



**RAJASTHAN AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX**

**KAR BHAWAN, AMBEDKAR CIRCLE, NEAR
RAJASTHAN HIGH COURT
JAIPUR – 302005 (RAJASTHAN)**



ADVANCE RULING NO. RAJ/AAR/2019-20/22

J.P.Meena	:	Member (Central Tax)
Additional Commissioner	:	
Hemant Jain	:	Member (State Tax)
Joint Commissioner	:	
Name and address of the applicant	:	M/s Wonder Cement Limited, Makrana Road, Madanganj-Kishangarh, District-Ajmer, Rajasthan 305801
GSTIN of the applicant	:	08AAACW6009L1Z4
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised	:	(e) determination of the liability to pay tax on any goods or services or both; (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term
Date of Personal Hearing	:	13.09.2019, 25.09.2019
Present for the applicant	:	For applicant:- Mr.Keshav Maloo (CA), Mr.Nikhil Jhanwar(CA)& Mr. Prashant Verma For RRVPNL:- Mr Virendra Parwal (CA), Mr. Vikas Gupta (CA) and Mrs. Anju Sultaniya Chief Accounts Officer RRRVPNL.
Date of Ruling	:	10.10.2019

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





- At the outset, we would like to make it clear that the provisions of both the CGST Act and the RGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the RGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / RGST Act would be mentioned as being under the "GST Act".
- The issue raised by M/s Wonder Cement Limited, Makrana Road, Madanganj-Kishangarh, District-Ajmer, Rajasthan 305801 (hereinafter the applicant) is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2) (e) & (g) given as under:
 - (e) determination of the liability to pay tax on any goods or services or both;
 - (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
- Further, the applicant being a registered person (GSTIN is 08AAACW6009L1Z4 as per the declaration given by him in Form ARA-01) the issue raised by the applicant is neither pending for proceedings nor proceedings were passed by any authority. Based on the above observations, the applicant is admitted to pronounce advance ruling.

1. SUBMISSION AND INTERPRETATION OF THE APPLICANT:

- The applicant is a registered manufacturer cum supplier under GST engaged in the manufacture of Ordinary Portland Cement (OPC) / Portland Pozalana Cement (PPC). That Rajasthan Rajya Vidyut Prasaran Nigam Limited (hereinafter referred to as RRPVNL) is a company registered under the Companies Act,



1956 and registered with Registrar of Companies as "Rajasthan Rajya Vidyut Prasaran Limited" vide CIN: L4010RJ2000SGC016485 with its Registered Office at Vidyut Bhawan, Jyoti Nagar, Jaipur-302005.

- That the existing power transmission lines passing through the mining area of the applicant is required to be shifted, to nearby safe proximity to the mining area of the applicant, for the purpose of carrying out the mining activity with safety and without any hazard.
- That RRVPNL has the policy wherein the work relating to raising or shifting of EHV Power transmission lines can be done in either of the following ways:
 - (i) Work to be executed by WCL, under supervision of RRVPNL, or
 - (ii) Work to be executed by RRVPNL itself by charging the cost of work, and overhead charges, above the cost estimate.

At present, the applicant is working under (i) option and undertook the charge for raising/ shifting of transmission lines.

- That these power lines are the property of RRVPNL and requires the modification on the need of applicant, all expenses are to be borne by applicant. It is a settled understanding between the Applicant and RRVPNL that whosoever is undertaking the primary project for modification, all the cost relating to that modification shall be borne by it. In the current situation, line shifting work is being undertaken/executed by the applicant under the supervision of RRVPNL, as a result, total cost of such line shifting work will be borne by applicant. Hence, applicant made an application to RRVPNL with a nominal application fee for shifting/raising of transmission lines owned by RRVPNL. The



RRVPNL approved the application and provided its specification and cost estimates as per Circular No. F&R 1235 dated 07.08.2018 based on which applicant has to work on shifting of its transmission lines. Based on this circular RRVPNL issued various letters including letter No. RVPN/ SE/ T&C/ COR/ TECH/ F./D.1798 dated 16.11.2018 providing demand estimate to be deposited by applicant.

- Accordingly, that RRVPNL shall be charging 5% of the total cost estimate as Supervision charges for supervising the Deposit work carried out by applicant and a fixed amount of Shut Down charges and GST on both the components. Applicant is willing to pay these aforementioned amounts plus GST on the same. That the total cost estimate for Deposit work provided by RRVPNL is solely for the purpose of work to be done as per specifications and technical guidelines and for calculating the Supervision charges amount as charges are based on the total cost estimate.
- That RRVPNL has issued demand imposing 18% GST on the total cost estimate, stating it as an "asset transfer" based on clause 3.6 of the Cost Estimate stated hereunder:

"It shall be ensured that asset/infrastructure built by intending agency/consumer shall have to be transferred to RRVPNL. Any expenditure or taxes incurred or to be incurred on such transfer shall be borne by intending agency/consumer".

That the demand issued by RRVPNL through the Superintendent Engineers (T&C), includes the major component of GST on 'asset transfer', which is the main question for seeking this advance ruling.



- That the only supply which RRVPNL is providing to applicant is supervision service for shifting work of transmission lines and shut down service for which applicant is willing to pay the demanded consideration plus GST on the same. The remaining GST on the total cost estimate which is not even a consideration for RRVPNL is being objected by applicant.
- The modification work which involves
 - (i) Dismantling the portion of EHV line.
 - (ii) Construction of new portion of EHV line to substitute this dismantled portion.
 - (iii) Civil Work (Foundation, Erection of super structures towers/Poles and stringing of conductor arises), is being executed through contractors, who is paying GST applicable to the vendors, supplying the materials required and labour contractors in their invoices/bills; which are paid by applicant directly or by reimbursement to the Contractor.

2. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT:

- Whether there is any 'Asset Transfer' involved which is a leviable to GST in the work of shifting & raising of transmission lines owned by RRVPNL by M/s Wonder Cement Ltd.?
- Without prejudice to the submissions made above, if there is an 'Asset transfer' which is a Supply under GST, then who is liable to pay GST?
- If above GST is to be paid by the Applicant, then the same will be exempt vide Entry 4 of Notification no. 12/2017- Central Tax (rate) dated 28.06.2017?

3. PERSONAL HEARING

In the matter personal hearing was granted to both applicant and RRVPNL on 13.09.2019 at Room no. 2.29 NCRB, Statue Circle,



Jaipur. Mr. Keshav Maloo (CA), Mr. Nikhil Jhanwar (CA) & Mr. Prashant Verma appeared for Wonder Cement Limited. Mr Virendra Parwal (CA), Mr. Vikas Gupta (CA) and Mrs. Anju Sultaniya (CAO) appeared for RRPVNL. On request of both the parties, second personal hearing was granted on 25.09.2019. During the PH on 25.09.2019, a corrigendum letter dated 24.09.2019 issued by Superintending Engineer, (T & C), Chittorgarh, RRPVNL was submitted. Copy of the same was also given to the authorized representatives of the applicant. Mr Keshav maloo requested that he will submit a written submission in respect of corrigendum issued by RRPVNL within a week. Shri Keshav Maloo has submitted the written submission vide letter dated 01.10.2019.

4. COMMENTS OF THE JURISDICTIONAL OFFICER

The jurisdiction officer (Deputy Commissioner, State Tax (SGST), Special Circle-I, Kar Bhawan Todarmal Marg, Civil Lines, Ajmer, Rajasthan 305001) has submitted his comments vide letter dated 09.09.2019 and stated that,

As per definition of Section 7(1) of CGST Act supply includes all forms of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or of furtherance of business.

Hence WCL's stance is that he has to bear the overall cost diversification / shifting of transmission lines owned by RRPVNL. There is no consideration or reimbursement flowing from RRPVNL to WCL in this regard such transaction is not a supply thus section 15 of CGST act is not applicable on WCL.

However, basis of RRPVNL's claim is based on clause 4 of schedule II of the act which reads as follows

Clause 4: Transfer of business asset

(a). Where goods forming part of the asset of a business are transferred or disposed of by or under the direction of the person carrying on the business so as no longer to form part of those asset so whether or not



for a consideration, such transfer or disposal is a supply of goods by a person;

However, WCL is of the view that the clause 4 (a) of the schedule II stipulate what constitute transfer of business assets. It states that the transfer or disposal of assets should be treated as supply if the following conditions are to be satisfied.

(I) There should be goods forming part of business assets.

As per sec. 2(52) of CGST Act, 2017-“goods” means every kind of moveable property other than money and security but include actionable claims, growing crops, grass and things attached to forming part of land which are agreed to be severed before supply or under a contract of a supply.

Here the applicant emphasizes that transmission line being an immovable property, cannot be construed as goods to fall under clause 4(a) of schedule II, hence the provision of clause 4(a) of schedule II shall not apply to such transactions so as to treat its transfer as supply of goods.

(II) The assets should be recognized as business asset in the books of WCL

WCL's view point is that since the shifted transmission lines are already the property of RRVPNL and no future economic benefits associated with these power transmission lines are supposed to flow to WCL by using such transmission package in its production or supply of goods or services, for rental to others, on for the administrative purpose, for more than one period. Hence, WCL cannot recognize these towers as an asset and not being an asset, the question of “transfer or disposal of business asset does not arise”

The applicant claims that even if it is assumed that there is an asset transfer, it is pertinent to note that GST is not levied on transfer of immovable property. According to section 3(26) of General Clauses Act, “immovable property shall include land, benefits to arise out of land and things attached to earth or permanently fastened to anything attached to the Earth. The essential character of immovable property is that it is attached to the earth; or permanently fastened to anything attached to the earth to the earth or forming part of the land and not agreed to be severed before supply or under a contact of supply. Furthermore, in the



context of GST Act, if the article attached to the earth, is not agreed to be severed before supply or under a contract for supply, it ceases to be goods and for that matter a moveable property. Thus the transmission line and towers being constructed is, an immovable property and not covered under the definition of goods in GST. From the above discussion it appears that view taken by WCL more appropriate and it appears that there is not asset transfer.

5. FINDINGS, ANALYSIS & CONCLUSION:

- We observe that the applicant is a registered manufacturer cum supplier under GST engaged in the manufacture of Ordinary Portland Cement (OPC) / Portland Pozalana Cement (PPC).
- That the existing power transmission lines (property of RRVPNL) passing through the mining area of the applicant is required to be shifted, to nearby safe proximity to the mining area of the applicant, for the purpose of carrying out the mining activity with safety and without any hazard.
- For the purpose of shifting of the power transmission lines from the mining area, currently the applicant is carrying out the work under the supervision of the RRVPNL. Accordingly based on the Circular No. F&R 1235 dated 07.08.2018 Superintendent Engineers (T&C) RRVPNL Chittorgarh, issued letter No. RVPN/ SE/ T & C/ COR/ TECH/ F. /D. 1798 dated 16.11.2018 imposing demand @ GST 18% on the total cost estimate, stating it as an "asset transfer" to be deposited by applicant.
- We observe that the main question raised by the applicant is whether, there is any asset transfer involved in the activity of shifting of transmission lines under the supervision of RRVPNL

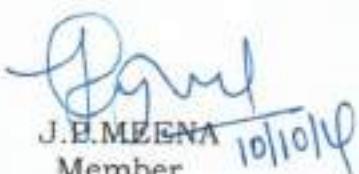
(diversion of existing one 220KV and two 132KV lines from their mining area to other route in their premises) or not.

- The Superintending Engineer (T & C), RRVPNL, Chittorgarh, has issued a Corrigendum Letter No. RVPN/SE/T&C/COR/TECH/F./D.973 dated 24.09.2019 in which the words "GST @ 18% applicable on asset transfer" should be read as the words "GST @ 18% applicable on cost of Infrastructure for 'Value of Supply' ". The RRVPNL has submitted a copy of the same to this office during the Personal hearing on dated 25.09.2019 and the same was also given to the authorized representative of the applicant.
- Further we observe that the contention of the applicant that there is no asset transfer, has been resolved by the RRVPNL by issuing corrigendum dated 24.09.2019. After issue of the said corrigendum the question raised by the applicant turned redundant and therefore no advance ruling is required to be given.

6. In view of the foregoing, we rule as follows: -

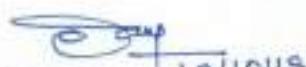
RULING

Since the issue raised by the applicant is no more in existence after issuance of Corrigendum by RRVPNL, no advance ruling is given.


J.E. MEENA 10/10/19
Member
(Central Tax)



O/C


10/10/19
HEMANT JAIN
Member
(State Tax)

SPEED POST

M/s Wonder Cement Limited,
Makrana Road, Madanganj-Kishangarh,
District-Ajmer, Rajasthan 305801



F.No. AAR/WCL/2019-20/161-64

Dated: 11-10-2019

Copy to:-

1. Commissioner, State Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005.
2. Commissioner, Central Tax, Jaipur Commissionerate, NCRB, Statue Circle, Jaipur, Rajasthan 302005.
3. Deputy Commissioner, State Tax (SGST), Special Circle-I, Kar Bhawan, Todarmal Marg, Civil Lines, Ajmer, Rajasthan 305001