

ODISHA AUTHORITY FOR ADVANCE RULING

GOODS AND SERVICE TAX

GST & CENTRAL EXCISE, RAJASWAVIHAR, BHUBANESWAR-751007(ODISHA)

PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING

U/S.98 OF THE GOODS AND SERVICE TAX ACT,2017



Members present are:

1. Sri Ananda Satpathy, OFS(SAG), Addl. Commissioner of CT&GST
Office of the Commissioner, CT&GST, Odisha Baniyakar Bhawan,
Old Secretariate Compound, Cuttack-753001-Odisha.
2. Sri Nilanjan Pan, IRS, Joint Commissioner, Office of the Audit Commissionerate

1	Name and Address of the Applicant	M/s Super Wealth Financial Enterprises (P) Ltd., Lewis Road, Gouri Vihar, Bhubaneswar, Odisha- 751002
2	GSTIN or User ID	21AAECS9864P1ZN
3	Date of Filing of Form GST ARA-01	06.08.2018
4	Present for the Applicant	Suresh H Shah, Promoter of the Company & Yash Dev Arya, C.A
5	Date of Personal Hearing	07.09.18,09.10.18 & 29.10.18

GST & Central Excise, Bhubaneswar .

ORDER NO.04/ODISHA-AAR/2018-19 DATED 31.10.2018

Subject: GST Act, 2017-Advance Ruling U/s 98 - Applicability of Entry No. 3 of Notification No.12/2017-Central Tax to the services provided by the applicant by way of providing energy saving street lighting services including OM of the street lighting installations to Bhubaneswar Municipal Corporation (BMC).

1.0 M/s Super Wealth Financial Enterprises (P) Ltd., (hereinafter referred to as the 'Applicant') assigned with GSTIN 21AAECS9864P1ZN having registered address at Lewis Road, Gouri Vihar, Bhubaneswar, Odisha-751002, have filed an application on 06.08.2018 under Section 97 of CGST Act, 2017 & OGST Act, 2017 read with Rule 104 of CGST Rules 2017 & OGST Rules, 2017 in Form GST ARA-01 seeking an Advance Ruling on the applicability of Entry No. 3 of Notification No.12/2017-Central Tax to the services provided by

ment by way of providing energy saving street lighting services including OM of the street lighting installations to Bhubaneswar Municipal Corporation (BMC). The applicant enclosed copies of challians as proof of payment of Rs.5,000/- for SGST bearing CIN No.HDFC18062100079651 dated 29.06.2018 and Rs.5000/- for CGST bearing CIN No.HDFC18082100008289 dated 05.08.2018 towards the fee for Advance Ruling. After due verification of the application, the application is admitted.

2.0 Notification No.12/2017-Central Tax of Government of India has been issued u/s 11 of the CGST Act exempting the notified services from levy of GST. Entry SI No. 3 of the said Notification, which is reproduced below, exempts pure services provided to the Central Government or any State Government or any Union Territory Administration or any Local Authority or a Government 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.

Entry SI No.3 of Notification No.12/2017 – Central Tax (Rate) Dated 28.06.2017

SI No	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (%)	Condition
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 by way of any activity in relation to any function entrusted to a Panchayat under article 243 G of the constitution or in relation to any function entrusted to a Municipality under Article 243 W of the Constitution.	Nil	Nil



3.0 For applicability of the aforementioned entry the following conditions need be fulfilled:

- (i) The supply must be a case of supply of pure service
- (ii) Supply must be made to either Central Government or a State Government or a Union Territory Administration or a Local Authority or a Government Authority or Government Entity
- (iii) The service supplied must not be works contract service or a composite supply involving supply of goods as well
- (iv) The service so supplied must be in relation to any function entrusted to a Panchayat under Article 243G or entrusted to a Municipality under Article 243W

4.0 In the case under consideration the views of the applicant are as follows:

- a) The activity undertaken by the applicant under the Energy Performance Contract would not be deemed to be a "supply of goods" in terms of Sl. No. 1(c) of Schedule II to the CGST Act.
- b) During the tenure of the contract i.e. for 10 years, the applicant would be making a single supply (of service) of providing lighting service to BMC for a period of 10 years, by using the Energy saving infrastructure installed by the applicant. This would include activities such as Installation of Energy saving equipment on existing street light poles of BMC, its day to day management in order to achieve energy savings and operation and maintenance of the Energy saving equipment.
- c) Since there is no transfer of property in goods for a period of 10 years to BMC, the aforesaid supply would qualify as a supply of 'pure service' and hence exempt under Sl. No. 3 of Notification No. 12/2017-C.T.(Rate) dated 28.6.2017.
- d) At the end of 10 years, when the ownership of Energy saving equipment is transferred to BMC, the applicant would be making a 'supply of goods' to BMC. Such a supply would not be chargeable to GST, since transfer of capital goods after being put to use are subject to valuation as per Section 18(6) of the CGST Act. As per Section 18(6), in case of supply of capital goods or plant & machinery, on which Input tax credit ("ITC") has been taken, the registered person shall pay an amount equal to ITC taken in respect of such capital goods or plant & machinery reduced by such percentage point as may be prescribed or the tax on the transaction value determined under section-15, whichever is higher. Rule 40(a) of the CGST Rules prescribe reduction of 5% for each quarter or part thereof. Going by the provision of Section 18(6) read with Rule 40(a), no GST would be payable, since the WDV of the Electric Fixture would become Nil after use for 5 years (5% * 20 quarters) and the transaction value would also be Nil.



The Personal Hearing was fixed on 27.09.2018. As per the request of the applicant for adjournment of PH, another date was fixed on 09.10.2018. Shri Arund Prakash Rai, Director of the company & Shri Yash Dev Arya, CA appeared for personal hearing. They re-iterated the earlier submission made in the application. However, on being asked to explain how the contracted supply is a case of pure supply of service when there is a significant use of materials for illumination, monitoring and metering of energy consumed. In reply, the representatives of the applicant sought more time to explain the query through a written submission. Therefore, another date for personal hearing was fixed on 29.10.2018 under due intimation to the Applicant, the Jurisdictional Officer of State GST & the Jurisdictional Officer of Central GST. The Applicant appeared through its representatives i.e. Promoter Shri Suresh H Shah & Chartered Accountant Shri Yash Dev Arya on 29.10.2018. Further, the Jurisdictional Officer of State GST & the jurisdictional Officer of Central GST appeared in person. During personal hearing, the representatives of the applicant have submitted fresh written submission wherein they inter-alia submitted as under.

- a) The applicant has a manufacturing unit at Nashik, Maharashtra for manufacturing of components of energy saving equipment. The said goods were stock transferred from the Nashik unit to the Branch office in Bhubaneswar (Odisha) for installation in terms of Energy Performance Contract with BMC on payment of Central Excise duty.
- b) BMC has been paying a fixed amount (hereinafter referred to as "O&M fees"), calculated at a fixed rate determined for each energy saving equipment installed in lieu of saving of the O&M cost by BMC. O&M fee is being received by the applicant on monthly basis in addition to the Energy performance fees.
- c) Even though the Energy performance contract provides for a separate consideration for -
 - i) installation of Energy saving equipment and its day to day management and ii) Operation and maintenance of said equipment, the said activities effectively constitute a single supply of providing lighting service to BMC for a period of 10 years, by using the Energy saving infrastructure installed by the applicant.
- d) In order to determine whether the Supply of Street lighting service by the applicant to BMC would be covered by the exemption provided to supply of services under S1. No. 3 of the Notification 12/2017-C.T.(Rate) dated 28.6.2017, the following three aspects are required to be considered.
 - (i) There is supply of pure service, i.e. there is no composite supply including supply of goods or supply is not in the nature of Works Contract.



Supply is made to a Local authority

(iii) The supply is made for one of the constitutional functions of the local authority.

e) There is no doubt that the applicant has supplied services to a 'local authority' (a municipal corporation) as defined under Section 2(69) of the CGST Act. Further, provision of public amenities such as street lighting listed under Twelfth schedule of the Constitution is one of the functions entrusted to the municipality under Article 243W of the constitution.

f) Since there is no transfer of property in energy saving equipment from the applicant to the BMC during the term of the contract, the applicant would not be making any 'supply of goods' during such period. The only supply made by the applicant during the period of the contract is the supply of service of management, operation and maintenance of the Energy Saving equipment. Therefore, the activity of management, operation and maintenance of Energy saving equipment undertaken by the applicant under the Energy Performance Contract would not qualify as a 'composite supply' in terms of Section 2(30) of the CGST Act.

g) The notification uses words "involving supply of any goods." Mere use of goods in any contract does not mean that the service is not pure service. In other words if there is no supply of goods, it would mean that it is supply of pure service (or supply of only service).

h) The contract was commenced in the FY 2013-14 and all replacement of the LED street lights were undertaken in FY 2013-14. In other words, all street lights were replaced well before Goods & Services Tax came into effect on 01-07-2017. It is humbly submitted that mere use of LED lights owned and possessed by the Applicant does not imply supply of LED street lights to the BMC. Therefore, the contract which is running for past four years is of supply of pure service and no material is being supplied under the said contract.

i) The contract only mentions providing necessary illumination by repairing and replacing the street lights, should it fail/fall below the necessary standard to ensure safety and security of citizen. The contract is for supply / provision of services. Hence, there is no supply of goods under the said contract to BMC and accordingly, in the Applicant's view, they are entitled to the exemption under the said notification (supra).

6.0 In the considered opinion of the jurisdictional Officer of State GST & Central GST, the objective of the contract between the applicant and BMC is implementation of energy



conservation measures within BMC area and that the applicant, besides installation of energy saving equipments, shall also undertake its operation & maintenance during the contract period and shall replace the worn out/damaged equipments. As per the admission of the applicant, it will be paid consideration in shape of 'energy saving fee' and 'O & M fee'. For implementation of the contracted energy conservation measures and maintenance of covered street lighting fixtures, there must be regular requirement for replacements during the contract period. Such a contract, by no stretch of imagination, can be held as 'pure service' contract as it involves, as per the own admission of the applicant, supply of goods such as LED lights and replacement of non-functional fixtures etc. As per the contract between the parties, the property in the goods may be transferred on a later date but such supply is agreed to be made for a consideration in the course of business. The parties to the contract have given their consent freely and there is mutual consideration. Further, they stated that the activities undertaken by the applicant do not constitute supply of 'pure services' as it involve supply of goods. Therefore, benefit of exemption from tax in terms of S1.3 of the notification No.12/2017- Central Tax (Rate), dated 28.06.2017 is not available to the applicant.

7.0 Since the supply under consideration of the Authority is in pursuance to a formal existing contract signed between the applicant and BMC, the relevant portion of the contract i.e. *the applicant's responsibilities and scope of services listed under para 5 read with schedule-1 of the contract/agreement* are extracted below:

- Conducting a detailed asset survey, feeder wise marking of poles in Phase 1 and creation and maintenance of asset database during the Term of the Project;
- Metering all fixtures supplied through street lighting phase/feeders considering optimizations required for enabling metering/ installation of feeder panels on switching points;
- Witnessing the TPEA verification and energy baseline consumption norm for the Existing Lighting Facilities covered under the Project Area;
- Identifying suitable ECMs and implementing them on the respective meter/handed over points/stretch;
- Operating and maintaining the covered street lighting fixtures, including making replacements during the Term of the Project, in line with good industry practice and relevant applicable standards;



- Deputing qualified staff to carry out installation and maintenance of energy efficiency technologies during the Term of the Project.
- Ensuring compliance with all safety standards and fulfilling all statutory obligations in respect of the deployed staff at its own cost during the Term of the Project;
 - Establishing a central monitoring centre for remote operations and monitoring of the entire population of handed over points; such monitoring centre shall also host a call centre facility for logging and tracking resolutions of citizen complaints regarding street lighting;
 - Reporting the performance and functioning of street lighting systems covered under the Project to BMC on a daily/weekly/monthly basis in accordance with the stipulated procedures;
 - Submitting a monthly Energy Savings report for every billing period along with its invoice for release of payment from BMC;
 - Ensuring knowledge transfer and training of BMC staff for operation and maintenance of new energy efficient technologies installed and submitting copies of warranties to BMC;
 - Transferring the street lighting system in working condition to BMC at the end of the Term,

7.1 The submissions made by the applicant, both with the application as well as in the written submission furnished at the time of personal hearing were considered. Also considered the considered opinion of the jurisdictional officers with reference to the terms of the contract relevant to this proceeding and the provisions of the CGST/OGST Acts including SI No.3 of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 and corresponding Notification issued by the State Government were also considered. On such consideration it was found that the applicant fulfills the following conditions quite clearly:

- (i) The service being supplied by the applicant to BMC is admittedly a supply to a Local Authority i.e. BMC.
- (ii) The scope of service being Energy conservation measures in street lighting within BMC area is admittedly in relation to a function entrusted to the Municipality under Article 243W in as much as street lighting is listed at Sr. 17 in the Twelfth Schedule of the Constitution.

7.2 However, there is no clarity as-to whether the service supplied is a case of pure service and whether the contract in pursuance to which the service is being supplied by the applicant to BMC is not a works contract. In fact, the present ruling entirely hinges on



answer to the first question i.e. whether the supply is a case of 'supply of pure service'. The term 'pure service' has not been defined in the said Notification for which it has to be understood by applying the common parlance test and general understanding. As per dictionary, pure means unadulterated and unmixed. Accordingly, pure service should mean pure unadulterated service not mixed with any other element (in this case without any mixture of goods).

7.3 As evident from the terms of the contract, the Applicant is contractually bound to replace the existing street light fittings with the energy efficient sets as per the energy conservation measures and such replacement must be of the standard enumerated in the contract (BIS Standard). During the tenure of the contract the applicant is also contractually bound to repair/replace the fittings to ensure illumination at the contracted level. The contract also involves installation of metering device, monitoring system and control system for regulated illumination. The original contract was for illuminating approximately 18000 points which has been reportedly increased to 45000 points by now. Illuminating the whole of BMC area with 45000 lighting points for a long contract period of 10 years is just not possible without substantial involvement of goods. It is also envisaged in the contract that the applicant, at the end of the contract period/on termination of the contract will be contractually bound to hand over the lighting system in working condition. This implies that the total business assets of the applicant will be transferred to BMC without any extra consideration. In other words, the consideration payable to the applicant includes the cost of acquisition of the business assets i.e. 'the energy efficient street light infrastructure' set up by the applicant at the end of the contract period. Such transfer of business assets from the applicant to BMC is admittedly not covered in clause (c) of para 1 of Schedule II of the CGST/OGST Acts, but rather covered in clause (a) of para 4 of Schedule II which reads as follows:-

"4. *Transfer of business assets*

(a) *where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;"*

7.4 Thus, it is not a case of supply of pure service but rather a case of supply with substantial use of goods. At the time of personal hearing, on a query raised by the



Authority it was explained by the applicant that during the period from 01.07.2017 till the date of hearing, materials such as Street Lights, Control Panel and LED Bulbs etc of value Rs.3,89,72,117/- have been moved to Bhubaneswar project from the manufacturing plant. This is a substantial amount and with material movement at this scale, the ultimate supply to BMC cannot be held as a case of supply of pure service. Thus, on this account, the condition is not fulfilled.

7.5 In addition, the contract between the applicant and BMC is essentially a 'works contract' since the terms of the contract clearly fits into the definition in Section 2 (119) of the CGST/OGST Act. To elaborate, the contract envisages, survey and identification of the street light posts, replacing the existing lighting system with the energy efficient lighting system, setting up a monitoring system to ensure regulated illuminations and also setting up the metering device where necessary. In addition, the contract also envisages operation and maintenance of the lighting system so installed for the entire contract period of 10 years. With such terms as replacement, fitting out, repair and monitoring of the lighting system in the contract is indisputably a case of works contract. The contracted replacement and fitting out of energy efficient street lights will be in relation to the street light installations which are immovable property. Thus, on this account also the application is failing to meet the requirement of Sl No.3 of Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 and matching Notification issued by the State of Odisha.

8.0 In view of the foregoing discussion, it is concluded that the activities undertaken by the applicant do not constitute supply of 'pure services' as it involves significant use of goods/materials. It is also a case of supply of works contract service by the Applicant to BMC. The benefit of exemption from tax in terms of S1.3 of the notification No.12/2017- Central Tax (Rate), dated 28.06.2017 is not available to the applicant. The Hon'ble Apex Court in the case of Commissioner of Customs (Import), Mumbai V. Dilip Kumar & Company [2018] 69 GST 239/95 taxman.com 327 (SC) has been pleased to held that "Exemption notification should be interpreted strictly, 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. When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject / assessee and it must be interpreted in favour of the revenue." Further, Entry at Sl



No.3 of the notification No. 12/2017 –central tax dated 28.06.2017 is unambiguous and it cannot be stretched or construed otherwise. It has no extension and putting any other extension is neither warranted nor intended to and would lead to absurd conclusion not called for and would render the notification entry redundant.

RULING

The services provided by the applicant by way of providing energy efficient street lighting services including OM of the street lighting infrastructure during the contracted period to Bhubaneswar Municipal Corporation (BMC) do not constitute supply of 'pure services' as it involves significant use of goods/materials with stipulation to transfer the total business assets to BMC at the end of the contract period. The benefit of exemption from tax in terms of S1.3 of the notification No.12/2017- Central Tax (Rate), dated 28.06.2017 is not available to the applicant.

The applicant or the jurisdictional officer, if aggrieved by the ruling given above, may appeal to the Odisha State Appellate Authority for Advance Ruling under Section 100 of the OGST/CGST Act, 2017 within 30 days from the date of receipt of the Advance Ruling.



Nilanjan Pan
Member CGST



Anand Satpathy
Member SGST



File No. V (1) ARA/Odisha/BBSR/2018/03/12087A-89A dated-05.11.2018

To

M/s Super Wealth Financial Enterprises (P) Ltd., PL No.3198/5183, Lewis Road, Gouri Vihar, Bhubaneswar, District- Khurda, Odisha-751002.

Copy Forwarded to:-

1. The Commissioner, GST and Central Excise, Bhubaneswar Commissionerate, C.R.Building, Rajaswa Vihar, Bhubaneswar, 751007(Odisha).
2. The Commissioner, GST Odisha, Baniyakar Bhawan, Old Secretariat Compound, Cuttack, Odisha, 753001.
3. Office Copy.



Adhir Kumar Das
5-11-18
(Adhir Kumar Das)

Superintendent (CGST),
Advance Ruling Authority, Odisha.

o/c