

**THE AUTHORITY FOR ADVANCE RULING
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Advance Ruling No. KAR ADRG 18/2021

Dated : 06-04-2021

Present:

1. Dr. M.P.Ravi Prasad
Additional Commissioner of Commercial Taxes Member (State Tax)
2. Sri.Mashhood Ur Rehman Farooqui,
Joint Commissioner of Central Taxes Member (Central Tax)

1.	Name and address of the Applicant	M/s Hadi Power Systems, 3rd Floor, Emkay Shalimar Complex, Opp. Kankanadi Bus Stand, Kankanady, Mangalore-575002.
2.	GSTIN or User ID	29BCLPA3437P1Z5
3.	Date of filing of Form GST ARA-01	02-09-2020
4.	Represented by	Sri Dayananda K, Chartered Accountant
5.	Jurisdictional Authority – Centre	The Principal Commissioner of Central Tax ,Mangalore GST Commissionerate
6.	Jurisdictional Authority – State	Asst. Commissioner, LGSTO-262, Mangalore
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000-00 under CGST Act& Rs. 5,000-00 under KGST Act vide CIN No. VIJB20082900306535 dated 27.08.2020

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

1. M/s Hadi Power Systems, 3rd Floor, Emkay Shalimar Complex, Opp. Kankanadi Bus Stand, Kankanady, Mangalore-575002 having GSTIN number-29BCLPA3437P1Z5, has filed an application for Advance Ruling under Section 97 of CGST Act, 2017, read with Rule 104 of the CGST Rules and Section 97 of the KGST Act, 2017 read with Rule 104 of KGST Rules 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act..



HADI POWER SYSTEMS



2. The applicant is a proprietary concern registered under the Goods and Services Tax Acts and is engaged in the business of execution of works contracts relating to electrical works and electrical infrastructure.

3. The applicant has sought advance ruling in respect of the following question:

1. *Whether concessional rate of GST shall apply to the sub-contractor who is sub-contracted from a sub-contractor of the main contractor, the main contractor being provider of works contract to a Government entity?*

4. **Admissibility of the application:** The question is about the applicability of a notification issued under the provisions of the Act and hence is admissible under Section 97(2)(b) of the CGST Act 2017

5. The applicant furnishes some facts relevant to the issue:

5.1 The applicant is a proprietary concern registered under the Goods and Services Acts and is engaged in the business of execution of works contracts relating to electrical works and electrical infrastructure.

5.2 Further, the applicant states that he has been allocated electrical sub-contractor works by the first sub-contractor M/s Shaaz Electricals which in turn is sub-contracted by main contractor M/s. Ocean Construction (India) Pvt. Ltd., who have been awarded the contract by M/s Karnataka Neeravari Nigam Ltd.

5.3 The applicant states that M/s. Ocean Constructions (India) Pvt. Ltd., (hereinafter called "main contractor") has been awarded a contract by M/s Karnataka Neeravari Nigam Ltd. for civil, electrical and mechanical works. The applicant also states that the nature of works delegated to the main contractor, M/s. Ocean Construction (India) Pvt. Ltd. is for the construction of Channa basaveshwara Lift Irrigation Scheme which includes preparation of plans and drawings, construction of intake canal, jack well cum pump house, Rising main, Electrical sub-station, erection of vehicle turbine pumps, including commissioning of entire project, including maintenance for 5 years period on turnkey basis.

5.4 The applicant has also stated that the main contractor has subcontracted the certain electrical works to M/s Shaaz Electricals (hereinafter called "first sub-contractor"). Further, first sub-contractor has in turn entered into sub-contract agreement with the applicant for providing electrical works.

5.5 M/s Karnataka Neeravari Nigam Ltd is being registered as a company which is wholly owned Government of Karnataka, as per the provisions of the Companies Act, 1956 with effect from 9th December 1998 for civil, electrical and mechanical works.



5.6 The applicant is of the opinion that the services provided by him falls under clause (ix) to serial number 3 of Notification 11/2017-Central Tax (Rate) dated 28-06-2017, as amended by Notification No.01/2018-Central Tax (Rate) dated 13-10-2017 and the concessional rate of tax @12% shall apply to him.

Description of the Service	Rate (per cent.)	Condition
“(ix) Composite supply of works Contract as defined in clause(119)of section2oftheCentralGoodsand ServicesTaxAct,2017provided by a sub-contract or 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.	6	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case maybe.

5.7 The applicant contends that activity of the electrical subcontractor works and infrastructure works carried out by him is on immovable property of M/s Karnataka Neeravari Nigam Ltd which is a government entity and the same is awarded by the first sub-contractor M/s Shaaz Electricals who is in turn awarded the said work by the main contractor M/s. Ocean Construction (India) Pvt. Ltd. Hence, according to the applicant, the work is liable to tax at the rate of 12% as per Notification (tax rate) 01/2018 dated 25-01-2018.

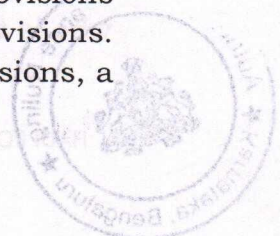
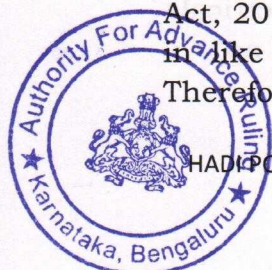
5.8 The applicant states that he is of the view that as all the requirements of clause(ix) of serial No.3 of the notification 11/2017- Central Tax(Rate), dated 28th June 2017(as amended) are fulfilled, the concessional rate shall apply to the applicant on the supply of works contract service made to the first sub-contractor.

PERSONAL HEARING: / PROCEEDINGS HELD ON 08-10-2020

6. Sri Dayananda K, Chartered Accountant, & Duly Authorized Representative of the applicant appeared for personal hearing proceedings held on 08.10.2020 & reiterated the facts narrated in their application.

FINDINGS & DISCUSSION

7. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and KGST Act, 2017 are in *pari-materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a



reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

8. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made by applicant and his authorized representatives during the hearing. We have also considered the issue involved on which advance ruling is sought by the applicant, relevant facts and applicant's interpretation of law.

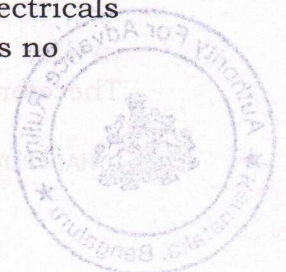
9. The documents submitted by the applicant is verified and observed that the applicant has not furnished the contract document/agreement between M/s Karnataka Neeravari Nigam Ltd. and M/s. Ocean Construction (India) Pvt. Ltd. for the execution of works pertaining to Channabasaveshwara Lift Irrigation Scheme.

9.1 The applicant has submitted only a part or incomplete work order. The nature of the work mentioned in the work order is of Construction of Channabasaveshwara Lift Irrigation Scheme at Walaballary in Sindhunur Taluk of Raichur District to irrigate supplementing suffering achkat of 54(9R) of TLBC includes preparation of plans and drawings, construction of intake canal, jack well cum pump house, Rising main, Electrical sub-station, erection of vehicle turbine pumps, including commissioning of entire project including maintenance for 5 years period on turnkey basis.

9.2 Further on verification of the copy of incomplete work order issued by M/s Ocean Constructions (India) Private Limited to Mohammed Haneef (Electrical Contractor) and the letter given by M/s Ocean Constructions (India) Private Limited, it is observed that only a part of the electrical work is sub-contracted to M/s Shaaz Electricals, who is the first sub-contractor.

9.3 The copy of the quotation raised by the applicant to M/s Shaaz Electricals for the electrification work of the 11KV HT substation with MCC panel clearly shows that the applicant is executing part of the electrical works as per the instructions of M/s Shaaz Electricals as Second sub-contractor.

9.4 In the instant case, it is seen that there is no privity of contract between the applicant and M/s Karnataka Neeravari Nigam Ltd. The original contract is awarded by M/s Karnataka Neeravari Nigam Limited to M/s Ocean Constructions (India) Private Limited. Hence as per the notification, *any sub-contractor providing services to Main contractor by executing the works mentioned in the serial number 3 of clause (iii) and clause (vi) which is exclusively covered under the clause (ix) of serial no.3 of Notification No.11/2017- Central Tax (Rate) dated 28.06.2017 (as amended from time to time) will be exempted from payment of GST subject to M/s Karnataka Neeravari Nigam Limited is qualified to be called as a Government Entity. In the present case, it is M/s Shaaz Electricals who is the sub-contractor who is covered under the said entry. As there is no*



privity of contract between the applicant and M/s Ocean Constructions (India) Private Limited and the contract is between the applicant and M/s Shaaz Electricals, the services provided by the applicant is not covered under the said entry.

10. The entry no.3 (iii) of Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017 (as amended) explains that any taxable person providing such supply of service in the form of composite supply of works contract as defined in clause (119) of section 2 of the CGST Act 2017 to Central Government, State Government, Union Territory, a local authority or a Governmental Authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of as explained vide sub entry no (b) (*canal,dam or other irrigationworks*) such being the case, the supplier of service as subcontractor will get concessional rate of tax @ 6% CGST and @ 6% KGST.

10.1 The entry no.3 (vi) of Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017 (as amended) explains that any taxable person providing such supply of service to the Central Government, State Government, Union Territory, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –

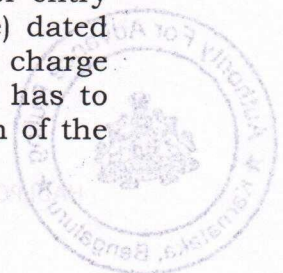
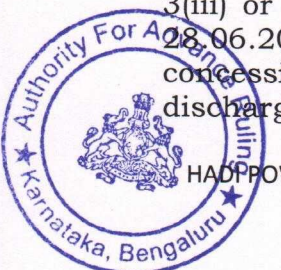
- (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
- (b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or
- (c) a residential 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.

such being the case, the supplier of service as subcontractor will get concessional rate of tax @ 6% CGST and @ 6% KGST.

10.2 It is observed that the privity of contract is between the applicant and the M/s Shaaz Electricals, however M/s Shaaz Electricals is not covered under Central Government, State Government, Union Territory, a local authority or a Governmental Authority or a Government Entity and hence the supply made by the applicant is not covered entry no.3 (iii) of Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017.

10.3 For the same reason, the activity of the applicant is also not covered under entry no. 3(vi) of the Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017 (as amended).

11. From the above it is observed that the activity under consideration undertaken by the applicant is not covered under entry no.3(ix) or under entry 3(iii) or under entry 3(vi) of Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017 (as amended) and hence applicant is not liable to charge concessional rate of GST@ 12% on the said supply, and the applicant has to discharge tax rate CGST @9% and KGST @ 9% each under the provision of the

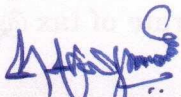


said Act.

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

RULING

The composite supply undertaken by the applicant under question is not covered under entry no. 3(iii) or 3(vi) or 3(ix) of the Notification No.11/2017 – Central Tax (Rate) dated 28.06.2017 as amended and hence applicant is not eligible to charge GST at a rate of 6% under CGST Act and 6% under the KGST Act. The applicant has to discharge tax rate CGST @9% and KGST @ 9% each under the provision of the GST Acts.



(Dr.M.P.Ravi Prasad)

MEMBER

Karnataka Advance Ruling Authority

Place : Bengaluru, 560 009

Date : 06-04-2021



(Mashhood Ur Rehman Farooqui)

Member

MEMBER

Karnataka Advance Ruling Authority

Bengaluru -560 009

To,

The Applicant

Copy to :

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bangalore.
3. The Principal Commissioner of Central Tax, Mangalore GST Commissionerate
4. The Asst. Commissioner, LGSTO-262, Mangalore.
5. Office Folder.

