सत्यमेव जयते

BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH

Goods and Service Tax

D.No.12-468-4,Adjacent to NH-16 Service Road, Kunchanapalli, Guntur-522501

Present

1. Dr. K.Ravi Sankar, Commissioner of State Tax (Member)
2. B. Lakshmi Narayana, IRS, Joint Commissioner of Central Tax (Member)

AAR No. 11/AP/GST/2024 dated:15.07.2024

1	Name and address of the applicant	M/s Visakha Trades
2	GSTIN	37AHSPK6604K1ZT
3	Date of filing of Form GST ARA-01	19.04.2024
4	Personal Hearing	02.05.2024
5	Represented by	CA Vinay Gandhi
6	Jurisdictional Authority – State	Assistant Commissioner (ST), Daba Gardens Circle, Visakhapatnam-1
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	b) Applicability of a notification issued under the Provisions of the Act; d) Admissibility of input tax credit of tax paid or deemed to have been paid

ORDER

(Under sub-section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017 and sub-section (4) of Section 98 of Central Goods and Services Tax Act, 2017)

1.Preamble:

1.1 At the outset we would like to make it clear that the provisions of CGST Act, 2017 and APGST Act, 2017 are in parimateria 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 APGST Act.

1.2. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to CGST Act and APGST Act respectively) by M/s. Visakha Trades(hereinafter referred to as applicant), registered under the AP Goods & Services Tax Act, 2017.

2. Brief Facts of the case:

2.1.The applicant, M/s Visakha Trades, is engaged in the business of renting immovable property as per registration certificate of the tax payer.

2.2. The applicant participated in and was awarded a contract through a tender process initiated by The Admiral Superintendent, Naval Dockyard, Visakhapatnam, vide Request for Proposal No. COM/OFF/OUT/21-22/1102 dated 29th July, 2022.

2.3. The contract pertains to Habitability upgradation works on board INS Ranveer, valued at Rs. 3,02,18,862.00 (inclusive of GST).

2.4. The scope of work, as per the Request for Proposal (RFP), includes:

a) Supply and installation of bathroom and washbasin fittings
b) Installation of bunks and wardrobe lockers
c) Fitting of telephone stands and cloth hanging rods
d) Installation of doors and taps
e) Supply and fitting of file cabinets, ventilation grills, mirrors, and executive chairs

2.5. The applicant seeks clarity on the applicable GST rate for this contract and the admissibility of Input Tax Credit on purchases made for execution o the work.

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3. Questions raised before the authority:

The applicant sought advance ruling on the following:

3.1 Is Entry 25(ib) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 02/2021 Central Tax (rate) dated 02.06.2021 applicable to the tender?

3.2 Can the applicant avail full Input Tax Credit in respect of purchases made towards completion of works mentioned in the tender?

4. Proceedings if any pending:

4.1. The application was forwarded to the jurisdictional officer for remarks as per Section 98(1) of the CGST/APGST Act, 2017.

4.2. The jurisdictional officer submitted that scrutiny of returns has been initiated and proceedings have been concluded up to March 2021. No proceedings are pending related to the issue for which the advance ruling is sought.

5. Admissibility of the application::

The question raised as above appeared to fall under section 97(2)(b), (d) of CGST/SGST Act, 2017, as no proceedings on the same is pending, the application, as advance ruling is admitted.

6. Applicant's Submissions:

6.1. The applicant contends that their services may fall under the ambit of "Maintenance, repair or overhaul services in respect of ships and other vessels, their engines and other components or parts" as per the Entry 25 of Notification No. 11/2017 - Central Tax (Rate) dated 28.06.2017 as added by Notification No. 02/2021 - Central Tax (Rate) dated 02.06.2021 reads as follows:-

25 (ib)"Maintenance, repair or overhaul services in respect of ships and other vessels, their engines and other components or parts" is taxed at 2.5% CGST + 2.5% SGST.

6.2. The applicant seeks clarification on the applicability of the concessional GST rate of 5% (CGST 2.5% + SGST 2.5%) as per the amended notification.

6.3. The applicant also seeks confirmation on their eligibility to avail full Input Tax Credit for purchases made in relation to the contract.

7. Personal Hearing:

7.1. A personal hearing was conducted on 02.05.2024, which was attended by the authorized representative, CA Vinay Gandhi, reiterated the submissions made in the application and provided details about the scope of work.

7.2. The applicant was requested to submit the agreement copies, which were eventually provided on 10th July, 2024.

8. Discussion and Findings:

8.1 We have carefully gone through the submissions made by the applicant in the advance ruling application, it is seen that the applicant M/s Visakha Trades, Visakhapatnam, Andhra Pradesh registered under GST Act with registration 37AHSPK6604K1ZT, under administrative control of "State" and on the rolls of Daba Gardens Circle, Visakhapatnam-1 Division.

8.2 The company submitted that they are engaged in dealing with Works Contract Services in renting of immovable property services and currently doing Habitality upgradation works onboard ship. There was a tender by The Admiral Superintendent, Naval Dockyard, Visakhapatnam vide Request for Proposal No. COM/OFF/OUT/21-22/1102 Dated. 29 July, 2022.The applicant was the successful bidder of the tender and has sought certain clarifications to the Advance Ruling Authority.

8.3. The key issue for consideration is whether the services provided by the applicant qualify as "Maintenance, repair or overhaul services" (MRO services) in respect of ships and vessels as per the amended notification.

8.4. Notification No. 11/2017 - Central Tax (Rate) dated 28.06.2017, as amended by Notification No. 02/2021 - Central Tax (Rate) dated 02.06.2021, inserted a concessional GST rate of 5% (CGST 2.5% + SGST 2.5%) for "Maintenance, repair or overhaul services in respect of ships and other vessels, their engines and other components or parts."

8.5. **MRO Services:**

The term 'maintenance, repair and overhaul' is neither defined under GST law nor in the rate notification. One may have to go by dictionary or common parlance meaning while considering the particular service to be MRO services.

The benefit of reduced tax rate is available only in respect of maintenance, repairs and overhaul services and hence it is important to understand the meaning of these terms.

Let's see the dictionary meaning of the terms 'maintenance', `repairs' and overhaul.

8.5.1 **Maintenance:**

Maintenance generally refers to routine, preventive care to keep equipment in good working condition.

Keeping something in good condition (Oxford Dictionary).

Work needed to keep road, building, machine etc. in good condition (Cambridge Dictionary).

The act of keeping property or equipment in good condition (Merriam-Webster).

Maintenance refers to care or upkeep, as of machinery or property, or to the means of upkeep, support, or subsistence (Dictionary.com).

Maintenance is to keep a machine, building in a good condition by periodically checking and servicing or replacing. While repair is a one time activity, maintenance is a continuous process of which repairing may be incidental or ancillary.

In common parlance, maintenance and overhaul means a preventive care of machinery, equipment, appliance or vehicle etc. to keep them in proper working condition or to enhance the its useful life.

Maintenance involves preserving or ensuring the upkeep of a building, machine, road, etc., in good condition. It includes keeping items in working order, and there is no strict limitation to occasional replacement.

8.5.2 **Repairs:**

Repairs have not been defined under GST Law (2017), however, in common terms repairs under GST refer to the restoration of an item by replacing or fixing broken parts, bringing it back to a sound or healthy state. It includes work for maintenance, decoration, or restoration.

The term 'repair' generally means fixing something which is not working or defective and to restore it to working condition. The MRO is an activity physically carried out on equipment, machinery, engine, appliance or vehicle.

To restore by replacing a part or putting together what is tored or broken, fix a part . Repair involves fixing something that is broken or not functioning correctly.

(a) To restore to a sound or a healthy state

(b) To make repair for becoming good for running/ condition for use

(c) Work of maintenance, decoration, a restoration

(d) To put something old or damaged back into good and working condition (Oxford Dictionary).

(e) To put something damaged, broken, or not working correctly, back into good condition or make it work again (Cambridge Dictionary).

(f) To restore by replacing a part or putting together what is torn or broken (Merriam-Webster).

(g) To restore to good or sound condition after decay or damage (Dictionary.com).

Meaning of repair will depend upon the contract. It is to note that repairs are in contra distinction to renewal or restoration and also that repairs or not expressive of a clear contract. Repair always involves renewal of a part or replacement of subsidiary parts of a whole.

8.5.3. **Overhauling Services :**

To look at something carefully and change or repair it if necessary (Oxford Dictionary).

To repair or improve something so that every part of it work as it should (Cambridge Dictionary).

To examine thoroughly (Merriam-Webster).

To examine thoroughly and make any needed repairs (thefreedictionary.com).

To make necessary repairs on; restore to serviceable condition (Dictionary.com).

The MRO is an activity carried out on equipment, Machinery, Engine, Appliance or Vehicle. But the items mentioned in the tender are not related to the specifications mentioned. Overhaul typically involves a comprehensive examination and restoration of equipment to serviceable condition.

<u>If the repair or maintenance has expanded the capacity or productivity of the machinery then it will not be classified under the "repair and maintenance" heading.</u>

The technical consultancy, inspection, testing, surveying etc. require special attention whether such services can be regarded as MRO services and reduced tax rate can be applied to it or not? Sometimes, technical consultancy or inspection is a pre-requisite for carrying out MRO services. In such as case, one may be justified in treating such services as composite supply of ship or vessel MRO services. In case of comprehensive MRO contracts (inclusive of parts, spares, components etc.), entire contract can be regarded as MRO contract eligible for concessional tax treatment.

It is pertinent to note that beneficial tax treatment is given only to ***maintenance, repair and overhaul services*** provided in respect of ships, vessels, its engine and its other components and parts. The provider of ship MRO services will have to closely examine nature of their services and bifurcate it into MRO and non-MRO services.

9. **Analysis:**

9.1 Upon examination of the work order and tender documents, we observe that:

a) The applicant does not have a specific maintenance contract with the Naval Dockyard.

b) The services primarily involve supply and installation of various items such as fittings, furniture, and fixtures.

c) The nature of the contract appears to be more aligned with a works contract involving supply of goods along with installation services.

9.2 In the instant case, on careful verification of the tender documents and connected materials it is noticed that, the applicant don't have any maintenance contract with the customer i.e, Naval dockyard. In the absence of the maintenance contract, to conclude or consider the contract as a maintenance repair overhauling contract is far away from the fact. To claim any concession under the notification No. 02/21 dated 02.06.2021, a pure maintenance contract is a must.

9.3 Further, Entry 25 (ib) of Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017, as amended by Notification No. 02/2021-Central Tax (Rate), dated 02.06.2021, pertains to the GST rate applicable to certain services. Specifically, it introduces a GST rate of CGST 2.5% SGST 2.5 % for "Maintenance, repair or overhaul services in respect of ships and other vessels, their engines and other components or parts."

9.4 The amended notification clarifies and updates the GST rates for various services, including the insertion of this specific service under Entry 25 (ib). This amendment is part of the ongoing adjustments to the GST framework to ensure clarity and appropriate taxation rates for different categories of services.

9.5 For a detailed understanding of how this entry might apply to a specific tender or contract, it is necessary to examine the tender in detail along with scope of work and agreements made in between the two parties. The amended notification is specifically provided for MRO services for ships, vessels, their engines, and components. It does not cover all services related to ships or vessels.

9.6 It is evidently clear that there is no specific, that the applicant had enter into a maintenance contract with their customer. Further, there is substance that the nature of the supply rendered by the applicant amounts to work order.

9.7 The services provided by the applicant, while related to a naval vessel, do not primarily constitute maintenance, repair, or overhaul in the conventional sense. Instead, they appear to be in the nature of upgradation or renovation works.

9.8 The contract involves substantial supply of goods along with installation services, which differentiates it from pure MRO services.

9.9 There is no evidence of a comprehensive maintenance agreement or that the works involve restoring malfunctioning equipment to working condition.

9.10 The ship repairs if any undertaken by them are in the nature of casual repairs but not involves complete overhauling of ships including repairs and replacement. It is thus clear that the supplier rendered by the applicant to it customer are more in the nature of supply of goods or a work order.

9.11 Further as per the work order, major portion of the services are covered with supply of materials along with services. This indicates that it does not only include maintenance and repair services. Hence, the amended notification is not applicable to this case.

9.12 The repair activities carried out by the applicants on the ship are in the nature of supply contract and there is not scope for vivisecting the same as to separate the same into service portion i.e, maintenance, repair etc., and supply of goods portion for the purpose of applicability of the concessional rate of tax.

9.13 It is observed that ,the services provided do not primarily constitute maintenance, repair, or overhaul services as envisaged in the notification, the contract is more in the nature of a works contract involving supply and installation of goods, there is no specific maintenance agreement between the applicant and the Naval Dockyard and the scope of work primarily involves up gradation and installation activities rather than repair or maintenance of existing equipment.

9.14 In view of the above, as per the discussion supra, we are of the opinion that the tender work rendered by the applicant does not fall under the scope of Entry 25(ib) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 02/2021 Central Tax (rate) dated 02.06.2021

RULING

(Under Section 98 of the Andhra Pradesh Goods and Services Tax Act, 2017 and Central Goods and Services Tax Act, 2017)

Based on the above discussions and findings, we hereby rule as follows:

Question 1: Is Entry 25(ib) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 02/2021 Central Tax (rate) dated 02.06.2021 applicable to the tender?

Answer: No, Entry 25 (ib) of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 02/2021 Central Tax (rate) dated 02.06.2021 is not applicable to the tender in question. The applicant is liable to pay tax at the applicable rates under GST law.

Question 2: Can the applicant avail full Input Tax Credit in respect of purchases made towards completion of works mentioned in the tender?

Answer : Does not arise

Sd/- K.Ravi Sankar
Member

Sd/-B.Lakshmi Narayana
Member

//t.c.f.b.o//

Deputy Commissioner (ST)

Registrar
Authority for Advance Ruling
O/o. Chief Commissioner (State Tax)
Andhra Pradesh, Vijayawada.

To
M/s.Visakha Trades, 43-9-189, Kolagatla Arcade, Floor no.2 ,Subbalaxmi Nagar,Visakhapatnam, Andhra Pradesh, 530016**(By Registered Post)**

Copy to

1. The Assistant Commissioner (ST),Daba Gardens Circle, Visakhapatnam-Division.**(By Registered Post)**

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Kunchanapalli, Guntur District, (A.P)
2. The Principal Chief Commissioner (Central Tax), O/o Principal Chief Commissioner of Central Tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area,Visakhapatnam-530035. A.P. **(By Registered Post)**

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act, 2017, with in a period of 30 days from the date of service of this order.