

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
14 Beliaghata Road, Kolkata – 700015
(Constituted under section 96 of the West Bengal Goods and Services Tax Act, 2017)

BENCH

Mr Brajesh Kumar Singh, Joint Commissioner, CGST & CX
Mr Joyjit Banik, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Tax Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	SUEZ INDIA PRIVATE LIMITED
Address	1/15F, GOPAL CHANDRA BOSE LANE, KOLKATA, 700050
GSTIN	19AAACD0136D1Z9
Case Number	17 of 2021
ARN	AD190921004448Z
Date of application	September 27, 2021
Order number and date	17/WBAAR/2021-22 dated 31.12.2021
Applicant's representative heard	Mr. Sandip Choraria, Authorized Representative Mr. Rajkumar Banerjee, Authorized Representative Ms. Payel Agarwal, ACA

1.1 At the outset, we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like matter except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the WBGST Act. Further to the earlier, henceforth for the purposes of these proceedings, the expression 'GST Act' would mean the CGST Act and the WBGST Act both.

1.2 The applicant is stated to be engaged in the business of design, construction and operation and maintenance of water distribution networks for municipal bodies across India.

1.3 The applicant entered into a performance based contract for water loss management with Kolkata Municipal Corporation (KMC, for short) which includes construction of water distribution networks and operation & maintenance in the Cossipore area in the city of Kolkata. The contract was awarded by KMC vide letter of acceptance dated 4th October, 2016.

1.4 The applicant submits that the contract was awarded to him for a single lump sum amount. However, for the contract signing purposes, KMC shared two separate contracts for DB phase and O&M phase along with the Letter of Award.

1.5 The applicant has made this application under sub-section (1) of section 97 of the GST Act and the rules made there under raising following questions vide serial number 14 of the application in FORM GST ARA-01:

- (i) Whether based on the facts of the agreement entered between the applicant and KMC, Establishment of District Meter Areas, Construction Works and Operation & Maintenance (hereinafter referred to as “DB” and “O&M” respectively) be considered as divisible supplies under the GST Laws?
- (ii) If the answer to (1) is not affirmative, whether the agreement entered between the applicant and KMC be treated as single contract for composite supply of DB and O&M and what would be its taxability under GST regime?
- (iii) If the answer to (1) is affirmative (i.e. DB and O&M will be considered as divisible), would O&M be regarded as pure services contract falling under clause (b) of para 5 of Schedule II to The CGST Act, 2017? Accordingly, input tax credit would become the cost in the hands of the applicant in connection with the O&M contract. Thus recoverable from client under change in Law clause.

1.6 The aforesaid question on which the advance ruling is sought for is found to be covered under clause (a) and (e) of sub-section (2) of section 97 of the GST Act.

1.7 The applicant states that the question raised in the application has neither been decided by nor is pending before any authority under any provision of the GST Act.

1.8 The officer concerned from the Revenue has raised no objection to the admission of the application.

1.9 The application is, therefore, admitted.

2. Submission of the Applicant

Fact of the case as submitted by the applicant along with interpretation of law made by him is reproduced herein under:

2.1 Kolkata Municipal Corporation had floated a tender in February 2016 for “Performance based contract for water loss management in the Cossipore Service Zone Ward Numbers 1

to 6” which includes construction of water distribution networks and operation & maintenance in the Cossipore area in the city of Kolkata. A single tender was floated for Design & Construction of water networks (‘DB’) and Operation & Maintenance (‘O&M’) by KMC. As per the tender, the bidder was required to submit a single bid for the construction (DB) as well as O&M of water distribution networks (i.e. bidder did not have any option under tender terms to either bid for DB or O&M as it was a single scope contract i.e. construction and O&M of water distribution network).

2.2 The applicant furnishes a copy of “Invitation for Bids” dated 25.02.2016 and submits that the works and the principal quantities involved, but not limited to, are:

SI No	Description of Items	Unit	Quantity(Approx.)
1	Establishment of District Meter Areas in ward no 1 to 6	LS	1
2	Providing D.I. K-9 grade pipes with internal cement mortar lining of assorted diameters between 100 mm dia to 700 mm dia	KM	140
3	Providing and supplying Polyethelence Pipes of assorted diameters	KM	13
4	Supply and Installation of various types of Valves of assorted diameters	Nos	222
5	Supply and Installation of Domestic water and bulk meters of assorted diameters	Nos	25000
6	Water loss reduction(NRW) and management services and Operation and Maintenance for a period of 3 years	Years	3

2.3 The applicant was awarded the contract by KMC vide letter of acceptance dated 4th October, 2016 and for the contract signing purposes, KMC shared two separate contracts for DB phase and O&M phase (In line with its usual practice to ensure performance of 2 type of scope in single agreement) along with the Letter of Award. However, as per the tender documents and subsequently the signed contract between KMC and the applicant, the subject works contract was awarded to the applicant for a single lumpsum amount. Special conditions of the contract specify that the contractor shall be bound to carry out the O&M (maintenance) of the installed plants for specified years.

2.4 The applicant submits that the contract has a particular sequence of activity whereby O&M necessarily follows after successful works completion and is subject to achievement of Key Performance Indicators (KPIs). It could be implied that a breach in DB works has a definitive impact on the O&M scope of work.

2.5 The applicant submits further that in the DB phase of the contract, the applicant needs to lay down water distribution networks in the specified area and in the operation and maintenance phase, it needs to operate and maintain the said network. However, it is apparent that both the contracts are interdependent on each other to achieve the key objective of Water Loss Reduction and expected performance outcomes. Therefore, second contract cannot be executed independent of the first contract.

2.6 The scope of the Project shall consist of:

A. During Design & Construction Period [Clause 6.2.1 of the Bidding document]:

- Preparation of System improvement Plan (SIP) within specified period and according to the contract conditions. SIP Preparation & Implementation shall include but not limited to the survey & investigations of existing assets, distribution network, mapping, freezing selected OMA boundaries, hydraulic modelling, the necessity, and the extent of rehabilitation required. SIP submission shall be done priority zone wise.
- Surveys and Investigations of transmission and distribution network for levels.
- Supply, laying, installation and commissioning of distribution network in specified area of Cossipore Zone in accordance with the SIP and technical specifications;
- Distribution System -Supply, Laying, Installation and Commissioning of distribution network with HDPE pipe for 13kms and DI pipe for 140kms.
- Providing house service connections with specified (MDPE/GI) type of pipe on DI and HDPE pipe.
- Providing and installing butterfly, sluice Valves, bulk flow meter, PRV valves;
- Finding invisible leaks in pipeline network, carrying out repairs and allied works
- SCADA system for distribution system management.

B. During Operation and Maintenance Period from Initial Take over date [Clause 6.2.2 of the Bidding document]

- Operation and maintenance of infrastructure within the DMA's established under this Project including major and minor repairs.
- Operation & Maintenance of the distribution network for distributing water efficiently, equitably and minimizing water loss and maintaining infrastructure on DMA basis.
- Providing continuous (24 x 7) pressurized water supply to the connected consumers and maintaining the infrastructure.
- Collection of water and sending the same to Laboratory for testing of water quality & ensure it meets Potable Water Specifications.
- Detecting and monitoring non-revenue connections and consumption and inform about such connections to KMC and install meters to measure consumption.
- Provide consumer service connections on approval/sanction by KMC.
- Operation and Maintenance of SCADA and monitoring system through computerized water management system.

2.7 The applicant submits that at the time of submission of Bid, VAT and Service Tax were applicable on contract. Further, as per the tender documents and subsequently the signed contract, it was imperative for the bidder to maintain price of O&M phase to a certain percentage of contract price which was a minimum 28% of total contract value. The applicant has referred relevant extract from the bidding documents to substantiate the aforementioned submission:

Bidders shall quote the contract price as per following

- i) DMA Establishment Price shall be minimum 18% of the contract price ii) Operation & Maintenance Service Price shall be minimum 28% of the contract price as per price bid*
- ii) The ratio of Establishment of District Meter Areas Amount, Construction Works Amount & Operation and Maintenance Services Amount shall be in the ration of 18:54:28.*

The following basis shall be applicable for evaluation of the bid during the bidding stage:

Any increase in Construction Works Amount shall be subject to comparison to the ratio above. In that case, Construction works Amount will be reduced and adjusted with Establishment of District Meter Areas Amount and Operation and Maintenance Services Amount proportionately by keeping the total Bid value for contract price unchanged.

2.8 The accepted contract value was for INR 212.40 Cr including taxes and duties (such as VAT, service tax etc.)

- Establishment of DMA Quote: INR 38.23 cr;
- Construction Works: INR 114.69 cr; and
- O&M Quote: INR 59.47 cr

However, post implementation of GST, discussions were held with the Client. Basis the same, only the value for construction works was revised upwards by 5.31% under the change in law provisions of the contract. Impact of GST provisions on O&M scope of Works quote under change in law clause of the contract was deferred for discussion.

2.9 The applicant submits that Clause 18 of the payment terms referred to in the General Conditions stipulates that the payment of the retention money or bank guarantee for the works shall be refunded after the expiry of O&M phase for the water distribution network installed by the applicant and certificates to this effect are obtained from the competent authorities i.e. 50% of retention money shall be released after completion of O&M phase and 50% when all defects notified by engineer are corrected.

2.10 The applicant also submits that Article B of the agreement stipulates that, in consideration of the payment to be made by the customer (KMC) to the contractor, the contractor covenants with the employer to execute the work, to operate and maintain the work at its rated capacity, including maintaining the plant and equipment in good operating condition, normal wear and tear excepted, and remedying any defects therein in conformity in all respects with the provisions of the contract. A consolidated price is stipulated as the total contract price combining the contract prices of the inter related phases i.e. DB and O&M under single tender.

2.11 According to the applicant, following provisions of the GST Act is pertinent in the matter of taxability on instant supply:

Section 8 of the Central Goods and Services Tax Act, 2017 speaks that tax liability on a composite or a mixed supply shall be determined in the following manner, namely: -

- (a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and
- (b) ...

where the term “composite supply” has been defined under Section 2(30) of the supra Act as -

“composite supply” means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Further “principal supply” is defined under Section 2(90) as –

“principal supply” means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;

2.12 Therefore, when two or more taxable supplies of goods or services or both are made by a taxable person to a recipient, where such supplies are naturally bundled and are supplied in conjunction with each other in the ordinary course of business, one of them being a principal supply, then the said supplies shall be treated as a supply of such principal supply and tax liability shall be determined accordingly.

Moreover, para 6 of the Schedule II to the CGST Act, 2017 reads as under –

The following composite supplies shall be treated as a supply of services, namely:-

- (a) works contract as defined in clause (119) of section 2; and
- (b)...

where “works contract” as defined under Section 2(119) 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;”

Since composite supply of works contract has been explicitly classified as supply of service under Schedule II, the concept of works contract follows that:

- Works contract in itself is a composite supply in which construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning etc. are involved along with transfer or property in goods.

- In GST, as per definition of works contract service if construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning is for immovable property only, then it will classify as works contract. Hence it means that aforesaid activities if they are undertaken for a movable property then it will not be works contract service.
- Notification No. 20/2017-Central Tax (Rate) dated 22nd August, 2017 provides that 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, pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal shall would fall under Entry 3(iii) with HSN Code 99544 attracting GST @ 12%.

2.13 The applicant contends further that if the O&M contract is held to be independent of DB supply, the former shall be considered as a pure service extended to a government entity and hence would be considered as an exempt supply under Entry 3 of Notification no. 12/2017-Central Tax (Rate) dated 28.06.2017.

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
3	Chapter 99	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.	Nil	Nil

2.14 The applicant submits that in a turn-key project, more particularly of the kind involved in this application, the same person has been entrusted with the responsibility of construction, and of operation and maintenance of the plant. While in-built safeguards are provided in all the contracts to ensure quality of the works and services and effective performance of the erection contract, the supply contracts, in substance, do not absolve the applicant-contractor of its obligation of operation and maintenance of the networks after laying down of water distribution networks in the specified area to the employer. The applicant-contractor's obligations, under both the construction and maintenance contracts, cease only after the turn-key project becomes operational and after final payment is made both for laying down of water distribution network and for operation and maintenance of the said network.

2.15 Furthermore, existence of a cross-fall breach clause, or a clause which enables the employer to terminate the supply contract for breach of the contract and vice-versa, would mean that, while the contracts are ostensibly two separate contracts - one for laying down of water distribution networks and the other for rendering works and services for operation and maintenance of the said networks, they are, in fact, one single indivisible contract. The construction of water distribution networks supplied to the employer, under the supply contracts, is tailor made supply, and cannot be bought off the shelf. Such services cannot, ordinarily, be supplied to another except for in turn-key projects of a similar nature. The applicant has been entrusted with the work mainly for its expertise in erection and maintenance of networks in the execution of turn-key projects. As the applicant is entrusted with the work of operation and maintenance of the water distribution networks, the applicant-contractor has also been entrusted with the task of erection and installation of the networks. The functions relating to the rendering services of erection, installation and maintenance of the networks are integrally connected and are inter-dependent and therefore tender did not allow to bid separately for DB and O&M scope.

2.16 The Client being KMC is aware of such interdependence of the two contracts. Although awarded under the same LOA and two separate contract agreements signed for execution, clauses under both of them make it abundantly clear that notwithstanding the break-up of the contract price, the contract shall, at all times, be construed as a single source responsibility contract and the applicant shall remain responsible to ensure execution of both the contracts to achieve successful completion and handing over of the facilities.

2.17 Composite nature of the contract is further clear from the clause that defines satisfactory performance of the First Contract (DB) upon completion of operation and maintenance phase in Second Contract. The client has not contracted for DB phase, but for the composite supply, namely works contract service for construction and operation and maintenance of Water distribution network.

2.18 The applicant thus contends that while the form of the contracts indicate that they are two separate contracts, in substance they are one single indivisible works contract for construction of water distribution networks and operation & maintenance in the Cossipore area in the city of Kolkata, owing to following factors: -

- Single letter of acceptance is issued by client without any split of contract value in it;
- Contract have 2 or more supplies of goods or services or both;
- The supplies are naturally bundled;
- The taxable supplies are supplied in conjunction with each other;

2.19 The applicant further submits that since this supply is undertaken for a Municipal corporation viz. KMC, hence the rate of tax applicable on given service (as it is a works contract service) shall fall under Entry 3(iii) with HSN Code 99544 and would attract CGST and SGST @ 6% each.

3. Submission of the Revenue

3.1 The concerned officer from the Revenue has not expressed any view on the issue raised by the applicant.

4. Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorised representatives of the applicant during the course of personal hearing.

4.2 In the instant case, the applicant, being the successful bidder, made two separate agreements with KMC for Design & Construction of water networks ('DB') and Operation & Maintenance ('O&M') respectively. Both the agreements are found to have been made in pursuance of a single tender bearing contract No. KEIIP/ICB/TR-1/WS01/2015-16 dated 25.02.2016 for "Performance Based Contract for Water Loss Management in the Cossipore Service Zone, Ward Numbers 1 to 6".

4.3 The applicant has contended, as stated in Para 2.18, that though there are two separate agreements, the same are made against one indivisible contract for construction of water distribution networks and operation & maintenance owing to following factors: -

- Single letter of acceptance is issued by client without any split of contract value in it;
- Contract have 2 or more supplies of goods or services or both;
- The supplies are naturally bundled;
- The taxable supplies are supplied in conjunction with each other;

4.4 The applicant has further argued that since this supply is made to a Municipal Corporation viz. KMC, hence the rate of tax applicable on given service (as it is a works contract service) shall fall under Entry 3(iii) with HSN Code 99544 and would attract CGST and SGST @ 6% each.

4.5 In order to analyze the issue involved in the instant case, we find it relevant to reproduce following clauses from the "General Conditions of Contract" (GCC, for short):

In clause 1.1 of GCC:

- *"Contract" is the Contract between the Employer and the Contractor to execute, complete and maintain the Works and Services. It consists of the documents listed in GCC Clause 3.*
- *"Completion Date" is the date of completion of the Works and Services as certified by the Engineer in accordance with GCC Sub-Clause 32.*

In clause 7 of GCC:

- *7.1 Unless otherwise expressly limited in Section 6, Employer's Requirements, the Contractor's obligation cover the design, execution and maintained of all Works, provision of all equipment and materials and the performance of all Services required to reduce water losses, provide continuous pressurized potable quality water supply and provide support services to Employer for timely resolution of customer complaints within the Site specified in the Employer's Requirements. The Works and Services include the (i)Design &Construction Phase Works includes preparation of*

SIP, DMA Establishment Works, Construction Works, Water Loss Reduction and (ii) O&M Services with performance standards in waterless reduction, Continuous pressurized water supply, faster resolution to customer complaints (excluding billing, collection & commercial issues) and maintaining water quality.

In clause 8 of GCC:

- 8.1 *The Contract is divided into two phases:*
 - (a) *Design & Construction Phase -the period of time given to the Contractor as specified in the PCC from the signing of the Contract to construction completion period it includes Mobilization, SIP, Construction Works, Establishment of DMAs, Pipe Replacement, Meter Installation and Unforeseen Works for Waterless reduction, conversion to continuous pressurized water supply and O&M from Initial Take over date for DMAs commissioned before final takeover date as defined in contract. At the end of Construction Phase, the Contractor will receive a Certificate of Completion following the requirements of GCC Clause 32.*
 - (b) *O&M Phase - the period of time as specified in the PCC which begins from Final take Over Date as defined in PCC after the receipt of the Certificate of Completion by the Contractor as per GCC Clause 32 for which the Contractor is obligated to maintain the Service levels as specified in the PCC. At the end of the O&M Phase the Contractor will receive a Taking-Over Certificate following the requirements of GCC Sub-Clause 33.1.*

In clause 32 of GCC:

- 32.1 *Certificate of Completion* : *At the end of the DMA Establishment Phase when the Design & Construction Works & water loss reduction phase have been substantially completed for respective DMAs or Sub DMAs in accordance with Section 6, Employer's Requirements, the Contractor shall request the Engineer to issue a Certificate of Sectional Completion for Design & Construction Works, and the Engineer within twenty one (21) days from receipt thereof, either issue to the Contractor a Certificate of Sectional Completion or give instructions in writing to the Contractor specifying all the conditions to be complied with and all the work which are required to be done by the Contractor before the issuance of such Certificate. Upon deciding that the work is complete, the Engineer shall thereafter issue a Certificate of Sectional Completion to the Contractor.*
- 32.2 *Initial Take Over date*: *If Certificate of sectional completion is issued by Engineer to any construction works or part of it including DMA establishment works or Sub DMA establishment works as per clause 32.1 above, before the completion of Design & Construction Period as specified in PCC. Contractor shall take over the O&M of such DMAs or Construction works and eligible for payment as per O&M period till completion of Construction period or Final take over date, whichever is earlier.*

4.6 It appears that the scope of work includes inter alia supply, laying, installation and commissioning of distribution network with HDPE pipe (noted in para 2.6) along with operation and maintenance. We find that the contract has been divided into two phases i.e., (i) Design & Construction Phase and (ii) O&M Phase. However, completion of first phase of the contract i.e., Design & Construction Phase shall entitle the contractor to apply for certificate of sectional completion only as referred to in clause 32.1 of the GCC. We also find that para 33.1 of GCC speaks about 'Taking Over Certificate' wherein it is stated that '*At the end of the O&M Phase, the Contractor may give notice to that effect to the Engineer, accompanied by a written undertaking to finish with due expedition any outstanding work during the Defects Liability Period. Such notice and undertaking shall be deemed to be a request by the Contractor for the Engineer to issue a Taking-Over Certificate in respect of the Works and Services*'.

4.7 Based on the aforesaid terms and conditions of the contract, we are of the view that the instant contract is to be treated as a single contract for composite supply of DB and O&M which qualifies as 'works contract' as defined in clause (119) of section 2 of the GST Act. Further, as per Para 6 (a) of Schedule II to the GST Act, works contracts as defined in clause (119) of section 2 shall be treated as a supply of services. So, the instant supply shall be treated as supply of services.

4.8 Now, we take the issue in respect of taxability of the instant supply. The applicant has contended that the supply is made to a Municipal Corporation viz. KMC and therefore the rate of tax applicable on given service (as it is a works contract service) shall fall under Entry 3(iii) as amended vide Notification No. 20/2017-Central Tax (Rate) dated 22.08.2017 and would attract CGST and SGST @ 6% each.

4.9 The said entry serial number 3(iii), subsequent to amendment made vide Notification No. 20/2017-Central Tax (Rate) dated 22.08.2017 and Notification No. 31/2017- Central Tax (Rate) dated 13.10.2017 respectively, reads as follows:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
3	Heading 9954 (Construction services)	(iii) Composite supply of works contract as defined in clause (119) of section 2 of the West Bengal Goods and Services Tax Act, 2017, supplied to the Central Government, State Government, Union territory, a local authority, 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,	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,

		<p>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);</p> <p>(b) canal, dam or other irrigation works;</p> <p>(c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.</p>	
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4.10 The applicant has made the instant composite supply of works contract to Kolkata Municipal Corporation which is a local authority in terms of definition under clause (69) of section 2 of the GST Act. Further, the works contract, as it appears from the scope of work, involves installation and maintenance of pipeline for water supply. We therefore find that the instant composite supply of works contract gets covered under entry serial number 3(iii) of the Notification No. 20/2017- Central Tax (Rate) dated 22.08.2017 and therefore shall attract tax @ 12% (Central Tax @ 6% + State Tax @ 6%).

4.11 The applicant has contended that if the O&M contract is held to be independent of DB supply, the former shall be considered as a pure service extended to a government entity and hence would be considered as an exempt supply under Entry 3 of Notification no. 12/2017-Central Tax (Rate) dated 28.06.2017. The applicant, vide serial number 14 of the application in FORM GST ARA-01 has also raised a question in this regard. However, we are not going to answer the question as we are of the view that the instant contract shall be treated as an indivisible single contract thereby the O&M contract cannot be held to be independent of DB supply. Moreover, though the term 'pure services' has not been defined under the Act, a bare reading of the description of services as specified in the aforesaid entry denotes that supply of services which does not involve any supply of goods can be regarded as pure services. We like to mention here that the scope of work in respect of O&M contract, as per bidding documents, includes major and minor repairs, install meters to measure consumption which essentially involves transfer of materials in goods. Thus, the O&M contract, if it were treated to be an independent supply, wouldn't qualify as pure services rather the same shall be held as works contract as defined in clause (119) of section 2 of the GST Act.

In view of the above discussions, we rule as under:

RULING

The contract for water loss management made by the applicant with Kolkata Municipal Corporation which includes construction of water distribution networks and operation &

maintenance shall be treated as an indivisible single contract and qualifies for works contract as defined under clause (119) of section 2 of the GST Act.

The instant composite supply of works contract gets covered under entry serial number 3(iii) of the Notification No. 20/2017- Central Tax (Rate) dated 22.08.2017 [corresponding West Bengal State Notification No. 1497 F.T. dated 22.08.2017] and therefore shall attract tax @ 12% (Central Tax @ 6% + State Tax @ 6%) w.e.f. 22.08.2017.

For the period from 01.07.2017 to 21.08.2017, the supply is taxable @ 18% (Central Tax @ 9% + State Tax @ 9%) vide entry serial number 3(ii) of the Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 [corresponding West Bengal State Notification No. 1135 F.T. dated 28.06.2017].

(BRAJESH KUMAR SINGH)
Member
West Bengal Authority for Advance Ruling

(JOYJIT BANIK)
Member
West Bengal Authority for Advance Ruling