

	KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWER, THIRUVANANTHAPURAM	
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BEFORE THE AUTHORITY OF : Smt. Gayathri P.G., IRS &
: Shri. Abdul Latheef K.

Legal Name of the applicant	M/s. S & G Engineers
GSTIN	32AAJFS5689J1ZM
ARN No.	AD3201220011371
Address	Dhanya, U.G-82, Kochulloor, Medical College P.O., Thiruvananthapuram, Kerala-695011
Advance Ruling sought for	1) Classification of services provided by the applicant and relevant SAC code. 2) Applicable rate of tax under Notification 11/2017 - Central Tax (Rate) as amended from time to time on various services provided by the applicant for the period July 2017 to January 2018, January 2018 to December 2021 and January 2022 onwards. 3) Eligibility of services to be exempt from the whole of tax leviable thereon under Notification 12/2017 - Central Tax (Rate) as amended from time to time.
Date of Personal Hearing	20/12/2023
Authorized Representative	Shri. Unnikrishnan.M, Chartered Accountant

ADVANCE RULING No.KER/04/2024 Dated 10/01/2024

1. M/s. S & G Engineers, Dhanya, U.G-82, Kochulloor, Medical College P.O,Thiruvananthapuram-695011 (hereinafter referred to as applicant) is a partnership firm registered under Section 22 of the CGST and KSGST Act, 2017 bearing GSTIN: 32AAJFS5689J1ZM. The firm submits that they are engaged in the business of works contract services in the state of Kerala, Karnataka and Tamil Nadu.



2. At the outset, 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 classification and SAC code for the Application of Polymer protective coating for bridges.

3.2. The rate of tax as applicable under Notification 11/2017 - Central Tax (Rate) as amended from time to time for the period 01-07-2017 till date.

3.3. Whether the services provided by them are eligible for any exemption from the whole or part of the tax leviable thereon under Notification 12/2017 - Central Tax (Rate).

4. Contentions of the Applicant.

4.1. The Applicant claims to be engaged in providing works contract services including materials by way of application of polymer protection to bridges in the State of Kerala as part of construction of bridges as well as for routine maintenance/renovation of bridges. The applicant is also providing such services in the states of Karnataka and Tamil Nadu and is also registered in the respective states under GST Law.

4.2. The Applicant provides the service as a principal contractor as well as in the capacity of sub-contractor to various entities including Government, Governmental Authorities and Government Entities including but not limited to the following:

- a. Ministry of Road Transport and Highways (MORTH) - Govt
- b. National Highway Authority of India - Govt Authority
- c. Kerala State Public Works Department - Govt
- d. Roads & Bridges Corporation of Kerala - Govt Entity
- e. Kerala State Construction Corporation - Govt Entity
- f. KITCO- Govt Entity



g. Cherian Varkey Construction Company (On sub contract model for Govt projects) - Main Contractor - Private Entity

4.3. The applicant submits that works contract services provided by them are in relation to bridges for general use by the public and are squarely covered by Notification 11/2017 - CT (Rate) Entry 3(iv) which attracts the rate of 12%. The applicant submits that the entry is independent in nature and service specific not conditional on nature of service recipient, or whether the supplier stands in the shoes of the principal contractor or sub-contractor.

4.4. The applicant interprets the classification of services and applicable rate of tax as per Notification 11/2017- Central Tax (Rate) and raised questions in connection with the classification and applicable rate of tax on Works Contract services for application of protective polymer coating for bridges as "Main Contractor" and Works Contract services for application of protective polymer coating for bridges as Sub-Contractor to a main contractor.

4.5. The applicant submits that the Service Code 995473 includes,

- i. painting services (principally decorative) of building interiors and similar services (e.g., application of coatings, lacquer, etc.);
- ii. painting services of building exteriors (principally for protection);
- iii. painting services of railings, gratings, doors and window frames of buildings, etc;
- iv. painting services of other engineering structures;
- v. paint removal services

As per Explanatory Notes on Classification of Services the applicant contended that the painting service falls under Service Code (Tariff) 995473.

4.6. The applicant submits that the rate of tax applicable as per Notification 11/2017 for the periods for services provided to Government, Governmental Authority and Government entity is shown below:



Period	Notification	Rate
01-07-2017 to 21-08-2017	11/2017 - CT - (R)	18%
22-08-2017 to 31-12-2017	11/2017 - CT (R) as amended by Notification 20/2017 CT (R) -	12%
01-01-2022 -	11/2017 - CT (R) as amended by Notification 22/2021 -	12%

4.7. The applicant also submits that the definition of works contract under Section 2(119) includes all services relating to the immovable property are included in the definition and it is immaterial if it is provided in the shoes of main contractor/ sub-contractor as far as entries in Notification 11/2017 - CT entry 3(iv) is concerned as well as wishes to submit at the status of the recipient is also not a condition envisaged in the said entry. Thus from the above contentions the appellant submits that the said services thus, fall under SAC 995473.

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 an opportunity for personal hearing on 20/12/2023. Shri. Unnikrishnan.M, Chartered Accountant 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 and oral submissions made while virtual hearing which were taken on record.

7. Discussion and conclusion.

7.1. We have carefully examined the statement of facts and the oral submissions made by the applicant at the time of hearing and the contentions on which



advance ruling is sought by the applicant falls within the purview of clause (a) & (b) of sub-section (2) of Section 97 of the CGST Act, 2017 and hence admitted.

7.2. The issue to be decided is the classification of services provided by the applicant and relevant Service Code (Tariff), applicable rate of tax under Notification 11/2017-Central Tax (Rate) dated 28.06.2017, as amended from time to time on various services provided by the applicant and the eligibility of services for exemption from the whole of tax leviable thereon under Notification No. 12/2017-CT(Rate) dated 28.06.2017, as amended from time to time.

7.3. The applicant is a partnership firm engaged in the provisions of Works Contract services by way of application of polymer protection to bridges as part of construction of the bridges as well as for routine maintenance/renovation of the bridges.

7.4. The applicant provides the said service as a principal contractor as well as in the capacity of a sub-contractor to various entities such as Government, Governmental Authorities and Government entities.

7.5. The applicant submits that works contract services provided by them are in relation to bridges for general use by the public and are covered vide entry no. 3(iv) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended from time to time, which attracts tax at the rate of 12% (CGST @ 6% and SGST @ 6%). The applicant contended that the entry is independent in nature and service specific and not conditional on the nature of service recipient, or whether the supplier stands in the shoes of the principal contractor or sub-contractor.

7.6. Section 2(119) of the CGST Act, 2017 defines "Works Contract" as follows; *Works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.* From the definition it reveals that the term works contract under GST is restricted to any works undertaken for an 'immovable property' wherein transfer of property in goods whether as goods or in some other form is involved.



7.7. For a contract to qualify as a works contract, it must be a composite supply, involving both goods and services, resulting in the construction, repair, maintenance, renovation, or improvement of an immovable property. As per para 6(a) of Schedule II of the CGST Act, 2017 works contract is treated as supply of services, regardless of whether the principal supply is goods or services.

7.8. A polymer coating is a thin layered coating or paint made with polymers that provide superior adherence and protection from corrosion. Therefore the activity of polymer coating comes under the activity of improvement of immovable property wherein transfer of goods in the form of paint included and hence squarely falls under the definition of "works contract" as defined in section 2(119) of the CGST Act.

7.9. As per Notification No 11/2017 dated 28-06-2017, works contract is classifiable under SAC 9954. Under this heading, the Service Code (Tariff) 995473 includes painting services for building interiors, exteriors, railings, gratings, doors, windows, and other engineering structures, as well as paint removal services. As per the explanatory notes to the scheme of classification of services, Service Code (Tariff) 995473-painting services includes;

- i. painting services (principally decorative) of building interiors and similar services (e.g., application of coatings, lacquer, etc.);
- ii. painting services of building exteriors (principally for protection);
- iii. painting services of railings, gratings, doors and window frames of buildings, etc;
- iv. painting services of other engineering structures;
- v. paint removal services

7.10. Therefore, the works rendered by the applicant to awarders squarely falls under the definition of "works contract" in section 2(119) of the CGST Act 2017 including material by way of application of polymer protection to bridges as part of construction of bridges as well as for routine maintenance/renovation of the bridges and the same will be treated as supply of service under Service Code (Tariff) 995473.



7.11. The second issue which is to be discussed is the rate of tax as applicable under Notification 11/2017 - Central Tax (Rate) as amended from time to time for the period 01-07-2017 till date. The applicant is providing works contract services by way of application of polymer protection to bridges as part of construction of bridges as well as for routine maintenance/renovation of the bridges and the bridges are for road transportation for use by the general public.

7.12. As per Sl. No. 3(ii) of the Notification 11/2017 - Central Tax (Rate) dated 28.06.2017, the works contract services discussed above will be taxable @ 18% (CGST @ 9% and SGST @ 9%) w.e.f 01.07.2017. The relevant portion of the notification is reproduced below;

Table

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Con ditio n
(1)	(2)	(3)	(4)	(5)
1	Chapter 99	All Services		
2	Section 5	Construction Services		
3	Heading 9954 (Construct ion services)	(i) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	9	-
		(ii) Composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.	9	-
		(iii) Construction services other than (i) and (ii) above.	9	-



7.13. However, w.e.f 22.08.2017, an amendment was made in the parent notification 11/2017-Central Tax (Rate) vide notification no. 20/2017-Central Tax (Rate) dated 22.08.2017. Sl. No. 3(iii) of the parent notification 11/2017-Central Tax (Rate) has been substituted with the following entries appended below;

(3)	(4)	(5)
<i>"(iii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied to the Government, a local authority or a Governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, -</i> <i>(a) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);</i> <i>(b) canal, dam or other irrigation works;</i> <i>(c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.</i>	6	-
<i>(iv) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-</i> <i>(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;</i> <i>(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;</i> <i>(c) a civil structure or any other original works pertaining to the "In-situ rehabilitation of existing slum dwellers using land as a resource through private participation" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana, only for existing slum dwellers;</i>	6	-



(d) a civil structure or any other original works pertaining to the "Beneficiary led individual house construction / enhancement" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana; (e) a pollution control or effluent treatment plant, except located as a part of a factory; or (f) a structure meant for funeral, burial or cremation of deceased.		
(v) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to,- (a) railways, excluding monorail and metro; (b) a single residential unit otherwise than as a part of a residential complex; (c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India; (d) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under- (1) the "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana; (2) any housing scheme of a State Government; (e) post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes; or (f) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.	6	-
(vi) Construction services other than (i), (ii), (iii), (iv) and (v) above.	9	-";



7.14. Analysis of the aforementioned amendment reveals that, w.e.f. 22.08.2017, vide sl. no. 3(iv)(a), the composite supply of works contract supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a bridge for road transportation for use by general public would be taxable @ 12% (CGST @ 6% and SGST @ 6%). Moreover, it is noted that such rate of tax is applicable in all cases where said works contract services are provided for the use of the general public. The status or class or category of the recipient of such works contract service is immaterial to decide the rate of tax.

7.15. Further, vide notification no. 03/2022-Central Tax (Rate) dated 13.07.2022, the items (iii), (iv), (v) (va), (vi) and (ix) against sl. no. 3 of notification no. 11/2017-Central Tax (Rate) dated 28.06.2017 has been omitted w.e.f 18.07.2022. Post amendment the items related to works contract services remain against sl. no. 3 of parent notification 11/2017-Central Tax (Rate) are as follows;

(3)	(4)	(5)
<i>“(vii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, involving predominantly earth work (that is, constituting more than 75 percent. of the value of the works contract) provided to the Central Government, State Government, Union territory or a local authority.</i>	6	
<i>“(viii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 and associated services, in respect of offshore works contract relating to oil and gas exploration and production (E&P) in the offshore area beyond 12 nautical miles from the nearest point of the appropriate baseline.</i>	6	-”.
<i>“(x) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (vii) above to the Central Government, State Government, Union territory or a local authority.</i>	6	



(xi) Services by way of house-keeping, such as plumbing, carpentering, etc. where the person supplying such service through electronic commerce operator is not liable for registration under sub-section (1) of section 22 of the Central Goods and Services Tax Act, 2017.	6	
(xii) Construction services other than (i), (ia), (ib), (ic), (id), (ie), (if), (vii), (viii), (x) and (xi) above. <i>Explanation.</i> - For the removal of doubt, it is hereby clarified that, supply by way of services specified at items (i), (ia), (ib), (ic), (id), (ie) and (if) in column (3) shall attract central tax prescribed against them in column (4) subject to conditions specified against them in column (5) and shall not be levied at the rate as specified under this entry.	9	

7.16. By way of the aforementioned amendment the specific entry related to works contract by way of construction of bridge for the road transportation for use by general public has been removed w.e.f. 18.07.2022. Hence, w.e.f 18.07.2022, the activity of the applicant discussed in this ruling will be taxable @ 18% (CGST @ 9% and SGST @ 9%) vide entry 3(xii) of notification no. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended from time to time.

7.17. As per sub-section (1) of section 13 of the CGST Act, 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.

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 said services discussed in this ruling as determined in accordance with section 14 of the CGST Act falls



between 01.07.2017 to 21.08.2017, the supply will be taxable @ 18% (CGST @ 9% and SGST @ 9%), if the supply is made between 22.08.2017 to 17.07.2022, the same will be taxable @ 12% (CGST @ 6% and SGST @ 6%) and thereafter, it will be taxable @ 18% (CGST @ 9% and SGST @ 9%) w.e.f. 18.07.2022.

RULING

Question No. 1. What is the classification and SAC code for the Application of Polymer protective coating for bridges?

RULING: Service Code (Tariff) 995473-painting services under the composite supply of Works Contract (9954).

Question No. 2. What is the rate of tax as applicable under Notification 11/2017 - Central Tax (Rate) as amended from time to time for the period 01-07-2017 till date?

RULING: If the time of supply of the services discussed in this ruling as determined in accordance with section 14 of the CGST Act falls between 01.07.2017 to 21.08.2017 will be taxable @ 18% (CGST @ 9% and SGST @ 9%), if supply is made between 22.08.2017 to 17.07.2022, it will be taxable @ 12% (CGST @ 6% and SGST @ 6%) and the supply will be taxable @ 18% (CGST @ 9% and SGST @ 9%) w.e.f. 18.07.2022.

Question No. 3. Whether the services provided above are eligible for any exemption from the whole or part of the tax leviable thereon under Notification 12/2017 - Central Tax (Rate).

RULING: This question is irrelevant on the basis of the ruling given to question no. 2.


Gayathri P.G., IRS

Joint Commissioner of Central Tax
Member


Abdul Latheef. K

Joint Commissioner of State Tax

Member



To,

M/s. S & G Engineers,
Dhanya, U.G – 82, Kochulloor, Medical College P.O.,
Thiruvananthapuram, Kerala-695011.

Copy submitted 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: cccocchin@nic.in; ccu-cexcok@nic.in]
2. The Commissioner of State Goods and Services Tax Department, Tax Towers, Karamana, Thiruvananthapuram – 695002.
3. The Commissioner of Central Tax & Central Excise, Thiruvananthapuram Commr.'te, GST Bhavan, Statue, Thiruvananthapuram -.
(E-mail id : commr-tvmhqrs@gov.in).

Copy to:

1. The Joint Commissioner, TPS, HQ, Thiruvananthapuram.
2. The Deputy Commissioner, ITMD, CCT, Thiruvananthapuram
(for uploading in the Website of the department).
3. Tax payer services Circle, Pattom, Thiruvananthapuram.
4. Central Tax, Veli Range, North Division.

