

**GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2023/02
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2021/AR/23)

Date: 27.03.2023

Name and address of the appellant	M/s. Shreeji Earth Movers, (Prop. Kababhai Popatbhai Savalia) Village-Kolithad, Taluka-Gondal, Rajkot.
GSTIN of the appellant	24BBTPS3402D1ZR
Advance Ruling No. and Date	GUJ/GAAR/R/43/2021 DATED 11.08.2021
Date of appeal	08.10.2021
Date of Personal Hearing	06.01.2023
Present for the appellant	Shri. Ramesh Rakholiya, Advocate

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act, 2017' and the 'GGST 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, 2017 would also mean reference to the corresponding similar provisions in the GGST Act, 2017.

2. The present appeal has been filed under Section 100 of the CGST Act, 2017 and the GGST Act, 2017 by M/s Shreeji Earth Movers, Village-Kolithad, Taluka-Gondal, Rajkot-360311 against the Advance Ruling No. GUJ/GAAR/R/43/2021 dated 11.08.2021.

Brief facts of the case:

3. M/s Shreeji Earth Movers (hereinafter referred to as 'the appellant') is a registered firm having GST No. 24BBTPS3402D1ZR with place of business at Kolithad, Taluka-Gondal, Dist. Rajkot (Gujarat).

3.1 The appellant is engaged in providing works contract service directly to sub-contractors who execute the contract with the main contractor for original contract work with the irrigation department (State of Gujarat). M/s. JSIW Infrastructure Pvt. Ltd., received the original contract from the irrigation department (State of Gujarat) for the construction of pumping station and supplying and laying MS pipeline with all allied work.



etc. and maintenance of the commissioned project for 10 years. M/s. JSIW Infrastructure executed the same contract with M/s. Radhe Construction. Further, M/s. Radhe Construction executed the same contract with the appellant.

3.2 The appellant had filed application with the Authority for Advance Ruling, Gujarat seeking ruling on the following:

- a) At what rate of tax the liability should be determined on services provided by appellant (sub-contractors) to the main contractor pertaining to the irrigation, construction and maintenance works to the irrigation department, State of Gujarat?
- b) Under which head we should classify our services to execute irrigation, construction and maintenance work supplied to the irrigation department, State of Gujarat?
- c) Whether to charge a tax rate of 12% GST or 18% GST?

3.3 Gujarat Authority for Advance Ruling, Ahmedabad (herein after referred to as 'GAAR') vide Advance Ruling order No. GUJ/GAAR/R/43/2021 dated 11.08.2021 gave the following ruling:

"GST rate on subject supply is 18% for services supplied by the sub-sub-contractor to sub-contractor M/s Radhe and supply merits entry at Heading 9954, Entry No. 3(ii) of Notification No. 11/2017-CT(R) dated 28.06.2017".

4. Aggrieved by the above decision of the GAAR, the appellant has filed this appeal on the following grounds:

4.1 The appellant is works contractor and executes and undertake composite supply of works contract as defined in clause 119 of Section 2 of CGST, 2017 and was awarded a sub-contract by another works contractor to execute the original work of civil construction works supply to the Irrigation department of Gujarat.

4.2 As per Notification No. 20/2017-CT (R) dated 22.08.2017, rate of GST is 12% for composite supply of works contracts supplied by way of construction, erection commission or installation of original works pertaining to the irrigation and construction works supply to the Irrigation Department, State of Gujarat.

4.3 As per Sr. No 12 in press release of 25th meeting of GST council held at New Delhi on 18.01.2018, the rate of GST applicable to the main contractor should be levied by sub-contractors.

4.4 As per Notification No. 01/2018-CT(Rate) dated 25.01.2018, the service provided by sub-contractors to the main contractor for irrigation and construction works supply to the state government is not specified in the Notification.

4.5 As per Item No. (iii) of Notification No. 20/2017-Central Tax (Rate), dated 22.08.2017, the composite value of works contract is classified @ 12%. The sub-contractors providing services to the main contractor is further classified only under two categories i.e item No. (ix) and (x) of the subject Notification.

4.6 Though they are sub-contractors providing civil construction services to the main contractor, which may not be covered in the aforesaid entry, it is their belief that the rate applicable to them is 12% which is the rate applicable for composite supply of works contract as defined in clause (119) of Section 2 of CGST Act,2017 supplied by way of construction, erection, commissioning ,or installation of original works pertaining to civil construction irrigation and construction work supply to the irrigation department of Gujarat.

4.7 As per Section 2(119) of the CGST Act, 2017, "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"; as per Section 2(5) of CGST Act, 2017, "Agent" means a person including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another;

4.8 Contractor and sub-contractor are not defined under the CGST Act, 2017 but as per the general definition Contractor means-a person or firm that undertakes a contract from the employer to provide materials or labour to perform a service or do job at a specified price and a sub-contractor means a person who is hired by a general contractor (or prime contractor,or main contractor) to perform a specific task as part of the overall project or the total project at a specified price for services provided to the project by the originating employer.

4.9 When the contractor awards either wholly or partially the contractual obligation to a sub-contractors, the contract remains the same and the work to be performed by the contractor as well as sub-contractors remains same and identical to what is specified in the contract between the main contractor and the employer. It can be seen from this definition that the subcontractor is not doing anything other than what is specified in the contract between the main contractor and the employer.

4.10 As per the definition of agent, an agent is a person who carries on the same business of supply and /or receipt of goods or services or both on behalf of another. Thus sub-contractors can be called as an agent who is also undertaking the same supply of service for the main contractor. It can also be said that the sub-contractor is only an agent of the contractor and the works undertaken by him passes directly from the subcontractors to the employer.

4.11 As the work get transferred directly to the employer by the sub-contractor, the works contract remains the same and therefore leads to the conclusion that there is only one contract which is undertaken by the contractor as well as sub-contractors.

4.12 Since the appellant is only an agent of the contractor and the property in goods passes directly from him to the employer, it can be concluded that there is only one contract between the irrigation department and contractor as well as sub-contractor.

4.13 The intent of the Government is to bring the rates of main contractor and sub-contractor at par while they are providing their services to Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity. Irrigation department being a Governmental Authority/Entity is already covered under clause (x) of heading 9954 of Section 5 of classification of services even though not specified separately. Thus the rate applicable for civil works contract carried out for railways in para (v) of heading 9954 of Section 5 of classification of services should be applicable to sub-contractors also.

4.14 Vide letter dated 04.10.2021, copies of the following judgments were submitted:

- A) S.P.Singla Construction Pvt Ltd. {(2019) 111 Taxmann.com 356 (AAR-PUNJAB)}
- B) M/s Shree Construction .{(2019) 103 Taxmann.com 448 (AAAR-Mah)}
- C) NHPC Ltd .{(2019) 104 Taxmann.com 365 (AAR-Uttarakhand)}
- D) ST Engineering Electronics Ltd .{(2019) 109 Taxmann.com 367 (AAR-Mah)}
- E) Yash Nirman Engineers & Contractors. {(2019) 109 Taxmann.com 367 (AAR-Mah)}

F) State of Andhra Pradesh & Ohters V Larsen & Turbo Ltd & Other –Supreme Court of India –Civil appeal No. 5239 of 2008.

5. During the course of virtual personal hearing held on 06.01.2023, the authorized representative of the appellant, Shri. Ramesh Rakholiya, Advocate reiterated the grounds made in the written submissions.

5.1 In pursuance to transfer of Member (SGST), the appellant was informed regarding the same for fresh personal hearing in the matter. Shri Ramesh Rakholia, Advocate, vide his letter/mail dated 13.03.2023 requested to decide the appeal on the basis of material already on record, written submission and earlier representation/hearing.

DISCUSSION & FINDINGS

6. Time limit for filing appeal:

6.1 The impugned Ruling has been passed by the GAAR on 11.08.2021. In the Form GST ARA-02 regarding Appeal to the Appellate Authority for Advance Ruling, at Sr.No.2, the appellant has shown the date of communication of the Advance Ruling as '**17.08.2021**'. We observe that the present appeal filed on **08.10.2021** has been filed after the prescribed time limit of 30 days from the date of communication of Ruling, which expired on 16/09/2021, as prescribed under Section 100(2) of the CGST Act, 2017. There has been a delay of 22 days. As per Order dated 10.01.2022 of Hon'ble Supreme Court in Misc. Application No.21 of 2022 in Misc. Application No.665 of 2021 in Suo Moto Writ Petition (C) No.3 of 2020, the period from 15.03.2020 till 28.02.2022 shall stand excluded in computing the period of limitation and all persons shall have a limitation period of 90 days from 01.03.2022. In view of the above, we consider the appeal to be filed within prescribed time limit as per Section 100 of the CGST Act, 2017 and proceed to decide the appeal on its merits.

7. We have gone through the facts of the case as submitted in the Appeal papers, the decision of Gujarat Authority for Advance Ruling, documents on record and oral as well as written submissions made by the appellant.

7.1 We find that M/s JSIW Infrastructure Pvt Ltd. Ahmedabad (hereinafter referred to as 'the main contractor') was awarded the Engineering, Procurement and Construction (EPC) contract by the Irrigation Department of State of Gujarat vide Work Order dated 08.03.2019.

The main contractor appointed M/s Radhe Constructions, Rajkot as a sub-contractor and as per agreement dated 02.09.2019 between the main contractor and the sub-contractor, the scope of work included “*crop compensation, unloading, excavation, laying, jointing, testing, backfilling, disposal of surplus earth and commissioning of MS Pipeline, Erection of butterfly, scour & Air valves of various diameter and associated civil works including supply of all consumable materials*”. Further, the sub-contractor i.e M/s Radhe Constructions issued a work order dated 15.09.2019 in the name of the appellant where the scope of work included ‘*Liasioning of Crop composition, Excavation of all strata including hard rock, Laying of water pipes including pipes, sand bedding, Lowering, Laying, jointing of pipes, RT of each joint, inner & outer joint coating, back filling, removal of surplus earth, restoration & NOC from farmer, testing etc*’. Thus, the above facts make it clear that in the instant case, the original contract was awarded to the main contractor by the Irrigation Department of State of Gujarat and the appellant has been awarded the work order by a sub-contractor of the main contractor.

7.2 In the instant case the appellant has referred to Sr. No (iii) of Notification No.20/2017-CT (Rate) dated 22.08.2017 to submit that the rate applicable to them is 12%. We find that the entry No. 3(iii) of the subject Notification provides for rate of tax @12% if any taxable person is providing composite supply of works contract as defined in cause (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, -

- (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);
- (b) canal, dam or other irrigation works;
- (c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.

It is not the case of the appellant that they have received any work order from any of the Governmental authorities mentioned above. They don't have any work order issued in their favour by any of the aforesaid Governmental authorities.

7.3 The appellant has further submitted that the sub-contractors providing services to the main contractor is further classified only under two categories mentioned at item No.(ix) and (x)



of Notification No. 01/2018-CT (Rate) dated 25.01.2018 amending the original Notification No. 11/2017-CT(R).

For the sake of convenience, the provisions relating to entry No. 3(ix) and (x) of Notification No. 01/2018-CT (Rate) dated 25.01.2018 is reproduced herein under:

Description of services	Rate in %	Condition
(ix) 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 (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 may be.
(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, a local authority, a Governmental Authority or a Government Entity.	2.5	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 may be.

On a combined reading of the provisions made under serial No. 3(iii), Sr.No 3(ix) and Sr.No 3(x) of the amended Notification No. 11/2017-CT (R), which the appellant has referred to, it is seen that the rate of GST leviable is @ 12% or 5% (CGST and SGST taken together), as the case may be, when the specified services are provided to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity, by the main contractor and sub-contractor to the main contractor.

In the present case, we find that the appellant is neither the main contractor nor the sub-contractor. There is no agreement between the appellant and the main contractor to be treated as a sub-contractor.

7.4 From the submissions made by the appellant it is seen that the M/s JSIW Infrastructure was the main contractor who was awarded the works contract service pertaining to the Irrigation Department of the State of Gujarat. This main contractor then engaged a sub-contractor M/s Radhe Construction, Rajkot for executing part of this contract who in turn engaged the appellant as the second level sub-contractor for executing part of the original works contract service pertaining to the State Government project. From the above it is clear that the appellant was not engaged directly as a contractor, or as a sub-contractor of the main contractor, by the State Government of Gujarat for supply of the works contract pertaining to the Irrigation Department. Therefore, though the appellant is emphasizing on the fact that the composite works contract services provided by him pertains to the Governmental authority specified under Serial No. 3(iii) of the Notification No. 11/2017-CT(R) as amended, it is seen that there is no direct nexus between the appellant and the Governmental authority (Irrigation Department) since the documents reveal that the appellant is supplying the service on the basis of the work order of a sub-contractor i.e M/s Radhe Construction and not directly from the main contractor, M/s JSIW Infrastructure P Ltd. who had originally received the contract from the Irrigation department of the State Government of Gujarat.

7.5 The appellant has further submitted that though their supply may not be covered under Sr. No 3(ix), they believe that they are eligible for the concessional rate of 12% as they are providing composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 in the capacity of sub-contractor to the main contractor. However, this defense of the appellant is not acceptable since in the instant case it is seen that the appellant is a sub-contractor of the sub-contractor of the main contractor. For availing the benefit of the concessional rate of 12% in terms of the provisions mentioned in the Notification No. 11/2017-CT(R) as amended, it is important that both the criterion, i.e. the nature of supply of service to the specified authority (as per Notification No. 20/2017-CT(R)) and the status of service provider (as per Notification No. 1/2018-CT(R)) should be fulfilled. However, as already discussed supra, there is no direct relation between the main contractor and the appellant and the appellant and the Governmental authority. Therefore, it is clear that the appellant does not fulfill the criteria mentioned in Sr. No 3(ix) of Notification No. 1/2018-CT(R) dated 25.01.2018. Thus, the

appellant who actually is functioning as a sub-contractor of the sub-contractor of the main contractor, is not eligible for the concessional rate of tax @12% .

7.6 Further, on perusing the copy of the sub-contract Agreement between M/s JSIW Infrastructure Pvt Ltd, Ahmedabad (the main contractor) and M/s Radhe Construction, Rajkot (the sub-contractor) dated 2.9.2019, it is seen that the main contractor had appointed M/s Radhe Construction as a sub-contractor for execution of the work specified in the Agreement. Further, Point No. 9(v) of the Agreement under reference states that the M/s JSIW (the main contractor) shall have at his option and be at liberty to cancel the order wholly or a part of the order and proceed to carry out the work through some other agency at the risk and cost of the sub-contractor, if the sub-contractor sublets part or full work to other parties without the consent of the contractor. Thus, there is a prohibition imposed by the main Contractor on the sub-contractor M/s Radhe Construction from further sub-contracting the work allotted to them, without the consent of the main contractor. The appellant has also not produced any evidence to show that they were appointed by M/s Radhe Construction after obtaining the consent of the main contractor.

7.7 The appellant has also taken the recourse of definition of 'Agent' as defined under Section 2(5) of CGST Act, 2017 and submitted that they are working as an agent of the contractor and the property in goods passes directly from them to the irrigation department (State Government) which also lead to the conclusion that there is only one contract that is between the Irrigation Department (State Government) and contractor as well as sub-contractor. These contentions of the appellant is without any basis since it is observed that the contract is between the appellant and M/s Radhe Construction. Though the ultimate recipient of service may be a Governmental authority, yet the appellant cannot be considered as the sub-contractor to the main contractor fulfilling the conditions of the Notification No. 11/2017-CT(R) dated 28.06.2017 as amended by Notification No. 1/2018-CT(R) dated 25.01.2018.

7.8 On further verification of the EPC contract dated 08.03.2019 awarded by the Irrigation Department to the main contractor, it is seen that the main contractor has sub contracted only a part of the main contract to M/s Radhe Construction who in turn had engaged the appellant for further execution of the services as per the work order issued in the name of the appellant. Further, in the work order dated 05.09.2019 of M/s Radhe Construction, it is seen that at point No. 5, M/s Radhe Construction has mentioned that they would be paying applicable GST @18% in addition to the other prices mentioned in Work

Order. This would seem to suggest that the sub-contractor i.e M/s Radhe Construction was aware that further sub-contracting this work would be appropriately leviable to GST @18% and not eligible for the concessional rate of GST@12%.

In view of the above discussions, the contention of the appellant that they are covered under the provisions 3(iii) and 3(ix) of the amended Notification No. 11/2017-CT(Rate) is highly misplaced.

8. The appellant further submits that as per Sr. No. 12 in press release of 25th meeting of GST council held at New Delhi on 18.01.2018, the rate of GST applicable to the main contractor should be levied by sub-contractors. The relevant entry at Sr. No 12 relating to services referred by the appellant is reproduced herein under:

“(12) To reduce GST rate (from 18% to 12%) on Works Contract Services (WCS) provided by sub-contractor to the main contractor providing WCS to Central Government, State Government, Union territory, a local authority, a governmental authority or a Government Entity, which attract GST of 12%. Likewise, WCS attracting 5% GST, their sub-contractor would also be liable @5%.”

The wordings in the aforesaid Press Release accord with the Notification and allows the benefit of the reduced rate of GST only to the sub-contractor of the main contractor only and not to the second level sub-contractor i.e. sub-contractor to sub-contractor. Therefore, reliance placed by the appellant on this press release is also completely unfounded.

9. The appellant has further contended that though they are sub-contractors providing civil construction services to the main contractor, which may not be covered in the Serial 3(ix), it is their belief that the rate of GST leviable in their case is 12% which is the rate applicable for composite supply of works contract as defined in clause (119) of Section 2 of CGST Act, 2017. It is observed that the said entry entails benefit of concessional rate only to a sub-contractor of the main contractor for providing the services so specified. No tax can be levied and collected except according to the authority of law. There are plethora of judgments of various authorities where it is held that taxes are to be determined as per the taxing statute and benefit of concessional/Exemption Notifications is available only upon strict compliance of conditions mentioned therein. Reliance is placed on the decision of Hon'ble Supreme Court in the case of CCE Vs M/s Doaba Steel Rolling Mills [2011(269)ELT 298 (SC)] wherein it was held that once it is shown that an assessee falls

within the letter of law, he must be taxed however great the hardship may appear to the judicial mind . Further, in the case of Dilip Kumar and Company (reported at 2018-TIOL-302-SC-CUS-CB), the Apex Court held that exemption Notification should be interpreted strictly and the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification. It is noted here that the appellant themselves have admitted that their case may not be covered under the said entry of the subject Notification.

10. As regards the reliance placed by the appellant on the Rulings given by AAR, Punjab in the case of M/s S.P Singla Constructions (P) Ltd, the Advance Ruling given by Maharashtra Appellate Authority for Advance Ruling in the case of M/s Shree Construction and the decision of the Apex Court in the case of State of Andhra Pradesh & Others Vs Larsen & Turbo Ltd & Other-Civil appeal No. 5239 of 2008, the same have already been correctly discussed and distinguished by Gujarat Authority for Advance Ruling in the impugned order. The appellant have additionally relied upon the decision of AAR, Tamil Nadu in the case of ST Engineering Electronics Ltd. The issue involved in this case was whether supply by the applicant is a composite supply and if yes whether the rate of tax @6% CGST as per entry No. 3(v) of Notification No. 11/2017-CT(R) is applicable to a sub-contractor. The facts are different in this case and therefore not relevant. Similarly, the facts in the case of Yash Nirman Engineers & Contractors are different since the said case pertains to works contract service by way of construction of houses pertaining to the low cost houses in affordable housing projects. Further in the case of NHPC Ltd, relied upon by the appellant, the issue involved was with regard to subletting the contract to other subcontractors. There was difference of opinion among the members of the advance ruling authority and the matter was referred to appellate authority of advance ruling. The appellate authority held that the works contract services for the road construction provided by the sub-contractor to PWD, Uttarakhand, who in turn is providing works contract services of road construction to M/s.NHPC Ltd., is not exempted from GST. The sub sub-contractor was denied the benefit of the exemption notification. Furthermore, as per Section 103 (1) of CGST Act, 2017, any advance ruling is binding only on the applicant who had sought it and the concerned officer or the jurisdictional officer in respect of applicant.

11. In view of the above discussions, we do not agree with the contention of the appellant that they are eligible for the concessional rate of GST @12% in terms of Notification No. 20/2017-CT(Rate) dated 22.08.2017 and Notification No.1/2018-CT(Rate) dated 25.01.2018 as the activity undertaken by the appellant is not covered under Sl. No.



3(iii) or under 3(ix) of the Notification No. 11/2017-CT(R) as amended and agree with the findings of the Gujarat Authority for Advance Ruling that the supply made by the appellant is not covered under entry No. 3(iii) or 3(ix) of Notification No. 11/2017-CT(R) dated 28.06.2017, as amended. The appellant is liable to discharge tax rate CGST @9% and GGST@9% under Entry No 3(ii) of Notification No.11/2017-CT(R) dated 28.06.2017 further amended vide Entry No.3(xii) of Notification ibid as amended.

12. In view of the foregoing, we reject the appeal filed by appellant M/s. Shreeji Earth Movers and uphold the Advance Ruling No. GUJ/GAAR/R/43/2021 dated 11.08.2021 of the Gujarat Authority for Advance Ruling.



(Samir Vakil)

Member (SGST)



(Vivek Ranjan)

Member (CGST)



Place: Ahmedabad

Date: 29 .03.2023