

GIB/TN/M/S. HYT SAM INDIA/04.03.2021/AAAR-55

Appellate Advance Ruling Category : Work Contract

State : Tamil Nadu

Order No.: GIB/TN/M/S. HYT SAM INDIA/04.03.2021/AAAR-55

Name of Entry :

M/S. HYT SAM INDIA (JV)

Date : 04-03-2021

Breif Issue :

FACTS OF THE CASE:

The appellant is engaged in construction of Shed, Provision of M& P's in ICF Shell/ Furnishing Division/ retro-fitment/ re-conditioning/ re-sitting/ disposal of obsolete M&P's of Shell division including wet leasing of M&P's and associated Electrical Works on turn key basis at ICF Chennai and the said work has been awarded vide LOA No. M/CPM/ICF/CSP-II/T-1 dated 29.06.2017. The appellant had sought ruling on whether the above works awarded to them are composite supply of services and the benefit of Sl.No. 3 (v) of Notification No. 11/2017-C.T.(Rate) is applicable to subject works. The Lower Authority has ruled that the works undertaken as per Schedule-I, II and III is a composite supply of works contract and the benefit of Sl.No. 3(v) of Notification No. 11/2017-C.T.(Rate) is applicable; Supply in the agreement for wet leasing as per Schedule V are composite supply of services and not 'works contract' and therefore not eligible for the benefit under Sl.No. 3(v)(a) of the notification; The agreement for comprehensive Annual Maintenance Contract under Schedule VI is not eligible for entry at serial No. 3 (v)(a).

ISSUE OF THE CASE:

Whether the activities under tender agreement for wet leasing of Robotic spot-welding machine and laser cutting and welding machine as per Schedule V(a) & V(b) are eligible for concessional rate under Sl.No 3(v)(a) or 3 (vi) of Notification No.11/2017-CT(Rate) dated 20.06.2017 as amended and corresponding entry under state notification.

Whether the activities under tender agreement for comprehensive Annual Maintenance Contract under Schedule VI(a) and VI(b) are eligible for serial no. 3 (v)(a) or 3 (vi) of Notification No.11/2017-CT(Rate) dated 20.06.2017 as amended and corresponding entry under state notification.

Decision of Advance Ruling Authority :

DECISION:

As per the contract agreement for wet-leasing, it is an activity consisting of leasing of M&Ps in working condition, providing skilled and unskilled manpower, spares, consumables for the entire period of leasing during which the leased goods are reflected in the books of the lessor. The lease charges are paid on a quarterly basis to the appellant based on the productivity. The M&Ps are transferred to ICF at the, end of the lease period. Just because, there is a transfer of property in goods after the lease period, the activity is not a works contract. The activity of wet-Leasing is squarely classifiable under SAC 9973 Leasing or rental services with or without operator as held by the LA. Therefore the benefit of entry at 3(v)(a) of Notification No.11/2017-C.T.(Rate) dated 28.06.2017 is not applicable in respect of Wet-Leasing of the M&Ps.

With respect to the CAMC, the activity being Maintenance, the same is not covered under entry 3(v) of Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 as amended, which is applicable only to works contract by way of construction, erection, commissioning or installation of original works pertaining to railways.

Benefit of entry Sl.No. 3 (vi)(a) of the Notification No. 11/2017-C.T.(Rate) dated 28.06.2017 as amended is applicable in the case of composite supply of works contract of maintenance of a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession to the class of receivers specified. ICF is a 'Production unit' of Railways and belongs to 'Central Government' and manufacturing steel coaches is not an activity where the Government is engaged as public authorities. As per the Explanation to the said entry, it is evident that when the activity is not in the capacity of 'Public authority', then the activity is for 'business' only. ICF is putting up the said Plant to manufacture Stainless Steel coaches, which is not an activity undertaken as a 'Public Authority' and therefore, the benefit of the above entry is not applicable to the appellant in respect of CAMC.

There are no reason to interfere with the Order of the Advance Ruling Authority in this matter. The subject appeal is disposed of accordingly.

The appeal is filed against the **Order No.8/AAR/2019 dated 22.01.2019** passed by the Tamilnadu State Authority for Advance ruling on the application for advance ruling filed by the appellant.