

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, Old Building, 1st floor, B-Wing, Room No.107, Mazgaon,
Mumbai - 400010.

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)
BEFORE THE BENCH OF

- (1) Shri. D. P. Gojamgunde, Joint Commissioner of State Tax, (Member)
 (2) Ms. Priya Jadhav, Joint Commissioner of Central Tax, (Member)

ARN No.	AD270419019782S
GSTIN Number, if any/ User-id	27AAECM2936N1Z2
Legal Name of Applicant	M/s. Maharashtra State Electricity Transmission Company Limited
Registered Address/Address provided while obtaining user id	C-19, E-Block, Prakashganga, BKC, Bandra, Mumbai Suburban, Mumbai, Maharashtra, 400051
Details of application	GST-ARA, Application No. 83 Dated 21.03.2022
Concerned officer	MUMBAI-LTU-4
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A Category	Service Provision
B Description (in brief)	Advance Ruling for applicability of GST on Deposit for Out-right Contracts (ORC) work.
Issue/s on which advance ruling required	<ul style="list-style-type: none"> ➤ Classification of any goods or services or both ➤ Applicability of a notification issued under the provisions of this Act ➤ Determination of time and value of supply of goods or services or both ➤ Admissibility of input tax credit of tax paid or deemed to have been paid ➤ Determination of the liability to pay tax on any goods or services or both ➤ Whether applicant is required to be registered ➤ Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the
 Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by M/s. Maharashtra State Electricity Transmission Company Limited, the applicant, seeking an advance ruling in respect of the following questions.

1. Whether the following works undertaken by MSETCL can be termed as "supply" to the Dedicated Consumers?

2. If the following works are decided as "supply, then:

- a. What shall be the time of supply?
- b. What shall be the HSN/SAC Code and rate of GST for such "supplies"?
- c. Whether ITC on the running bills received from the contractor can be claimed by MSETCL? If ITC can be claimed by MSETCL, then whether ITC can be claimed in the period in which the running bill is received or on the receipt of the final invoice/completion of entire work?
- d. What shall be the value of supply at a particular moment when consideration is received?

3. In case, the deposit obtained from the end users becomes excess on the final completion of the works and the excess amount is refunded back to the Dedicated Consumers, then whether credit can be claimed for the purposes of GST liability in respect of the said amount? This question is asked because the works get completed even after a lapse of 2-3 years.

4. In case, the deposit obtained from the Dedicated Consumers falls short on the final completion of the works and if such amount is recovered from the end user, then whether we shall be liable to pay GST on the same and if yes, then what shall be the time of supply in this case? This question is asked because the works get completed even after a lapse of 2-3 years.

- a. Transaction One: Shifting/Height raising of Transmission Towers/Lines, belonging to MSETCL through a contractor on the request of the Dedicated Consumers such as railways, National Highway Authority of India etc. on receipt of payment of consideration in the form of adjustable deposit.

- b. Transaction Two: Construction of EHV Substations and EHV Lines for dedicated user of Dedicated Consumers by MSETCL *through a contractor on the request of the end users on receipt of payment of consideration in the form of adjustable deposit.*
- c. Transaction Three: Construction of new transmission bay/express feeder for dedicated use of Consumer by MSETCL through a contractor on the request of the Dedicated Consumers on receipt of payment of consideration in the form of adjustable deposit.
- d. Transaction Four: Spare existing asset available with MSETCL (like express feeder, bay etc.) is allotted by MSETCL to the Dedicated Consumers for its dedicated use on payment for a specified duration:

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

FACTS AND CONTENTION - AS PER THE APPLICANT FACTS:

1.1 Nature of business of the applicant:

Maharashtra State Electricity Transmission Company Limited ("MSETCL" or the Company) is a leading state transmission utility in the country. MSETCL owns and operates largest Electricity Transmission System in the state. The Company is a wholly owned corporate entity of Maharashtra Government incorporated on May 31, 2005 after restructuring and trifurcation of the erstwhile Maharashtra State Electricity Board.

Business of the applicant can be classified broadly into three types:

- 1.2 **Transmission of electricity:** Service by way of transmission of electricity by an electricity transmission utility is exempt from GST under Notification No, 12/2017-CT (R), SI. No. 25, hence no Input Tax Credit (ITC) claim is availed by MSETCL for such activities. No question is posed in Advance Ruling.



1.3 Construction and maintenance of Extra High Voltage (EHV) network for transmission to electricity between generation and distribution companies in the state:

The company carries out the construction and maintenance of Extra High Voltage (EHV) network to cater the Transmission of Electricity between the generation and distribution companies in the state of Maharashtra, The EHV Substations & EHV Lines are constructed as per the State Transmission Utility (STU) Plan and approval of Maharashtra Electricity Regulatory Commission (MERC). Such assets are capitalized for the compounded value of the total cost incurred including and cost. The construction activities are carried out through the outside agency i.e. contractors appointed by MSETCL as per the rules and regulation of MSETCL the contractors are reimbursed with the total cost of construction (including GST). The MERC allows MSETCL Return on Equity (ROE) and Operation & Maintenance (O&M) charges on asset constructed as per the regulatory framework of MERC in the form of tariff for transmission services which is borne by electricity consumer (i.e., general public) of Maharashtra State:

1.4 Construction and maintenance of Extra High Voltage (EHV) network for customers/users as per their requirements:

MSETCL executes such works/services for the customers/users as per their specific requirements. These works/services are executed in two models i.e. on out right Contracts (ORC) basis and only supervisory basis. These works/services are not part of the regulated business.

1.5 Model One – Outright Contracts:

Consideration received from the Dedicated Consumers in ORC has two components i.e. "cost" of the works and the "supervision charges" for the services provided by MSETCL. The cost charges charged from the specific users are as per the "Estimates." based on the Schedule of Rates (SOR) prepared by MSETCL 1, "cost" of the works. The "supervision charges." for the services provided by MSETCL is at 15% of the cost of works. The amount is recovered

in advance from the dedicated consumers through a "demand note" based on the estimates prepared by MSETCL.

The cost part of the demand note is treated as deposits, hence at present no GST is charged on the same. It is shown in the liability side of the balance sheet of the MSETCL. This amount is finally set off against the actual cost of the construction works at the time of completion of all activities of the works. Till the constructions stage, the expenditure incurred on these works is shown as Capital WIP and finally on completion of the works this deposit amount is set-off against the total works cost. For these works, no depreciation is claimed in the books of accounts of MSETCL. Here, it is pertinent to mention that the amount of deposit is recovered in advance by MSETCL whereas the completion of works takes approx. 3 to 24 months to complete as per the nature of works. Hence, the deposits are set off with the capital expenditure once works are complete in all respect and the Asset is capitalized in the books of MSETCL at Re. 1. The Operation & Maintenance (O&M) of asset is carried out by MSETCL. In turn, MSETCL awards these contracts to a contractor, the contractor raises running bills and is paid out of the deposit amount collected from the end user. The supervision charges are booked as income in the Profit & Loss Account of MSETCL. GST is duly recovered on Supervision Charges and paid to the Govt. Treasury within due date.

6 Model Two- Supervisory basis:

For some contracts, only Supervision is executed by MSETCL and tender, contractor selection, agreement with contractors, execution and payments to contractors etc is handled/managed by the Dedicated Consumers. In this case, the supervision charges plus GST on Supervision Charges are calculated and collected from the respective user thru a Demand Note. Charges, other than the supervision charges are paid by the end user to the contractor directly. Therefore, in this scenario, we are of the view that there is no supply of services by MSETCL (other than supervision) and hence no question of any GST liability on the same.



The following are the works carried by the company on ORC basis as per the requirement of respective dedicated user.

1.7 In this business model, the contracts are of following types:

1.7.1 Sub-type One: Shifting/Height raising of Transmission Towers/Lines:

- i. Nature of contract: in this case, the concerned Dedicated Consumers for their project works like Construction/ Widening of Highways, laying of Railway Networks. etc.; approach the MSETCL for shifting of transmission towers/lines. As transmission tower lines that belongs to MSETCL, the ORC Consumer for their project work approach the MSETCL for shifting of Transmission Tower Lines that belongs to MSETCL. For example, NHAI approaches the MSETCL for shifting/ height raising of the existing Transmission Lines/towers or shifting of Transmission Lines/Towers towards widening/construction of roads.
- ii. Consideration from recipient of services. The respective ORC Consumer make remittance (Deposit) of cost of shifting diversion along with supervision charges to MSETCL.
- iii. Execution of contract: MSETCL further award the contract to the contractor for shifting/diversion of Transmission Tower Lines by floating a tender,
- iv. Consideration paid to contractor Contractor raises Running Account Bills including GST as per stages of completion of work.
- v. Capitalization of property in asset: After the completion of work the Asset so created is adjusted against the remittance received from dedicated user/consumer, The Asset is capitalized in the MSETCL books at Re. 1.

1.7.2 Sub-type Two: Construction of EHV Substations and EHV Lines for dedicated user of EHV Consumer:

- i. Nature of contract: in this case, concerned Dedicated Consumers for their uninterrupted dedicated supply of electricity approaches the MSETCL for construction of new EHV Substations/lines. For example, Indian Railways approaches the MSETCL for construction of the new

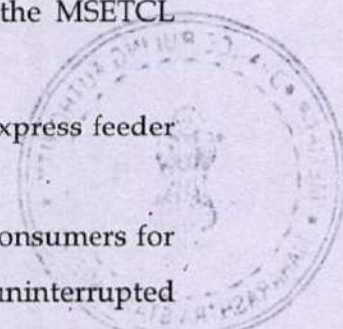


substation or/and the Transmission Lines for their upcoming new railways network.

- ii. Consideration; The respective ORC Consumer make remittance (Deposit) of cost of new substation or/and the Transmission Lines with supervision charges to MSETCL,
- iii. Execution of contract: MSETCL further awards the contract to the contractor for construction of new substation or/and the Transmission Lines by floating a tender,
- iv. Consideration paid to contractor: Contractor raises Running Account Bills including GST as per stages of completion of work.
- v. Capitalization of property in assets: After the completion of work the Asset so created is adjusted against the remittance received from dedicated user/consumer. The Asset is capitalized in the MSETCL books at Re. 1:

1.7.3 Sub-Type Three: Construction of new transmission bay / express feeder for dedicated user of EHV Consumer:

- i. Nature of contract: in this case, concerned Dedicated Consumers for the dedicated transmission bay/express feeder for uninterrupted electricity supply. They approach the MSETCL for construction of new transmission / electrical bay. For example, IT Hub approaches the MSETCL for construction of the new bay towards dedicated/uninterrupted power supplies for their IT Set-up.
- ii. Consideration: The respective ORC Consumer makes remittance (Deposit) of cost of construction of new transmission / electrical bay along with supervision charges to MSETCL.
- iii. Execution of contract: MSETCL further award the contract to the contractor for construction of new transmission / electrical bay by floating a tender.
- iv. Consideration paid to contractor: Contractor raises Running Account Bills, including GST as per stages of completion of work.



- v. Capitalization of property in assets: After the completion of work the Asset so created is adjusted against the remittance received from dedicated user/consumer. The Asset is capitalized in the MSETCL books at Re 1.

1.7.4 Sub-Type Four: Existing asset available with MSETCL (like express feeder, bay etc.) is allotted to the Dedicated Consumers for its dedicated use.

- i. Nature of contract: In this case, the existing Asset (like bay etc.) available as a spare with MSETCL, is allotted to the Dedicated Consumers for their demand for its dedicated use by respective consumer. For example, IT Hub approaches the MSETCL for allotment of spare bay/feeder towards dedicated/uninterrupted power supplies for their IT Set-up.
- ii. Consideration: The cost of asset already constructed is recovered from the consumer and deposit received from the consumer is adjusted against the asset. Entire consideration as per the latest Schedules of Rates (SOR) is received upfront and bay is then used by Dedicated Consumers.
- iii. Transfer of asset: Needs clarity on these issues. Whether it is renting of immovable property? Cost of asset is recovered from customer, how is the asset valued? Is the asset transferred to the consumer?



2. CONTENTION - AS PER THE CONCERNED OFFICER:

- (a) Classification of Goods and their Central Excise Tariff Heading.

Major Commodity - Electricity

Supply of electricity is exempted under GST as per the Notification 02/2017 (Central Tax) dated 28 June 2017 under the heading "Electrical Energy" (HSN Code: 27160000). Further, services provided by an electricity transmission or distribution utility (e.g. state electricity board) by way of transmission or distribution of electricity is exempted under GST as per the Notification 12/2017 under heading 9969.

Supply of other goods-

Iron and Steel Ferrous Scrap Waste Scrap of Assets

(b) Rate of GST on works contract.

The rate of GST on the supply being made under the contract referred to in Col. 3 shall be also 9 percent CGST and 9 percent SGST as per the Notification No. 11/2017 – Central Tax (Rates), issued under CGST Act/MGST Act, 2017.

(c) Details of benefit of notification under GST if any availed.

Not available

(5) (a) Classification of Service/Services as applicable.

(b) Rate / Rates of Service Tax as applicable to services provided.

(c) Details of benefits of Notification of Service Tax if any availed.

Section Chapter Heading/Group	Service Code Tarrif	Service Description	*Rate of Tax
99542	995423	General construction services of long-distance underground/ overland/ submarine pipelines, communication and electric power lines (cables); pumping stations and related works; transformer stations and related works	As per separately given
Heading 9954 (Construction services)		Composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.	As per separately given
Heading 9954 (Installation services)	995461	Electrical installation services including Electrical wiring & fitting services, fire alarm installation services, burglar alarm system installation services.	As per separately given
	995461	1. special trade installation services involving the installation of basic electrical wiring circuits or fittings in buildings and other construction projects;	As per separately given
	995461	2. electrical wiring and fitting services for emergency power supply systems;	As per separately given
	995461	3. electrical services arising from the installation of appliances;	As per separately given



	995461	4. installation services of meters; installation services of fire alarm systems;	As per separately given
	995461	5. installation services of burglar alarm systems at the construction site;	As per separately given
	995461	6. installation services of all types of residential antenna including satellite antenna;	As per separately given
	995461	7. installation services of cable television lines within a building; installation services of lightning conductors;	As per separately given
	995461	8. electrical installation services of telecommunications equipment;	As per separately given
	995461	9. electrical installation services of illumination and signalling systems for roads, railways, airports, harbours and similar premises;	As per separately given
	995461	10. installation services of heavy electrical equipment;	As per separately given

*Rate of MGST

The rate of GST for Works Contract service has been prescribed in serial number 3 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 20/2017-Central Tax (Rate) dated 22.08.2017 & notification no.24/2017-Central Tax (Rate) dated 21.09.2017.

The rate of MGST on the supply being made under the contract referred to in Col. 3 shall be 9 percent CGST and 9 percent SGST as per the Notification to the Notification No. 11/2017 - Central Tax (Rates), issued under MGST Act, 2017.

(6) Copies of Advance Ruling Application/orders if any obtained by applicant under the provisions of Central Excise, Service Tax and Sales Tax and their present status in case of your company / related company or sister concern.

Comment - Not available

(7) Copy of Show Cause Notices / Adjudication orders in respect of Central Excise or Service Tax if any issued during Last Five years, in case of your company / related company or sister concern.

Comment - Not available



(8) Cases of violation of Central Excise / Service Tax if any booked during Last Five years.

Comment – Not available

(9) Whether any proceeding is pending before any authority on said subject matter or otherwise.

Comment – Not available

As stated in the Statement of relevant facts, the business of the applicant can be broadly classified into 03 types of Works-

1. Transmission of Electricity
2. Construction and maintenance of EHV Network (EHV Substations and EHV Lines) for Transmission of Electricity between Generation Company and Distribution Companies.
3. Construction and maintenance of EHV Network (EHV Substations and EHV Lines) for Transmission of Electricity for Customers or Users as per their requirement.

a) Nature of Business of the applicant

Maharashtra State Electricity Transmission Company Limited (MSETCL) is a leading State Transmission Utility in the Country. MSETCL owns and operates largest Electricity Transmission System in the State. The Company is a wholly owned corporate entity of Maharashtra Government incorporated on 31st May, 2005 after reconstruction and trifurcation of erstwhile Maharashtra State Electricity Board. (MSEB).

Business Models

1. Transmission of Electricity
2. Construction and maintenance of Extra High Voltage (EHV) Network for transmission of electricity- (Generation to Distribution as per MERC guidelines)
3. Construction and maintenance of Extra High Voltage (EHV) Network for transmission of electricity- (for Customer as per specific requirement.)

Model-1 Outright Contracts-



Consideration received from the dedicated consumer in ORC has two components i.e. Cost of the work (advance deposit on estimated basis) and the Supervision charges (15% of the **estimated cost**).

Model-2 Supervisory basis

Transaction Type 1:

Shifting/Height Raising of transmission Tower/Lines belonging to MSETCL through a contractor on the request of the 'Dedicated Consumer' such as Railways, National Highway Authority of India, etc. on receipt of payment of consideration in the form of adjustable deposit.

Transaction Type 2:

Construction of EHV Substations and EHV Lines for dedicated user of Dedicated Consumers by MSETCL through a contractor on the request of Dedicated Consumers on receipt of payment of consideration in the form of adjustable deposit.

Transaction Type 3:

Construction of New Transmission Bay/Express Feeder for dedicated use of consumer by MSETCL through a contractor on the request of Dedicated Consumers on receipt of payment of consideration in the form of adjustable deposit.

Transaction Type 4:

Spare Existing Asset available with MSETCL (like express feeder, bay etc.) is allotted by MSETCL to the dedicated consumers for its dedicated use on payment for a specified duration.

Questions raised for Advance Ruling

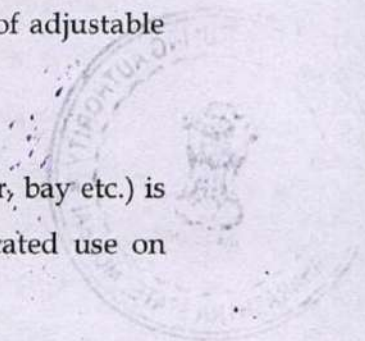
Sr. No.14- Following are the questions on which advance ruling is sought

1. Whether the following works undertaken by MSETCL can be termed as "supply" to Dedicated Consumers?

Comment- From the statement of facts as submitted by MSETCL, it can be concluded that above referred works undertaken by MSETCL can be termed as supply to dedicated consumers.

2. If the following works are decided as "supply" then,

a. What shall be the time of supply?



Comment -

As per the provisions u/s 12 13 and 14 of the CGST/MGST Act, 2017, the time of supply is determined with reference to the time when the supplier receives payment with respect to the supply as well as a few other references like issue of invoice, receipt of goods etc.

In general, the time of supply is earliest of issuance of invoice or receipt of payment. Therefore, in case of advance received for any supply, time of supply is fixed at the point when advance is received, irrespective of the fact whether the supply is made or not.

Accordingly, GST needs to be paid with reference to the time at which advance is received, if any, and this requires compliances with a few procedures, documentation and reconciliation of taxes paid on the advances and supply made.

As per the explanation 1 to Section 12 of the CGST Act, 2017 a "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.

b. What shall be the HSN/SAC Code and Rate of GST for such supplies?**Comments -**

Section Chapter Heading/Group	Service Code Tariff	Service Description	*Rate of Tax
99542	995423	General construction services of long-distance underground/overland/submarine pipelines, communication and electric power lines (cables); pumping stations and related works; transformer stations and related works	As per separately given
Heading 9954 (Construction services)		Composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.	As per separately given
Heading 9954 (Installation services)	995461	Electrical installation services including Electrical wiring & fitting services, fire alarm	As per separately given



		installation services, burglar alarm system installation services.	
	995461	1. special trade installation services involving the installation of basic electrical wiring circuits or fittings in buildings and other construction projects;	As per separately given
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	995461	9. electrical installation services of illumination and signalling systems for roads, railways, airports, harbours and similar premises;	As per separately given
	995461	10. installation services of heavy electrical equipment;	As per separately given

***Rate of MGST-**

Comments -

The rate of GST for Works Contract service has been prescribed in serial number 3 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 20/2017- Central Tax (Rate) dated 22.08.2017 & notification no.24/2017-Central Tax (Rate) dated 21.09.2017.

The rate of MGST on the supply being made under the contract referred to in Col. 3 shall be 9 percent CGST and 9 percent SGST as per the Notification to the Notification No. 11/2017 - Central Tax (Rates), issued under MGST Act, 2017.

c. Whether ITC on the Running Bills received from the Contractor can be claimed by MSETCL?

If ITC can be claimed by MSETCL, then whether ITC can be claimed in the period in which Running bill is received? Or on the receipt of the final Invoice? Or on Completion of entire work?

Comments -

As per section 17(5) (c) of the CGST Act, 2017, input tax credit shall not be available in respect of the works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service. Thus, ITC for works contract can be availed only by one who is in the same line of business and is using such services received for further supply of works contract service. When a works contract is for the construction of plant and machinery, the ITC of the tax paid to the works contractor would be available to the recipient, whatever is the business of the recipient. This is because works contract in respect of plant and machinery comes within the exclusion clause of the negative list and ITC would be available when used in the course or furtherance of business.

d. What shall be the value of supply at a particular moment when consideration is received?

Comments - Valuation of a works contract service is dependent upon whether the contract includes transfer of property in land as a part of the works contract. In case of supply of service, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such



supply shall be deemed to be one third of the total amount charged for such supply.

Explanation. - For the above purpose, "total amount" means the sum total of,-
(a) consideration charged for aforesaid service; and (b) amount charged for transfer of land or undivided share of land, as the case may be.

3. In case the deposit obtained from the end users becomes excess on the final on the final completion of the works and the excess amount is refunded back to the dedicated Consumers, then whether credit can be claimed for the purpose of GST liability in respect of the said amount?

Above 3 and 4 are asked because the works get completed even after lapse of 2-3 yrs.

Comment - Credit notes may be issued to the Recipient of service.

4. In case the deposit obtained from the Dedicated Consumers falls short on the final completion of the works and if such amount is recovered from the end user then whether we shall be liable to pay GST on the same and if yes, what shall be the time of supply in this case?

Above 3 and 4 are asked because the works get completed even after lapse of 2-3 yrs.

Comment - Debit notes may be issued to the Recipient of service.

3. HEARING

Preliminary e-hearing in the matter held on 26.04.2022. Mr. Pushkar Patil, Tax Consultant, Mr. Ashok Relekar, Learned GM & Mr. Parshuram Patil, Learned Senior Manager appeared, and requested for admission of the application. Jurisdictional Officer Mr. B.B. Pawar, Deputy Commissioner of SGST, appeared.

The application was admitted and called for final e-hearing on 09.04.2025. Mr. Arpit Jain C. A. Authorized Representative, appeared made oral and written submissions. Jurisdictional Officer Mrs. Sudarshana J Patil, Deputy Commissioner of SGST appeared. We heard both the sides.

4. OBSERVATIONS AND FINDINGS:

4.1 We have gone through the records of the case and the submissions made by the applicant and the jurisdictional officer. We find that the applicant is engaged in

the business of transmission of electricity which is procured by them from the generators of electricity like MAHAGENCO and then transmitted by them to various dedicated users / consumers and to distribution companies like MSEDCL. Maharashtra State Electricity Transmission Company Limited ('MSETCL' or 'the applicant') is a leading state transmission utility in the country. MSETCL owns and operates largest Electricity Transmission System in the state. The Company is a wholly owned corporate entity of Maharashtra Government incorporated on May 31, 2005 after restructuring and trifurcation of the erstwhile Maharashtra State Electricity Board. We find that in terms of S.No.25 to Notification No.12/2017 Central Tax (Rate) dated 28.6.2017, transmission of electricity by a electricity transmission or electricity distribution company/utility is exempted from tax. Thus, the basic function of transmission of electricity carried out by the applicant is exempted from GST.

4.2 We find that the applicant has raised certain questions, based on the various business models followed by them. In order to examine whether the services provided by the applicant are taxable or not and whether it can be treated as a supply, it is necessary to understand the business model of the applicant. The types of business models enumerated by the applicant are as under:-

a) Outright contracts:- Here the customer provides a contract to the applicant which is then handed over by the applicant to sub-contractors. The applicant charges the cost of the contract + 15% supervisory charges for the said contract. The cost of the contract is recovered as a deposit and the supervisory charges are booked to the profit and loss account.

b) Supervisory Basis: Here, the contract is between the Consumer and the contractor and the role of the applicant is only that of a supervisor of the said work. The payment for the contract is made directly by the user to the contractor and the supervisory charges is recovered by the applicant by raising a demand note for the services provided.

In the light of the above models, the applicant has submitted details of four types of transactions undertaken by them and has sought a ruling on the

taxability of the said transactions, amongst other questions. Therefore, it is imperative that we look into these transactions separately.

4.3 Before we delve into the various transactions, it would not be out of place to mention the amendment to the Notification No.12/2017 dated 28.6.2017 by Notification No.8/2024 Central Tax (Rate) dated 8.10.2024 which introduced a S.No.25 A to the said exemption notification which states that supply of services by way of providing metering equipment on rent, testing for meters/transformers/capacitors etc., releasing electricity connection, shifting of meters/service lines, issuing duplicate bills etc., which are incidental or ancillary to the supply of transmission and distribution of electricity provided by electricity transmission and distribution utilities to their consumers are exempted. Thus from 8.10.2024, both the services of transmission of electricity falling under heading 9969 and support services to transmission and distribution of electricity which are in the nature of incidental or ancillary to the main service falling under heading 9986 are exempted from payment of tax. Prior to 8.10.2024, only the transmission of electricity services were exempted.

4.4 The first type of transaction on which the ruling is sought is that of Shifting/Height Raising of transmission Tower/Lines belonging to MSETCL through a contractor on the request of the 'Dedicated Consumer' such as Railways, National Highway Authority of India, etc. on receipt of payment of consideration in the form of adjustable deposit. The applicant in his submissions has given further clarification on the nature of the services as under:-

- i. *Nature of contract: in this case, the concerned Dedicated Consumers for their project works like Construction/ Widening of Highways, laying of Railway Networks. etc.; approach the MSETCL for shifting of transmission towers/lines. As transmission tower lines that belongs to MSETCL, the ORC Consumer for their project work approach the MSETCL for shifting of Transmission Tower Lines that belongs to MSETCL. For example, NHAI approaches the MSETCL for shifting/ height raising of the existing Transmission Lines/towers or shifting of Transmission Lines/Towers towards widening/construction of roads.*



- ii. *Consideration from recipient of services. The respective ORC Consumer make remittance (Deposit) of cost of shifting diversion along with supervision charges to MSETCL.*
- iii. *Execution of contract: MSETCL further award the contract to the contractor for shifting/diversion of Transmission Tower Lines by floating a tender.*
- iv. *Capitalization of property in asset: After the completion of work the Asset so created is adjusted against the remittance received from dedicated user/consumer, The Asset is capitalized in the MSETCL books at Re. 1.*

It is seen from the nature of the contract that in this case, the transmission towers and lines have already been laid out by the applicant and the customer approaches the applicant for shifting of the transmission tower lines or raising the height of the towers for widening /construction of roads etc. We find that the said services are neither services of transmission of electricity or any service incidental or ancillary to the said service. In fact, this service is not even provided to the actual consumers or users of the electricity. It is a service of shifting of transmission lines so that there is no hindrance for the various persons such as National Highway Authority, Railways etc., in widening of roads, giving right of way etc. For the said shifting of the transmission lines which come in the way of their work, these customers approach the applicant requesting them to shift the transmission towers or raise the height of the transmission lines or towers for which they offer compensation which includes the cost of the said work along with 15% Supervisory Charges. Since these services are not covered under S.No.25 and S.No.25A of the Notification No.12/2017 Central Tax (Rate) dated 28.6.2017, the said services are taxable services. The said services are in the nature of agreeing to do an act for a consideration. As per Circular No.178/10/2022 – GST dated 3.8.2022, agreeing to do an act is nothing but a contractual agreement. In the said agreement there are two parties and where one party agrees to do something and the other party agrees to pay consideration to the first party for doing the said thing. In the instant case, the applicant is agreeing to shift the transmission towers/raise the height of the transmission lines/towers and for this purpose, consideration is



paid by the customer. In this regard, para 6.1 of the said circular is relevant which reads as under:-

6.1 A perusal of the entry at serial 5(e) of Schedule II would reveal that it comprises the aforementioned three different sets of activities viz. (a) the obligation to refrain from an act, (b) obligation to tolerate an act or a situation and (c) obligation to do an act. All the three activities must be under an "agreement" or a "contract" (whether express or implied) to fall within the ambit of the said entry. In other words, one of the parties to such agreement/contract (the first party) must be under a contractual obligation to either (a) refrain from an act, or (b) to tolerate an act or a situation or (c) to do an act. Further some "consideration" must flow in return from the other party to this contract/agreement (the second party) to the first party for such (a) refraining or (b) tolerating or (c) doing. Such contractual arrangement must be an independent arrangement in its own right. Such arrangement or agreement can take the form of an independent stand-alone contract or may form part of another contract. Thus, a person (the first person) can be said to be making a supply by way of refraining from doing something or tolerating some act or situation to another person (the second person) if the first person was under an obligation to do so and then performed accordingly.

4.5 Therefore, we find that the said services provide by the applicant would be aptly covered under the service of agreeing to do an act for a consideration and therefore such services would be classifiable under 999792.

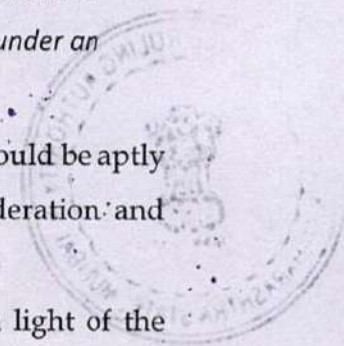
The decision with respect to the various questions which arise in light of the aforesaid findings are as under:-

a) What shall be the time of supply?

Since no specific contract details are available, we find that in general, the time of supply shall be the time prescribed under Section 13 of the CGST Act, 2017.

b) What shall be the HSN/SAC Code and rate of GST for such "supplies"?

The service would be covered under the services of agreeing to do an act for a consideration and would be classifiable under Heading 999792 and chargeable to 18% GST (9% SGST + 9% CGST).



- c) Whether ITC on the running bills received from the contractor can be claimed by MSETCL? If ITC can be claimed by MSETCL, then whether ITC can be claimed in the period in which the running bill is received or on the receipt of the final invoice/completion of entire work?

The issue of admissibility of input tax credit is covered under the provisions of Section 16 and 17 of the CGST Act, 2017. Subject to the fulfilment of all the conditions laid down under Section 16, the applicant would be entitled to avail the ITC if it is not restricted under Section 17 of the CGST Act, 2017. We find that the work of shifting of transmission line is handed over by the applicant to sub-contractors. The said work done by the contractors would be a works contract service. We find that under Section 17(5)(d) of the Act, goods or services or both received by a taxable person for construction of immovable property (other than plant or machinery) on his own account, including when the goods or services are used for furtherance of business is not admissible. We find that the transmission towers are embedded to earth and can be dismantled only by destroying the structure and cannot be shifted from one place to another place and therefore the said goods which are embedded to earth shall be considered as an immovable property. The term 'Plant and Machinery' has been defined in the Explanation under Section 17 as apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural support but excludes land, building or any other civil structures; telecommunication towers and pipelines laid outside the factory premises. The Hon'ble Supreme Court of India in various decisions have held that whether a immovable property can be termed as a plant or machinery depends on various factors and facts of each case, the nature of the structure, the nature of business etc. In the instant case, for a generic question, it is not possible to decide whether any structure is a plant and machinery, without going into the facts and details in a particular case. Therefore, it is not possible to come to a conclusion whether in the generic situation mentioned



by the applicant, the service provided by the sub-contractors to the applicant for construction of an immovable property, can be covered under the definition of plant or machinery. Under the circumstances, it would not be possible to give any decision as to whether the input tax credit would be available to the applicant. However, on the basis of general understanding, if the activity of construction is in respect of plant and machinery, input tax credit would be available. If the activity of construction is in respect of any immovable property, that does not satisfy the definition of plant and machinery laid down in the Explanation under Section 17 of the CGST Act, 2017, no input tax credit would be available to the applicant. If input tax credit can be availed, it will be on the basis of the running bills raised by the sub-contractors.

d. What shall be the value of supply at a particular moment when consideration is received?

The value of supply shall be the value as determined under Section 15 of the CGST Act, 2017.

4.6 Transaction Type 2:

Construction of EHV Substations and EHV Lines for dedicated user of Dedicated Consumers by MSETCL through a contractor on the request of Dedicated Consumers on receipt of payment of consideration in the form of adjustable deposit.

We have gone through the submissions made by the applicant in this regard.

The nature of the activity as propagated by the applicant is as under:-

- i. Nature of contract: in this case, concerned Dedicated Consumers for their uninterrupted dedicated supply of electricity approaches the MSETCL for construction of new EHV Substations/lines. For example, Indian Railways approaches the MSETCL for construction of the new substation or/and the Transmission Lines for their upcoming new railways network.
- ii. Consideration: The respective ORC Consumer make remittance (Deposit) of cost of new substation and the Transmission Lines with supervision charges to MSETCL,



- iii. Execution of contract: MSETCL further awards the contract to the contractor for construction of new substation or land the Transmission Lines by floating a tender,
- iv. Consideration paid to contractor: Contractor raises Running Account Bills including GST as per stages of completion of work.
- v. Capitalization of property in assets: After the completion of work the Asset so created is adjusted against the remittance received from dedicated user/consumer. The Asset is capitalized in the MSETCL books at Re. 1

From the nature of the service described by the applicant, it is seen that dedicated users of the electricity, approach the applicant for supply of electricity and in order to provide uninterrupted and dedicated supply of electricity, the applicant proposes that EHV Substations/lines have to be constructed and for the said construction, a contract is entered into with the dedicated user, who provides for the cost of construction of the substation in addition to 15% Supervision charges to the applicant. The applicant, in turn, enters into contract with sub-contractors who do the actual construction of the EHV Sub Station/ EHV Lines under the supervision of the applicant. After completion of the construction, the EHV Sub Station/ EHV Line so created is capitalized in the books of the applicant as an asset. Thus, we find that in such a transaction, the EHV Substation and EHV Lines remain the property of the applicant and there is no transfer of property or goods to the customer. The applicant has claimed that the said construction of EHV Sub Station/EHV lines would be an activity incidental or ancillary to the transmission of electricity and therefore the said services would be covered under S.No.25 A of the Notification No.12/2017 dated 28.6.2017 (as amended by Notification 8/2024 Central Tax (Rate) dated 10.10.2024). Ongoing through a sample contract provided by the applicant we find that such type of work involves the following work:-

- a) establishment of traction substation along with gantry foundation, equipment foundation, control room, meter room, cable trench, RCC road, metal spreading and GI pipeline, chain link fencing and gantry foundation etc.

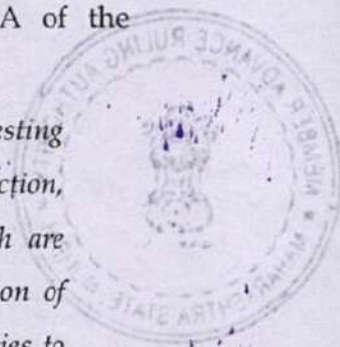


- b) Construction of DCDC Line across a length of 9.6 Km along with end bays between two sub stations.
- c) Conversion of existing conductor with equivalent HTLS conductor.
- d) Metering CT, PT, Isolator.
- e) PLjCC & FOTE equipment, OPGW 9.6 Km or actual.
- f) 220V & 48V battery and battery charger.
- g) Suitable ABT metering arrangement capable of measuring Four Quadrant Reative Energy alongwith AMR facility with integration to control Center at SLDC.
- h) Establishment of SCADA for remote end control and monitoring alongwith real time data visibility at SLDC.

Thus, from the aforesaid scope of work in establishing an EHV Sub Station, it is seen that these are major works of creating an asset for the purpose of transmission of electricity. Without construction of these sub stations, it would not be possible to transmit electricity to the dedicated consumer. The applicant is claiming that such works would be covered under S.No.25A of the Notification 12/2017 dated 28.6.2017, which reads as under:-

"Supply of services by way of providing metering equipment on rent, testing for meters/ transformers/capacitors etc., releasing electricity connection, shifting of meters/ service lines, issuing duplicate bills etc., which are incidental or ancillary to the supply of transmission and distribution of electricity provided by electricity transmission and distribution utilities to their consumers."

On perusal of the said entry, it is seen that the services envisaged under the said entry are services which are incidental or ancillary to the supply of transmission of electricity provided by electricity transmission utilities to their consumers. The type of services covered include providing metering equipment on rent, testing of meters/transformers/ capacitors etc., releasing electricity connection, shifting of meters/service lines, issuing duplicate bills etc. Such services are generally minor services which are incidental or ancillary to the transmission of electricity. These incidental services result from certain business exigencies which necessitates such support services are normally



minor and insignificant in nature and scale. Such services are normally provided after establishment of transmission equipment and after the start of the provision of service of transmission by the transmission utility. By applying the principle of *ejusdem generis* for interpretation, the activities covered as incidental and ancillary would be similar in nature and scale to those mentioned preceding them such as shifting of meters, issue of duplicate bills, testing of meters/transformers/capacitors etc.

We find that the term '**incidental**' has been defined in various dictionaries as under:

Oxford Dictionary - the happening as part of something more important.

Cambridge Dictionary - less important than the thing something is connected with or part of

Dictionary.com - happening or likely to happen in an unplanned or subordinate conjunction with something else.

Similarly word '**ancillary**' has been defined as under:

Oxford Dictionary - provide necessary support to the main work or activities of an organization.

- In addition to something else but not as important.

Cambridge Dictionary: providing support or help.

Dictionary.com - supporting, secondary, subsidiary

The reading of all above definitions establishes that any activity, which supports the main activity or necessary to carry out the principal activity, is an activity or transaction incidental or ancillary to the principal activity. Such activities are not the main activity but supporting activities. We find that setting up of a EHV Sub Station and EHV Lines are major activity of creating basic infrastructure for the purpose of transmission of electricity. It is sine qua non and a non-negotiable activity for the purpose of transmission of electricity without which the transmission of electricity safely and in the required quantity is not possible. Under the said circumstances, it is not possible to term such activity as incidental or ancillary activity but such activities will have to be termed as the core and main activity of the applicant. Therefore, we find



that such an activity would not qualify as a activity incidental or ancillary to the activity of transmission of electricity by the applicant and therefore the said activity would not be covered under the said exemption notification. This is also not covered by entry 25 of the notification no. 12/2017 dated 28.08.2017 which only covers the services of transmission of electricity and not creation of infra for such transmission. The services provided by the applicant of setting up of infrastructure for transmission of electricity are more akin to managing the construction of infrastructure for provision of supply of electricity by providing skills of engineering, project management and supervision of the actual construction. Supply has been defined under the CGST Act under Section 7 as all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course of furtherance of business. In the instant case, the applicant is providing a service to the customer for a consideration in the course of furtherance of their business. Therefore the activity of managing a project of setting up a substation on behalf of the customer for providing dedicated and uninterrupted supply of electricity would be a supply in terms of the CGST Act, 2017.



4.7 The decision with respect to the various questions which arise in light of the aforesaid finding are as under:-

a) What shall be the time of supply?

Since no specific contract details are available, we find that in general, the time of supply shall be the time prescribed under Section 13 of the CGST Act, 2017.

b) What shall be the HSN/SAC Code and rate of GST for such "supplies"?

We find that the applicant is managing the entire project of construction and setting up of EHV Sub Station/EHV Lines on behalf of the customer. We also find that the asset so constructed is capitalized in the books of the applicant and is the property of the applicant. Since there is not transfer of property, the services provided by the applicant cannot be termed as a 'works contract' because in terms of Section 2(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 any other form) is involved in the execution of such contract. Further, we find that the service provided by the applicant is in the nature of assuming overall responsibility for the successful completion of a construction project on behalf of a client, including organizing the design, requesting tenders, performing management and control function falling under Heading 998339.. Such services are chargeable to 18% GST (9% SGST + 9% CGST).

- c) Whether ITC on the running bills received from the contractor can be claimed by MSETCL? If ITC can be claimed by MSETCL, then whether ITC can be claimed in the period in which the running bill is received or on the receipt of the final invoice/completion of entire work?

The issue of admissibility of input tax credit is covered under the provisions of Section 16 and 17 of the CGST Act, 2017. Subject to the fulfilment of all the conditions laid down under Section 16, the applicant would be entitled to avail the ITC if it is not restricted under Section 17 of the CGST Act, 2017. We find that the work of construction of EHV Sub Station/ EHV Lines is handed over by the applicant to sub-contractors. It appears that the said work done by the contractors would be a works contract service. We find that under Section 17(5)(d) of the Act, goods or services or both received by a taxable person for construction of immovable property (other than plant or machinery) on his own account, including when the goods or services are used for furtherance of business is not admissible. We find that the EHV Sub Stations and EHV Lines are embedded to earth and can be dismantled only by destroying the structure and cannot be shifted from one place to another place and therefore the said goods which are embedded to earth shall be considered as an immovable property. The term 'Plant and Machinery' has been defined in the explanation under Section 17 as apparatus, equipment and machinery fixed to earth by foundation or structural support that are



used for making outward supply of goods or services or both and includes such foundation and structural support but excludes land, building or any other civil structures; telecommunication towers and pipelines laid outside the factory premises. The Hon'ble Supreme Court of India in various decisions have held that whether a immovable property can be termed as a plant or machinery depends on various factors and facts of each case, the nature of the structure, the nature of business etc. In the instant case, for a generic question, it is not possible to decide whether any structure is a plant and machinery, without going into the facts and details in a particular case. From the sample agreement provided by the applicant, it is seen that the construction of EHV Substations involve setting up of civil structures such as control rooms, meter rooms, cable trenches, RCC Roads, pipelines, gantry foundations etc. Such structures would not qualify as plant and machinery as envisaged in the explanation under Section 17 of the CGST Act., 2017. However, it is not possible to arrive at a conclusion whether in the generic situation mentioned by the applicant, the service provided by the sub-contractors to the applicant for construction of an immovable property, can be covered under the definition of plant or machinery. Under the circumstances, it would not be possible to give any decision as to whether the input tax credit would be available to the applicant. However, on the basis of general understanding, if the activity of construction is in respect of plant and machinery, input tax credit would be available. If the activity of construction is in respect of any immovable property, that does not satisfy the definition of plant and machinery laid down in the Explanation under Section 17 of the CGST Act, 2017, no input tax credit would be available to the applicant. If input tax credit can be availed, it will be on the basis of the running bills raised by the sub-contractors.

d. What shall be the value of supply at a particular moment when consideration is received?

The value of supply shall be the value as determined under Section 15 of the CGST Act, 2017.



4.8 Transaction Type 3:

Construction of New Transmission Bay/Express Feeder for dedicated use of consumer by MSETCL through a contractor on the request of Dedicated Consumers on receipt of payment of consideration in the form of adjustable deposit.

We find that the nature of service as informed by the applicant is as under:-

- i. Nature of contract: in this case, concerned Dedicated Consumers for the dedicated transmission bay/express feeder for uninterrupted electricity supply approach the MSETCL for construction of new transmission / electrical bay. For example, IT Hub approaches the MSETCL for construction of the new bay towards dedicated/uninterrupted power supplies for their IT Set-up.
- ii. Consideration: The respective ORC Consumer makes remittance (Deposit) of cost of construction of new transmission / electrical bay along with supervision charges to MSETCL.
- iii. Execution of contract: MSETCL further award the contract to the contractor for construction of new transmission / electrical bay by floating a tender.
- iv. Consideration paid to contractor: Contractor raises Running Account Bills, including GST as per stages of completion of work.
- v. Capitalization of property in assets: After the completion of work the Asset so created is adjusted against the remittance received from dedicated user/consumer. The Asset is capitalized in the MSETCL books at Re 1.

We find that transmission bay is a functional unit where specific equipment in which circuit breakers, transformers and transmission lines are connected and managed. It facilitates the control, protection and isolation of electric power equipment ensuring the safe and efficient operation of the power system. It is a dedicated area within a substation that allows for the connection and management of a specific circuit or component. It is a part of a substation. Establishing a bay is a major part of the business of transmission of electricity. It is necessary to establish a bay for a dedicated consumer who requires uninterrupted power supply of certain megawatts and a feeder bay ensures



that the electricity can be provided to the consumer in an uninterrupted manner and ensuring that the grid is safe from surges and shortfalls. On verification of the sample agreement provided by the applicant between them and M/s. Afcons Infrastructure, it is seen that the construction of a new feeder bay involves lot of civil work in addition to electrical equipment, transmission towers, etc. We find that constructing and providing a feeder bay is a major activity of creating and using infrastructure by a transmission utility. It cannot be termed as incidental or ancillary activity of supply or transmission of electricity. As already discussed hereinabove, we find that the activities covered under S.No.25A of the Notification 12/2017 dated 28.6.2017 covers minor activities which are incidental or ancillary to the transmission. They involve functions to support the business of the dedicated consumer, which are minor in nature such as testing, repair, shifting of meters etc. Major activities such as setting up separate dedicated infrastructure to provide electricity does not form a part of the activities envisaged under Sr.No.25A. Such activities of setting up and construction of a Feeder Bay are major infrastructural development activities which are neither incidental nor ancillary but are primary task of a transmission company. The activity of transmission cannot be safely and successfully concluded without these critical infrastructures. Providing such infrastructure, constructing the same after conducting feasibility study and enabling construction of such infrastructure is the primary function of the applicant and it cannot be termed as incidental or ancillary activity. Therefore, we find that the provisions of S.No.25A of Notification No.12/2017 dated 28.6.2017, as amended, from time to time, would not be applicable to the services provided by the applicant of setting up of a feeder bay for the dedicated consumer. This is also not covered by entry 25 of the notification no. 12/2017 dated 28.06.2017 which only covers the services of transmission of electricity and not creation of infra for such transmission. The services provided by the applicant of setting up of infrastructure for transmission of electricity are more akin to managing the construction of infrastructure for provision of supply of electricity by providing skills of



engineering, project management and supervision of the actual construction. The services provided by the applicant of setting up of infrastructure for transmission of electricity are more akin to managing the construction of infrastructure for provision of supply of electricity by providing skills of engineering, project management and supervision of the actual construction. Supply has been defined under the CGST Act under Section 7 as all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course of furtherance of business. In the instant case, the applicant is providing a service to the customer for a consideration in the course of furtherance of their business. The activity of managing a project of setting up a feeder bay on behalf of the customer for providing dedicated and uninterrupted supply of electricity would be a supply in terms of the CGST Act, 2017.

4.9 The decision with respect to the various questions which arise in light of the aforesaid finding are as under: -

a) What shall be the time of supply?

Since no specific contract details are available, we find that in general, the time of supply shall be the time prescribed under Section 13 of the CGST Act, 2017.

b) What shall be the HSN/SAC Code and rate of GST for such "supplies"?

We find that the applicant is managing the entire project of construction and setting up of feeder bay on behalf of the customer. We also find that the asset so constructed is capitalized in the books of the applicant and is the property of the applicant. Since there is not transfer of property, the services provided by the applicant cannot be termed as a 'works contract' because in terms of Section 2(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 any other form) is involved



in the execution of such contract. Further, we find that the service provided by the applicant is in the nature of assuming overall responsibility for the successful completion of a construction project on behalf of a client, including organizing the design, requesting tenders, performing management and control function falling under Heading 998339. Such services are chargeable to 18% GST (9% SGST + 9% CGST).

- c) Whether ITC on the running bills received from the contractor can be claimed by MSETCL? If ITC can be claimed by MSETCL, then whether ITC can be claimed in the period in which the running bill is received or on the receipt of the final invoice/completion of entire work?

The issue of admissibility of input tax credit is covered under the provisions of Section 16 and 17 of the CGST Act, 2017. Subject to the fulfilment of all the conditions laid down under Section 16, the applicant would be entitled to avail the ITC if it is not restricted under Section 17 of the CGST Act, 2017. We find that the work of construction of feeder bay is handed over by the applicant to sub-contractors. It appears that the said work done by the contractors would be a works contract service. We find that under Section 17(5)(d) of the Act, goods or services or both received by a taxable person for construction of immovable property (other than plant or machinery) on his own account, including when the goods or services are used for furtherance of business is not admissible. We find that the feeder bay which comprises of transformers, transmission towers and structures are permanent structures embedded to earth and can be dismantled only by destroying the structure and cannot be shifted from one place to another place and therefore the said goods which are embedded to earth shall be considered as an immovable property. The term 'Plant and Machinery' has been defined in the explanation under Section 17 as apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural support but excludes land, building or any other civil structures; telecommunication towers and pipelines laid outside the factory premises. The Hon'ble Supreme



Court of India in various decisions have held that whether a immovable property can be termed as a plant or machinery depends on various factors and facts of each case, the nature of the structure, the nature of business etc. In the instant case, for a generic question, it is not possible to decide whether any structure is a plant and machinery, without going into the facts and details in a particular case. From the sample agreement provided by the applicant, it is seen that the construction of feeder bay involve lot of civil work. Its main components include setting up of transformers, transmission lines, and circuit breakers etc. Such structures would generally not qualify as plant and machinery as envisaged in the explanation under Section 17 of the CGST Act, 2017. However, it is not possible to arrive at a conclusion whether in the generic situation mentioned by the applicant, the service provided by the sub-contractors to the applicant for construction of an immovable property, can be covered under the definition of plant or machinery. Under the circumstances, it would not be possible to give any decision as to whether the input tax credit would be available to the applicant. However, on the basis of provisions of law, if the activity of construction is in respect of plant and machinery, input tax credit would be available. If the activity of construction is in respect of any immovable property that does not satisfy the definition of plant and machinery laid down under Section 17 of the CGST Act, 2017, no input tax credit would be available to the applicant. If input tax credit can be availed, it will be on the basis of the running bills raised by the sub-contractors.

d. What shall be the value of supply at a particular moment when consideration is received?

The value of supply shall be the value as determined under Section 15 of the CGST Act, 2017.

4.10 We find that one of the issues raised by the applicant is whether they can be treated as a pure agent of the recipient of service as they recover only the cost which is incurred for construction of the EHV Substations, shifting of transmission towers and feeder bay and if there is any excess recovered, the same is returned back. They only keep their 15% supervisory charges. In this



regard, it would be necessary to examine the facts of each particular case and the provisions of Rule 33 of the CGST Rules, 2017. Rule 33 of the CGST Rules, 2017, reads as under: -

Rule 33. Value of supply of services in case of pure agent. -

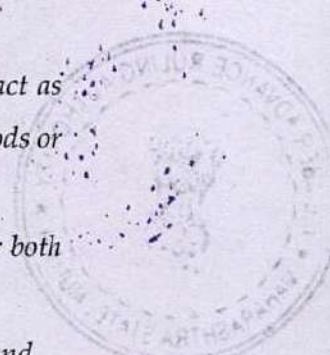
Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely, -

- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;
- (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- (iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Explanation. - For the purposes of this rule, the expression "pure agent" means a person who-

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
- (c) does not use for his own interest such goods or services so procured; and
- (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

Illustration. - Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees.



Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

In order to exclude the cost incurred by the applicant for providing the services to the customer, from the value of the services, as a pure agent, the applicant should qualify as a pure agent. For the said purpose, all the conditions laid down for being eligible as a pure agent should be fulfilled.

- a) The first condition is that the supplier acts as a pure agent of the recipient of the supply. A pure agent means a person who enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both.
- b) The second condition is that he neither intends to hold nor hold any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply.
- c) The third condition is that he does not use for his own interest such goods or services so procured.
- d) The fourth condition is that he receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

4.11 From the facts of the case presented before us, we find that the applicant does not fulfill the first three conditions. From the sample contract between the applicant and the recipient, it is seen that the entire work has to be carried out by the applicant. In one other contract, it is seen that the option was given to the consumer to decide whether the service should be on the basis of 15% Supervision charge basis or all work to be executed by MSETCL on 100% deposit basis and the approval is given for the work to be executed by MSETCL on 100% basis. Such contracts are 'cost plus contracts'. All the responsibility for completion of the work satisfactory lies on the applicant. They are not acting as agents of the recipient of the service. Secondly, the second condition that the applicant shall not hold any title to the goods or services provided by the sub-contractor also does not get satisfied as the applicant holds the title of all the goods and services supplied by the sub-contractor. In fact, the constructed asset is capitalized in the



books of the applicant. Thirdly, such goods or services should not be used by the agent for his own interest. In the instant case, the constructed sub stations, transmission lines etc., are used by the applicant for providing their services of transmission of electricity. Thus, we find that the applicant does not fulfill the conditions laid down for a pure agent and therefore, the applicant would not be treated as a pure agent in these types of transactions.

4.12. Transaction Type 4:

Spare Existing Asset available with MSETCL (like express feeder, bay etc.) is allotted by MSETCL to the dedicated consumers for its dedicated use on payment for a specified duration.

The scope of such type of activities are explained by the applicant as under:-

- i. Nature of contract: In this case, the existing Asset (like bay etc.) available as a spare with MSETCL, is allotted to the Dedicated Consumers for their demand for its dedicated use by respective consumer. For example, IT Hub approaches the MSETCL for allotment of spare bay/feeder towards dedicated/uninterrupted power supplies for their IT Set-up.
- ii. Consideration: The cost of asset already constructed is recovered from the consumer and deposit received from the consumer is adjusted against the asset. Entire consideration as per the latest Schedules of Rates (SOR) is received upfront and bay is then used by Dedicated Consumers.
- iii. Transfer of asset: Needs clarity on these issues. Whether it is renting of immovable property? Cost of asset is recovered from customer, how is the asset valued? Is the asset transferred to the consumer?

From the nature of the activity, it is seen that the applicant has already constructed a feeder bay which is not used by any dedicated user. When a new user seeks electricity from the applicant for a particular period of time, they allot the spare feeder bay to the said consumer for a specified duration. For the said purpose, they recover the cost of the already constructed feeder bay as charges for the infrastructure required for dedicated supply of electricity. It can be seen that the said activity of allotment of a feeder bay for a specified period is in the nature of renting out of immovable property for use by a consumer for a specified period.



Though the applicant is silent about the transfer of asset, it is seen that the asset was already on the books of the applicant and that the allotment of the feeder bay is only for a specified period. The applicant is silent about who will maintain the said asset, whether it will be run by the applicant or the consumer, but taking into consideration the fact that transmission of electricity through a feeder bay is a dedicated and sophisticated task which will be handled by the transmission utility i.e. the applicant and such tasks would not be handed over to consumers of the electricity. Thus, it can be safely concluded that the activity of allotment of feeder bay to the consumer for a consideration which is equal or the present cost of construction of the said asset is an activity which is in the nature of renting out of an immovable property. We have already discussed hereinabove that the feeder bay constructed by the applicant is an immovable property and therefore allotment of the same for use by the dedicated consumer for a consideration, for a specified period would amount to supply of services. Further, these services are not akin to renting out of meters, testing of transformers etc. These bays are major infrastructural assets and allotment of these bays to a dedicated consumer is necessary to ensure uninterrupted flow of electricity at required voltages to the consumers. Without these bays, it would not be possible to provide the service of transmission of electricity to the specified consumers who require a certain minimum fixed quantity of electricity over a specified period of time. Therefore, these activities cannot be termed as incidental or ancillary to the service of transmission of electricity but has to be considered as one of the main activities of the transmission utility so as to ensure optimum utilization of resources. Therefore, we find that such an activity would not get covered under the services mentioned under S.No.25 A of Notification No.12/2017 Central Tax (Rate) dated 28.6.2017. Further, since the said activity is undertaken by the applicant for a consideration under a contract for the furtherance of their business, such activity would amount to supply of services.

4.13 With regard to the various issues raised in respect of transaction, we rule as under:-

a) What shall be the time of supply?

Since no specific contract details are available, we find that in general, the time of supply shall be the time prescribed under Section 13 of the CGST Act, 2017.

b) What shall be the HSN/SAC Code and rate of GST for such "supplies"?

We find that the applicant is renting out immovable property for consideration. Renting of immovable property includes renting, letting, leasing, licencing or other similar arrangements of the immovable property. Such activity is a service and is subject to GST. It is classifiable under heading 997212 which includes services such as rental or leasing services concerning industrial property by owners and is chargeable to GST @ 18% i.e. (9%CGST + 9%SGST).

c) Whether ITC on the running bills received from the contractor can be claimed by MSETCL? If ITC can be claimed by MSETCL, then whether ITC can be claimed in the period in which the running bill is received or on the receipt of the final invoice/completion of entire work?

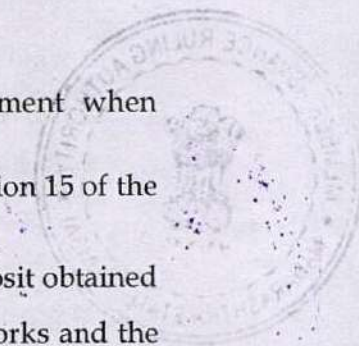
Not applicable in this type of transaction.

d). What shall be the value of supply at a particular moment when consideration is received?

The value of supply shall be the value as determined under Section 15 of the CGST Act, 2017.

4.14 Another issue raised by the applicant is that in cases where, the deposit obtained from the end users becomes excess on the final completion of the works and the excess amount is refunded back to the Dedicated Consumers, then whether credit can be claimed for the purposes of GST liability in respect of the said amount? This question is asked because the works get completed even after a lapse of 2-3 years. It would not be out of place to mention that the amount received by the applicant is in respect of the services provided by them for setting up of Sub Stations, Shifting of transmission lines and construction of feeder bay etc.

4.15 After getting request from Dedicated Consumer for transaction enlisted above, the applicant gives estimated value of work to be done along with applicable GST and asks the dedicated consumer to deposit whole amount into applicant's account. Then, applicant issue invoice to Dedicated Consumer along with applicable GST. Some time, estimate given and amount received from the end



users becomes excess on the final completion of the works and the excess amount is refunded back to the Dedicated Consumers. The, question raised is whether credit can be claimed for the purposes of GST liability in respect of the said amount refunded. To claim credit, Applicant has to issue credit note to Dedicated Consumer. As per section 2(37), "credit note" means a document issued by a registered person under sub-section (1) of section 34.

The provisions of Section 34 (1) and (2) are as under-

1. Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient one or more credit notes for supplies made in a financial year] containing such particulars as may be prescribed.

2. Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than (The thirtieth day of November) following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:

Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

If applicant fulfill the conditions mentioned in section 34(2), he is eligible to take credit of such credit notes issued failing which no credit can be availed.

4.16 Another issue raised by the applicant is in cases where, the deposit obtained from the Dedicated Consumers falls short on the final completion of the works and if such amount is recovered from the end user, then whether the applicant shall be liable to pay GST on the same and if yes, then what shall be the time of supply in this case. The applicant claims that some time, estimate given and amount received from the Dedicated Consumers falls short on the final completion of the works and if such amount is recovered from the end user then question raised by the applicant that whether we shall be liable to pay GST on the same. We find that to claim additional amount, Applicant will have to issue debit note to



Dedicated Consumer. As per section 2(38), "debit note" means a document issued by a registered person under sub-section (3) of section 34.

The provisions of Section 34 (3) and (4) are as under-

(3) Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient [one or more debit notes for supplies made in a financial year] containing such particulars as may be prescribed.

(4) Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.

Explanation.—For the purposes of this Act, the expression "debit note" shall include a supplementary invoice.

In view of the above provision, it is clear that any person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be paid accordingly. Further, a supplementary invoice can also be issued instead of a debit note.

5. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 83/2021-22/B- 216 Mumbai, dt. 30/04/2025

For reasons as discussed in the body of the order, the question is answered thus -

1. Whether the following works undertaken by MSETCL can be termed as "supply" to the Dedicated Consumers?
 - a. Transaction One: Shifting/Height raising of Transmission Towers/Lines, belonging to MSETCL through a contractor on the request of the Dedicated Consumers such as railways, National Highway Authority of India etc. on receipt of payment of consideration in the form of adjustable deposit.

Answer: Yes.

2(a) If the works are decided as "supply, then:

a. What shall be the time of supply?

Answer: Time of Supply shall be the time prescribed under Section 13 of the CGST Act, 2017.

b. What shall be the HSN/SAC Code and rate of GST for such "supplies"?

Answer: The service would be covered under the services of agreeing to do an act for a consideration and would be classifiable under Heading 999792 and chargeable to 18% GST (9% SGST + 9% CGST).

c. Whether ITC on the running bills received from the contractor can be claimed by MSETCL? If ITC can be claimed by MSETCL, then whether ITC can be claimed in the period in which the running bill is received or on the receipt of the final invoice/completion of entire work?

Answer: Not answered due to generic nature of the question.

d. What shall be the value of supply at a particular moment when consideration is received?

Answer: Value of supply shall be the value determined under Section 15 of the CGST Act, 2017.

1(b) Whether the following works undertaken by MSETCL can be termed as "supply" to the Dedicated Consumers?

b. Construction of EHV Substations and EHV Lines for dedicated user of Dedicated Consumers by MSETCL *through a contractor on the request of the end users on receipt of payment of consideration in the form of adjustable deposit.*

Answer: Yes.

If the works are decided as "supply, then:

a. What shall be the time of supply?

Answer: Time of Supply shall be the time prescribed under Section 13 of the CGST Act, 2017.

b. What shall be the HSN/SAC Code and rate of GST for such "supplies"?

Answer: The services provided by the applicant is classifiable under Heading 998339.. Such services are chargeable to 18% GST (9% SGST + 9% CGST).



- c. Whether ITC on the running bills received from the contractor can be claimed by MSETCL? If ITC can be claimed by MSETCL, then whether ITC can be claimed in the period in which the running bill is received or on the receipt of the final invoice/completion of entire work?

Answer: Not answered due to generic nature of the question.

- d. What shall be the value of supply at a particular moment when consideration is received?

Answer: Value of supply shall be the value determined under Section 15 of the CGST Act, 2017.

- 1(c) Whether the following works undertaken by MSETCL can be termed as "supply" to the Dedicated Consumers?

- c. Construction of new transmission bay/express feeder for dedicated use of Consumer by MSETCL through a contractor on the request of the Dedicated Consumers on receipt of payment of consideration in the form of adjustable deposit.

Answer: Yes.

- 2(c) If the works are decided as "supply, then:

- a. What shall be the time of supply?

Answer: Time of Supply shall be the time prescribed under Section 13 of the CGST Act, 2017.

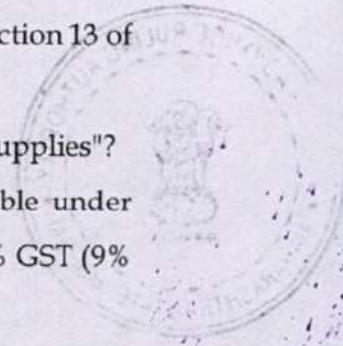
- b. What shall be the HSN/SAC Code and rate of GST for such "supplies"?

Answer: The services provided by the applicant is classifiable under Heading 998339. Such services are chargeable to 18% GST (9% SGST + 9% CGST).

- c. Whether ITC on the running bills received from the contractor can be claimed by MSETCL? If ITC can be claimed by MSETCL, then whether ITC can be claimed in the period in which the running bill is received or on the receipt of the final invoice/completion of entire work?

Answer: Not answered due to generic nature of the question.

- d. What shall be the value of supply at a particular moment when consideration is received?



Answer: Value of supply shall be the value determined under Section 15 of the CGST Act, 2017.

1(d) Whether the following works undertaken by MSETCL can be termed as "supply" to the Dedicated Consumers?

d. Spare existing asset available with MSETCL (like express feeder, bay etc.) is allotted by MSETCL to the Dedicated Consumers for its dedicated use on payment for a specified duration:

Answer: Yes.

2(d) If the works are decided as "supply, then:

a. What shall be the time of supply?

Answer: Time of Supply shall be the time prescribed under Section 13 of the CGST Act, 2017.

b. What shall be the HSN/SAC Code and rate of GST for such "supplies"?

Answer: The services are classifiable under heading 997212 which includes services such as rental or leasing services concerning industrial property by owners and is chargeable to GST @ 18% i.e. (9%CGST + 9%SGST).

Whether ITC on the running bills received from the contactor can be claimed by MSETCL? If ITC can be claimed by MSETCL, then whether ITC can be claimed in the period in which the running bill is received or on the receipt of the final invoice/completion of entire work?

Answer: Not applicable.

d. What shall be the value of supply at a particular moment when consideration is received?

Answer: Value of supply shall be the value determined under Section 15 of the CGST Act, 2017.

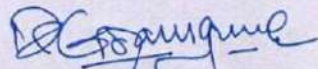
3: In case, the deposit obtained from the end users becomes excess on the final completion of the works and the excess amount is refunded back to the Dedicated Consumers, then whether credit can be claimed for the purposes of GST liability in respect of the said amount? This question is asked because the works get completed even after a lapse of 2-3 years.

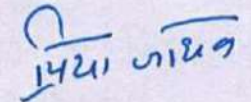


Answer: - Answered in negative.

4: In case, the deposit obtained from the Dedicated Consumers falls short on the final completion of the works and if such amount is recovered from the end user, then whether we shall be liable to pay GST on the same and if yes, then what shall be the time of supply in this case? This question is asked because the works get completed even after a lapse of 2-3 years.

Answer: - Answered in positive. The time of supply is time at which advance is received.


D.P. GOJAMGUNDE
(MEMBER)


PRIYA JADHAV
(MEMBER)



PLACE - Mumbai

DATE -

Copy to: -

1. The applicant
- The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai
5. The Joint commissioner of State Tax, Mahavikas for Website.

Note: -An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai - 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.

