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# Relief from GST brouhaha-Solar Industry

**2018-19**

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22nd December 2018

FOR PRIVATE CIRCULATION ONLY



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## History

- Under the leadership of our Hon'ble Prime Minister, India is undertaking the largest renewable capacity expansion programme in the world. Ministry of New and Renewable Energy ('MNRE') has taken several steps to fructify the clean energy goal of current government by implementing various schemes such as Solar Park, Solar Roof Top Scheme, Solar PV power plants on Canal Bank and Canal Tops etc.
- Despite such incentives/ initiatives being taken by the Central Government to promote the sector, GST reform has posed various challenges for the renewable energy sector, especially solar power projects.
- Under GST regime, supplies made for setting up of the solar power plants have been subjected to levy of GST at concessional rate of 5%. This has resulted in an increase in the overall project cost for setting-up of the solar power plant under the GST regime as compared to the erstwhile regime because electricity is outside the ambit of GST and hence any impact of GST paid on goods or services used for setting-up of the solar power plant adds to the project cost.
- The intention of the Government to tax such projects at GST rate of 5%. However, due to the contracting structures being followed by the industry and the manner in which the GST legislation has been worded a new debate has been initiated as to whether setting up of solar power generating systems would qualify as 'composite supply' and would be subject to GST at 5% (i.e., the dominant intent being supply of solar power generating system) or the same would be treated as 'works contract' and would be subject to GST at 18%.

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## Advance Ruling

- The Advance ruling in Maharashtra [No. GST-ARA-01/2017/B-01 dated 17 February 2018] in the case of Giriraj Renewables Private Limited [TS-155-AAR-2018-NT] ('the Advance Ruling') had set the issue on fire. In the said ruling, the Hon'ble Advance Ruling authority has held that setting up of a solar power generating system qualifies as 'works contract' (ie works carried on an immovable property) and would, therefore, be taxed at 18% which was further affirmed by the Appellate authority.
- Identical ruling was given in the case of Frizo India Power Limited, Solairedirect India LLP, RFE Solar Pvt. Ltd. by Rajasthan AAR, Fermi Solar Farms Pvt. Ltd. by Maharashtra.

## Circular No. 283/11/2017 by MNRE

- Ministry of New and Renewable Energy vide circular 283/11/2017 had given following clarification:

*Structural, as such, do not qualify as immovable property and, hence, are outside the domain of 'works contract service'. Whether the EPC contracts qualify as composite supply (u/s 2(30) of the CGST Act) as supply of goods or services or both, naturally bundled or supplied in conjunction with each other in the ordinary course of business will depend on the facts of the case. If such (EPC contracts) supplies could 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....'*

- The clarification given by MNRE was not followed by the AAR authority and thus creating perplexing enigma for the entire solar industry.

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## 31st Council Meeting (22.12.2018)

- Several representation were made before the GST council to resolve the ambiguity created by contrasting views prevalent amongst the ministry, solar industry and tax authorities.
- The GST council has recommended that in contracts wherein specified solar goods attracting 5% rate of GST are supplied with EPC service, 70% of contract value shall be deemed to supply of solar goods attracting 5% tax rate and remaining shall be deemed to be value of taxable services attracting applicable rate.

### Result

- After the above recommendation of the Council the effective rate of GST on Supply of solar goods along with EPC services in now is 8.9% (5% on 70% contract value and 18% on 30% contract value.)

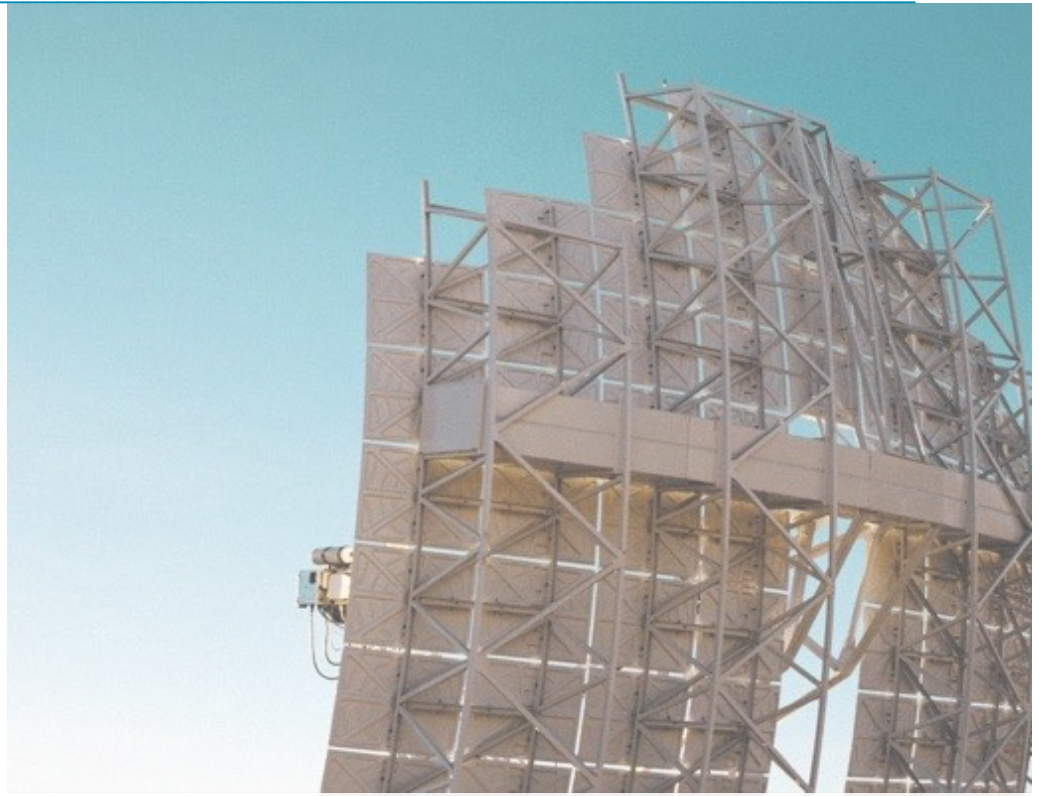
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