

Capital Subsidy received on 90% of Project Capital Expenditure liable to GST:

AAR

Fact of the Case

- The applicant, M/s Surya Roshni LED Lighting Project Limited is engaged in the business of executing Greenfield street lighting projects.
- The Government of Odisha, through the Housing and Urban Development Department, the Urban Infrastructure Development Fund, and the Directorate of Municipal Administration has decided to develop an energy-efficient street lighting system covering new and upcoming road stretches in Greenfield areas across 21 Urban Local Bodies (ULBs), including in the cities of Balasore, Bhadrak, Jajpur, Baripada on a Public-Private Partnership basis.
- The Applicant is entitled to receive a consideration, in the form of Capital Subsidy, being 90% of the total capital expenditure incurred by the Applicant in supplying, installing and commissioning of the equipment. The balance 10% of the total capital expenditure along-with O&M fees is receivable as 'Annuity fees', and is recovered by the Applicant by raising quarterly invoices on the ULBs. After the Greenfield Public Street Lighting System has been commissioned, the Applicant is required to undertake the Operation and Maintenance of the system till the end of the term of the Agreement.

The applicant sought the advance ruling on the issue whether Capital Subsidy (90 percent of Project Capital Expenditure) received by the Applicant as per SIOM Agreement and Escrow Agreement from Odisha Government/ULBs for the Green Field Public Street Lighting System in the State of Odisha is not liable to GST and if liable to GST, then at what rate of GST.

The other issue was raised in respect of the GST rate for the balance 10% of the Project Capital Expenditure and O&M Fees received as Annuity Fee over the period of 7 years by the Applicant as per SIOM Agreement considering the Sl. No. 3(vi) of the notification No. 11/2017 Central Tax (Rate), dated June 28, 2017 as amended by Notification No. 31/2017 Central Tax (Rate), dated October 13, 2017 and corresponding notifications of Odisha State Tax Rate as amended.

Decision of the Case

- The Coram ruled that Capital Subsidy (90 percent of Project Capital Expenditure) received by the Applicant is liable to GST. The GST will have to be paid on the goods at the appropriate rate after classification under the appropriate heading.
- The AAR further ruled that the supply being undertaken or proposed to be undertaken by the applicant would qualify to be a supply of 'composite supply' in terms of the definition under Section 2(119) of the Central Goods and Services Tax Act, 2017, where the principal supply is the supply of goods and is not the supply of service'.
- Therefore, the question of the applicability of the concessional rate of tax in terms of Notification No. 11/2017-Central Tax (Rate), dated June 28, 2017, and as amended does not arise. The GST will have to be paid on the goods at the appropriate rate after classification under the appropriate heading.

The Orissa Authority of Advance Ruling (AAR), ruled that the Capital Subsidy received on 90% of Project Capital Expenditure is liable to Goods and Service Tax (GST).