# Shri Kailash Chandra, (Mali Construction), Mali Vas, Maandava, Mandwa, Sirohi, Rajasthan 307001 (GSTIN 08ALVPC2862Q1ZA)

Authority for Advance Ruling — Rajasthan

**ADVANCE RULING NO. RAJ/AAR/2018-19/22, dated 29.10.2018 (F.No. IV(…** Dated **29.10.2018**

## Q Questions Before the Authority

- Whether the activity of O & M of Fluoride Control Project on ESCO Model and O & M work is a supply of goods or a supply of services, and what shall be the rate of GST on it?

## F Facts

The applicant provides water services to private and government clients and was bidding for a PHED (Rajasthan) tender for a single contract combining ESCO-model works and O&M of a Fluoride Control Project. The works include pump house replacement and extension, supply and installation of new pumping machinery, switchyards, pipelines, storage tanks, SCADA and campus upkeep, followed by O&M of rising mains, OHSR and a water treatment plant. The applicant withdrew Questions 1 and 2 at the personal hearing on 22.10.2018, so the ruling covers only the third question.

## H Ruling

| | | |
|---|---|---|
| **Nature of the ESCO-cum-O&M Fluoride Control Project contract (goods or services) and the GST rate** | **Composite supply of works contract, treated as a supply of services. Nil rate while goods are at or below 25% of composite value; 12% once goods exceed 25%.** | Nil rate under entry 3A of Notification 12/2017-CT(Rate) dated 28.06.2018 applies only where the supply is to a government entity under an activity relating to Article 243W functions. The 12% rate is under Notification 11/2017-CT(Rate) dated 28.06.2017, entry 3(iii), heading 9954 (6% CGST and 6% SGST, 12% IGST), subject to its government-procurement proviso. |

The Authority held that the ESCO-cum-O&M contract is a single composite supply of works contract, which is treated as a supply of services under Schedule II. Because the contract is for a government entity in relation to water supply, the rate depends on the value of goods supplied. **If the goods are below 25% of the total value of the composite supply, the rate is Nil** , and **if the goods exceed the 25% benchmark during the contract, the rate shifts to 12%** .

## R Reasoning

The Authority accepted the applicant's ESCO and O&M scope as a works contract, relying on Schedule II entry 6(a) and the definition in section 2(119) to treat it as a supply of services. To test whether the works concern immovable property, it applied the General Clauses Act 1897, section 3(26), and CBEC Circular 58/1/2002-CX dated 15.01.2002, para (e), finding the pumping assets permanently attached to earth. It then treated water


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supply as a municipal function under Article 243W, Twelfth Schedule item 5, so the government supply qualified for the Nil entry 3A of Notification 12/2017-CT(Rate). If the goods content crosses 25%, the Authority applied the 12% rate under Notification 11/2017-CT(Rate), entry 3(iii).

## P Provisions Relied On

- Section 97(2)(a) and (e) of the CGST/SGST Act, 2017 (scope of advance ruling)
- Section 2(119) of the CGST Act, 2017 (works contract definition)
- Schedule II, entry 6 (composite supply treated as supply of services)
- General Clauses Act, 1897, section 3(26) (immovable property)
- CBEC Circular No. 58/1/2002-CX dated 15.01.2002, para (e)
- Article 243W and Twelfth Schedule, item 5 (water supply for domestic, industrial and commercial purposes)
- Notification No. 12/2017-CT(Rate) dated 28.06.2018, entry 3A (Nil rate for composite supply to government where goods are…
- Notification No. 11/2017-CT(Rate) dated 28.06.2017, entry 3(iii), heading 9954 (12% composite works contract rate)

## ! For the Practitioner

This ruling helps contractors bidding for government water-supply ESCO or O&M tenders that include a goods component, as it sets out how the 25% goods threshold and the Nil-to-12% shift will be applied. It settles that the combined contract is one composite works-contract supply. It does not decide how goods value is to be computed or allocated within the composite value, and the ruling binds only the applicant and the jurisdictional officers.

### 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 -> raj.22.2018-19_kc.pdf

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