

WORKS CONTRACT SERVICES FOR USE OTHER THAN COMMERCE

In an Application filed before AAR under GST, Rajasthan by M/S ARG Electricals Pvt. Ltd [2020 (6) TMI 489]

Facts: Applicant received the work order from AWNL (Government Entity)- first work order is for the 'supply of materials/equipments' for Providing of Rural Electricity infrastructure and the second work order is for erection, testing and commissioning of the supplied goods. Both the agreements are for the single works contract of providing electricity. The contention as made by us is to treat the both work orders as one being a composite supply for which the principal supply is providing electricity. Applicant is of the view that the contract is an original work and it is predominantly for use not for commerce but to provide electricity at an affordable price to the rural areas.

AAR Findings: According to AAR, some conditions to make eligible any work under to fall under Entry 3(vi)(a) of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 entry, which are as following:

- a. It must be a composite supply of works contract as defined in section 2(119) of the CGST Act. 2017*
- b. It must be provided to the Central Government, State Government, Union Territory. a local authority, a Governmental Authority or a Government Entity*
- c. The contract should be by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of a civil structure or any other original works.*
- d. The civil structure or original works must be meant predominantly for use other than for commerce, industry, or any other business or profession*
- e. 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 a local authority, as the case may be.*

AAR Conclusion: The predominant activity of M/s AWNL is to supply electricity and work undertaken by the applicant in the instant case is to help M/s AWNL predominantly in this work. Hence, the work undertaken by the applicant in the instant case is an original meant predominantly for use for commerce, industry,

or any other business or profession. The work undertaken by the applicant are not eligible to be taxed at lower rate of 12% (SGST 6% + CGST 6%) and hence are liable to be taxed @18% (CGST 9% + SGST 9%).

Our Comments: In our opinion, AAR has erred in interpreting the notification by treating the person who has provided. Entry in the Notification is very clear and non-ambiguous to the extent that the benefit of reduced rate is applicable on the services used for the purpose of other than commerce, industry or other than profession. If the Works Contract Services are used for other than commerce than reduced rates are applicable. **Intent of the person supplying the services might have profit motive however the use of the services is the important factor which determines the rate of the supply of the service.** If the use of the services is that for other than commerce, industry or other than business or profession, the nature of the supply of service would fall in the entry providing the reduced rate. Benefit of Reduced Rate is based on the nature of the services provided and the use of the services.

User of the Service: AAR Vide Para 2 of the Order has acknowledged that

“Rajiv Gandhi Grameen Vidyutikaran Yojana (hereinafter RGGVY) for Rural Electricity Infrastructure and Household Electrification Scheme was launched in 2005 and is dedicated to provide electricity to all rural households. The Scheme is funded 90% by Central government and 10% by Rural Electrification Corporation (REC). This scheme is applicable for all rural households living below poverty line”. The RGGVY schemes was implemented by Ministry of Power, Government of India and therefore, projects undertaken by AWNL, Ajmer under (RGGVY) schemes are entrusted by Government of India.

However no discussion has taken about the “USE OF THE SERVICE” which has dominant role to play. Discussion was on the “PERSON PROVIDING SERVICE”

Above Analysis is based purely on Personal Understanding of the Author which may differ from person to person.

Contact us:

Rachit Agarwal

Chartered Accountant

18 Rabindra Sarani

Kolkata-700001

Website- www.nragarwal.com

Email: rachit@nragarwal.com

rachitagarwal1@gmail.com