicant entered into an agreement dated 21/08/2018 with Goa State Infrastructure Development Corporation Ltd (GSIDC) to supply, install, test and commission VRF indoor and outdoor air-conditioning units, with refrigerant and drain piping, MS stands, cabling and associated electrical works. The applicant argued that the resulting central air-conditioning plant is immovable property, since it cannot be shifted without dismantling and re-erecting, so the contract is a works contract. The Revenue officer contended that the contract is a composite supply of goods and services with goods as the principal supply.

H Ruling

Q1: Works contract under Sr. No. 3, item 3, Notification 20/2017 (CT Rate)	**Answered in the negative**	The contract is not a works contract because the goods are removable and the installation is not immovable property.
Q2: Composite supply taxed at the rate for air-conditioners, Schedule IV Sr. No. 119, Notification 1/2017 (CT Rate)	**Answered in the positive; taxable at 28% (per the body of the order)**	The applicant had sought 14%. The order says air-conditioner units under Chapter 8415 attract 28% under Sch. IV Sr. No. 119, and that GST is payable on the whole contract at 28%. The scan of the rate in the body is legible, but check the operative paragraph against the full order.

The Authority held that the contract is not a works contract, because the indoor and outdoor units, cabling and electrical items are individually identifiable goods that can be removed, and so the plant is not immovable property. It held that the contract is a composite supply in which supply of goods is the principal supply, and that it is not a mixed supply because no separate individual supplies are made. It therefore ruled that the composite supply is taxed at the rate applicable to air-conditioners under Schedule IV, Sr. No. 119 of Notification No. 1/2017 (CT Rate).

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

R Reasoning

The Authority read the definition of 'works contract' in section 2(119) CGST Act as requiring a contract relating to immovable property. It relied on the permanency and marketability tests from Supreme Court and Tribunal excise decisions, including Solid and Correct Engineering Works, and held that the VRF units, cables and electrical items are removable and so are not immovable. It then applied the definition of 'composite supply' in section 2(30), finding that the goods and the installation services are naturally bundled and that goods are the principal supply. It rejected mixed-supply treatment under section 2(74) because no separate individual supplies were made. Finally, it fixed the rate by reference to the principal goods, air-conditioners, under Schedule IV, Sr. No. 119 of Notification 1/2017 (CT Rate).

P Provisions Relied On

- Section 2(119) CGST Act, 2017 (definition of works contract)
- Section 2(30) CGST Act, 2017 (composite supply)
- Section 2(74) CGST Act, 2017 (mixed supply)
- Sections 97 and 98 CGST Act and MGST Act, 2017 (advance ruling)
- Notification No. 20/2017 (Central Tax Rate) dated 22/08/2017, Sr. No. 3 item 3 (as framed in the question)
- Notification No. 1/2017 (Central Tax Rate) dated 28/06/2017, Schedule IV, Sr. No. 119
- Schedule II, GST (works contract and construction entries, as referred to in the order)
- Section 3 Transfer of Property Act, 1882 and Section 3(26) General Clauses Act, 1897 (immovable property, as argued by th…
- Commissioner of Central Excise, Ahmedabad v. Solid and Correct Engineering Works (2010) 5 SCC 122 (permanency test, a…

! For the Practitioner

The order shows that an air-conditioning supply-and-install contract with removable VRF units will usually be treated as a supply of goods with installation, not as an immovable works contract, even where the plant is fixed to the building. Practitioners can use it to resist works-contract rate claims for similar VRF projects. It does not decide whether a different AC installation, such as a fully built-up plant with immovable ducting, would be treated the same way. It also does not settle the rate for other goods bundled with the AC units, and the applicant's and Authority's rate figures differ (14% sought, 28% applied), so the rate should be checked against the operative ruling.

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 -> maharashtra_aar_127_2018-19_nikhil_comforts_24.05.19.pdf

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