


<b>GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.</b>	
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ADVANCE RULING NO. GUJ/GAAR/R/2024/16  
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2023/AR/30)

**Date:** -02.07.2024

Name and address of the applicant	:	M/s. Vijai Electricals Ltd., 15, Jaldeep Entice, Bopal Road, Ahmedabad- 380 058
GSTIN of the applicant	:	24AAACV7259B1ZI
Jurisdiction Office	:	Center Commissionerate – Ahmedabad North Division - VI Range -I
Date of application	:	14.08.2023
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a), (b), (c)
Date of Personal Hearing	:	24.4.2024
Present for the applicant	:	Shri Mehar Tej Alamuri, Manager

**Brief facts:**

M/s. Vijai Electricals Ltd., 15, Jaldeep Entice, Bopal Road, Ahmedabad- 380 058 [for short-‘applicant’] is registered under GST and their GSTIN number is 24AAACV7259B1ZI.

2. The applicant is engaged in the EPC contract business with various distribution companies [DISCOMS] like Paschim Gujarat Vij Company Ltd [PGVCL].

3. The applicant has further stated that they have a turnkey contract with PGVCL for supply of plant as contract agreement part-I and supply of installation services as contract agreement part-II under single agreement bearing No. PGVCL/Project/RDSS/Infra/MVCC/P1/87/509.

4. The applicant has further stated that they receive 7.5% advance against contract agreement part-I as well as contract agreement part-II. It is the applicant’s case that though it is a single agreement as mentioned *supra*, there



is a clear bifurcation in rates and activities and hence, can be termed as a divisible contract.

5. The applicant further contends that in terms of notification No. 66/2017-CT dated 15.11.2017, the Central Government has exempted payment of GST at the time of receipt of advances in case of goods, effective from 15.11.2017; that in their case, contract agreement part-I pertains to supply of goods and contract agreement part-II, pertains to supply of services; that they do separate billing for supply & erection; that it is a purely divisible contract; that no GST is payable on advance received against supply at the time of receipt of advance in terms of the notification, *ibid*; that they have received an interest bearing advance against supply by providing Bank Guarantee for 110% of advance received, which can be treated as corporate credit facility [loan] from the client.

6. The applicant has raised the below mentioned questions, seeking an advance ruling *viz*

*(i) Notification No. 66/2017 will applicable for turnkey contract?*

*(ii) Is GST payable on advance received against supply portion in Turnkey contract..?*

*(iii) Identification of rates for supply and service separately under single contract can be read as divisible contract ...?*

7. Personal hearing was granted on 24.4.2024 wherein Shri Mehar Tej Alamuri, Manager, appeared on behalf of the applicant. He further reiterated that it is a divisible contract; that invoices are separate for goods and services; that he will produce invoices of goods supplied since the supply has already started.

8. Vide additional submission dated 24.4.2024, the applicant submitted copies of supply & erection invoices against contract bearing number GVCL/PROJECT/RDSS/INFRA/MVCC/VIJAI/PI/87/1023 and P2/88/1024 dated 08-06-2023 to substantiate their averment that the aforesaid contract is a divisible contract and the GST on advance received against supply can be deferred at the time of advance received against supply.

**Revenue's Submission:**

9. Deputy Commissioner, Division- VI, CGST Ahmedabad North Commissionerate vide letter No. CGST-06/04-01/ DIV-VI/ Tech/ 2023 submitted its comments as follows:

On going through the works contract agreement undertaken between the employer and taxpayer it appears that the employer has engaged the services of the contractor for successful erection and installation of 11 KVA Medium Voltage Conductor along with its supply. The basic arrangement of supply intended to be received by the employer is not for sole supply of goods, but for complete package of supply and installation of such goods, only then the service would be deemed to be complete as per the provisions of the agreement entered. Though the monetary bifurcation of goods and services are available in the agreement, but the nature and essence of the services intended to be received by the employer is a complete all-round supply and installation work by the contractor. In such circumstances, the outward supply of service cannot be fragmented into two separate elements of supply of goods and services but rather be constituted as a single Works Contract Service for the payment of GST. Accordingly, the advances received by the contractor for the scope of work to be accomplished cannot be bifurcated separately for part of goods supply or part of service supply but shall be considered as a gross receipt of advances for the complete Works Contract which includes element of both supply and services. Resultantly, the provisions of Notification 66/2017-Central Tax dated 15.11.2017 being relied upon by the applicant/contractor for exemption of payment of tax on advances received does not appear applicable in the present case.

**Discussion and findings**

10. At the outset, we would like to state that the provisions of both the CGST Act and the GGST 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 GGST Act.

11. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made during the



course of personal hearing. We have also considered the issue involved, the relevant facts & the applicant's submission/interpretation of law in respect of question and the additional submission on which the advance ruling is sought.

12. Before advertng to the submissions made by the applicant, we would like to reproduce the relevant provisions and notification for ease of reference:

- CGST Act, 2017

**Section 2(119)**

(119) "works contract" 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;

**Section 12 Time of Supply of Goods**

(1) The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of goods shall be the earlier of the following dates, namely:-

(a) the date of issue of invoice by the supplier or the last date on which he is required, under <sup>1</sup>[\*\*\*\*] section 31, to issue the invoice with respect to the supply; or

(b) the date on which the supplier receives the payment with respect to the supply:

**Provided** that where the supplier of taxable goods receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.

**Explanation 1.-** For the purposes of clauses (a) and (b), "supply" shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

**Explanation 2.-** For the purposes of clause (b), "the date on which the supplier receives the payment" shall be the date on which the payment is entered in his books of account or the date on which the payment is credited to his bank account, whichever is earlier.

**Section 13. Time of Supply of Services.-**

(1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of services shall be the earliest of the following dates, namely:-

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under <sup>1</sup>[\*\*\*\*] section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under <sup>1</sup>[\*\*\*\*] section 31 or the date of receipt of payment, whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not: apply

**Provided** that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

**Explanation .-**For the purposes of clauses (a) and (b)-

(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;



(ii) "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

• **Notification No. 66/2017-CT dated 15.11.2017**

G.S.R. (E):—In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act) and in supercession of notification No. 40/2017-Central Tax, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.1254(E), dated the 13th October, 2017, except as respects things done or omitted to be done before such supercession, the Central Government, on the recommendations of the Council, hereby notifies the registered person who did not opt for the composition levy under section 10 of the said Act as the class of persons who shall pay the central tax on the outward supply of goods at the time of supply as specified in clause (a) of sub-section (2) of section 12 of the said Act including in the situations attracting the provisions of section 14 of the said Act, and shall accordingly furnish the details and returns as mentioned in Chapter IX of the said Act and the rules made thereunder and the period prescribed for the payment of tax by such class of registered persons shall be such as specified in the said Act.

13. At the outset, the entire documents regarding acceptance of tender (RFP)-At dated 8.6.2023, relating to "Appointment of full turnkey contract for supply, installation, testing and commissioning of 11 KV Medium Voltage covered conductor (MVCC) with its accessories in Morbi and Part of Kacchhh district (Anjar circle) in PGVCL under Revamped Reforms,-Based on results-linked , distribution sector scheme (Package-1)" is not enclosed with the application. The applicant has only provided some documents which is not complete set. From the papers that are enclosed, relevant portions are culled out and reproduced below, for ease of reference viz

• **Acceptance of Tender (RFP)-AT**

*Appointment of Full Turnkey Contract for Supply: Installation, Testing and Commissioning of 11 KV Medium Voltage Covered Conductor (MVCC) With its Accessories in Morbi and Part of Kachchh District (Anjar Circle) in PGVCL under Revamped Reforms-Based and Results-Linked, Distribution Sector Scheme (Package-1), as per terms and condition of stated in tender in the Schedule attached, and as per, Scope of works and conditions now mentioned in this P.O. (i.e. Purchase Order).*

The Total value of Project is as mentioned below;

<b>Price Component</b>	<b>Amount</b>
Total for Supply of Plant Contract (Including GST)	Rs. 130,38,35,298.00 (One Hundred Thirty crore thirty eight lakh thirty five thousand two hundred eighty eight rupees only)
Total for Installation Services Contract (Including GST)	Rs. 18,53,54,364.00 (Eighteen crore fifty three lakh fifty four thousand three hundred sixty four only)
Total	Rs. 148,91,89,662.00 (One Hundred forty eight crore ninety one lakh eighty nine thousand six hundred sixty two only)

**1. Scope of Work**

The Brief Scope of work is Supply, Installation, Testing and Commissioning of 11 KV Medium Voltage Covered Conductor (MVCC) with its Accessories in Morbi and Part of Kachchh District (Anjar Circle) in PGVCL under Revamped Reforms-Based and Results-Linked, Distribution Sector Scheme is to be executed on turnkey basis, the scope of which includes survey, network design, supply, manufacturer's quality assurance, testing (where specified/ required), transportation, storage,



erection, including all civil/ structural works, site, testing, commissioning of all items & materials including all associated activities though not exclusively specified herein and are required for the completion and satisfactory performance of the entire works as intended. The above said works are to be executed in the predefined phase manner work to achieve targets as per Action Plan of RDSS.

- **Contract Agreement**

<b>CONTRACT AGREEMENT</b>	
CONTRACT AGREEMENT PART I FOR SUPPLY OF PLANT BETWEEN Paschim Gujarat Vij Company Limited AND M/s. Vijai Electricals Ltd.,	
THIS CONTRACT AGREEMENT PART I No. <b>PGVCL/PROJECT/ RDSS/INFRA/MVCC/P1/87/509</b> also referred to as ("Supply of Plant Contract / the Contract Part I") is made on the <b>1<sup>st</sup> day of April 2023</b> .	
BETWEEN	
(1) Paschim Gujarat Vij Company Limited a company incorporated under the laws of Companies Act 1956/2013 (with amendment from time to time) and having its Registered and Corporate Office Reg. & Corporate Office, "Paschim Gujarat Vij Seva Sadan" Off, Nana Mava Road, Laxminagar, Rajkot - 360 004. (hereinafter called "the Employer" and also referred to as ("PGVCL")	And
(2) M/s. Vijai Electricals Limited a company incorporated under the laws of Companies Act 1956/2013 (with amendment from time to time) and having its Principal place of business at <b>6-3-648/1&amp;2, Off. Raj Bhavan Road, Somajiguda, Hyderabad - 500 082</b> and Registered Office at <b>6-3-648/1&amp;2, Off. Raj Bhavan Road, Somajiguda, Hyderabad - 500082</b> (hereinafter called "the Contractor" and also referred to as ("VEL")	





WHERE, the Employer, under this Contract Agreement Part I, desires to engage the Contractor for the supply of Plant on FOR {Final place of destination (Site/Project Site)} basis inter-alia including design, engineering, manufacture, testing, transportation, insurance etc. and other services, incidental thereto, required for the complete execution of the

SUPPLY, INSTALLATION, TESTING AND COMMISSIONING OF 11 KV MEDIUM VOLTAGE COVERED CONDUCTOR (MVCC) WITH ITS ACCESSORIES IN MORBI AND PART OF KACHCHH DISTRICT (ANJAR CIRCLE) IN PGVCL UNDER REVAMPED REFORMS-BASED AND RESULTS-LINKED, DISTRIBUTION SECTOR SCHEME (Package-1) and the scope of work is briefly described below;

Site survey, planning, design, engineering, assembly manufacturing, testing, supply, loading, transportation, unloading, insurance, delivery at site, handling, storage, installation, testing, commissioning and documentation of all items/material required to complete the following works in Morbi and Part of Kachchh District (Anjar Circle) in PGVCL which inter-alia include

Supply of 11 KV Medium Voltage Covered Conductor (MVCC) with its accessories;

1. Conversion of existing bare conductor by 11 KV AAAC Covered Conductor (MVCC) with its accessories
2. Conversion of existing bare conductor by 11 KV AL59 ACS Covered Conductor (MVCC) with its accessories.

#### Article 2. Contract Price and Terms of Payment

##### 2.1 Contract Price (Reference GCC Clause 11) for Contract Part I

The Employer hereby agrees to pay to the Contractor the Contract Price for Contract Part I in consideration of the performance by the Contractor of its obligations hereunder. The Contract Price for Contract Part I shall be the aggregate of (Rs. 130,38,35,298.00 (with GST)) (In Words: One Hundred Thirty Crores Thirty Eighty Lakhs Thirty Five Thousand Two Hundred Ninety Eight Rupees Only), or such other sums as may be determined in accordance with the terms and conditions of the Contract. The break-up of the Contract Price for Contract Part I is as under:

The detailed break-up of Contract Price for Contract Part I is given in the relevant Appendices hereto.

##### 2. Terms of Payment (Reference GCC Clause 12)

The terms and procedures of payment according to which the Employer will reimburse the Contractor are given in Appendix 1 (Terms and Procedures of Payment) hereto.

Sl. No.	Description	Total Price (Rs.)
1.	TOTAL for Supply of Plant Contract (Excl. GST)	Rs. 110,49,45,168.00 (One Hundred Ten Crores Forty Nine Lakhs Forty Five Thousand One Hundred Sixty Eight Rupees Only)
	Total for Supply of Plant Contract (Incl. GST)	Rs. 130,38,35,298.00 (One Hundred Thirty Crores Thirty Eighty Lakhs Thirty Five Thousand Two Hundred Ninety Eight Rupees Only)



Article 5.

The Contract Agreement Part II No. **Letter of Intent/ Notification of Award** No. PGVCL/PROJECT/RDSS/INFRA /MVCC/P1/87/509 has also been made on the 1<sup>st</sup> day of April 2023 between the Employer and the Contractor for the Supply of Installation Services (hereinafter referred to as the "Contract Part II") for providing/ supplying all Installation Services (excluding the incidental services included in Contract Part I), inter-alia, unloading and handling of Plant, all labor, Contractor's equipment, temporary works, materials, consumables, design and preparation of layout, engineering drawings, and all matters and things of whatsoever nature, including testing, pre-commissioning, guarantee tests and commissioning, the provision of as-built drawings, operations and maintenance manuals, training, etc., applicable and necessary for the proper execution of the installation and other services, at final destination (Site/ Project site), related to and incidental to successful installation of the Plant supplied under the Contract Part I, required for the complete execution of SUPPLY, INSTALLATION, TESTING AND COMMISSIONING OF 11 KV MEDIUM VOLTAGE COVERED CONDUCTOR (MVCC) WITH ITS ACCESSORIES IN MORBI AND PART OF KACHCHH DISTRICT (ANJAR CIRCLE) IN PGVCL UNDER REVAMPED REFORMS-BASED AND RESULTS-LINKED, DISTRIBUTION SECTOR SCHEME (Package-1) and the scope of work is briefly described below:

Site survey, planning, design, engineering, assembly manufacturing, testing, supply, loading, transportation, unloading, insurance, delivery at site, handling, storage, installation, testing, commissioning and documentation of all items/material required to complete the following works in Morbi and Part of Kachchh District (Anjar Circle) in PGVCL which inter-alia include:

Supply of 11 KV Medium Voltage Covered Conductor (MVCC) with its accessories:

1. Conversion of existing bare conductor by 11 KV AAAC Covered Conductor (MVCC) with its accessories
2. Conversion of existing bare conductor by 11 KV AL59 ACS Covered Conductor (MVCC) with its accessories.

## • Contract Agreement

### CONTRACT AGREEMENT

P.B. NO. 0178 C. 0104

CONTRACT AGREEMENT PART II FOR SUPPLY OF INSTALLATION SERVICES BETWEEN Paschim Gujarat Vij Company Limited AND M/s. Vijai Electricals Ltd.,

THIS CONTRACT AGREEMENT PART II No. PGVCL/PROJECT/RDSS/INFRA /MVCC/P1/87/509 (also referred to as "Supply of Installation Services Contract/the Contract Part II") is made on the 1<sup>st</sup> day of April 2023.

BETWEEN

1) Paschim Gujarat Vij Company Limited a company incorporated under the laws of Companies Act 1956/2013 (with amendment from time to time) and having its Registered and Corporate Office at, "Paschim Gujarat Vij Seva Sadan" Off, Nana Mava Road, Laxminagar, Rajkot - 360 004. (hereinafter called "the Employer" and also referred to as ("PGVCL")

And

(2) M/s. Vijai Electricals Limited a company incorporated under the laws of Companies Act 1956/2013 (with amendment from time to time) and having its Principal place of business at 6-3-648/1&2, Off. Raj Bhavan Road, Somajiguda, Hyderabad - 500 082 and Registered Office at 6-3-648/1&2, Off. Raj Bhavan Road, Somajiguda, Hyderabad - 500082 (hereinafter called "the Contractor" and also referred to as "(VEL)")

WHERE, the Employer, under this Contract Agreement Part II, desires to engage the Contractor for the supply of Installation Services for providing/ supplying all Installation Services (excluding the incidental services included in Contract Part I), inter-alia, unloading and handling of Plant, all labor, Contractor's equipment, temporary works, materials, consumables, design and preparation of layout, engineering drawings, and all matters and





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things of whatsoever nature, including testing, pre-commissioning, guarantee tests and commissioning, the provision of as-built drawings, operations and maintenance manuals, training, etc., applicable and necessary for the proper execution of the installation and other services, at final destination (Site/Project site), related to and incidental to successful installation of the Plant supplied under the Contract Part I, for the complete execution of the SUPPLY, INSTALLATION, TESTING AND COMMISSIONING OF 11 KV MEDIUM VOLTAGE COVERED CONDUCTOR (MVCC) WITH ITS ACCESSORIES IN MORBI AND PART OF KACHCHH DISTRICT (ANJAR CIRCLE) IN PGVCL UNDER REVAMPED REFORMS-BASED AND RESULTS-LINKED, DISTRIBUTION SECTOR SCHEME (Package-1), and the scope of work is briefly described below:

Site survey, planning, design, engineering, assembly manufacturing, testing, supply, loading, transportation, unloading, insurance, delivery at site, handling, storage, installation, testing, commissioning and documentation of all items/material required to complete the following works in Morbi and Part of Kachchh District (Anjar Circle) in PGVCL which inter-alia include

Supply of 11 KV Medium Voltage Covered Conductor (MVCC) with its accessories;

1. Conversion of existing bare conductor by 11 KV AAAC Covered Conductor (MVCC) with its accessories
2. Conversion of existing bare conductor by 11 KV AL59 ACS Covered Conductor (MVCC) with its accessories

Article 2. Contract Price and Terms of Payment

2.1 Contract Price (Reference GCC Clause 11) for Contract Part II

The Employer hereby agrees to pay to the Contractor the Contract Price for Contract Part II in consideration of the performance by the Contractor of its obligations

Article 5.

The Contract Agreement Part I No. i.e., Letter of Intent/ Notification of Award No. PGVCL/PROJECT/RDSS/INFRA/MVCC/P1/87/509 has also been made on the 1<sup>st</sup> day of April 2023 between the Employer and the Contractor for the Supply of Plant (hereinafter referred to as the "Contract Part I") for the supply of Plant on FOR (Site/Project Site) basis inter-alia including design, engineering, manufacture, testing, transportation, insurance etc. and other services, incidental thereto, required for the complete execution of the SUPPLY, INSTALLATION, TESTING AND COMMISSIONING OF 11 KV MEDIUM VOLTAGE COVERED CONDUCTOR (MVCC) WITH ITS ACCESSORIES IN MORBI AND PART OF KACHCHH DISTRICT (ANJAR CIRCLE) IN PGVCL UNDER REVAMPED REFORMS-BASED AND RESULTS-LINKED, DISTRIBUTION SECTOR SCHEME (Package-1) and the scope of work is briefly described below:

Site survey, planning, design, engineering, assembly manufacturing, testing, supply, loading, transportation, unloading, insurance, delivery at site, handling, storage, installation, testing, commissioning and documentation of all items/material required to complete the following works in Morbi and Part of Kachchh District (Anjar Circle) in PGVCL which inter-alia include;

Supply of 11 KV Medium Voltage Covered Conductor (MVCC) with its accessories;

1. Conversion of Existing bared Conductor with 11 KV AL59 ACS Covered Conductor (MVCC)

hereunder. The Contract Price for Contract Part II shall be the aggregate of (Rs. 18,53,54,364.00 (with GST)) (In Words: Eighteen Crores Fifty Three Lakhs Fifty Four Thousand Three Hundred Sixty Four Rupees Only), or such other sums as may be determined in accordance with the terms and conditions of the Contract. The break-up of the Contract Price for Contract Part II is as under:

Sl. No.	Description	Total Price (Rs.)
1.	TOTAL for Supply of Installation Services Contract (Excl. GST)	Rs. 15,70,79,969.00 (Fifteen Crores Seventy Lakhs Seventy Nine Thousand Nine Hundred Sixty Nine Rupees Only)
2.	Training Charges (if required)	Not Applicable
	Total for Supply of Installation Services Contract (Incl. GST)	Rs. 18,53,54,364.00 (Eighteen Crores Fifty Three Lakhs Fifty Four Thousand Three Hundred Sixty Four Rupees only)

The detailed break-up of Contract Price for Contract Part II is given in the relevant Appendices hereto.

2.2 Terms of Payment (Reference GCC Clause 12)

The terms and procedures of payment according to which the Employer will reimburse the Contractor are given in Appendix I (Terms and Procedures of Payment) hereto.



01/02/2017  
01/08/2017  
01/08/2017

2. Conversion of Existing Bare Conductor with 11 KV MVCC  
(MVCC) Contract III

14. The applicant, as is evident, has sought ruling on three questions, which has been vaguely framed. Ruling is sought on whether the contract can be read as a divisible contract; whether GST is payable on advance received and whether the notification no. 66/2017, which is reproduced *supra*, is applicable to a turnkey contract.

15. In respect of the issues to be determined, we would first venture to decide whether this is a divisible contract.

16. Of the portions of the contract that was made available, the relevant portions are already reproduced above. A bare reading reveals that the applicant has entered into a **turnkey contract** for supply installation testing & commissioning of 11 KV medium voltage covered conductor (MVCC) with its accessories in Morbi & part of Kachchh district (Anjar Circle) in PGVCL under revamped-reforms based & results-linked, distribution sector scheme. Under a single agreement, with PGVCL, the applicant has entered into [i] contract agreement part-I for supply of plant wherein the total price including GST is Rs. 130.38 crores and [ii] contract agreement part-II, for supply of installation services wherein the total price including GST is Rs. 18.53 crores.

17. Article 5 of the aforementioned part-I & part-II contracts, reproduced *supra* clearly state that both part-I and II contract(s) have been made on the same date; that in terms of article 5 of the part-I, it is mentioned that contract agreement part-II is entered for providing/supplying installation services, related to & incidental to successful installation of the plant supplied under contract part-I; notwithstanding the award of work for completion of the facilities under the contract in two separate parts in the aforesaid manner the applicant shall be overall responsible to ensure execution of both the parts of the contract to achieve successful completion and taking over the facilities by PGVCL as per the contract; that any default and breach under part-II shall automatically be a default under part-I & *vice versa* giving PGVCL a right to terminate the contract; that plant/equipment/material supplied by the applicant

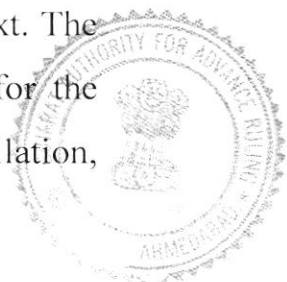


under part-I when erected, installed and commissioned by the applicant under part-II shall give satisfactory performance in accordance with the provisions of the contract; that article 5 of contract agreement part-II also casts a similar obligation on the applicant.

18. Thus, it is clear that the first contract *i.e.* contract agreement part-I, relating to supply of plant, cannot be executed independent of the second contract *i.e.* contract agreement part-II, relating to supply of installation services. There cannot be supply of goods without a place of supply. As the goods to be supplied under the contract agreement part-I involves movement and/or installation at the site, the place of supply shall be the location of the goods at the time when movement of the goods terminates for delivery to the recipient, or moved to the site for assembly or installation, in terms of section 10(1)(a) & (d) of the IGST Act, 2017. Thus, contract agreement part-I is not a complete contract, unless tied up with contract agreement part-II. This is more so since any default or breach under the contract agreement part-II, shall automatically be deemed as a default or breach of contract agreement part-I [refer article 5 of the contracts].

19. Black's Law Dictionary defines that "*a severable contract, also termed as divisible contract, as a contract that includes two or more promises each of which can be enforced separately, so that failure to perform one of the promises does not necessarily put the promises in breach of the entire contract*". In the present context, supply of goods, their transportation to PGVCL's site, supply, installation, testing and commissioning and related services are not separate contracts, but are parts of an indivisible composite works contract, as defined under section 2(119) of the GST Act, with 'single source responsibility'.

20. Composite nature of the contract is also clear from Article 5 that defines satisfactory performance of the contract agreement in part-I as the time when the goods so supplied are installed and finally commissioned in terms of the contract agreement part-II. The two promises – supply of the goods and the supply of services – are not separately enforceable in the present context. The recipient has not contracted for ex-factory supply of materials, but for the composite supply, namely works contract service for supply, installation,



testing and commissioning of 11 KV medium voltage covered conductor (MVCC) with its accessories. A bifurcation of the turnkey contract into two further contracts as part-I and part-II, would not change the classification. The contract, being a turnkey contract, both of which are interlinked & interdependent to performance as is evident from article 5, *supra*, leads us to the conclusion that the turnkey contract entered by the applicant with the PGVCL, is a **works contract** as defined u/s 2(119) *supra*. Further, there is nothing on record either in the application or in the additional submission averring that the supply, installation testing & commissioning of 11 KV medium voltage covered conductor (MVCC) with its accessories, is not an immovable property.

21. In view of the foregoing, we further find that the contract entered into by the applicant with PGVCL is also not a divisible contract, notwithstanding the fact that the turnkey contract, as mentioned above constitutes two different contract, entered on the same day, the performance of which is interconnected, interdependent & wherein the obligations cast in part-II clearly state that his performance in part-I is interconnected to his performance in part-II & *vice versa*.

22. The above view is substantiated by the judgement of the Hon'ble Supreme Court in a Constitution Bench judgement in the case of M/s. Kone Elevator India Pvt. Ltd. [2014 (304) ELT 161 (SC)], wherein it was held as follows:

*38. Reference to the aforesaid authorities is for the purpose that post the constitutional amendment, the Court has been interpreting a contract of work, i.e., works contract in the constitutional backdrop. In certain cases, which involve transfer of property and also an element of service in the context of work rendered, it has been treated as works contract.*

*39. The essential characteristics have been elucidated by a three-Judge Bench in Larsen and Toubro (supra) thus :-*

*"As the very title of Article 366 shows, it is the definition clause. It starts by saying that in the Constitution unless the context otherwise requires the expressions defined in that article shall have the meanings respectively assigned to them in the article. The definition of expression "tax on sale or purchase of the goods" is contained in clause (29A). If the first part of clause (29A) is read with sub-clause (b) along with latter part of this clause, it reads like this: "tax on the sale or purchase of the goods" includes a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract and such transfer, delivery or supply of any goods shall be deemed to be a sale of*



*those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made. The definition of "goods" in clause (12) is inclusive. It includes all materials, commodities and articles. The expression "goods" has a broader meaning than merchandise. Chattels or movables are goods within the meaning of clause (12). Sub-clause (b) refers to transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract. The expression "in some other form" in the bracket is of utmost significance as by this expression the ordinary understanding of the term "goods" has been enlarged by bringing within its fold goods in a form other than goods. Goods in some other form would thus mean goods which have ceased to be chattels or movables or merchandise and become attached or embedded to earth. In other words, goods which have by incorporation become part of immovable property are deemed as goods. The definition of "tax on the sale or purchase of goods" includes a tax on the transfer of property in the goods as goods or which have lost its form as goods and have acquired some other form involved in the execution of a works contract."*

**40.** *On the basis of the aforesaid elucidation, it has been deduced that a transfer of property in goods under Clause (29A)(b) of Article 366 is deemed to be a sale of goods involved in the execution of a works contract by the person making the transfer and the purchase of those goods by the person to whom such transfer is made. One thing is significant to note that in Larsen and Toubro (supra), it has been stated that after the constitutional amendment, the narrow meaning given to the term "works contract" in Gannon Dunkerley-I (supra) no longer survives at present. It has been observed in the said case that even if in a contract, besides the obligations of supply of goods and materials and performance of labour and services, some additional obligations are imposed, such contract does not cease to be works contract, for the additional obligations in the contract would not alter the nature of the contract so long as the contract provides for a contract for works and satisfies the primary description of works contract. It has been further held that once the characteristics or elements of works contract are satisfied in a contract, then irrespective of additional obligations, such contract would be covered by the term "works contract" because nothing in Article 366(29A)(b) limits the term "works contract" to contract for labour and service only.*

**42.** *At this juncture, it is condign to state that four concepts have clearly emerged. They are (i) the works contract is an indivisible contract but, by legal fiction, is divided into two parts, one for sale of goods, and the other for supply of labour and services; (ii) the concept of "dominant nature test" or, for that matter, the "degree of intention test" or "overwhelming component test" for treating a contract as a works contract is not applicable; (iii) the term "works contract" as used in Clause (29A) of Article 366 of the Constitution takes in its sweep all genre of works contract and is not to be narrowly construed to cover one species of contract to provide for labour and service alone; and (iv) once the characteristics of works contract are met with in a contract entered into between the parties, any additional obligation incorporated in the contract would not change the nature of the contract.*

23. Moving on to the **next issue** raised by the applicant as to whether GST is payable on advance received and whether the notification no. 66/2017-CT dated 15.11.2017 is applicable for turnkey contract? Having held that it is a works contract, falling within the ambit of section 2(119), *ibid*, we find that Sr. No. 6 of Schedule-II of the CGST Act, 2017. which deals with 'activities [or transactions] to be treated as supply of goods or supply of services', states as follows:





### 6. Composite supply

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) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

[emphasis added]

24. CGST Act, 2017, thus clearly states that a works contract in terms of schedule II, is to be treated as supply of service. Now, notification No. 66/2017-CT dated 15.11.2017, relied upon by the applicant states that a registered person, shall pay the central tax on the outward supply of goods at the time of supply as specified in section 12(2)(a) of CGST Act, 2017 including in the situations attracting the provisions of section 14 of the said Act. Section 12(2), *ibid*, provides that the time of supply of goods shall be the earlier of the following dates, namely (a) the date of issue of invoice by the supplier or the last date on which he is required, under section 31, to issue the invoice with respect to the supply; or (b) the date on which the supplier receives the payment with respect to the supply. However, as is evident this notification provides the benefit only for supply of goods. We have already held *supra*, that the supply undertaken in respect of the turnkey contract, by the applicant to PGVCL is a works contract, and therefore, in terms of schedule II, is a supply of service. Hence, the question of availing the benefit of notification No. 66/2017-CT dated 15.11.2017 does not arise and therefore, the applicant is liable to pay GST on the advance received.

25. In view of the foregoing, we hold that GST is payable on advance received by the applicant and the benefit of notification no. 66/2017-CT dated 15.11.2017 is not applicable in respect of the turnkey contract entered into by the applicant.




**RULING**

26. In view of the foregoing, we pass the following ruling

(i) As the turnkey contract entered into by the applicant has been held to be a works contract, Notification No. 66/2017-CT dated 15.11.2017 is not applicable in respect of the said turnkey contract.

(ii) As the turnkey contract entered into by the applicant has been held to be a works contract, GST is payable on advance received against supply portion in respect of the Turnkey contract.

(iii) As the turnkey contract entered into by the applicant has been held to be a works contract the said turnkey contract cannot be held to be a divisible contract.

  
(MILIND KAVATKAR)  
MEMBER (SGST)

  
(AMIT KUMAR MISHRA)  
MEMBER (CGST)

Place: Ahmedabad  
Date: 02/07/2024

