
	KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM	
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BEFORE THE AUTHORITY OF: Dr. S. L. Sreeparvathy, IRS &
: Shri Abraham Renn S. IRS

Legal Name of the applicant	ULCCS Calicut City Infrastructure Development Private Ltd
GSTIN	32AABCU8617P1ZW
Address	Nadapuram Road, Madapally College, Vatakara, Kozhikode, Kerala - 673102
Advance Ruling sought for	Whether the annuity amount received is exempted or not as it contains both construction and maintenance part (which is inseparable) as per entry No. 23A of the Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017? The establishment is eligible for an early completion bonus as the construction is completed before the scheduled date. Whether this bonus will also be exempted as it is the part and parcel of the principal project.
Date of Personal Hearing	03/11/2021
Authorized Representative	Shaju S

ADVANCE RULING No.KER/138/2021 Dtd 21.06.2022

1. M/s. ULCCS Calicut City Infrastructure Development Private Ltd (hereinafter referred to as the applicant) was formed and registered for the execution of the work of Design, Engineering, Finance, Procurement, Construction, Operation and maintenance of roads under Phase II (A) of Kozhikode City Road Improvement Project [KCRIP] on Design, Finance, Operate, Maintain and Transfer [DBFOT- Annuity] basis.



2. At the outset, it is clarified that the provisions of the Central Goods and Services Tax Act, 2017 (**hereinafter referred to as CGST Act**) and the Kerala State Goods and Services Tax Act, 2017 (**hereinafter referred to as KSGST Act**) are the same except for certain provisions. Accordingly, a reference hereinafter to the provisions of the CGST Act, Rules and the notifications issued there under shall include a reference to the corresponding provisions of the KSGST Act, Rules and the notifications issued there under.

3. The Applicant requested an advance ruling on the following:

1. Whether the annuity amount received is exempted or not as it contains both construction and maintenance parts (which are inseparable) as per entry No. 23A of the Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017?
2. The establishment is eligible for an early completion bonus as the construction is completed before the scheduled date. Whether this bonus will also be exempted as it is the part and parcel of the principal project.

4. Contentions of the Applicant:

4.1. The applicant submits that the total project is for 17 years which includes 2-year construction and 15-year maintenance. The company is eligible for annuity payments as a consideration after the period of construction. The construction was completed in December 2017 and now it is under operation and maintenance.

4.2. The service by way of access to a road or a bridge on payment of annuity is exempted from GST in terms of Entry No. 23A of the Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017. The notification is applicable in their case also. The annuity consists of both construction and O & M annuity



which are inseparable as per terms of the engagement. Since the majority of the annuity is attributable to the construction part, the whole amount received as the annuity is exempted from the purview of GST. Since the principal supply is an exempted service the bonus received will not also be taxable.

5. Comments of the Jurisdictional Officer:

5.1. The application was forwarded to the jurisdictional officer as per provisions of subsection (1) of Section 98 of the CGST Act. The Jurisdictional Officer submitted that in respect of Question No. 1 they have issued For – GST-ASMT-10 on 13.07.2021 demanding GST of Rs. 5,80,55,958/- [CGST – Rs.2,90,27,979/- and SGST – Rs. 2,90,27,979/-] on the payment of annuity based on CBIC Circular No. 150/06/2021 GST dated 17.06.2021 as GST is exempted only on service falling under Heading 9967 by way of access to a road or a bridge on payment of annuity and the services provided by the applicant do not come under Heading 9967. The applicant in their reply dated 10.09.2021 has requested to settle the tax liability at the rate of 12% [6% CGST + 6% SGST] as per Notification No. 20/2017 Integrated Tax (Rate) dated 22.08.2017.

6. Personal Hearing:

6.1. The applicant was granted an opportunity for a personal hearing on 03.11.2021. Shri. Shaju. S represented the applicant in the personal hearing. The representative stated that they will be making additional submissions and requested to issue a ruling considering the submissions in the application and also the additional submissions to be made by them.



6.2. The applicant made additional submissions by letter dated 27.12.2021. In the additional submissions the applicant stated as follows;

6.2.1. The Government of Kerala through the Kerala Road Fund Board [KRFB] has decided to implement the project to improve and upgrade important road corridors in Kozhikode City and the Government sanctioned the programme namely; Kozhikode City Road Improvement Project.[KCRIP] KRFB floated tender for work of Design, Engineering, Finance, Procurement, Construction, Operation and Maintenance of Roads under Phase I(A) of KCRIP on Design, Build, Finance, Operate, Maintain and Transfer [DBFOT-Annuity] basis under Annuity Mode. After tender procedures letter of approval dated 10.06.2015 was issued by KRFB. As per terms of tender a Special Purpose Vehicle namely; ULCCS Calicut City Infrastructure Development Pvt Ltd [the applicant] was incorporated under the Companies Act, 2013 with the said exclusive objective.

6.2.2. The total duration of the project is for 17 years including 2 years of construction and 15 years of maintenance. The construction was completed in December 2017 and is now under the phase of operation and maintenance. The consideration for the project is received as annuity spread across 15 years after the construction. The first annuity was due on 01.03.2018. The Annuity of the Project is recognised as per Article 8 of the Concession Contract Agreement. The said Annuity is a combined consideration for both construction and maintenance. The relevant portion of Article 8 is attached as Annexure - 1.



6.2.3. The department has issued Circular No. 150/06/2021 GST on 17.06.2021 stating that Entry 23A of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 does not exempt GST on annuity (deferred payments) paid for the construction of roads. The annuity was classified under entry 23A before the above circular and regarding that, the National Highways Authority of India had also issued a circular dated 23.10.2017 regarding the applicability of GST on annuity payments. The Circular is attached as Annexure - 2. An advance ruling regarding the annuity for construction of roads was also seen where the annuity was classified under entry 23A of Notification No. 12/2017 CT (Rate). The Advance Ruling is attached as Annexure -3.

6.2.4. They are making a taxable supply to KRFB a statutory body constituted by the Government of Kerala under the Kerala Road Fund Act, 2001 and as per Notification No. 20/2017 Integrated Tax (Rate) dated 22.08.2017 the rate of GST applicable for composite supply of works contract as defined in clause (119) of Section 2 of the Central Goods and Services Tax Act, 2017 supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of a road, bridge, tunnel or terminal for road transportation for use by the general public is 12%.

6.2.5. The early completion bonus which is invoiced as a part of the annuity will also attract tax at the rate of the principal supply; annuity at 12%. The early completion bonus was claimed as per Article 8.3 of the concession agreement which deals with the provision of Bonus/Reduction in Annuity. This explains that the



concessionaire shall either receive a bonus for early completion of the project or incur a reduction in the annuity for delayed completion of the project as the case may be. Thus it is evident that the Annuity and Bonus are naturally bundled and exclusively incurred because of this contract only. The bonus was claimed by them as the project construction was completed ahead of the scheduled time and the bonus was arrived based on the first annuity amount. The calculation of the bonus is also explained in the agreement. Hence the bonus for the project should also be considered at the rate of annuity which is 12%.

6.2.6. The concession agreement for the project was executed on 22.07.2015 before the introduction of GST. The total agreement cost is Rs. 199,95,50,432/-. They have completed more than 80% of the construction activities during the pre-GST period. The execution of the works contract was in the purview of the KVAT Act and Central Service Tax Act. The construction of roads was exempted from payment of service tax. The contract was completed through sub-contracting and payment was made to the sub-contractor after deducting the applicable works contract tax from the bill. The tax was paid to Government and as per their KVAT return records an amount of Rs.6,29,10,902/- was deducted from the bill of the sub-contractor and paid to the Government. The Challan and KVAT return are attached as Annexure - 4.

6.2.7. During the construction period an amount of Rs. 6,29,10,902/- was paid as VAT to the Government for the execution of the works contract for an amount of Rs.157,27,72,500/- and the balance of



the work for an amount of Rs. 32,98,41,750/- has been executed in GST period and 12% GST has been paid by the sub-contractor.

6.2.8. The consideration for the project will be received as biannual instalments for 15 years during the period of the GST regime. As per Circular No. 150/06/2021 GST, the annuity amount is taxable as per provisions of the GST Act. A proportional tax is payable to the Government only once as per the provisions of the applicable laws relating to the execution of works contract. In their case as the commencement of operations was during the KVAT period and consideration is received in the GST period they are forced to pay double taxes as tax paid as VAT cannot be proportionately reduced in GST. If the entire construction work of the main contract had been carried out during the GST period, the GST amount on the sub-contract bill could have been calculated as IPT credit and paid the taxes. However, the total amount of Rs. 6,29,10,902/- paid to the Government for construction during the pre-GST period cannot be deducted from the amount of GST payable for the total annuity amount. Due to this tax is payable for the entire amount in addition to the tax paid earlier.

6.2.9. As the tax has to be paid to the Government only once in connection with the construction of the main contract, an appropriate judgment may be issued to reduce the total amount of GST payable to the Government by considering the amount of KVAT previously paid to the Government to avoid huge financial loss to them by paying double tax.

6.2.10. The annuity was considered exempted because of the various clarifications and notifications issued earlier as explained



above and the Circular No. 150/06/2021 GST having been issued only on 17.06.2021 shall not be considered with retrospective effect.

7. Discussion and Findings:

7.1. The matter was examined in detail. The application has been filed by the applicant on 08.03.2021 and the proceedings were initiated by the jurisdictional officer on 13.07.2021 consequent to the issue of Circular No.150/06/2021 GST dated 17.06.2021 by CBIC. Therefore, no proceedings were pending on the issue against the applicant as of the date of application and hence the application is admitted.

7.2. The applicant is a company incorporated under the Companies Act, 2013 as a Special Purpose Vehicle to undertake the work of Design, Engineering, Finance, Procurement, Construction, Operation and Maintenance of Roads under Phase I(A) of KCRIP on Design, Build, Finance, Operate, Maintain and Transfer [DBFOT] basis. The Concession Agreement is for 17 years of which 2 years is the construction period and 15 years is the operation and maintenance period. The applicant receives the cost of construction, operation and maintenance as a bi-annual annuity over 15 years after the completion of construction; i.e; Commercial Operation Date. Further, as per the concession agreement, the applicant shall either receive a bonus for early completion of the construction of the project or incur a reduction in the annuity for delayed completion of the project. As per the submission of the applicant, the construction of the project was completed early and the first annuity became due on 01.03.2018 and the applicant has also become entitled to a bonus for early completion. The issue to be determined is the classification, taxability and the rate of GST applicable on



the services supplied by the applicant as per the Concession Agreement dated 22.07.2015.

7.3. As per the terms and conditions of the concession agreement, the applicant as the concessionaire is designing, constructing, operating and maintaining the roads under Phase 1(A) of the KCRIP during the concession period and transferring it to the Government on completion of the concession period. The entire project is financed by the applicant and the cost of the construction, operation and maintenance is recovered by the applicant by way of bi-annual annuity payments as per the terms and conditions of the concession agreement for 15 years. On completion of the payment of the cost of construction and maintenance for 15 years through bi-annual annuity as fixed by the agreement, the road is transferred to the Government. The services of construction, operation and maintenance of roads on a Design, Build, Finance, Operate, Maintain and Transfer [DBFOT] basis is a composite supply as defined under clause (30) of Section 2 of the CGST Act, 2017 which reads as under;

(30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

The supplies being made in relation to construction of immovable property namely; roads the principal supply can be termed as 'Works Contract' as defined in Section 2(119) of CGST Act, 2017 as under;

"Works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any



immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

Therefore, it is evident that the services provided by the applicant as per the concession agreement are covered under the definition of works contract under Section 2(119) of the CGST Act, 2019 and the bi-annual annuity received by the applicant as per the concession agreement can be considered as the consideration for the works contract services supplied by the applicant given the definition of "consideration" in Section 2 (31) of the CGST Act, 2017 as follows;

"consideration" in relation to the supply of goods or services or both includes—

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply."

Further, the bonus received by the applicant for early completion of construction in terms of the concession agreement is nothing but an additional consideration for the works contract services supplied by the applicant.



7.4. As per the Explanatory Notes to the Scheme of Classification of Services notified as Annexure to Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 the Heading 9954 pertains to Construction services; the Group 99542 pertains to General construction services of civil engineering works and the Service Code 995421 pertain to General construction services of highways, streets, roads, railways and airfield runways, bridges and tunnels. Accordingly, the services supplied by the applicant as per the concession agreement are appropriately classifiable under SAC 995421.

7.5. Having decided the classification of the services, the time of supply of the services is to be determined as per Section 13 of the CGST Act, 2017 the relevant portion of which reads as follows;

"13. (1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of services shall be the earliest of the following dates, namely:—

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply;

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option



of the said supplier, be the date of issue of invoice relating to such excess amount.

Explanation.—For the purposes of clauses (a) and (b)—

(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;

(ii) “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.”

7.6. As per sub-section (2) of Section 31 of the CGST Act, 2017; a registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, the tax charged thereon and such other particulars as may be prescribed and as per sub-section (5) of Section 31; in the case of continuous supply of services; (a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment; (b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment; and (c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

7.7. The continuous supply of services is defined in clause (33) of Section 2 of the CGST Act, 2017 as follows; “continuous supply of services” means a supply of services which is provided, or agreed to be provided, continuously or on a recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes the supply of such services as the Government may, subject to such conditions, as it may, by notification, specify



7.4. As per the Explanatory Notes to the Scheme of Classification of Services notified as Annexure to Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 the Heading 9954 pertains to Construction services; the Group 99542 pertains to General construction services of civil engineering works and the Service Code 995421 pertain to General construction services of highways, streets, roads, railways and airfield runways, bridges and tunnels. Accordingly, the services supplied by the applicant as per the concession agreement are appropriately classifiable under SAC 995421.

7.5. Having decided the classification of the services, the time of supply of the services is to be determined as per Section 13 of the CGST Act, 2017 the relevant portion of which reads as follows;

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(2) The time of supply of services shall be the earliest of the following dates, namely:—

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option



of the said supplier, be the date of issue of invoice relating to such excess amount.

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7.7. The continuous supply of services is defined in clause (33) of Section 2 of the CGST Act, 2017 as follows; “continuous supply of services” means a supply of services which is provided, or agreed to be provided, continuously or on a recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes the supply of such services as the Government may, subject to such conditions, as it may, by notification, specify.



7.8. On a conjoint reading of the above provisions of the CGST Act, 2017 it is evident that the service rendered by the applicant as per the concession agreement is a continuous supply of works contract services and the annuity is in sum and substance the consideration for the works contract services rendered. Since the cost of construction is initially financed by the applicant the applicant is granted a concession to operate and maintain the roads for 15 years during which the entire consideration is paid to the applicant and on completion of the concession period the road is transferred to the Government. Therefore, the transfer of goods involved in the execution of the works contract happens at the time of transfer of the roads to the Government as per the concession agreement and accordingly the completion of the work contract service takes place on the date of transfer of the roads to the Government. Given the provisions of sub-section (5) of Section 31 and the Explanation (i) to sub-section (2) of Section 13 of the CGST Act, 2017; the supply is deemed to have been made on each annuity payment date to the extent covered by the payment of annuity and the applicant is liable to raise tax invoice as per provisions of sub-section (5) of Section 31 and pay GST on the annuity received by them on each annuity payment date by the due date prescribed as per provisions of Section 39 of the CGST Act, 2017.

7.9. Having determined the classification and the time of supply of the services supplied by the applicant the next issue to be determined is the rate of GST applicable to the services supplied by the applicant. The relevant portion of Sl No. 3 (iv) of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 as amended reads as follows;

“3 (iv) – Heading 9954 (Construction Services) - Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than that covered by items (i), (ia), (ib), (ic), (id), (ie)



and (if) above supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-

(a) a road, bridge, tunnel, or terminal for road transportation for use by general public – 6% - Condition – Nil.”

On a plain reading of the above entry, it is evident that the rate of GST applicable for composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a road, bridge, tunnel, or terminal for road transportation for use by the general public is 12% [6% - CGST + 6% - SGST]

7.10. Based on the discussion above, we conclude that the services rendered by the applicant as per the concession agreement are classifiable as works contract services falling under SAC 995421 and the annuity received by the applicant including the bonus for early completion of construction is the consideration for the works contract services rendered and the applicant is liable to pay GST at the rate of 12% [6% CGST and 6% SGST] on the annuity including bonus as per entry at Sl No. 3 (iv) of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 as amended.

Given the observations stated above, the following rulings are issued;

RULING

1. Whether the annuity amount received is exempted or not as it contains both construction and maintenance parts (which are inseparable) as per entry No. 23A of the Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017?

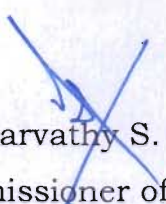
Ruling: The annuity amount received by the applicant is liable to GST at the rate of 12% [6% CGST and 6% SGST] as per entry at Sl No. 3 (iv) of Notification



No. 11/2017 – Central Tax (Rate) dated 28.06.2017 as amended for the reasons as discussed above.

2. The establishment is eligible for an early completion bonus as the construction is completed before the scheduled date. Whether this bonus will also be exempted as it is the part and parcel of the principal project.

Ruling: The early completion bonus received by the applicant in terms of the concession agreement is an additional consideration received by the applicant for the works contract services rendered and is liable to GST at the rate of 12% [6% CGST and 6% SGST] as per entry at Sl No. 3 (iv) of Notification No. 11/2017 – Central Tax (Rate) dated 28.06.2017 as amended for the reasons as discussed above.


Sreeparvathy S. L.

Joint Commissioner of Central Tax
Member


Abraham Renn S.

Additional Commissioner of State Tax
Member

To

M/s. ULCCS Calicut City Infrastructure Development Private Ltd 10/323,
Nadapuram Road, Madapally College, Vatakara, Kozhikode, Kerala – 673102.

Copy to,

1. The Chief Commissioner of Central Tax and Central Excise,
Thiruvananthapuram Zone, C.R.Building, I.S.Press Road, Cochin-
682018. [E-mail ID: cccocchin@nic.in; ccu-cexcok@nic.in]



2. The Commissioner of State Goods and Services Tax Department,
Tax Towers, Karamana, Thiruvananthapuram – 695002.
3. The State Tax Officer, Works Contract, Kozhikode. [E-mail
ID:kkdwclt.ctd@kerala.gov.in]

