
	<b>KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM</b>	
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BEFORE THE AUTHORITY OF: *Shri. B.G. Krishnan, IRS &*

*: Shri. B.S. Thyagarajababu B.Sc, LL.M*

Legal Name of the applicant	M/s. R.S. Development & Constructions India Pvt. Ltd.
GSTIN	32AAECR1869D1ZL
Address	NMC XIV/181A, Near Piriyan Moodu Checkpost, Neyyattinkara, Kerala 695121.
Advance Ruling sought for	<ul style="list-style-type: none"> <li>• <i>Whether the rate of CGST for the supplies covered under Work Order No.06/CECCN/2017-18 dtd.06-10-2017 is 6% either under Sl.No.3(iii) or under Sl.No.3(vi) of Notification No.11/2017-CT(Rate)?</i></li> <li>• <i>Since the CGST statutory provisions are pari materia with the State GST provisions, whether the rate of SGST is also 6% in terms of notification SRO.No.370/2017 dtd.30-06-2017 for the supplies covered under Work Order 06/CECCN/2017-18 dtd.06-10-2017?</i></li> </ul>
Date of Personal Hearing	30-09-2019
Authorized Representative	Mr. Subramanian Sankar

**ADVANCE RULING No. KER/64/2019 Dt.12.10.2019**

Kerala State Electricity Board Ltd has awarded the work of execution of civil works of Pazhassi Sagar Small Hydro Electric Project to the applicant as per the Work Order No. 06/CECCN/2017-18 dated 06.10.2017. As per the work order, the work involves construction of intake structure, leading channel, tunnel, power house, tail race, civil works of switch yard, access roads and other allied works, fabrication and erection of steel liners and specials from tunnel portal to power house, trash rack, intake gate, draft tube gate and hoisting arrangements. The Applicant has sought Advance Ruling as to whether the execution of the civil works of Pazhassi Sagar Small Hydro Electric Project as per the above work order would fall under Sl No. 3 (iii) (b) or 3 (vi) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 attracting GST at the rate of 12%.

The authorized representative of the applicant was heard. It is pointed out that Kerala State Electricity Board Ltd is created by Section 131 of the Electricity Act, 2003 (Central Act, 36 of 2003). It is fully owned by the Government of Kerala. The salient features of the National Electricity Policy, 2005 and Electricity Tariff Policy proved that such works are predominantly for the purpose of socio economic development of the country, which is one of the functions entrusted to a Municipality under Article 243W of the Constitution read with 12<sup>th</sup> Schedule. Rural electrification is specified in Schedule XI of Article 243G. Therefore Kerala State Electricity Board Ltd is a Governmental authority as defined in Para 2(zf) of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017.

The predominant nature of supply is construction of part of Dam ie, construction of various structures of dam like tunnels etc. Such structures are covered by the definition of Dam as per The Dam Safety Bill, 2019 which was placed in the Lok Sabha. The conditions to be fulfilled to avail the rate of 12% GST as per Sl.No.3 (vi) of Notification 11/2017-CT (Rate) dated 28.06.2017 or SRO 370/2017 dt.30.06.2017 are:

- (i) Supply must be a works contract as defined in clause 119 of Section 2 of CGST/SGST Act.
- (ii) Supplies are to be provided to the Central Government or State Government or Union Territory, a Local Authority, Governmental Authority or a Government entity.
- (iii) Supply shall be by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession.

Since the above work order fulfilled all the conditions as prescribed the execution of the works contract to Kerala State Electricity Board Ltd attract 12% GST.

The matter was examined in detail. The matter to be considered is;

- (i) Whether the execution of the civil works of Pazhassi Sagar Small Hydro Electric project awarded by Kerala State Electricity Board Ltd would fall under Sl.No.3 (iii) (b) or 3(vi) of Notification No.11/2017 Central Tax (Rate) dated 28.06.2017 attracting GST at the rate of 12%?

- (ii) Whether Kerala State Electricity Board Ltd will fall under any of the categories namely; Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity?

Sl No.3 (iii) of Notification No.11/2017 Central Tax (Rate) dated 28.06.2017 reads as follows;

“(iii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-

(a) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

(b) canal, dam or other irrigation works;

(c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.”

Sl No.3 (vi) of Notification No.11/2017 Central Tax (Rate) dated 28.06.2017 reads as follows;

(vi) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, provided to the Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or

(c) a residential complex predominantly meant for self use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of Central Goods and Services Tax Act, 2017.

The condition specified for both the above provisions are that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.

As per Para 2(zf) of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017; "Governmental authority" means an authority or a board or any other body-

- (i) set up by an Act of Parliament or a State Legislature; or
- (ii) established by any Government,

with ninety per cent or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution.

As per Para 2 (zfa) of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 "Government Entity" means an authority or a board or any other body including a society, trust, corporation,

- (i) set up by an Act of Parliament or State Legislature; or
- (ii) established by any Government,

with ninety per cent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority."

Kerala State Electricity Board Ltd is a company incorporated under the Companies Act, 1956 by the Government of Kerala for carrying out the business of Generation, Transmission and Distribution of electricity in the State of Kerala. It is the successor entity of the Kerala State Electricity Board which was constituted by the Government of Kerala by Order no. EL1-6475/56/PW dated 07.03.1957 under the Electricity (Supply) Act, 1948 for carrying out the business of Generation, Transmission and Distribution of electricity in the State of Kerala.

Consequent to the enactment of the Electricity Act, 2003 Kerala State Electricity Board continued as transmission utility and distribution licensee till 24.09.2008 as per provisions of Section 172 (a) of the Electricity Act, 2003.

The Government of Kerala in exercise of powers conferred under Section 131 of the Electricity Act, 2003 issued Notification GO (Ms).37/2008/PD dated 25.09.2008 vesting all functions, properties, interest, rights, obligations and liabilities of Kerala State Electricity Board with the State Government till re-vested in a corporate entity.

Consequent to the incorporation of the Kerala State Electricity Board Ltd under the Companies Act, 1956 the State Government notified the Kerala Electricity Second Transfer Scheme (Re-Vesting), 2013 by GO (P) No.46/2013/PD dated 31.01.2013 re-vesting all the assets, liabilities, rights and obligations of the erstwhile Kerala State Electricity Board which were vested in the State Government by the first transfer scheme dated 25.09.2008 to Kerala State Electricity Board Ltd.

From the above discussion, it is evident that the Kerala State Electricity Board Ltd; is a Government Company incorporated under the Companies Act, 1956 with 90 per cent or more participation by way of equity or control of the Government of Kerala to carry out the business of generation, transmission and distribution of electricity in the State of Kerala and is a "State Transmission Utility" within the meaning of Section 2 (67) of the Electricity Act, 2003.

Hence, Kerala State Electricity Board Ltd could not be considered as constituted / established by the Government of Kerala to carry out any function entrusted to a municipality under article 243W or a panchayat under article 243G of the Constitution. Therefore, Kerala State Electricity Board Ltd will not come under the definition of "Governmental Authority" under Para 2(zf) of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017. However, Kerala State Electricity Board Ltd squarely falls under the definition of "Government Entity" under Para 2 (zfa) of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017.

The concessional rate of GST of 12% under Sl No. 3 (vi) (a) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 is applicable only for composite supply of works contracts as defined in clause (119) of Section 2 of the CGST Act, 2017 supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance,

renovation, or alteration of,- (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession. The concessional rate under this entry is not applicable for the works contract services provided as per the above work order as Kerala State Electricity Board Ltd has been established for carrying out the business of generation, transmission and distribution of electricity in the State of Kerala on commercial principles as is evident from the provisions of Sections 61 and 62 of the Electricity Act, 2003 regarding tariff regulation and determination of tariff. Therefore, the supply of works contract services as per the above work order cannot be considered as meant predominantly for use other than for commerce, industry, or any other business or profession.

The concessional rate of GST of 12% under Sl No. 3 (iii) (b) of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 is applicable only for composite supply of works contracts as defined in clause (119) of Section 2 of the CGST Act, 2017 supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, - (b) canal, dam or other irrigation works. On examination of the Letter of Acceptance dated 25.09.2017 and the Work Order dated 06.10.2017 it is seen that the work awarded is in respect of civil works of a Small Hydro Electric Project in the existing dam of Pazhassi Irrigation Project and hence cannot be considered as civil work for canal, dam or other irrigation works eligible for concessional rate of tax under the above entry.

In view of the observations stated above, the following rulings are issued:


1. Whether the rate of CGST for the supplies covered under Work Order No.06/CECCN/2017-18 dated 06.10.2017 is 6% either under Sl.No.3 (iii) or Sl.No.3 (vi) of Notification no.11/2017- CT (Rate) dated 28.06.2017?

No. The rate of 6% under Sl.No.3 (iii) or Sl.No.3 (vi) of Notification No.11/2017-CT (Rate) dated 28.06.2017 is not applicable for the works contract services supplied by the applicant to Kerala State Electricity Board Ltd as per the Work Order No. 06//CECCN/2017-18 dated 06.10.2017.

2. Since the CGST statutory provisions are pari materia with the State GST provisions, whether the rate of SGST is also 6% in terms of notification

SRO.No.370/2017 dtd.30-06-2017 for the supplies covered under Work Order 06/CECCN/2017-18 dated 06.10.2017?

No, in view of the ruling to 1 above.



**B.G.Krishan, IRS**  
**Joint Commissioner of Central Tax**  
**MEMBER**



**B.S. Thyagarajababu, B.Sc, LL.M**  
**Joint Commissioner of State Tax**  
**MEMBER**

To

M/s. RS Development and Constructions India Pvt Ltd  
NMC XIV/181A, Near Piriyanmoodu Checkpost,  
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