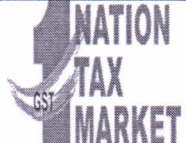



| | | |
|---|--|---|
|  | KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM |  |
|---|--|---|

BEFORE THE AUTHORITY OF : Shri. Sivaprasad .S, IRS &
: Shri.B.S. Thyagarajababu, B.Sc, LL.M

| | |
|-----------------------------|--|
| Legal Name of the applicant | M/s. Cochin Port Trust |
| GSTIN | 32AAALC1134F1ZZ |
| Address | Malabar Road, Willingdon Island, Ernakulam 682009 |
| Advance Ruling sought for | <p>1. What is the nature of services rendered by CoPT as per the M.O.U. entered into between CoPT and N.T.R.O.? Whether it would be treated as a "Works Contract" or as a "Composite Supply" of services or as a "Mixed Supply" as defined in clauses (119), (30) and (74) respectively of Section 2 of the CGST Act, 2017?</p> <p>2. Whether CoPT is eligible for the reduced rate of 12% GST as per Notification No. 24/2017 IT(R) dated 21.09.2017 in respect of the services provided by CoPT to N.T.R.O. as per the M.O.U.?</p> <p>3. Whether the contractors engaged by COPT to execute the work as envisaged in the M.O.U., are eligible to take the benefit of reduced rate of 12% GST as per Notification No.24/2017-IT(R) dated 21.09.2017 in respect of the services provided by them to CoPT?</p> <p>4. If CoPT is eligible for the reduced rate of 12% GST, Whether it is entitled to claim refund of the excess remittance of GST from the date of application of the said notification?</p> <p>5. If the supplies to N.T.R.O. are taxable at 12%, as per Notification 24/2017- IT(R) dated 21.09.2017, whether supply of goods such as electricity and water,</p> |

| | |
|---------------------------|--|
| | which are exempt from GST are also taxable at the rate of 12% as composite supply of services? |
| Date of Personal Hearing | 10-03-2020 |
| Authorized Representative | Mr. Radhesh L. Bhat, CA |

ADVANCE RULING No. KER/82/2020 Dated: 20-05-2020

1. M/s. Cochin Port Trust (herein after referred to as the “applicant”) is a body corporate constituted under the Major Port Trusts Act, 1963 and is engaged in providing port services with modern infrastructure. The Board of Trustees of the applicant had entered into a Memorandum of Understanding dated 22.12.2016 with National Technical Research Organisation (hereinafter referred to as “N.T.R.O.”) a Technical Intelligence Agency of the Government of India for construction of Jetty and development of sites for N.T.R.O. at Cochin on “Deposit Work” terms.

2. The sites on which the activity as per the M.O.U. is undertaken have been acquired by the N.T.R.O. from the applicant on long lease for 30 years as per the Registered Lease Deed dated 24.08.2014 at the Office of the Sub – Registrar of Mattanchery, Cochin. The estimated project cost as approved by the competent authority of N.T.R.O. is Rs. 122.30 Crores. The applicant has commenced the work as per the M.O.U. and the work is undertaken by the applicant by engaging various independent contractors. The applicant is entitled to get 7% of the actual expenditure for the project as Engineering and Supervision charge which is also termed as project management service charges. The approved estimated cost also includes the 7% project management service charges of the applicant. The procedure presently followed by the applicant is that the contractors engaged by the applicant raise invoice on the applicant and the applicant in turn raise invoice on N.T.R.O. for the a M.O.U.nt including the project management service charges. The applicant is charging GST at the rate of 18% in the said invoices. In addition to the above the applicant is raising monthly invoices to N.T.R.O. claiming licence fees for the office building allotted to N.T.R.O. on license basis and also charges for electricity and water supplied to N.T.R.O.. They are charging 18% GST on the license fees and no GST is charged on the electricity and water charges as they are exempted from GST.

3. The applicant requested advance ruling on the following:

1. Whether, having regard to the background and details including the scope of work of the Deposit work contained in the M.O.U. entered into between CoPT and N.T.R.O., what is the nature of the services rendered by CoPT under the M.O.U. entered Into between CoPT and N.T.R.O.? Whether it would be treated as a "Works Contract" as per section 2 (119) of the CGST Act or as a Composite Supply for services as per Section 2 (30) of the CGST Act or as a mixed supply as defined in Section 2 (74) of the CGST Act?
2. Whether, having regard to the background and details Including the scope of work of the Deposit work contained in the M.O.U. entered into between CoPT and N.T.R.O., whether CoPT is eligible to take the benefit of reduced rate of 12% GST as per Notification No 24/2017- IT(R) dated 21.09.2017, in respect of the services provided by it to N.T.R.O. under the M.O.U.?
3. Whether, having regard to the background and details Including the scope of work of the Deposit work contained in the M.O.U. entered Into between CoPT and N.T.R.O., whether the contractors engaged by COPT to execute work as envisaged in the M.O.U., would be eligible to take the benefit of reduced rate of 12% GST as per Notification No.24/2017- IT(R) dated 21.09.2017, in respect of the services provided by them to CoPT?
4. If CoPT is eligible to take the benefit of reduced rate of 12% GST as per Notification No 24/2017- IT(R) dated 21.09.2017; whether it is entitled to claim refund of the excess remittance of GST (6%) remitted from the date of applicability of the said Notification?
5. If the supplies to N.T.R.O. are taxable at 12%, as per Notification 24/2017- IT(R) dated 21.09.2017, whether supply of goods such as electricity and water, which are exempt from GST are also taxable at the rate of 12% as composite supply of services?

4. The authorized representative of the applicant was heard. As per the M.O.U. for construction of Jetty and Development of site for N.T.R.O., the applicant shall undertake the design and execution of the work on turnkey basis. The activities agreed to be undertaken by the applicant includes the following;

a) Construction of a Jetty and allied facilities: Conducting various studies and investigations, construction of a Jetty with all requisite statutory clearances and berthing infrastructure for the N.T.R.O. Ship, which includes various facilities like Main Berth, approach bridge, gate office building, fire pump station, substation, development of land, construction of reclamation wall and approach road, firefighting facilities, electrical facilities, telephone / network facilities, Jetty Crane (a standard rail M.O.U. nted electric level luffing crane of 15/10 ton capacity with 20m reach), CCTV System, Parking, site office, building with furnished rooms, air conditioning, solar panels, security post, port container etc.

b) Development of 1.8 acre land including providing allied facilities which amongst other things, comprises of land development including electric connection and Transformer with outlet, water connection, water tanks, pump house, security towers, compound wall and gate, internal roads, pavement and drainage facilities, porta container with air-conditioning etc.

c) Development of 4.0 acre land including providing allied activities which includes land development, compound wall and gate, security tower, electric connection, water tanks and pump house etc.

5. The matter was examined meticulously. As per the M.O.U. dated 22.12.2016 the applicant has to execute the contract for the construction of Jetty and Development of Sites for N.T.R.O. on turnkey basis as "Deposit Work".

6. As per Section 2 (119) of the C.G.S.T. Act, 2017; "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.

7. From the terms and conditions of the M.O.U. dated 22.12.2016; it is evident that the activity undertaken by the applicant for the Construction and Commissioning of Jetty and the Development of Sites as per the M.O.U. squarely falls within the ambit of "Works Contract" as defined in Section 2 (119) of the CGST Act, 2017. As per Sl No. 6 of Schedule II of the CGST Act, 2017; the composite supply of works contract as defined in clause (119) of Section 2 shall be treated as a supply of services.

8. Sl No. 3 (vi) and (ix) of Notification No. 08/2017 – Integrated Tax (Rate) dated 28.06.2017 as amended by Notification No. 20/2017 Integrated Tax (Rate) dated 22.08.2017; Notification No. 24/2017 Integrated Tax (Rate) dated 21.09.2017; Notification No. 39/2017 Integrated Tax (Rate) dated 13.10.2017; Notification No. 48/2017 Integrated Tax (Rate) dated 14.11.2017; Notification No. 18/2018 Integrated Tax (Rate) dated 26.07.2018 and Notification No. 03/2019 Integrated Tax (Rate) dated 29.03.2019 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, (other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above) 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 the Central Goods and Services Tax Act, 2017.

Explanation.- For the purposes of this item, the term "business" shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities."

(ix) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (iii) or item (vi) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.

9. The rate of GST applicable under both the above entries is 12% IGST [6% CGST and 6% SGST]

10. The activity undertaken by the applicant as per the M.O.U. is for the National Technical Research Organisation, a Technical Intelligence Agency of the Government of India. Since the services rendered by the applicant falls under the definition of “Works Contract” as per Section 2 (119) of the CGST Act, 2017 and the services being rendered to the Central Government for an original work meant predominantly for use other than for commerce, industry or any other business or profession the rate of GST applicable is 12% as per Sl No. 3 (vi) (a) of the Notification No. 08/2017 – Integrated Tax (Rate) dated 28.06.2017 as amended. In view of the entry at Sl No. 3 (ix) of the Notification No. 08/2017 Integrated Tax (Rate) dated 28.06.2017 as amended the rate of GST applicable to the contractors / sub- contractors engaged by the applicant to execute the works as per the M.O.U. is also 12%.

11. The next issue that arises for consideration is the liability and rate of GST applicable on the project management service charges, license fees for the building allotted to N.T.R.O. and the supply of electricity and water.

12. As per Section 2 (30) of the CGST Act, 2017; “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.

13. Clause (90) of Section 2 of the CGST Act, 2017; defines “Principal Supply” as follows; “principal supply” means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

14. Section 8 of the CGST Act, 2017; which deals with the tax liability on composite and mixed supplies reads as follows;

"8. The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax."

15. It is evident from the terms and conditions of the M.O.U. that the principal supply is the supply of works contract services for construction of Jetty and Development of Sites for N.T.R.O. and the project management service charges, license fees of building, the supply of electricity and water are components of the main supply which are ancillary to the main supply. Therefore, the rate of GST applicable for such supplies are also the same rate as applicable to the main supply as the activities cannot be segregated or vivisected from the main supply for a differential tax treatment.

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

1. Whether, having regard to the background and details including the scope of work of the Deposit work contained in the M.O.U. entered into between CoPT and N.T.R.O., what is the nature of the services rendered by CoPT under the M.O.U. entered Into between CoPT and N.T.R.O.? Whether it would be treated as a "Works Contract" as per section 2 (119) of the CGST Act or as a Composite Supply for services as per Section 2 (30) of the CGST Act or as a mixed supply as defined in Section 2 (74) of the CGST Act?

The activity undertaken by the applicant as per the M.O.U. dated 22.12.2016 entered with National Technical Research Organisation of the Government of India are covered under "Works Contract" as defined in Section 2 (119) of the CGST Act, 2017.

2. Whether, having regard to the background and details Including the scope of work of the Deposit work contained in the M.O.U. entered into between CoPT and N.T.R.O., whether CoPT is eligible to take the benefit of reduced rate of 12% GST as per Notification No 24/2017-IT(R) dated 21.09.2017, in respect of the services provided by it to N.T.R.O. under the M.O.U.?

Yes. The rate of GST applicable on the services provided by the applicant as per the said M.O.U. is 12% as per Sl No. 3 (vi) (a) of the Notification No. 08/2017 – Integrated Tax (Rate) dated 28.06.2017 as amended.

3. Whether, having regard to the background and details Including the scope of work of the Deposit work contained in the M.O.U. entered Into between CoPT and N.T.R.O., whether the contractors engaged by COPT to execute work as envisaged in the M.O.U., would be eligible to take the benefit of reduced rate of 12% GST as per Notification No.24/2017- IT(R) dated 21.09.2017, in respect of the services provided by them to CoPT?

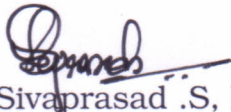
Yes. The rate of GST applicable on the services provided by the contractors / sub contractors to the applicant as envisaged in the said M.O.U. is 12% as per Sl No. 3 (ix) of the Notification No. 08/2017 – Integrated Tax (Rate) dated 28.06.2017 as amended.

4. If CoPT is eligible to take the benefit of reduced rate of 12% GST as per Notification No 24/2017- IT(R) dated 21.09.2017; whether it is entitled to claim refund of the excess remittance of GST (6%) remitted from the date of applicability of the said Notification?

Yes. The applicant is entitled for refund of the excess GST paid if any; subject to the provisions of Section 54 of the CGST Act, 2017 and the Rules made thereunder.

5. If the supplies to N.T.R.O. are taxable at 12%, as per Notification 24/2017- IT(R) dated 21.09.2017, whether supply of goods such as electricity and water, which are exempt from GST are also taxable at the rate of 12% as composite supply of services?

Yes. The supply of electricity and water are components of the main supply and are ancillary to the main supply and hence cannot be segregated or vivisected from the main supply and is liable to G.S.T. at the same rate as the main supply.



Sivaprasad .S, IRS
Joint Commissioner of Central Tax
Member



B.S. Thyagarajababu, B.Sc, LL.M.
Additional Commissioner of State Tax
Member

To

M/s. Cochin Port Trust
Malabar Road, Willingdon Island,
Ernakulam - 682009.