
	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. Abdul Latheef. K

Legal Name of the applicant	M/s. Ray Constructions Limited
GSTIN	32AAACR5277K1Z8
ARN No.	AD3205210013032
Address	Building No. 52/3328, Ray Bhavan, 1 st Floor, NH Bypass, Thykoodam, Vyttila, Ernakulam, Kerala-682019
Advance Ruling sought for	<p>The Rate Applicable for Works Contracts awarded by various Government authorities:-</p> <p>1) M/s. Kerala Stata Film Development Corporation Ltd (promoted by Government of Kerala). Name of work – Development and construction of Sree Narayana Guru Cultural Complex at Kollam.</p> <p>Work Order No. : 674/P1/19/KSFDC Dated 14/11/2019.</p>
Date of Personal Hearing	19/04/2023
Authorized Representative	Praveen Kumar.U, Senior Manager (Accounts).

ADVANCE RULING No.KER/24/2023 Dated 27/06/2023

1. Ray Constructions Limited, First Floor, 52/3328, Ray Bhavan, N.H Bypass, Thykoodam, Vyttila, Ernakulam (hereinafter referred to as “the applicant”) is a taxpayer registered under GST Act, engaged in providing Construction services.



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 same except for certain provisions. Accordingly, a reference herein after to the provisions of the CGST Act, Rules and Notifications issued thereunder shall include a reference to the corresponding provisions of the KSGST Act, Rules and the Notifications issued thereunder.

3. The applicant requested advance ruling on the following:

3.1. The rate of tax applicable for works contract awarded by M/S. Kerala State Film Development Corporation Ltd. (promoted by Government of Kerala) for the development and construction of Sree Narayana Guru Cultural Complex at Kollam.

4. Contentions of the Applicant:

4.1. The applicant is registered under the GST Act and is engaged in providing construction services including supply of materials (Composite contract) and labour contract. The applicant filed this advance ruling application for clarifying the applicable rate of tax in connection with a works contract awarded by M/s Kerala State Film Development Corporation Ltd.

4.2. The applicant submitted that they entered into an agreement with M/S. Kerala State Film Development Corporation Ltd vide agreement No.KSFDC/KIIFB/2019/Agreement 2, Dated.18.12.2019 for development and construction of Sree Narayana Guru Cultural Complex at Kollam. The contract includes construction service along with supply of materials. The applicant contended that the said work is falling under service to the State Government category.

4.3. The applicant further submitted that, as per Notification No. 24/2017- Central Tax (Rate) Dated 21.09.2017, service provided by a con-



tractor to the Central Government, State Government or Local Authority 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 will attract @ 12% GST. A similar Notification was also issued in Integrated Tax (Rate) as per No.08/2017, dated 28.06.2017.

4.4. Finally, the applicant concluded that the work awarded as per the said agreement falls under the ambit of the above Notification beyond any doubt or controversy, and therefore they are eligible to remit tax at 12%.

5. Comments of the Jurisdictional Officer:

The application was forwarded to the jurisdictional officer as per provisions of section 98 (1) of the CGST Act. The Jurisdictional officer has not submitted any remarks and hence it is presumed that the jurisdictional officer has no specific comments to offer. It is also construed that no proceedings are pending on the issue against the applicant.

6. Personal Hearing:

The applicant was granted opportunity for personal hearing on 19.04.2023. Shri. Praveen Kumar.U, Senior Manager (Accounts) represented the applicant for personal hearing, which was conducted virtually. The representative reiterated the contentions made in the application and requested to issue the ruling on the basis of the submissions made in the application.

7. Discussion and Conclusion:

7.1. We have carefully examined the application, statement of facts, and considered the oral submissions made at the time of virtual hearing. The advance ruling to be issued is on the clarification of the rate of tax for the construction service provided by the applicant to M/S. Kerala State Film



Development Corporation Ltd in the light of notification No. 24/2017-Central Tax (Rate) dated 21.09.2017. The questions on which advance ruling sought by the applicant falls under the purview of section 97 (2) (b) of the CGST/KSGST Act, 2017, "applicability of a notification issued under the provisions of this Act " and hence admitted.

7.2. The applicant is a registered taxpayer under GST headquartered at Mumbai and also took separate GST registration in the State of Kerala, office at Vyttila, Ernakulam. They provide works contract services of supply of materials and labour for executing works. The question that arises for consideration is the applicability of tax rate in respect of a specific works contract awarded by M/S. Kerala State Film Development Corporation Ltd for development and construction of Sree Narayana Guru Cultural Complex at Kollam.

7.3. The applicant was selected to execute the work by the awardee, M/S. Kerala State Film Development Corporation Ltd through a tender process. Thereafter they executed a mutual agreement on 18.12.2019 as per No. KSFDC/KIIFB/2019/ Agreement 2, in which the contractor has certain obligations that are specifically mentioned in the agreement. One of the important parts of the agreement is the conditions specified as per serial No.4;

"The following documents shall be deemed to form and be read and construed as part of this Agreement, viz:

- i) Letter of acceptance (reference number 674/P1/19/KSFDC, dated 14th November 2019)
- ii) Notice to proceed with the works
- iii) Contractors bid
- iv) Contract data
- v) Conditions of contract (including special conditions of contract, general conditions, instruction to bidder and pre- qualification information).
- vi) Technical specifications



vii) Drawings

viii) Accepted schedule of tender

ix) Minutes of the pre-bid meeting and clarifications issued to the bidders

x) Bid validity extension letter no RCL/TND/643/2019, dated 14.11.2019.

xi) Any other document listed in the contract data as forming part of the contract.

7.4. General conditions of contract PART II, submitted by the applicant, in which as per definition 2.2, it is stated that "the contractor shall carry out and complete the work under the contract in every respect and his work shall include the supply of all labour, equipment, materials, plant and machinery, tools, transportation, form work, scaffolding and everything else necessary for the proper execution and completion of the work in accordance with the contract document and to the satisfaction of the Engineer in charge.

7.5. In order to decide the issue, it is to be examined whether the services rendered by the applicant qualify to be classified as works contract services. Section 2(119) of the CGST Act, 2017 defines that works contract is 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. From this definition it reveals that the term works contract under GST has been restricted to any work undertaken for an "Immovable Property" wherein transfer of property in goods whether as goods or in some other form is involved.

7.6. Further, as per clause (a) of Para 6 of Schedule II to CGST Act, 2017, the composite supply of works contract is treated as supply of service.

7.7. From the description of the works submitted by the applicant it is revealed that the following works are awarded to the applicant; Supply of



all labour, equipment, materials, plant and machinery, tools, transportation, form work, scaffolding and everything else necessary for the proper execution and construction of a complex predominantly for the use of cultural activities named Sree Narayana Guru Cultural Complex at Kollam.

7.8. Therefore, the works rendered by the applicant to M/s. Kerala State Film Development Corporation Ltd squarely falls under the definition of works contract in Section 2 (119) of the CGST Act, 2017 and the same will be treated as supply of service.

7.9. Now it is to be decided whether the works contract services rendered by the applicant attract GST at the rate of 12% under Sl No. 3 (vi) of Notification No.11/2017- Central Tax (Rate) dated 28.06.2017. Sl No.3 (vi) of the Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended by Notification Nos. 24/2017 – Central Tax (Rate) dated 21.09.2017; 31/2017 CT (Rate) dated 13.10.2017; 46/2017 CT (Rate) dated 14.11.2017; 17/2018 CT (Rate) dated 26.07.2018 and 03/2019 CT (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."

7.10. The next issue to be considered is whether the recipient of service i.e, the awarder M/s. Kerala State Film Development Corporation Ltd falls within the definition of 'Governmental Authority' in Para 2 (zf) or 'Government Entity' in Para 2 (zfa) of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017.

7.11. The term "Governmental authority" is defined in Para 2 (zf) of Notification No. 12/2017 CT (Rate) dated 28.06.2017 as follows;

"(zf) "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 90 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."

7.12. Article 243G of the Constitution reads as follows;

"243G. Powers authority and responsibilities of Panchayats: Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to -

(a) the preparation of plans for economic development and social justice.

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh schedule."

7.13. The functions entrusted to a Panchayat under the Eleventh Schedule of the Constitution are as under:



1. Agriculture, including agricultural extension.
2. Land Improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor Irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi, Village and Cottage industries.
10. Rural housing.
11. Drinking Water.
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centers and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.
27. Welfare of the weaker sections and in particular of the scheduled castes and Scheduled tribes.



28. Public Distribution System.

29. Maintenance of the Community assets.

7.14. M/s. Kerala State Film Development Corporation Ltd, the recipient, i.e, the awarder of this work, is a Public Sector Undertaking established by the Government of Kerala in 1975 for the promotion of Malayalam Cinema in the State. The establishment is engaged in promoting the cultural activities such as providing studio services for production of film and documentaries, exhibiting cinematograph films through their own movie theatres, conducting film festivals etc. The said establishment is fully under the control of the Government of Kerala by nominating and appointing the Chairman, the Managing Director and the members of the board of directors including permanent members Secretary to Government of the Cultural Affairs Department and Finance Department. Hence the recipient of service M/s. Kerala State Film Development Corporation Ltd squarely falls under the definition of "Governmental Authority" as the same is fully controlled by the State Government and established for the purpose listed under Sl. No. 21 of the Eleventh Schedule of the Constitution.

7.15. Accordingly, the works contract services performed by the applicant as per the above-mentioned contracts awarded by M/s. Kerala State Film Development Corporation, a Governmental Authority to construct Sree Narayana Guru Cultural Complex at Kollam is in the nature of construction of a structure meant predominantly for use as a cultural establishment and hence the same is liable to GST at the rate of 12% [6% CGST+6% SGST] as per entry at Sl No.3 (vi)(b) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended from time to time.

7.16. However, with effect from 01.01.2022 by Notification No. 22/2021-Central Tax (Rate) dated 31.12.2021 the words "Governmental Authority" and "Government Entity" has been omitted from Sl. No. 3(vi) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended from time to time. Hence the concessional rate of 12% [6% CGST+6%



SGST] will not be applicable with effect from 01.01.2022. As such, with effect from 01.01.2022, by virtue of Sl. No. 3 (xii) of the Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended from time to time, the rate of tax for the aforementioned construction service will be 18% [9% CGST+9% SGST].

7.17. As per sub-section (1) of Section 13 of the CGST Act, 2017, the liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of the said section. However, where there is a change in the rate of tax in respect of goods or services or both, the time of supply shall be determined in accordance with the provisions of Section 14 of the CGST Act, 2017.

7.18. Section 14 of the CGST Act, 2017 reads as follows;

“Notwithstanding anything contained in section 12 or section 13, the time of supply, where there is a change in the rate of tax in respect of goods or services or both, shall be determined in the following manner, namely:-

(a) in case the goods or services or both have been supplied before the change in rate of tax,-

(i) where the invoice for the same has been issued and the payment is also received after the change in rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or

(ii) where the invoice has been issued prior to the change in rate of tax but payment is received after the change in rate of tax, the time of supply shall be the date of issue of invoice; or

(iii) where the payment has been received before the change in rate of tax, but the invoice for the same is issued after the change in rate of tax, the time of supply shall be the date of receipt of payment;

(b) in case the goods or services or both have been supplied after the change in rate of tax,-



(i) where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment; or

(ii) where the invoice has been issued and payment is received before the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or

(iii) where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax, the time of supply shall be the date of issue of invoice:

Provided that the date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax.

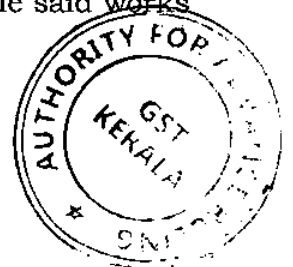
Explanation.-For the purposes of this section, "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier."

7.19. Thus, we conclude that if the time of supply of the works contract services as determined in accordance with Section 14 of the CGST Act, 2017 falls on any date prior to 01.01.2022, the aforementioned service will be taxable at the rate of 12% [6% CGST+ 6% SGST] and if the time of supply falls on any date on or after 01.01.2022, the said service will be taxable at the rate of 18% [9% CGST+ 9% SGST].

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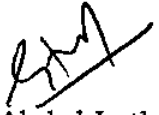
Question: What is the rate of tax applicable for works contract services awarded by M/S. Kerala State Film Development Corporation Ltd. (promoted by Government of Kerala) for the development and construction of Sree Narayana Guru Cultural Complex at Kollam?

Answer: The applicant is liable to pay GST at the rate of 12% [6% - CGST + 6% SGST] as per the entry at Item (vi) of SI No.3 of Notification No. 11/2017, Central Tax (Rate) dated 28.06.2017 in respect of the said works



contract services supplied for which the time of supply as determined in terms of Section 14 of the CGST Act, 2017 falls between 21.09.2017 and 31.12.2021 and at the rate of 18% [9% CGST+9% SGST] as per entry at Item (xii) of Sl No. 3 of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 in respect of the said works contract services supplied for which the time of supply as determined in terms of Section 14 of the CGST Act, 2017 falls on or after 01.01.2022.

~~S. L. Sreeparvathy
Addl Commissioner of Central Tax
Member~~


K. Abdul Latheef
Joint Commissioner of State Tax
Member

To,

M/s. Ray Construction Limited,
Building No. 52/3328, Ray Bhavan, 1st Floor,
NH Bypass, Thykoodam, Vyttila,
Ernakulam, Kerala-682019

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: cccochin@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, Taxpayer Services Circle, Vyttila, Ernakulam.

