

(AAR-KAR) 2020 ITL(GST) 136

IN RE: M/S. M.V. INFRA SERVICES PVT. LTD.,

AUTHORITY FOR ADVANCE RULING KARNATAKA

ORDER

UNDER SECTION 98(4) OF THE CENTRAL GOODS & SERVICES TAX ACT, 2017 AND UNDER 98(4) OF THE KARNATAKA GOODS & SERVICES TAX ACT, 2017

1. M/s. M V Infra Services Pvt. Ltd., (called as the 'Applicant' hereinafter), M V House, #323, 13th Main, 18th Cross, Narayana Nagara I Block. BOOHBCS, Kanakapura Main Road, Doddakallasandra (Post), Bengaluru- 560 062, Karnataka., having GSTIN number 29AAHCM8620L1ZY, have filed an application for Advance Ruling under Section 97 of CGST Act,2017 & KGST Act, 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01 discharging the fee of ₹ 5,000/- each under the CGST Act and the KGST Act.

2. The applicant is engaged in provision of composite works contract services of erection, foundation, electrical works & painting of communication towers and their maintenance. They are expected to get sub contract work, of imparting training of soft skill development to Engineers, ITI students, Building and other construction workers, from M/s Adityaa Call Centre Private Limited, Bengaluru, who are the main contractor exclusively engaged in skill development training & are likely to get the main contract work.

3. In view of the above, the applicant sought for advance ruling on the following question. -

What is the rate of tax applicable on services provided under sub-contract to main contractor, who in turn provides to M/s Maharashtra State Skill Development Society (MSSDS), in respect of training of Building and other construction workers (skill development training) and admissibility of SI. No. 69 and Si No. 72 of the notification 12/2017- Central Tax (Rate) New Delhi, dated 28th June, 2017.

APPLICANT'S INTERPRETATION OF LAW:

4. The Applicant submits that the Notification No. 12/2017- Central Tax (Rate), dated 28.06.2017 exempts any service provided by National Skill Development Corporation set up by the Government of India; SI. No. 69 of the said notification is applicable to the main contractor and hence the said company is eligible for exemption in terms of clause (d) in relation to condition (iii). Further, if SI. No. 69 is not applicable, SI. No.72 is applicable to the main contractor and the

services provided by main contractor in respect of training of Building and other construction workers to MSSDS Maharashtra State Skill Development Society, Maharashtra are exempted.

5. The applicant intend to rely on the order passed by **Madhya Pradesh Advance Ruling Authority in the case of M/s. Network For Information & Computer (GST AAR Madhya Pradesh) dated. 10-04-2019 = 2019 (7) TMI 42 - AUTHORITY FOR ADVANCE RULING, MADHYA PRADESH**, wherein applicant is engaged in Commercial Training 8s Coaching and business auxiliary services provided to Uttar Pradesh Skill development Corporation, through which they train the youth of Uttar Pradesh for gainful employment of the candidates, is being exempted from the payment of taxes vide SI. No. 72 of the Notification No. 12/2017- Central Tax (Rate) New Delhi, dated 28th June, 2017.

6. In view of the above, the applicant contends that main contractor i.e. M/s Adityaa Call Centre Private Limited, Bengaluru, is exclusively engaged in training of soft Skill development provided to Engineers, ITI students, Building and other construction workers and the services to be provided by the main contractor to the Maharashtra State Skill development Society, Skill development and Entrepreneurship Department, Government of Maharashtra are exempted, in terms of the aforesaid notification. The applicant further contends that the services to be provided by them to the main contractor are also exempted as the services to be provided by the main contractor are exempted.

PERSONAL HEARING / PROCEEDINGS HELD ON 21.11.2019.

4. Sri Dayananda K, Chartered Accountant and duly authorised representative of the applicant appeared for personal hearing proceedings held on 21.11.2019, reiterated the facts narrated in their application and also furnished the following submissions.-

a) The applicant is likely to get sub-contract work of RPL (Recognition of prior learning) of Building & other Construction workers for imparting training of skill development to Building & other Construction workers, from M/s Aditya Call Centre Pvt. Ltd., Bengaluru ("Mail Contractor), who participated in the tender called by Maharashtra Skill Development Society, Skill Development & Entrepreneurship Department, Government of Maharashtra and is expecting to get the assignment.

b) The total expenditure of the said training programme is borne by the Government of Maharashtra under its flagship Skill Development Mission. The applicant, though under sub-contract, will be providing services to Maharashtra State Skill Development Society, Skill Development & Entrepreneurship Department, Government of Maharashtra in a "bill to-ship to" model.

c) Entry No.72 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 exempts services provided to the State Government under any training programme for which total expenditure is borne by the State Government. In the instant case, the impugned training programme is hosted by the State Government of Maharashtra and hence the services provided under the said programme are exempt and accordingly main contractor is eligible for exemption.

d) The services of main contractor are exempted and the applicant, through the main contractor, will be providing the same services to the Government of Maharashtra and hence the said services, to be provided by the applicant under sub-contract, also should be exempted, under entry 72 of the Notification supra.

e) The applicant intend to rely on the Advance Ruling given by this authority in the case of **M/s Quatro Rail Tech Solutions Ltd. =2019 (10) TMI 1134 - AUTHORITY FOR ADVANCE RULING, KARNATAKA**, and also the ruling in the case of **M/s NHPC Ltd. = 2019 (3) TMI 837 - AUTHORITY FOR ADVANCE RULINGS, UTTARAKHAND**, issued by the Advance Ruling Authority, State of Uttarakhand.

f) The incidence of GST, being the indirect tax, is upon the recipient of supply; any increase in the cost, in the form of GST, will accrue to the Government, being the recipient; the exemption on the training services is with an intention to lesser the burden on the Government treasury; taxing the said services only because they are rendered through main contractor results in defeating the legislative intent and results in increased burden to the treasury of the Government of Maharashtra and hence legislative intent may please be given more weightage than the technicalities.

5. FINDINGS & DISCUSSION:

5.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri Dayananda K, Chartered Accountant and duly authorised representative of the applicant during the personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

5.2 At the outset, we would like to state that the provisions of both the CGST Act and the KGST 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 provisions under the KGST Act.

5.3 The applicant sought advance ruling in respect of the question mentioned at para 3 supra, as they are likely to get sub-contract work, for imparting training of skill development to Building & other Construction workers, from M/s Aditya Call Centre Pvt. Ltd., Bengaluru (“Mail Contractor”), who is expecting to get the assignment. In this regard, they sought rate of tax on the services to be provided and the applicability of entry No.69 or 72 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

5.4 The applicant contends that the total expenditure of the said training programme is to be borne by the Government of Maharashtra under its flagship Skill Development Mission; they, though under sub-contract, will be providing services to Maharashtra State Skill Development Society, Skill Development & Entrepreneurship Department, Government of Maharashtra in a “bill to-ship to” model; the services of main contractor are exempted under entry No.72 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and the applicant, through the main contractor,

will be providing the same services to the Government of Maharashtra and hence the said services, to be provided by the applicant under sub-contract, also should be exempted.

5.5 We proceed to examine the entitlement of exemption to the main contractor under entry numbers 69 & 72, of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, respectively one at a time. Entry No.69 exempts the services, covered under Service Code 9991 or 9992 or 9983, provided by (a) the National Skill Development Corporation (NSDC) set up by Government of India, (b) a Sector Skill Council (SSC) approved by the NSDC, (c) an assessment agency approved by the SSC or NSDC, (d) a training partner approved by NSDC or SSC; in relation to (i) National Skill Development Programme implemented by NSDC, or (ii) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or (iii) any other scheme implemented by NSDC.

5.6 In the instant case, the tender has been called by Maharashtra State Skill Development Society, Skill Development and Entrepreneurship Department, Government of Maharashtra which is neither NSDC nor a SSC. The tender was meant for empanelment of "Training Providers". The applicant has not furnished any documentary evidence so as to arrive at whether the main contractor qualifies to be a training partner, approved by either NSDC or SSC, or not. Further the training providers are not entitled for exemption under the entry No.69. Therefore the main contractor, in case if they get the said work, would not be entitled for exemption under this entry for the said work.

5.7 Now we proceed to examine the entitlement of exemption to the main contractor under entry No. 72, of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, which exempts the services, covered under Service Code 9992, provided to the Central Government, State Government, Union Territory Administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union Territory Administration. In the instant case, the main contractor, if they get the work, would be providing service, of training for Recognition of Prior Learning (RPL) to construction workers, to the Government of Maharashtra, for which total expenditure is to be borne by the Government of Maharashtra. Therefore the main contractor would be eligible for exemption under entry No.72 of the said notification, subject to fulfillment of the aforesaid conditions.

5.8 The last issue before us to examine is whether the aforesaid exemption that is applicable to the main contractor is applicable to the applicant or not. The conditions for the entitlement of the said exemption are as under:-

- a) The services must be related to/ under any training programme.
- b) The services must be provided to the Central Government, State Government, Union Territory Administration.
- c) The total expenditure for the said training programme must be borne by Central Government, State Government, Union Territory Administration.

In the instant case though the services to be provided by the applicant would be under training programme for Recognition of Prior Learning (RPL) to construction workers, the services would be provided to the Main Contractor i.e. the recipient of the services would be the Main contractor, but not the State Government. Therefore the required conditions are not fulfilled and hence the applicant is not entitled for exemption under entry No.72 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. Thus, the services to be provided by the applicant are taxable at 18% IGST or 9% each of CGST & KGST.

6. In view of the foregoing, we pass the following

RULING

The rate of 18% GST is applicable on services to be provided under sub-contract to main contractor, who in turn provides to M/s Maharashtra State Skill Development Society (MSSDS), in respect of training of Building and other construction workers (skill development training) and the SI. No. 69 or SI. No. 72 of the notification 12/2017- Central Tax (Rate) New Delhi, dated 28th June, 2017 are not applicable to the applicant.