

KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING
6TH FLOOR, VANJIYA THERIGE KARYALAYA
KALIDASA ROAD, GANDHINAGAR, BANGALORE 560009

(Constituted under Section 99 of the Karnataka Goods and Services Tax Act, 2017
 vide Government of Karnataka Order No FD 47 CSL 2017, Bengaluru, dated 25-04-
 2018)

BEFORE THE BENCH OF
Shri. A.K. JYOTISHI, Member
Shri. M.S. SRIKAR, Member

ORDER NO:-KAR/AAAR/02/ 2018-19

Dated:- 05.09.2018.

Name and address of the appellant	M/s Giriraj Renewables Private Ltd, 1 st Floor, CTS 906/B, ShivajiGali, BasavanaBagewadi, DistVijayapura (Bijapur), Karnataka 586203
GSTIN or User ID	29AACCE0525D1Z4
Advance Ruling Order against which appeal is filed	Advance Ruling No KAR ADRG 01/2018 Dated: 21-03-2018.
Date of filing appeal	08-06-2018
Represented by	Sri. Mallaha Rao, Advocate
Jurisdictional Authority – Centre	Assistant Commissioner of Central Tax, Vijayapura-586102
Jurisdictional Authority – State	NA
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details.	Yes. Payment of Rs. 20,000/- made vide Challan CIN IBKL18052900338327 dated 31.05.2018

PROCEEDINGS

(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)

At the outset, we would like to make it clear that the provisions of both the Central Goods and Services Tax Act, 2017 and the Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act, 2017 and KGST Act, 2017) are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the corresponding similar provisions under the KGST Act.

The present appeal has been filed under Section 100 of the CGST Act, 2017 and the KGST Act, 2017 by M/s.Giriraj Renewables Private Ltd (hereinafter referred to as 'Appellant') against the Advance Ruling No KAR ADRG 01/2018 dated 21-03-2018 pronounced by the Karnataka Authority for Advance Ruling.

Brief facts of the case:

1. The Appellant is registered under GST with GSTIN No.29AACCE0525D1Z4 and is engaged in the business of supply and end to end setting up Solar Power Generating Systems. The appellant is a contractor and enters into contracts with various Developers who desire to set up and operate Solar Photovoltaic Plants for supply of power generated. In certain cases, the appellant is also the Project Developer wherein it is engaged in operation of renewable energy power plant projects.

2. As per the contract entered into with the Project Developer, the Appellant is required to do end to end setting up of a solar power plant which includes supply of various goods (such as modules, structures, inverter transformer etc) as well as complete design, engineering and transportation, unloading, storage and site handling, installation and commissioning of all equipments and material, complete project management as well as civil works/ construction related services for setting up of a functional Solar Power Plant.

3. The contract entered into by the Appellant includes end to end activities i.e, supply of various goods and services intended for setting up, operation and maintenance of a Solar Power Plant. There may be a single lump sum price for the entire contract for supply of both goods and services and payment terms may be defined depending on agreed milestones.

4. The appellant filed an application on 24.11.2017 before the Karnataka Authority for Advance Ruling under Section 97 of CGST/KGST Act,2017, read with Rule104 of CGST / KGST Rules,2017 in form GST ARA-01, seeking a ruling on the following questions:

- a. Whether supply of turnkey Engineering, Procurement & Construction (EPC) Contract for construction of a solar power plant wherein both goods and

services are supplied can be construed to be a composite supply in terms of Section 2(30) of the CGST Act, 2017

- b. If yes, whether the principal supply in such case can be said to be of “Solar Power Generating System”, which is taxable at 5% GST.
- c. Whether, benefit or concessional rate of 5% on Solar Power Generation System and parts thereof would also be available to sub-contractors.

5. The application was heard on 9th January 2018 and 9th February 2018, wherein the appellant made elaborate submissions to clarify that the main intent of the contract was to develop and supply ‘SPGS’ which consists of various components such as modules, structures, inverter transformer, cables, SCADA, transmission lines etc; that the services like civil construction are merely ancillary to provision of such goods. Hence, the entire contract including goods supplied and used in AC electrical, DC electrical, transmission lines as well as other ancillary parts/goods and services should be considered as supply of SPGS; that if the contract qualifies as a ‘composite supply’ then the same should be taxable at 5% as principal supply is the supply of ‘Solar Power Generating Systems’.

6. Further, the appellant also submitted that the major component of Solar Power System is Solar Photovoltaic module (PV module) which comprises around 60-70% of the entire Solar Power Plant and the rest of the components are merely parts or sub-parts which are required for panel housing and setting up of the module such as controllers and switches; that the service portion of the contract is only 10-15% and balance is supply of goods which substantiates the fact that provision of services is incidental to supply of goods and hence, the supply of goods should form the principal supply and the entire contract should be taxed as

supply of goods itself. They also submitted that they would be supplying the PV module which is the major equipment and installation of the same.

7. They also drew reference to the erstwhile Service Tax regime wherein the concept of naturally bundled services is identical to the concept of composite supply under GST. They referred to the Education Guide issued by the CBEC in 2012 wherein the concept of naturally bundled service was explained and submitted that in their case, the customer perceives the entire contract as a supply of Solar Power Generating System as the intent of both the parties is supply of goods / system which would help in generation of electricity. They relied on a number of judgments in support of their contention that even in cases where the main components of solar power generating systems i.e, Solar Photovoltaic Module(hereinafter referred as 'PV Module') has been supplied , the same has been held to be a SPGS. The Appellant had also urged that the benefit of such concessional rates should be available to sub-contractors as well, as long as it can be established that the supplies made by them are to be used in SPGS.

8. Subsequently, the Karnataka Authority for Advance Ruling, vide Advance Ruling No.KAR ADRG 01/2018, dated 21.03.2018 (hereinafter referred to as 'Impugned Order') made the following observations on a detailed examination of the draft contract:

As per clause D of the contract, the equipment (PV module) is imported and directly transferred to the owner by way of High Sea Sale. The owner files the Bill of Entry with the Customs for clearance of the PV module. This indicates that the owner has procured the goods and made them available to the contractor. Further, as per clause 1.1.45 of the contract, "Free Issue Equipment" is defined as Photovoltaic Modules to be supplied by the owner to the contractor as free issue equipment at the

plant site for the installation and commissioning of the solar power plant. Hence the major component (PV Module) said to be constituting 70% of the whole project cannot be construed to be supplied by the applicant consequent upon High Sea Sale of the said product and hence it cannot be construed to be a principal supply of the project.

On the issue whether the terms of supply as envisaged in the draft contract qualifies it to be a composite supply, the Authority held that for a supply to be a composite supply, different goods and / or services supplied should be naturally bundled; that the draft contract clearly demonstrates that in such projects the owner can procure the major equipments involved on their own also and the contractor may carry out the supply and services portion in respect of the remaining portion; that thus, the concept of natural bundling does not apply to the instant draft contract and would not constitute a composite supply.

On the question whether in case the supply is a composite supply, whether the principal supply can be said to be "Solar Power Generating System" which is taxable at 5% GST, the Authority held that since the main equipment i.e PV module is procured by the owner himself, it cannot be construed as a principal supply by the contractor (applicant) and hence the question is irrelevant.

On the question whether the benefit of concessional rate of 5% on the Solar Power Generation System and parts thereof would also be available to the sub-contractors, the Authority held that the made by sub-contractor is an individual supply and thereby the appropriate rate of GST has to be applied depending on the specific nature of supply.

9. Being aggrieved by the above mentioned Ruling of the Authority (hereinafter referred to as 'Impugned Order'), an appeal was preferred before the Appellate Authority for Advance Ruling on 08-06-2018 on the following grounds:

i. The proposed transaction is for composite supply of solar power generating system as a whole and hence the rate of GST should be at 5% GST. The appellant submits that the term 'Solar power generating system' has not been defined under GST. The term solar power system has been defined under Solar Power –Grid Connected Ground Mounted and Solar Rooftop and Metering Regulations – 2014 issued by the State of Goa to mean "a grid-connected solar generating station including the evacuation system upto the Grid interconnection point'. Under the erstwhile law also solar power generating systems were not defined. However under the erstwhile law, various exemptions were extended to non-conventional energy devices which included solar power generating systems. They submitted that where the contract is awarded as a whole for supply of solar power generation system consisting of various components as well as services, the entire contract should qualify as supply of solar power generating system taxable at 5%; that this is in line with the concept of composite supply in which case the taxability is as per the principal supply which in the instant case is Solar Power Generating System.

The Appellant submitted that the main intent of the contract is provision of Solar Power Generating System as a whole which consists of various components such as PV module, structures, inverter transformers, cables, SCADA, transmission lines, etc. The contract also included services like civil installation and commissioning as well as construction which are incidental to provision of such goods and form an ancillary part of the contract. Reference is made to Schedule I of the draft contract which defines the scope of work to be executed by the Appellant. The said Schedule provides that the Appellant would be responsible for supply of equipment and undertake all necessary activities ancillary to

such supplies (such as erection, civil work, etc) to ensure complete supply of Solar power plant. Separate process are specified for different equipment which are supplied under the agreement for commercial convenience such as movement of goods, claiming of payment or availing trade credit, etc.

The appellant submitted that the MNRE has issued a clarification vide Circular F.No 283/11/2017-GRID SOLAR dated 3rd April 2018 wherein it was highlighted that if the supplies under the contract can be treated as 'composite supply' with supply of solar power generating systems as the principal supply, then such supplies may be eligible for 5% GST rate as a whole. In view of the above, in the instant case, the draft contract should qualify as a composite supply wherein the principal supply is of solar power generating system and hence the entire contract should be taxed at 5% GST.

ii. Alternatively the Appellant submitted that mounted Photovoltaic module (PV Module) comprises around 60-70% of the entire Solar Power Plant; that PV modules are nothing but an assembly of solar cells that helps in converting solar power into electricity and is the most important component of solar power generating system both in terms of value and functionality and therefore PV modules will be the principal supply and hence the contract should be taxable at 5% GST.

iii. The Appellant submitted that in the impugned order, the AAR has held that merely because the PV module is supplied on HSS basis, the contract cannot qualify as composite supply of SPGS. They submitted that procurement of goods on High Sea Sales('HSS') basis does not change the nature of the contract. The intention of procuring the PV modules on HSS basis is for commercial convenience and in order to avail benefit of concessional customs duty as benefit of concessional rate of customs duty is only available to the owner. However, the risk and liabilities pertaining to all the equipment provided and to the development and design, procurement, supply, development, construction, testing and

commissioning of the plant shall be borne by the Appellant till the completion of the plant. Hence it cannot be said that the PV modules are being procured by the Project owner.

iv. The appellant submitted that in certain case, they engage various sub-contractors who further supply the goods to the Appellant or engage in provision of certain portions of the contract. Notification No 01/2017 Integrated Tax (Rate) which provides for concessional rate on solar power generating system does not specify the persons who would be eligible for concessional rate of 5% i.e. whether the developer, contractor, manufacturer or sub-contractor. Since the concessional rate of 5% is provided to renewable energy products and parts thereof, the same should be applicable to all suppliers providing such products as long as it can be established that these are to be used in solar power generation system.

v. In view of the above, the Appellant pleaded that the impugned order is incorrect and based on misinterpretation of the facts and the draft contract should be treated as a composite supply of goods and services and the PV module being the major and principal supply of the contract, the whole supply should be taxed at 5% GST

Personal Hearing:

10. The Appellant was called for a personal hearing on 28.08.2018 and was represented by Shri Mallaha Rao, Advocate. During the hearing the Advocate highlighted that the main intention of the parties to the contract was the supply and setting up of the Solar Power Generating Plant. He argued that the issue whether the contract was to be considered as a 'composite supply' was misunderstood by the AAR merely on the grounds that the main equipment of the contract i.e. PV Module was imported and transferred on High Sea Sales basis to the owner who then supplied the PV module to the Appellant at the site. While admitting to the factual position of transfer of title of the PV module on High Sea Sales to the owner and later supplying it to the Appellant under the Free Issue clause of the contract, he emphasised that this was done only for commercial reasons; that since the owner alone was

eligible for customs duty exemptions, the import was done by the owner. However, the terms of the contract was such that the rights and risks and liabilities rested with the Appellant till the Solar plant was supplied to the owner in totality. He stressed on the essence of the contract and the intention of the parties involved in the contract to drive home the fact that the Appellant was responsible to supply the entire Solar Power Generating System. He pleaded that the impugned order be set aside and the benefit of 5% GST on the value of the contract be extended to the Appellant as well as their sub-contractors. He requested for time till 30th August to make additional written submissions which was agreed by the Bench.

11. The Appellant vide letter dated 31.08.2018 filed their additional submissions to the instant case wherein they submitted the sequence of transactions involved in the ultimate setting up of the solar power generation system which involves:

- a. The intending customer-project owner, enters into power purchase agreement with the authorities such as Govt, Corporate Entities etc,
- b. To comply with the commitment for power supply under the agreement, the project owner enters into contract with the contractor by entering into EPC contract with the Appellant.
- c. Thereupon, the Appellant places purchase orders on various vendors for supply of goods in order to execute the EPC contract entered into with the project owner.
- d. Moreover, the Appellant also places purchase order with Foreign Vendors for supply on HSS basis to the project owner against HSS contract which is a sub set off main EPC contract entered into as referred to above.
- e. In pursuance of the purchase orders from the Appellant, foreign vendors supply the goods to the Appellant

- f. Thereafter, the Appellant sells those goods on HSS basis to the project owner against HSS contract which is a sub set of main EPC contract entered into as above.

12. Accordingly, the Appellant has made payments to the foreign vendors against the purchase orders. The project owner has made payment to the Appellant despite HSS transaction, in terms of and pursuance to payment terms under EPC contract They submitted that despite being the ultimate buyer/owner of the goods under HSS, the goods never came into possession of the project owner, as the goods are cleared, transported and incorporated in ' solar power generation systems by the Appellant only; that the risk and rewards have not been transferred by the Appellant to the project owner; that the Appellant has taken insurance for risk during transit, risk during construction nor provided guarantees and performance warranties for entire value of the solar plant including PV module; that the Bill of Entry of Customs (BOE) also has the name of the Appellant as original importer which also provides a linkage of the transaction between foreign vendor, the appellant and the project owner.

13. Therefore they submitted that the intent of the Appellant is to set up a completely functional solar power generating system which would include procuring all the goods and related services in that regard in order to complete the project. Further they submitted that even though certain goods are being supplied on High Sea Sale basis, the same does not change the nature of the contract and obligation of the contractor to provide such goods to the owner; that the said goods transferred on HSS basis still form part of the contract and the risk and liabilities remain with the contractor and are passed on to the project owner only after completion of the project, that is supply of SPGS which includes supply of equipment and ancillary service like development, design, procurement, supply construction, testing and

commissioning of the plant etc. They relied on the Andhra Pradesh High Court decision in the case of M/s Larsen & Toubro Ltd vs. State of Andhra Pradesh reported in 2015-TIOL-3055-HC-AP-CT wherein the Hon'ble High Court observed that in cases of turnkey contract, wherein both goods and services are provided, the intention of the parties under the contract needs to be taken into consideration to determine when the ownership of the goods are transferred. The Hon'ble High Court also observed that the nature of procurement of goods (even by way of HSS) does not determine who would be the owner of such goods, and a person can be an importer even without being the owner of the goods. In view of the above they submitted that it cannot be said that the PV modules under the draft contract are being procured by the Project owner.

14. They also submitted that as per S.No.234 of Notification No.1/2017, the Government has chosen to tax solar devices and parts and solar power generating system and Photovoltaic cells at 5%. Hence, the clear legislative intent and its interpretation by Government authorities including Ministry of Natural Renewable Energy is that at all levels, from part to system, GST will be payable at 5%. In fact, the effective rate for such contracts even prior to GST was approx.3% and an application of the 'equivalence principle' also affirms that the intent of the Government was never to tax the entirety of the goods and services in relation to setting up an SPGS at a significantly higher rate of 18%. Further, the clear intention of the Legislature is that the 'system' must be taxed at an aggregated level in whatever form it is, as a 'system', where all the value elements which comprise the 'system' must be taxed at 5%.

15. As regards the question whether the benefit would also be available to the sub-contractor, they submitted that Notification no 01/2017 Integrated Tax (Rate), which provides concessional rate on solar power generating system does not specify the persons who would be eligible for concessional rate of 5% i.e. developer, contractor or manufacturer / supplier /

sub-contractor. Since the concessional rate of 5% is provided to renewable energy products and parts thereof, the same should be applicable to all suppliers providing such products as long as it can be established (through certification or otherwise) that these are to be used in solar power generation system.

Discussion & Findings:

16. We have gone through the records of the case and taken into consideration the findings of the AAR in the impugned order and the submissions made by the Appellant in their grounds of appeal as well at the time of personal hearing and in the written additional submissions.

17. The Appellant vide their written submissions dated 31.08.2018 has sought for another opportunity to be heard in order to produce additional documents. However, we are not inclined to grant another personal hearing as the issue has been argued at length during the hearing on 28th August and also detailed written submissions have been made on 08.06.2018 and 31.08.2018. We are of the view that another hearing would not bring forth any fresh facts or evidences which have a bearing on this matter and hence we do not think that there may be a need to grant another opportunity for hearing.

18. The Appellant has also sought for condonation of delay in filing this appeal on the grounds that the Appellate Authority was not constituted at the time when the date for filing this appeal was due and hence the delay was beyond their control. We note that the appeal in this case ought to have been filed by the 20th April 2018. However, the Appellate Authority for Advance Ruling was constituted under the KGST Act only on 25th April 2018. Hence we condone the delay in filing this appeal.

19. Coming to the matter at hand, we find that certain facts as observed by the AAR have not been disputed by the Appellant viz. The fact that the contract in question is an EPC contract for supply of Solar Power Generating System; that the contract involves both the supply of goods as well as the supply of services; that the major equipment as per the contract is the Photovoltaic module which forms about 60-70% of the contract; that the said Photovoltaic module is purchased overseas and transferred on High Sea Sale basis to the owner of the project (the other contracting party) who then imports the same by filing the Bill of Entry and availing of applicable Customs duty exemptions; that the said PV module is later made available to the Appellant without a consideration at the project site; that the procurement and supply of the remaining parts and components which are essential to complete the Solar Power plant and the services of design, erection, installation and commissioning of the Solar Power Plant are supplied by the Appellant.

20. In the background of these facts which are accepted being the facts in the situation, the short point for determination is whether the transactions undertaken in terms of the said draft contract can qualify as a 'composite supply' and if so, whether the supply of PV module which is the major equipment in terms of value and functionality will in this matter be regarded as the principal supply determining the rate of tax for the entire transaction.

21. The definition of 'composite supply' as per Section 2(30) of the CGST Act reads as under:

“Composite supply” means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally **bundled and supplied in conjunction with each other** in the ordinary course of business, one of which is a principal supply.

Whereas, Section 8 of the CGST Act states that the tax liability on a composite supply shall be determined in the following manner, namely:- “a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply.”

Illustration.— Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

In addition we also note that Section 2 (31) of the CGST Act 2017 has defined ‘consideration’, ‘goods’ and ‘mixed supply’, as follows:

(31) “consideration” in relation to the supply of goods or services or both includes—

(a) **any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person** but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply

(52) “goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming

part of the land which are agreed to be severed before supply or under a contract of supply;

(74) “mixed supply” means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

Illustration— A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately;

22. In the instant case there is no dispute that the contract in question involves a supply of both goods and services. However in order for the supply to be termed as a ‘composite supply’, what is required is that the supply of the goods and the services should at least be bundled, more specifically be ‘naturally bundled’, and supplied in conjugation with each other. The term ‘naturally bundled’ has not been defined in the GST Act. We note that the concept of composite supply under the GST law is similar to the concept of naturally bundled services that prevailed under the service tax regime, and the same was understood to refer to those transactions involving an element of provision of service and an element of transfer of title in goods in which various elements are so inextricably linked that they essentially form **one composite transaction.**

23. We have gone through the draft contract in question in detail. We find that the scope of the contract is that the contractor shall supply all the equipment as per the terms of the contract in accordance with the Execution Schedule. The terms “Equipment” has been defined in Para 1.1.39 to mean and include all the equipment and major equipments along with its associated accessories, conductors, electrical cables, instruments, apparatus and other

items /equipment required to be supplied by the Contractor for completing and integrating the SPP, as per the Technical Specification, excluding Free Issue Equipment(Emphasis supplied). In terms of Para 1.1.45 "Free Issue Equipment" means Photovoltaic Modules to be supplied by the owner to the contractor, as a free issue equipment at the Plant site for the installation and commissioning of the SPP. The obligations of the owner in terms of Para 4 of the contract include providing for insurance required for Free Issue Equipment, third party/public liability insurance and insurance required for its representative, engineers and labours until completion of its obligations under this contract. In terms of Para 9 of the contract, the owner agrees to provide Free Issue Material as agreed between the parties. The said material would be over and above the Plant being supplied by the Contractor under this contract. The owner shall be responsible for transportation of Free Issue Equipment from the point of origin till the Plant site and in this regard, the owner shall remain solely liable, including in respect of any damage during transit. Further, in terms of Para 15.3, the Contractor shall, on arrival of the Free Issue Equipment at the Plant site, shall be entitled to inspect the Free Issue Equipment at the Plant Site and notify the Owner in writing, detailing the defects of such inspection. The Owner shall correct/rectify the defects detailed in the Contractor's notice by causing to repair or replacing the defective Free Issue Equipment. Whereas it is apparent from the terms of the draft contract as indicated above, that, in the instant case, the Appellant has vivisected the contract in the initial stage itself into two parts i.e. first a supply of the PV module which constitutes about 60-70% of the value of the contract and then the second part for the supply of the remaining parts and components and services.

24. The first part of the supply is done by purchasing from a foreign supplier the PV module and transferring the title of the said PV module on High Sea Sales basis to the owner of the project. The Project owner clears the PV module through the Customs and makes available the same to the contractor (Appellant) without consideration to the project site. The

Appellant have argued that the above modus is merely undertaken for commercial reasons since it is the project owner who is eligible for custom duty exemptions and therefore, the PV module although has been identified and arranged for purchase by the Appellant, the same has been actually procured and imported by the other contracting party. We find that the reason for this modus, though compelling is not the relevant to the issue at hand. What is relevant is that the Appellant having resorted to such a structuring, has the effect of making the supplies effected in this instance to have been effected in at least three clear and distinct stages.

- One is the transfer of ownership of the PV module from the Appellant (the original purchaser) to the Project owner on High Sea Sale basis.
- Second is the free issue of the PV module by the Owner to the Contractor at the Plant site.
- The third part is the supply of the remaining part of the goods and services by the Appellant.

25. The effect of the first transaction under the contract is to transfer the chattel as chattel to the other contracting party and thus effectively separate it from the subsequent supplies. This transaction is outside the scope of GST as it takes place on High Sea Sales basis. However, we note that it is a 'supply' as understood in ordinary parlance, wherein the meaning of the expression supply is clearly understood to be "make (something needed or wanted) available to someone; provide".

26. The second transaction which happens thereafter, is the free supply of the PV module by the Project owner to the Appellant for setting up the Solar Power plant. This supply without consideration is not within the fold of the definition of 'supply' as stated in Section 7 of the CGST Act. Other than the exceptions spelt out in Schedule I, any supply without a

consideration is not a 'supply' and hence does not attract GST. What crystallizes from the above is that, the supply of the PV module which is the major component of the contract is not coupled at all with the supply of the other parts of the Solar Power Plant and the services for setting up the Solar Power Plant. In fact, the supply of the PV module in the situation is separated both in time and intent and is distinct and never coupled with supply of other items/ services within the impugned contract (and which, it is the responsibility of the owner to procure and make available to the contractor). The transaction of supply of PV module in itself is abstracted from the rest of the elements of the EPC contract. It is clearly a separate instance of sale/ delivery from the rest of the agreement of work or service and the sale of other items, and just because the contractor may have arranged the procurement of it for the owner, does not take away from the distinct and separate nature of the supply. The distinction is observed by the contracting parties too in having separately received the consideration for this element of supply from the rest of the supplies made under the contract. Transfer of property of goods for a price is the linchpin of the definition of sale. Clearly, the thing to be delivered (PV modules, in this case) has an individual existence before the delivery as the sole property of the party who is to deliver it and for that reason, this then is a sale. If 'A' may transfer property for a price in a thing in which 'B' had no previous property then the contract is a contract for sale. On the other hand where the main object of work undertaken by the payee of the price is not the transfer of a chattel qua chattel, the contract is one for work and labour. The intention in the two different transactions is different- on the matter of PV module sold on high seas, it is sale; and thereafter other transactions in goods and services are to follow.

27. Therefore, in view of the above, we find that the supply of PV module is a distinct transaction by itself and cannot be said to be naturally bundled with the supply of the remaining parts required for setting up the Solar Power Plant. The contract itself makes it

abundantly clear that the term “equipments” does not cover “free issue equipment”. Therefore, the contract itself recognises the supply by the owner as a distinct transaction which is separate from the supply of the other equipments and components by the contractor. To this extent the AAR was right in the impugned order in holding that the concept of natural bundling does not apply to the instant envisaged supply of the PV module in terms of the draft contract in question.

28. Once the contract in question is that of a multistage supply as already discussed, having been already vivisected into the supply of the PV module by the owner as free issue to the Appellant, what remains to be executed by the Appellant is undertaking the supply of the remaining equipments and components and parts of the Solar Power Plant and supplying the services of design, erection, installation and commissioning of the Solar Power Plant. We are of the opinion that the supply of this remaining portion of the contract in question (involving the supply of the balance components and parts as well as the service portion) can still be termed as a ‘composite supply’ in terms of Section 2(30) of the CGST Act, 2017 since the supply of these components and parts as well as the services of erection, installation and commissioning appear to be naturally bundled. Having said this, the tax liability on the latter portion of the contract in question which is to be supplied by the Appellant and which we are agreeable to be termed as a composite supply will be determined on the basis of the dominant nature of the supply. In other words, if the dominant nature of the remaining portion of the contract in question which is executed by the Appellant is principally a supply of services of design, erection, installation and commissioning, then the tax rate will be the rate as applicable to the services if they form the principal supply of the remaining portion of the contract. It has never been contended before us that for the balance part of the supply under the contract in question, the goods element of what we agree to call a ‘composite supply’ are the predominant or principal component in the transaction. We modify the ruling of the Advance

Authority in the impugned order to the above extent. It is emphasised that the discussions and findings as detailed above are limited to the facts involved in the contract in question.

29. As regards the question whether the benefit of concessional rate of 5% GST on the supply of solar power generating systems and its parts will apply to the sub-contractors, we are of the view that the supplies made by the sub-contractor to the Appellant are independent supplies. If the supply by the sub-contractor to the Appellant is of goods which can be termed as 'parts' of the Solar Power Generating System, then the rate applicable will be 5% in terms of Sl.No234 of Notification No 01/2017 Integrated Tax (Rate) dated 28.06.2017. However, if the supply by the sub-contractor to the Appellant is a composite supply, then the rate applicable to the dominant nature of the supply will prevail. We are in agreement with the finding of the AAR on this and uphold the same.

30. In view of our findings and discussions as above, the Ruling dated 21.03.2018 of the Karnataka Authority for Advance Ruling is modified as under:

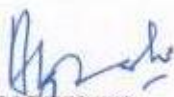
- a) The supply of the PV module which is the major component of the Solar Power Plant is not naturally bundled with the supply of the remaining components & parts of the Solar Power Plant and the supply of the services of Erection, Installation and Commissioning of the Solar Power Plant.
- b) The supply of PV module is a distinct transaction from the supplies in contract in question as it is the owner whose responsibility it is to procure and supply the PV module. This PV module is to be supplied as free issue material over and above the plant being supplied by the contractor. The owner is responsible for transportation of the PV module from the point of origin till plant site and he bears the other risks and rewards of ownership. The PV module which is procured by the Project owner on High Sea Sale basis and

imported by availing Customs duty exemptions and later supplied to the Appellant as a free issue for use in the setting up of the Solar Power Plant.

c) The supply of the remaining portion of the contract in question by the Appellant which involves the supply of the balance components and parts of the Solar Power Plant and the supply of services of Erection, Installation and Commissioning of the Solar Power Plant is viewed as a 'composite supply' as the supply of goods and services are naturally bundled.

d) The tax liability on this portion of the contract in question (other than PV module) which is termed as a 'composite supply' will be determined in terms of Section 8 of the CGST Act, 2017 wherein the rate applicable to the dominant nature of the supply will prevail.

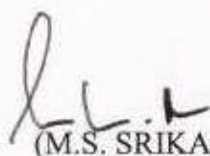
The Appeal is disposed off in the above manner.



(A.K. JYOTISHI)

Member

Karnataka Appellate Authority



(M.S. SRIKAR)

Member

Karnataka Appellate Authority