

**Sub-contractor would not be eligible for GST concession rate as main contractor on shifting of electrical utilities**

The West Bengal Authority of Advance Ruling (“**the WBAAR**”) in *Re: M/s Shree Powertech [WBAAR 17 of 2022 dated October 21, 2022]* ruled that the subcontractors are not eligible for the Goods and Service Tax (“**GST**”) concession rate on shifting electrical utilities which was a part of highway construction by the main contractor.

**Facts:**

M/s Shree Powertech (“**the Applicant**”) is engaged in the business of rendering various works contract services related to modification, renovation & maintenance of roads & highway projects.

The National Highway Authorities of India (“**the NHAI**”) after evaluation bids, accepted bid of M/s KCC Buidcon Private Limited (“**the Contractor**”) for execution of balance work for construction of 4-laning of Barasat-Krishnanagar section of NH-34 in the State of West Bengal.

The Contractor issued ‘Work Order for sub-contracting of shifting of electrical utilities in respect of proposed 4-laning of Barasat-Krishnanagar section of NH-34 project to the Applicant.

In terms of entry 3 (iv) (a) of the Notification No. 11/2017-Central Tax Rate dated June 28, 2017 (“**the Notification**”), the concessional tax rate of 12% was applicable on composite supply of work contract as defined in Section 2 (119) of the Central Goods and Services Tax Act, 2017 (“**the CGST Act**”) supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a road, bridge, tunnel, or terminal for road transportation for use by general public

According to the Applicant work proposed to be carried out by the it was nothing more than the obligations of the main Contractor, which consists of construction as well as completion of a road. Therefore, the concession rate should be applicable on the services provided by the Applicant as well.

The Revenue department (“**the Respondent**”) contended that the Applicant was awarded the work of shifting of electrical utilities while the Notification allows concessional rate in case of works contract of road, bridge, tunnel or terminal for road transportation for use by general public. Hence, the activities do not fall under Heading 3(iv) (a) of the said Notification.

**Issue:**

Whether the activity carried out by the Applicant is composite supply and hence eligible for 12% GST concessional rate as per the Notification.

**Held:**

The WBAAR held as under:

- According to the Section 2(93) of the CGST Act, the Applicant is providing services to the KCC Buildcon Pvt. Ltd. i.e. the main contractor.
- The ‘Scope of Project’ in respect of the main contractor means and includes construction of Project Highway which demands shifting of obstructing utilities as and where required and for that purpose, such shifting work cannot be regarded as supply by way of construction of road and at best can be considered as an ancillary to the main work.
- Providing services of shifting of electrical utilities only cannot be regarded as services by way of construction of road. We are, therefore, of the opinion that the work being undertaken by the applicant fails to get covered under serial number 3(iv)(a) of the Notification.

- Therefore, activities being carried out by the Applicant as a subcontractor could not be regarded as a composite supply of works as mentioned under serial number 3(iv)(a) of the Notification to be provided by main contractor.

*(Author can be reached at [info@a2ztaxcorp.com](mailto:info@a2ztaxcorp.com))*

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