Sterlite Technologies Limited

Authority for Advance Ruling — Maharashtra

NO.GST-ARA-106/2018-19/B-34, Mumbai Dated **28.03.2019**

Q Questions Before the Authority

- Whether the supply of goods or services for 'setting up of network' would qualify as 'works contract' as defined in Section 2(119) of the CGST Act?
- If supplies contemplated under the contract with BSNL are not treated as works contract, can they continue to qualify as a composite supply, and if so, what is the principal supply?
- What is the rate of tax applicable to the supplies made under the contract?

F Facts

The applicant manufactures optical fibre cable and telecom products. Under a contract with BSNL, which holds a tender from the Indian Navy for a countrywide IP/MPLS converged network, it must supply materials and services to set up the network. The scope includes civil construction of buildings, power rooms and roads, installation and commissioning of equipment, satellite connectivity vehicles, and operator training.

H Ruling

Does setting up the network qualify as a works contract under Section 2(119) of the CGST Act?	**Yes. It qualifies as a composite supply of works contract as defined in clause (119) of Section 2 of the CGST Act, 2017.**	The order rests the taxable classification on clause (ii) of Section 5 of Notification 11/2017-CT (Rate), as amended, and not on the 'original works' limb of entry 3(vi)(a).
If not a works contract, can the supplies be a composite supply, and what is the principal supply?	**Not answered.**	The authority treated this as unnecessary given its answer to the first question.
What is the rate of tax applicable to the supplies under the contract?	**18% GST.**	The applicant had sought 12% (6% CGST and 6% SGST) under entry 3(vi)(a) of Notification 11/2017-CT (Rate). The authority held the contract is not 'original works' because the equipment is supplied by the applicant itself.

The authority held that the supply for setting up the network is a composite supply of works contract as defined in clause (119) of Section 2 of the CGST Act. It did not separately answer the second question, because the first was answered in the affirmative. It held that the applicable rate is **18% GST** , not the 12% rate the applicant had sought under entry 3(vi)(a) of Notification 11/2017.

R Reasoning

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

The authority found that the contract involves supply of both goods and services, so it is a composite supply of works contract under Section 2(119) read with Section 2(30) of the CGST Act. It held that the work is not 'original works' under entry 3(vi)(a) of Notification 11/2017, because the applicant installs equipment that it supplies itself, so its activity is primarily the supply of goods. It relied on the definition of 'original works' in Notification 12/2017 and in the CPWD Manual, and on Section 3(26) of the General Clauses Act, 1897 for 'immovable property'. Because the contract does not fall within clauses (i) to (xii) of Section 5, except clause (ii), it attracts 18% GST.

P Provisions Relied On

- Section 2(119) of the CGST Act, 2017 (works contract)
- Section 2(30) of the CGST Act, 2017 (composite supply)
- Notification No. 11/2017-CT (Rate), entry 3(vi)(a) and Section 5, clause (ii), as amended
- Notification No. 12/2017-CT (Rate), definition of 'original works' (referred to by the applicant)
- CPWD Manual 2014, para 1.3.1 (definition of 'original works')
- Section 3(26) of the General Clauses Act, 1897 (definition of 'immovable property')

! For the Practitioner

The order is useful for turnkey network or telecom projects with government entities, as it shows the authority treating such a contract as a composite supply of works contract taxable at 18%. A contractor seeking the 12% concessional rate under 'original works' should note that the authority refused it where the contractor supplies the equipment it installs. The order does not decide the second question, so the composite-supply analysis under Section 2(30) remains untested for this type of contract. It is an advance ruling binding only on the applicant, and the bottom of the order notes an appeal lies to the Maharashtra Appellate Authority for Advance 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 -> ara_order_106_2018_maharashtra_sterlite_tech._ltd.pdf

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Pune (HQ)
RTC Silver, B4-708, Sai Satyam Park, Wagholi, Pune, Maharashtra 412207

Mumbai
104, Rajshila Building, 597 J.S.S. Road, Marine Lines, Mumbai 400002

Delhi
3rd Floor, B-6/154-155, Sector 5, Rohini, Delhi 110085

Gurugram
Pioneer Urban Square, B109, Golf Course Ext Road, Sector 62, Gurugram…

Ahmedabad
Phoenix Tower, 1107, near Commerce Six Road, Drive In Road, Navrangp…

Talk to us: +91 94594 56700 | sales@patronaccounting.com | patronaccounting.com