

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICE TAX
VANIJA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

**Advance Ruling No. KAR ADRG 01 / 2018
Dated: 21st March, 2018**

Present:

1. Sri. Harish Dharnia,
Joint Commissioner of Central Tax,
..... Member (Central Tax)
2. Dr. Ravi Prasad M.P.
Joint Commissioner of
Commercial Taxes
..... Member (State Tax)

1.	Name and address of the applicant	M/s Giriraj Renewables Private Ltd., I Floor, CTS 906/B, Shivaji Galli, Basavan Bagewadi, Dist. Vijayapura (Bijapur), Karnataka - 586 203
2.	GSTIN or User ID	29AACCE0525D1Z4
3.	Date of filing of Form GST ARA-01	24.11.2017
4.	Represented by	Sri. Prashant Agarwal, Partner M/s Pricewaterhouse Coopers Pvt. Ltd., Building No.10, 17 th Floor, Tower C, DLF Cyber City, Gurgaon - 122 002.
5.	Jurisdictional Authority - Centre	Assistant Commissioner, Central Tax & C.Ex., Vijaypur - 586 102.
6.	Jurisdictional Authority - State	N A
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- CIN number IBKL17112900071003 dated 16.11.2017.

**ORDER UNDER SUB-SECTION (4) OF SECTION 98 OF CENTRAL GOODS
AND SERVICE TAX ACT, 2017 AND UNDER SUB-SECTION (4) OF SECTION
98 OF KARNATAKA GOODS AND SERVICES TAX ACT, 2017**

1. M/s Giriraj Renewables Private Ltd., (called as the 'Applicant' hereinafter), I Floor, CTS 906/B, Shivaji Galli, Basavan Bagewadi, Dist. Vijayapura (Bijapur), Karnataka - 586203, having GSTIN number 29AACCE0525D1Z4, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017, KGST Act, 2017 & IGST Act, 2017 read with Rule

104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01. They also enclosed copy of challan for Rs.5,000/- bearing CIN number IBKL17112900071003 dated 16.11.2017.

2. The Applicant is an EPC contractor and enters into contract with various developers who desire to set up and operate solar photovoltaic plants for supply of power generated. The contracts are for supply of goods as well as services. The applicant has sought advance ruling in respect of the following questions:

- a) Whether supply of turnkey Engineering, Procurement & Construction ('EPC') Contract for construction of solar power plant wherein both goods and services are supplied can be construed to be a Composite Supply in terms of Section 2(30) of CGST Act, 2017.
- b) If Yes, Whether the Principal Supply in such case can be said to be 'Solar Power Generating System' which is taxable at 5% GST.
- c) Whether benefit of concessional rate of 5% of solar power generation system and parts thereof would also be available to sub-contractors.

4. The applicant furnishes, in exhibit II to the application, some facts relevant to the stated activity:

- a. The applicant is an **EPC contractor** & enters into contract with various developers who desire to set up and operate solar photovoltaic plants for supply of power generated. In various cases, the Applicant also is a project developer wherein it is engaged in operation of renewable energy power plant projects.
- b. Typically a turnkey contract is entered into by the Applicant to do end to end setting up of a solar power plant which includes **supply of various goods (such as modules, structures, inverter transformer etc.) as well as complete design, engineering and studies transportation, unloading, storage and site handling, installation and commissioning of all equipments and material, complete project maintenance as well as supply and**

construction related in various other packages for complete PV plants.

- c. Accordingly, the contract entered into by the Applicant, includes end to end activities i.e. **supply of various goods and services intended for setting up, operation and maintenance of a solar power plant.**
- d. The intent of the contract is that the entire contract would be undertaken by the Applicant for supply of both goods and services and setting up of the solar power plant as well as **transmission lines for transmission of the electricity generated up to the storage or the GRID.**
- e. There may be a **single lump sum price for the entire contract** for supply of both goods and services and payment terms may be defined depending on various milestones.

The applicant also provided a diagrammatic illustration of the solar power system.

4. The applicant, in Exhibit III to the application, has furnished their understanding of rate of tax / exigibility in respect of the impugned transaction, on the basis of the following grounds:

4.1. Legal provisions and applicability

4.1.1 Rate of solar power generating system

Under GST regime, various rates have been prescribed for goods and services. Per, Notification No. 1/2017 — Integrated tax (Rate) dated 28 Jun 2017, solar power generating systems and parts for their manufacture are taxable at 5%. The relevant entry reads as follows:

Chapter Heading	Description
84 or 85 or 94	<p>Following renewable energy devices and parts for their</p> <p>a) Bio-gas plant</p> <p>b) Solar power based devices</p> <p>c) Solar power generating system</p> <p>d) Wind mills and wind operated electricity generator</p> <p>e) Waste to energy plants/devices</p> <p>f) Solar lantern/solar lamp</p> <p>g) Ocean waves/tidal waves energy devices/plants</p> <p>h) Photo voltaic cells, whether or not assembled in modules or made up into panels</p>

Per the above, concessional rate of 5% has been provided to the following (when covered under heading 84, 85 or 94):

- PV modules
Solar power generating system — This term has not been defined
- Parts for manufacture of solar power generating system and PV modules —
There is no restriction provided on what would qualify as parts and in such case all goods which qualify as 'parts' of solar power generating system should be eligible for concessional rate of tax

4.1.2 Concept of composite supply and mixed supply

Section 2(30) of CGST Act defines composite supply to mean '*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*'.

Section 2(90) defines principal supply as '*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*'.

Further, mixed supply has been defined under the Act as "*mixed supply*" means *two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite*

supply". Hence, for mixed supply there should be a single price and entire contract gets taxed at the supply with highest rate of tax.

4.1.3 Concept of works contract

Works contract has been defined under Section 2 (119) of CGST Act as follows:

"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."

Works contract has been deemed to be a service under GST — Schedule II of GST law specifies that composite supply of works contract would be deemed to be a service. The general rate of works contract service is 18%.

4.1.4 Our understanding in present context

Per the above legal provisions, we understand that in present case, since the scope of work of the Applicant includes provision of both goods and services, the entire contract is one turnkey_ EPC, contract and hence, would qualify as a composite supply. The principal supply in such case is provision of the solar power generating system and hence, the entire contract (including_ services, portion) should be taxable at 5%.

4.2. Ambit of composite supply

4.2.1. Wide ambit of term 'Composite Supply'

Composite Supply has been defined in Section 2(30) of the Central Goods and Services Tax Act, 2017 as *'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;'*

Further, Principal Supply has been defined in Section 2(90) of the CGST Act as *'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'*

Thus, principal supply refers to the supply which is the predominant element in a composite supply.

Illustration as provided in GST law is that *In case goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply.*

Further, in terms of Section 8 of the CGST Act, it has been clarified that a composite supply comprising two or more supplies, one of which is a principal supply will be treated as supply of such principal supply. The relevant para of Section 8 of the CGST Act provides as follows:

'8. Tax liability on composite and mixed supplies. — 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'

Per the above, the essential conditions for a supply to qualify as composite supply can be highlighted as under:

- a) 2 or more taxable supplies of goods or services or both
- b) The taxable supplies should be naturally bundled
- c) The taxable supplies should be supplied in conjunction with each other
- d) One taxable supply should be a principal supply

In such case, the supply which is the principal supply is treated as the main supply and the entire transaction is taxed as per the principal supply.

In the present case, the Applicant would like to submit that the main intent of the contract is provision of the solar power generation system which consists of various components such as modules, structures, inverter transformers, cables, SCADA, transmission lines, etc. Services like civil construction are merely incidental to provision of such goods and form an ancillary part of the contract.

It is submitted that service portion of the contract is only —10 to 15% and balance is supply of goods. This also substantiates the fact that provision of services is incidental to supply of goods and hence, the supply of goods should form the principal supply and the entire contract should be taxed as supply of goods itself. It is submitted that the entire contract including goods

supplied used in AC electrical, DC electrical, transmission lines as well as other ancillary parts/ goods and services should get covered as composite supply and be taxable as principal supply of 'solar power generating system'.

It is further submitted that Ministry of New and Renewable Energy ('MNRE') in various instances has also approved entire BOQ consisting of various parts e.g. cables, module mounting structures, spares, transmission lines etc. as essential to solar power generating system and hence the concessions applicable have been extended to all goods to be used in solar power plant. Drawing a corollary, concessional rate of 5% should be applicable on all the goods approved under BOQ by MNRE as well. Further, as highlighted above, services being incidental to such supply should also get covered as composite supply and taxable at rate applicable to principal supply of 'solar power generating system'.

4.2.2. Wide ambit of term 'solar power generation system'

The term 'solar power generating system' has not been defined under GST. Solar power generating system generally are the systems which absorb sunlight and convert it into electricity which can be put to further use.

Solar power system has been defined under Solar Power – Grid connected Ground Mounted and solar Rooftop and metering Regulation 2014 issued by State of Goa. Solar power system as per the regulation means '*a grid-connected solar generating station including the evacuation system up to the Grid inter-connection point*'.

Typically the term system has a wide ambit. As per the Oxford Dictionary, the definition of the term 'system is *a complex whole, a set of things working together as a mechanism or interconnecting network*'. Similarly, the system is defined in Chambers 20th Century Dictionary as "*anything formed of parts placed together or adjusted into a regular and connected whole*". Hence, system typically includes various components/ parts which are manufactured/ assembled together for performing a function. In the present case, the term system should include all goods provided under the contract which help in end to end generation as well as transmission of electricity.

Further, under erstwhile law also, solar power generating systems have not been defined. However, under erstwhile excise law, various exemptions were extended to non-conventional energy devices which included solar power generating systems - List 8 of Notification no. 12/2012-Central Excise, dated 17 March 2012.

Reference is made to the judgment of Delhi Tribunal in the case of **Rajasthan Electronics & Instruments Ltd. vs. Commr. Of C. Ex., Jaipur** wherein it was held that '7. The adjudicating authority admitted the fact that Solar Photovoltaic Module is a Solar Power Generating System. We find that other parts are only panel housing consisting of controllers and switches. Hence the whole system is a Solar Power Generating System and is entitled for the benefit of notification. Therefore, the denial of benefit of notification by the adjudicating authority is not sustainable. The impugned order is set aside and the appeals are allowed'.

Further, in the case of Bangalore Tribunal in the case of **B.H.E.L. vs. Commissioner of Central Excise, Hyderabad** it was held that "In the present case, the appellants have claimed exemption in respect of "inverter charger card" as solar power generating system. The appellants actually manufactured SPV lantern. The above lantern required electricity for its working. It is possible to convert solar energy to electricity with the help of inverter charger manufactured by the appellants. The Dy. General Manager has certified that the inverter charger constitutes solar power generating system as it performs the function of generating the required high frequency AC power from Sunlight with, the help of SPV module and supplying it to the compact fluorescent lamp of a solar lantern. In view of the above, expert opinion, we hold that the impugned item can be considered as solar power generating system and is entitled for the benefit of the exemption Notification. Therefore, we allow the appeal with consequential relief"

Please find attached the aforesaid judgments as **Annexure — B.**

Per the above, where a contract is awarded as a whole for supply of solar power generation system consisting of various components (as highlighted above) as well as services, the entire contract should qualify as a solar power generating system. This is in line with the concept of 'composite supply' in which case the taxability is as per the principal supply which is the solar power generating system.

4.2.3. Reference to Education Guide issued under service tax regime

It is to be noted that the concept of composite supply under GST is identical to the concept of naturally bundled services prevailing in the erstwhile Service Tax Regime.

Section 66F (3) of the Finance Act, 1994 (the Finance Act') two rules have been prescribed for determining the taxability of such services. The rules prescribed are explained as under:

1. If various elements of a bundled service are naturally bundled in the ordinary course of business, it shall be treated as provision of a single service which gives such bundle its essential character'
2. If various elements of a bundled service are not naturally bundled in the ordinary course of business, it shall be treated as provision of a service which attracts the highest amount of service tax.

The concept of naturally bundled services was explained in the Education Guide issued by the CBEC in the year 2012 (the Education Guide'). The relevant extract of the Education Guide is reproduced as under for case of reference:

Bundled service means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services. An example of 'bundled service' would be air transport services provided by airlines wherein an element of transportation of passenger by air is combined with an element of provision of catering service on board. Each service involves differential treatment as a manner of determination of value of two services for the purpose of charging service tax is different.'

The Education Guide also clarifies that in cases of composite transactions, i.e. transactions involving an element of provision of service and an element of transfer of title in goods in which various elements are so inextricably linked that they essentially form one composite transaction then the nature of such transaction would be determined by the application of the dominant nature test.

Further, the following was provided in the Education Guide:

'9.2.4 Manner of determining if the services are bundled in the ordinary course of business

Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below —

- *The perception of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package then such a package could be treated as naturally bundled in the ordinary course of business.*
- *Majority of service providers in a particular area of business provide similar bundle of services. For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines*

- *The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. For example service of stay in a hotel is often combined with a service or laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.*
- *Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are:*
 - *There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use*
 - *The elements are normally advertised as a package*
 - *The different elements are not available separately.*
 - *The different elements are integral to one overall supply — if one or more is removed, the nature of the supply would be affected.*

Per the above, the following conclusions can be drawn:

- *In case more than two supplies are supplied together wherein one of the supply is principal supply would qualify as composite supply.*
- *Further, goods supplied under the composite supply are supplied in conjunction with each other. Also, such composite supply is supplied in the ordinary course of business.*
- *The composite supply would qualify as supply of the principal supply. Taxes would be applicable as on such principal supply.*

Drawing reference to the above, it is submitted that the customer perceives the entire contract is for supply of solar power generating system as the intent of both the parties is supply of the goods/ system which would help in generation of electricity. Hence, the entire contract (both goods and services) and bundled and linked wherein the main intent is provision of the goods which constitute solar power generating system.

4.2.4. Global Jurisprudence — Meaning of Composite Supply

The concept of 'composite supply' is a global concept and has been discussed in various countries. Provided below is relevant extract from various countries regarding the same:

4.2.4.1. Australia

In terms of Goods and Services Tax Ruling 2001/8 issued under Australia, *Composite Supply means a supply that contains a dominant part and includes something that is integral, ancillary or incidental to that part. Composite supply is treated as supply of one thing.*

There have been various precedents in which the courts have defined a composite supply. Few are highlighted below:

- The Full Federal Court in the case of *Luxottica* found that while 'supply' is widely defined it 'invites a commonsense, practical approach to characterisation'. It was observed that while 'Supply' is defined broadly, it nevertheless invites a commonsense, practical approach to characterisation. An automobile has many parts which are fitted together to make a single vehicle. Although, for instance, the motor, or indeed the tyres, might be purchased separately there can be little doubt that the sale of the completed vehicle is a single supply. Like a motor vehicle, spectacles are customarily bought as a completed article and in such circumstances are treated as such by the purchaser. The cost that either the frame or the lenses may be purchased separately is not to the point. Similarly the fact that one component, the lenses, is GST-free or that one component is subject to a discount does not alter the characterisation.
- In the case of *Saga Holidays*, Stone J focused on the 'social and economic reality' of the supply and found that there was a single supply of accommodation and the adjuncts to that supply (including the use of the furniture and facilities within each room, cleaning and linen services, access to common areas and facilities such as pools and gymnasiums and various other hotel services such as portage and concierge) were incidental and ancillary to the accommodation part of the supply.'

Per the above, composite supply is taxed as supply of the dominant activity to which others are merely ancillary. In the present case also, the dominant supply is those of goods (which constitutes solar power generating system' and services is merely incidental to provision of such goods.

4.2.4.2. European Union

Per the European Union Directive, *a composite supply is a transaction where supplies with different VAT treatments are sold together as one*. The supplies with a composite supply may consist of parts that, if assessed separately, have different tax rates. Some have standard rates, reduced rates or are exempt from VAT.

The European Court of Justice ('ECJ') has delivered several judgements on the aspect of composite supply under European Union Value Added Tax laws ('EU-VAT').

In the case of Card Protection Plan Ltd. Vs. C & E Commrs [1994] BVC 20 , the ECJ held that *'a service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself but a means of better enjoying the principal service supplied'*.

Per the above principal, in the present case also, what the customer wishes or intends to obtain is the main supply of solar power generating system and services are only a means to enjoy the same and hence, services are incidental to the main supply of goods.

4.2.4.3. United Kingdom

Under the UK VAT laws, a multiple supply (also known as a combined or composite supply) involves the supply of a number of goods or services. The supplies may or may not be liable to the same VAT rate.

If a supply is seen as insignificant or incidental to the main supply, then for the purposes of VAT it is usually ignored — the liability is fixed by the VAT rate applicable to the main supply (or supplies).

In the case of Tumble Tots (UK) Ltd v R & C Commrs [2007] BVC 179. *Members of a playgroup received a T-shirt (children's clothing is potentially zero rated) and a magazine (potentially zero rated) as well as the right to attend classes which would be standard rated. The Court decided that there was a single standard rated supply of the right to belong to the playgroup*

and the T shirt and magazine were incidental to that main supply. No one who was not in the playgroup could have bought the T shirt or magazine separately.

Per the above, it is clear that globally also composite supply means a supply of more than one goods/services wherein one supply qualifies as principal supply. Therefore, taxes as applicable on the principal supply are applied on the whole composite supply.

4.3. Intention of parties

As discussed above, section 2(30) of CGST Act states that supply of two or more taxable supplies of goods or services or both or combination of both which are naturally bundled and are supplied in conjunction with each other in ordinary course of business, one of which is a principal supply will be considered as a composite supply.

Further, in terms of Section 2(90) of CGST Act, principal supply means the supply of goods or services which constitutes predominant element of a composite supply. Further, as per Section 8, in case of composite supply, the taxes applicable on principal supply would be applicable on the composite supply.

In the present case, the intention of both the parties is to supply the whole of solar power generating system in totality which consists of various goods and services are incidental to provision of such goods. What the customer wants is a functional solar power system and services such as erection, commissioning etc are only a means to provide the main supply of goods.

4.4. Contract does not constitute works contract

It is submitted additionally that works contract is also defined as a composite contract and includes 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.

It is our case that the intent of the contract executed by the Applicant are not in the nature of erection, commissioning or fitting out, etc. Instead the contract is entered for provisioning of solar power generating system and the main intent of parties is to procure a solar power generating system to which the activity/ services of erection/ commissioning etc are only incidental.

In the present case, even if the contract qualifies as composite contract, the principal supply would be that of provision of solar power generating system and not provision of works contract services. This is because as highlighted above, the principal supply or dominant intent is provision of goods as solar power generating system and hence, entire contract should be taxable as the principal supply itself.

4.5. Whether benefit would also be available to sub-contractor

- 4.5.1 In certain cases, the turnkey contractor engages various sub-contractors (manufacturers/supplies/ sub-contractors) who further supply the goods to such contractor or engage in provisioning of certain portion of the turnkey contract.
- 4.5.2 Further, there may be cases wherein the Developer divides the EPC contract between two separate EPC contracts of construction of solar power generation system.
- 4.5.3 Notification no. 1/2017-Integrated Tax (Rate), which provides concessional rate on solar Power generating system does not specify the persons who would be eligible for concessional rate of 5% i.e. developer, EPC contractor or manufacturer/ supplier/ sub-contractor.
- 4.5.4 Since the concessional rate of 5% is provided to renewable energy products and parts thereof, the same should be applicable to all suppliers providing such products as long as it can be established (through certification or otherwise) that these are to be used in solar power generation system. This would also be in line with practice under erstwhile excise law wherein benefit was extended to sub-contractors also through MNRE certification.

4.6. Conclusion

- As per Section 2(30) of the CGST Act, in case more than one goods are supplied which are bundled together in the ordinary course of business, such supply would be considered as composite supply. Further, per Section 8 of the CGST Act, a composite supply comprising two or more supplies, one of which is a principal supply will be treated

as supply of such principal supply. Therefore, GST applicable on the principal supply would be applied on such composite supply.

- In view of the above, a position can be taken that the Applicant engaged in the business of EPC contracts of supply of solar power generating system providing services, erection, testing and commissioning of solar power projects, should qualify as composite supply wherein the supply of the solar power generating system constitutes the principal supply. Other services, erection, testing and commissioning of solar power plants are ancillary to the supply of solar power generating system and hence, entire contract (including all goods as well as services) should qualify as solar power generating system taxable at 5%.
- Concessional rate of 5% for supply of solar power generating system or its parts should also be available to sub-contractors.

Further to above submissions, we most respectfully pray that:

1. Allow us to reiterate all the submissions without prejudice to one another;
2. Grant a personal hearing put forth our contentions and explain our submissions before passing any order in this regard;
3. Allow us to amend, alter and add to the present reply;
4. Allow us to produce additional documents and other material during the time of Personal Hearing; and
5. In that behalf pass such other orders and directions as may be deemed proper and necessary.

PERSONAL HEARING: / PROCEEDINGS HELD ON 09.02.2018.

5. The Applicant submitted Specific Power of Attorney appointing M/s Price Waterhouse Coopers Private Limited, represented by Shri Prashanth Agarwal, as their authorized legal representative, who attended the proceedings held before the Authority on Advance Ruling in Karnataka, Bengaluru on 09.02.2018 and furnished additional written submissions. The authorized representative during the proceedings stated / pleaded that the contract is for supply of system / solar plant only which includes both supply of goods (PV plates) and installation & does not include maintenance; also the contract is for one lump sum amount; the rate of GST should be at 5% as per specific entry in schedule; it is not a works contract as the equipments are not immovable property, the predominant cost is that of Photovoltaic cells which are chargeable at 5%

and hence this contract should not be considered as works contract. The written additional submissions are appended below:

6. Besides the above presentation during the hearing the applicant made the following additional written submissions.

6.1 The Applicant has put forth the argument that the proposed transaction/ Contract is one for supply of 'Solar Power Generating System' as a whole and hence the rate of GST should be 5%. In furtherance to the same the applicant puts forth as follows:

- (a) The intent of the parties is always for supply of Solar Power Generating system as a whole.
- (b) The applicant has also submitted a draft contract and draws attention to Clause 'B' of the draft contract which provides that *"B. Owner has appointed the Contractor for supply of the Solar Power Plant which includes engineering, design, procurement, supply, development, testing and Commissioning of the Plant as per scope defined in relevant schedule of this Contract, as per Applicable Law and Technical Specifications"*
- (c) The Applicant has further drawn reference to Schedule I of the agreement which defines the scope of work to be executed by the Contractor i.e. the Applicant. The said schedule clearly outlines the entire scope to be undertaken and provides that the Applicant would be responsible for supply of Solar Power Plant.

"The Contractor would be responsible for Supply of Equipment and undertake all necessary activities ancillary to such supplies (such as erection, civil work etc) to ensure complete supply of Solar Power Plant..."

(d) It is further stated that typically the said contract is entered into for supply of solar power generating system which involves supply of equipment and undertaking certain services. Separate prices are specified for different equipment which are supplied under the agreement for commercial convenience such as movement of goods, claiming of payment or availing trade credits etc., however, as a general trade practice all the equipment which are being supplied under the agreement are supplied together for setting up/ supply of a solar power generating system.

6.2 The second assertion by the applicant is that the Contract does not constitute works contract. The following submissions have been made in this regard.

(a) Works contract is defined as a composite contract and includes 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.

(b) Therefore, in order to determine whether the supply made by the Applicant is of works contract, it is imperative to understand (i) the essence of the contract and the intention of the parties involved in the contract to determine whether the parties

intend to undertake works contract or supply of solar power plant and (ii) whether the activities are undertaken on an immovable property for the contract to qualify as works contract.

Essence of the contract and intention of the parties involved in the contract is clearly to supply

As explained above, the intention of the parties entering into a contract with the Applicant, is to procure a completely functional solar power plant wherein the Applicant undertakes end to end responsibility of supply of equipment for solar power plant including designing, engineering, supply, installation, testing and commissioning of the solar power plant. The intention of the parties is not to undertake any activity on an immovable property, but to supply Solar power plant.

Solar power plant is not an immovable property

It is submitted that it has been highlighted in various pronouncements by the judicial authorities that in cases where an object is installed/fastened to the land for better running of the said object, and not for the benefit of land, such object will not be considered as immovable property. Further, it has been held that if fixing of a plant to a foundation is only meant to give stability to the plant and where there is no intention to make such plant permanent, the foundation would not change the nature of the plant and make it an immovable property.

(c) The applicant has relied upon the following judgments in furtherance of their arguments.

- (i) **Sirpur Paper Mills Ltd., vs. Collector of Central Excise, Hyderabad** (1998 1 SCC 400)
- (ii) **Commissioner of Central Excise v. Solid and Correct Engg Works & Ors.** (2010 (175) ECR 8 (SC)),
- (iii) **Sri Velayuthaswamy Spinning Mills v. The Inspector General of Registration and the Sub Registrar** (2013 (2) CTC 551),
- (iv) **Perumal Naicker v. T. Ramaswami Kone and Anr.** (AIR 1969 Mad 346)

In view of the aforesaid judgments, the applicant submits that in the instant case, the solar power plants supplied by the Applicant is commissioned and installed only for the purpose of better functioning of the plant and are capable of being removed and transferred from one place to another. Hence, the fact that the plant is firmly but not permanently attached to the land means that the same is not an immovable property.

Reference is also made to Clause 4.1(xiii) of the draft agreement, which contemplates possibility of transferring the Plant:

(xiiz) Any costs incurred by the Contractor for any changes made in the land/premises of the Owner, while development of Plant, due to the requirement of transferring the Plant to another location, would be borne by the Owner. Such costs incurred would be charged by the Contractor from Owner separately and does not form part of the Contract price highlighted in Schedule 3 of the Contract. The amount to be charged due to the changes will be mutually decided between the parties.

Reliance is also placed on the Chartered Engineer Certificate which clearly provides that Solar Power Plant if required can be shifted to another location and is highly moveable.

The applicant has also made reference to Circular issued by Central Board of Customs and Excise ('CBEC'), vide 37B Order No. 58/1/2002 — CX issued under F.No. 154/26/99 — CX4 dated 15 January, 2002 ('the Circular'), after realizing the anomaly in case of plant and machinery assembled at site, issued the Circular clarifying the following:

(i) If items assembled or erected at site and attached by foundation to earth cannot be dismantled without substantial damage to its components and thus cannot be reassembled, then the items would not be considered as moveable and will, therefore, not be excisable goods.

(vi) If any goods installed at site (example paper making machine) are capable of being sold or shifted as such after removal from the base and without dismantling into its components/parts, the goods would be considered to be movable and thus excisable. The mere fact that the goods, though being capable of being sold or shifted without dismantling, are actually dismantled into their components/parts for ease of transportation etc., they will not cease to be dutiable merely because they are transported in dismantled condition.....'

Relying on the aforesaid circular the Applicant contends that as the solar power plant, once installed, is capable of being removed and transferred from one place to another without substantial damage, the same should qualify as movable property.

The applicant further states that the service portion of the contract constitutes a meagre 6% of the entire contract, solely for the purpose of operation of the solar power plant. The solar power plant can be easily transferred to another location in case required. Hence, it is abundantly apparent that the activity of erection, commissioning and installation is for the beneficial enjoyment of the solar power plant, and hence, solar power plant should not be considered as an

immovable property.

6.3 The applicant further contends that Without prejudice to the above and in the alternative, even if the agreement is construed as a Composite Supply, the most critical compo Major component of Solar Power System — Solar Photovoltaic module.

Section 2(30) of CGST Act defines composite supply to mean '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'.

Section 2(90) defines principal supply as "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'.

Further, in terms of Section 8 of the CGST Act, it has been clarified that a composite supply comprising two or more supplies, one of which is a principal supply will be treated as supply of such principal supply. The relevant para of Section 8 of the CGST Act provides as follows:

"8. Tax liability on composite and mixed supplies. — The tax liability on 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'

Per the above, the essential conditions for a supply to qualify as composite supply can be highlighted as under :

- a. 2 or more taxable supplies of goods or services or both
- b. The taxable supplies should be naturally bundled
- c. The taxable supplies should be supplied in conjunction with each other
- d. One taxable supply should be a principal supply.

In such case, the supply which is the principal supply is treated as the main

supply and the entire transaction is taxed as per the principal supply.

The Applicant would like to highlight that mounted Photovoltaic module (PV module) comprises around 60%-70% of the entire Solar Power Plant, and the rest of the components constitute for around 30-34% and are merely parts or sub parts which are required for panel housing or setting up the module such as controllers and switches. This is due to the fact that PV module is a packaged, connect assembly of typically 6xio photovoltaic solar cells, which constitute the photovoltaic array of a photovoltaic system that generates and supplies solar electricity. In other words PV modules are nothing but an assembly of solar cells that helps in converting solar power into electricity. Hence, PV module is the most important component of solar power generating system and therefore, would squarely qualify as the 'principal supply' as per the provisions of the GST law.

Accordingly, it is submitted that the GST rate of PV modules which is 5% should be applicable on the whole of the contract.

Reference can be made to the CERC Order dated 23 March 2016 involving determination of Benchmark Capital Cost Norm for Solar PV Power Project for FY 16-17. In the said case also, the CERC, of the total cost of the project including land cost, PV Modules cost is considered as 62%. A copy of the said order has also been submitted.

Reliance can also be placed on Chartered Engineer Certificate which provides that the most critical component is PV Modules both in terms of the value and the functionality that such Modules perform.

Even in the draft agreement, reference can be made to Schedule I of the scope of work which provides as below:

"The Contractor would be responsible for Supply of Equipment and undertake all necessary activities ancillary to such supplies (such as erection, civil work etc) to ensure complete supply of Solar Power Plant.

Both parties agree that of the total supplies, the most critical part of the Plant are the supply of the mounted PV Module which constitute 60%-70% of the total contract value. Further, it is also agreed that the Contractor is responsible for the whole of the contract that is for setting-up/ supply of the Plant.

For the purpose of undertaking compliances under Laws constituted in India the parties may agree to define prices of the equipment to be supplied as part of the contract. The same shall not in any manner exceed the lumpsum price agreed between the Parties and also does not in any manner dilute the responsibility of the Contractor..."

Further, there is a definition in the draft agreement, "Major Equipment" [1.1.67] which clearly identifies PV Modules as the Major Equipment

"Major Equipment(s)" means PV solar modules which is an assembly of solar cells that helps in converting solar power into electricity and all other Equipments specified in Schedule 3 (Contract Price and Payment Milestones) for facilitation of Payment under this Contract;

Reference in this regard is made to the judgment of Delhi Tribunal in the case of Rajasthan Electronics & Instruments Ltd. vs. Commr. Of C. Ex., Jaipur wherein a Solar Photovoltaic Module was held to be a Solar Power Generating System. Relevant extract of the judgement is reproduced below for ease of reference:

"7. The adjudicating authority admitted the fact that Solar Photovoltaic Module is a Solar Power Generating System. We find that other parts are only panel housing consisting of controllers and switches. Hence the whole system is a Solar Power Generating System and is entitled for the benefit of notification. Therefore, the denial of benefit of notification by the adjudicating authority is not sustainable. The impugned order is set aside and the appeals are allowed'.

Basis the above submissions, it is clearly evident that the PV Modules qualifies as 'principal supply' and hence the whole contract even if construed as composite supply should be liable to tax considering it to be supply of PV Modules, which is liable to GST at the rate of 5%.

6.4 Whether benefit would also be available to sub-contractor

In certain cases, the contractor engages various sub-contractors (manufacturers/ supplies/ sub-contractors) who further supply the goods to such contractor or engage in provisioning of certain portion of the contract.

Further, there may be cases wherein the Developer divides the contract between two separate contracts of construction of solar power generation system.

Notification no. 1/2017-Integrated Tax (Rate), which provides concessional rate on solar power generating system does not specify the persons who would be eligible for concessional rate of 5% i.e. developer, contractor or manufacturer/ supplier/ sub-contractor.

Since the concessional rate of 5% is provided to renewable energy products and parts thereof the same should be applicable to all suppliers providing such products as long as it can be established (through certification or otherwise) that these are to be used in solar power generation system. This would also be in line with practice under erstwhile excise law wherein benefit was extended to sub-contractors also through MNRE certification.

7. The applicant has concluded their presentation as follows:

- I. that the Applicant is engaged in the business of supply of 'solar power generating system' and the same should be liable to tax at 5%.
- II. that solar power generating system should not qualify as immovable property.
- III. that even if the agreement is construed as a composite supply, the principal supply would be the supply of PV Modules which again are liable to tax @5%.
- IV. That the Applicant submits that the proposed agreement with its customers should be taxable @5% GST, and the same should be applicable to sub-contractors as well.

FINDINGS & DISCUSSION:

8. We have gone through the records of the application, filed by M/s Giriraj Renewables Private Ltd., (the Applicant), the issue/transaction(s) involved on which advance ruling is sought by the applicant, relevant facts of the transaction(s) involved, the statement containing the applicant's understanding of rate of tax in respect of the transaction(s), the additional submissions of the applicant during the hearing proceedings and the copy of draft contract.

8.1 The Applicant has sought Advance Ruling on the following questions:

1. Whether supply of turnkey Engineering, Procurement & Construction ('EPC') Contract for construction of solar power plant wherein both goods and services are supplied can be construed to be a Composite Supply in terms of Section 2(30) of CGST Act, 2017.
2. If Yes, Whether the Principal Supply in such case can be said to be 'Solar Power Generating System' which is taxable at 5% GST.
3. Whether benefit of concessional rate of 5% of solar power generation system and parts thereof would also be available to sub-contractors.

9. Question No. 1 is "Whether supply of turnkey Engineering, Procurement & Construction (EPC) Contract for construction of solar power plant wherein both goods and services are supplied can be construed to be a Composite Supply in terms of Section 2(30) of CGST Act, 2017?".

9.1 Composite Supply is defined under Section 2(30) of the CGST Act, 2017 as 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 the principal supply.

9.2 In order that a supply be categorised as a Composite supply its essential to have (a) two or more taxable supplies and (b) they should be naturally bundled in conjunction with each other. In the present application before us and in terms of the draft contract the applicant contends that they are supplying the goods and are also carrying out services related to the installation of the supplied good. Thus they are engaged in the supply of both goods and services. They have further contended in the concluding part under Para 2.3, Page 12 of the application that the customer perceives that the entire contract is for the supply of solar power generating system and the intent of both the parties is for supply of goods/system. Hence the entire contract (both goods and services) is bundled and linked where the main intent is provision of the goods which constitute solar power generating system.

9.3 We thus proceed as follows to determine whether the intended supply constitutes a Composite Supply.

9.3.1 The scope of contract, as mentioned at clause 3 of the draft contract provides that the contractor (Applicant) shall supply all the equipment as per the terms of the said contract and in accordance with the execution schedule, to the plant site and complete development, installation and commissioning of the works in accordance with the technical specifications, applicable law, applicable permits and the terms of the contract, in addition to the detailed drawings / documents finalized during engineering. This clause indicates that the Applicant would

supply all the required goods and also provide services related to installation and commissioning of the project.

9.3.2 The Applicant submits that the major component of Solar Power System is Solar Photovoltaic module (PV module), which comprises around 60% - 70% of the entire Solar Power Plant and the rest of the components constitute for around 30% - 34% and are merely parts or sub-parts which are required for panel housing and setting up of the module such as controllers and switches. The PV module is a packaged, connect assembly of typically 6 x 10 photovoltaic solar cells, which constitute the photovoltaic array of a photovoltaic system that generates and supplies solar electricity. In other words they are nothing but an assembly of solar cells that helps in converting solar power into electricity. Hence PV module is the most important component of solar power generating system. Further the Applicant claims that they would be supplying PV module, which is a major equipment and installation of the same, for which they supply connectors etc.

9.3.4 The contents of the draft contract have been examined closely and the following facts emerge:

1. As per clause D of the contract, the equipment (PV modules) is imported and directly transferred to the owner by way of High Sea Sale. Therefore the legal title of the goods shifts to the owner and also the Bill of Entry to clear goods from Customs Area is filed by the owner and not the Applicant. This indicates that the owner has procured the goods and made them available to the Applicant. This is in contrast to what the Applicant has claimed. Once the owner files the Bill of Entry at the time of import they become the titleholders in respect of those goods. After clearance of the goods once they are made available to the Applicant for further action of installation etc, then the Applicant cannot claim to have supplied the goods.
2. As per clause 1.1.45 of the contract "Free Issue Equipment" is defined as Photovoltaic Modules to be supplied by the owner to the contractor as free issue equipment at the plant site for the installation and commissioning of the solar power plant. Hence it is clearly evident from this clause that the major equipment i.e PV modules, are not being supplied by the contractor / Applicant.

3. As per the scope of contract, as mentioned at clause 3 of the contract, *the contractor (Applicant) shall supply all the equipment as per the terms of the said contract and in accordance with the execution schedule, to the plant site and complete development, installation and commissioning of the works in accordance with the technical specifications, applicable law, applicable permits and the terms of the contract, in addition to the detailed drawings / documents finalized during engineering, which is contradictory to the free issue equipment.*

4. The owner's obligation, as mentioned at clause 4.1.iv of the contract, is to *intimate the contractor at least five days prior to the arrival of free issue equipment at plant site for the contractor to make all the necessary arrangement for unloading and storage at the plant site, which clearly shows that the contractor does not supply the PV modules.*

9.3.5 The provisions of the draft contract as discussed in the preceding para indicates that the major portion of contract, i.e. the PV module constituting 60% - 70% of the total contract value, is supplied by the owner and not the contractor. Therefore the contractor cannot claim that they will supply the PV Module & thereby there is no principle supply involved in the instant case.

9.3.6 This further raises the point whether the supply envisaged in the draft contract qualifies to be a composite supply. The different goods and /or services supplied should be naturally bundled. However here the draft contract opens up the question whether such supplies are indeed bundled or not. The draft contract clearly demonstrates that in such projects the owner can procure the major equipments involved on their own also and the contractor may carry out the supply and services portion in respect of the remaining portion. Thus the concept of natural bundling does not apply to the present envisaged supply. In other words the envisaged supply does not constitute a composite supply.

9.3.7 Therefore upon examination of the specific nature of the supply envisaged under the draft contract we conclude that the envisaged supply does not amount to a composite supply.

10. The second question is "If yes, whether the Principal supply in such case can be said to be 'Solar Power generating System' which is taxable at 5% GST".

10.1 The answer to this question flows from the answer to the first question. During the examination of the first question it is borne out that the major component of PV Modules is procured by the owner himself. Therefore the same cannot be construed as a principal supply by the applicant. Therefore this question does not remain relevant.

11. The third question is 'Whether benefit of concessional rate of 5% of solar power generation system and parts thereof would also be available to sub-contractors.'

The sub-contractor is an individual supplier and the rate of GST applicable depends on the type of supply and no concessional rate of GST is provided to sub-contractor on the basis of main contractor. Hence the supply made by sub-contractor need to be viewed as an individual supply and thereby the appropriate rate of GST has to be applied.

10. In view of the foregoing, we rule as follows

RULING

1. Question No. 1-The major component (PV Module) said to have been constituting 70% of the whole project can not be construed to be supplied by the applicant consequent upon High Sea Sale of the said product and hence it cannot be construed to be a principal supply of the project and thereby cannot be a composite supply.
2. Question No. 2- The question does not remain relevant on account of answer to question number 1.
3. Question No. 3- The supply made by sub-contractor need to be viewed as an individual supply and thereby the appropriate rate of GST has to be applied depending on the specific nature of supply.


21.03.2018
(Harish Dharnia)
Member


(Dr. Ravi Prasad M.P.)
Member

Place : Bengaluru,
Date : 21.03.2018