



No 10034/CT
POL-56/3/2017-policy

Dated 6/7/18

To

Chairman-cum-Managing Director
Odisha Power Transmission Corporation Ltd. (OPTCL)
Bhubaneswar

Sub: Applicability of Reduced Rate of GST @12% against the EPC Works Contract already Awarded or to be Awarded by OPTCL

Ref: Finance Department Letter No. FIN-CT1-TAX-0037-2018-14968/F, dated 02.05.2018 enclosing a copy of Letter No. FW-CF-TAX-212/2017-98 of CMD, OPTCL

Sir,

OPTCL has sought for clarification as to whether its EPC works contractors shall, while billing to OPTCL, charge GST @ 12% (CGST @ 6% and OGST @ 6%) or 18% (CGST @ 9% and OGST @ 9%). In this connection, our considered views are furnished below.

1. GST rate on supply of various types of services had been originally notified vide Ministry of Finance (Department of Revenue), GoI Notification No. 11/2017 – Central Tax (Rate) Dated 28.06.2017 and Finance Department, GoO Notification No. 19869 dated 29.06.2018. Subsequently, certain changes have been made to the original notification vide amendment notifications dated 22.08.2017, 21.09.2017, 13.10.2017, 14.11.2017 and 25.01.2018. The updated version of the original notification dated 28.06.2017, incorporating all subsequent amendments, is enclosed herewith for reference.
2. EPC Contractors engaged by OPTCL for executing various projects make 'Composite Supply of Works Contract Service' to OPTCL, as defined in the GST Acts. Therefore, such Composite Supply of Works Contract Service by the EPC contractors to OPTCL is chargeable to GST. The question, however, is whether GST on such supply is chargeable @ 12% or @ 18% ?
3. Such Composite Supply of Works Contract Service by the EPC contractors to OPTCL will be taxable @ 12% if it falls under Serial No. 3(vi) of the updated version of the Notification dated 28.06.2017. But if it does not fall under Serial No. 3(vi), it will fall under the residual entry at Serial No. 3(xii) and will be taxable @ 18%.
4. It is very pertinent to mention that Sl. No. 3(vi) was inserted on 21.09.2017. The concept of 'Government Entity' was not there at that time. This concept was subsequently inserted in column 3 against Sl. No. 3(vi) on 13.10.2017. The conditions mentioned in column 5 against

Sl. No. 3(vi) were also inserted on 13.10.2017. Therefore, OPTCL being a Government Entity, the tax rate on composite supply of Works Contract Service by the EPC contractors to OPTCL was 18% till 12.10.2017.

5. However, from 13.10.2017, the following matrix can be used to determine the correct tax rate, i.e. 18% or 12%, can be ascertained as given below.

1 st Level Check		2 nd Level Check	Tax Rate	Remark
Whether the project is meant predominantly for use other than for commerce, industry, or any other business or profession.	NO	(Not required)	GST @ 18% is applicable	<ul style="list-style-type: none"> Indian Railways and NHAI are treated as Central Government. But Government Companies/ Corporations such as IRCTC, BSNL, ITDC, OTDC, IDCO, NALCO, SAIL, NTPC, etc. are not treated as Government. They are also not 'Local Authorities'.
	YES	If the project is in relation to a work entrusted to OPTCL by the Central Government, State Government or a Local Authority.	GST @ 12% is applicable	
		If the project is in relation to a work not entrusted to OPTCL by the Central Government, State Government or a Local Authority	GST @ 18% is applicable	

6. The moot question in this case is whether these projects of OPTCL, executed through EPC works contractors, are meant predominantly for use other than for commerce, industry or any other business or profession.
7. After due consultation with Department of Revenue (Government of India), it is hereby clarified that 'Distribution of Electricity' qualifies as a 'Commercial and Industrial Use'. Therefore, creation of infrastructures meant for distribution of electricity is not eligible for lower GST rate of 12%. The Applicable GST rate will be 18%.
8. Hence the EPC Works Contractors are required to, while billing to OPTCL, charge GST @18% GST.

Yours faithfully



Commissioner of CT & GST
Odisha (at Cuttack)

Memo No 10035/CT

Dated 6/7/18

Copy to Shri N.K Rautray (OFS)(SAG), Additional Secretary to Government, Finance Department
for information and necessary action.

Yours faithfully



Commissioner of CT & GST
Odisha (at Cuttack)

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