

**AUTHORITY FOR ADVANCE RULINGS**  
**(Central Excise, Customs and Service Tax)**  
**Hotel Samrat, 4<sup>th</sup> Floor, Kautilya Marg, Chanakyapuri**  
**New Delhi**

**Present:**

**Justice V.S. Sirpurkar (Chairman)**  
**Shri S.S.Rana (Member)**  
**Shri R.S.Shukla (Member)**

The 22<sup>nd</sup> day of April, 2016

Ruling No. AAR/ST/12-13/2016

in

Application No. AAR/44/ST/18/2013 &  
AAR/44/ST/32/2013

Name & address of the applicant : M/s Hyundai Rotem Company, New Delhi

Commissioners concerned : Commissioner of Customs, Central Excise &  
Service Tax, Hyderabad-II, Kendriya Shulk  
Bhavan, L.B.Stadium Road,  
Basheer Baug, Hyderabad-500004  
&  
Commissioner of Service Tax,  
17-B, I.A.E.A. House, Mahatma Gandhi Marg,  
I.P.Estate, New Delhi-110002

Present for the applicant : Shri Tarun Gulati, Advocate  
Shri Kishore Kunal, Advocate,

Present for the Department : Shri Amresh Jain (AR)

Ruling

Hyundai Rotem Company (hereinafter also referred to as the applicant) has filed following two applications for Advance Ruling:-

- (a) AAR/44/ST/18/2013 with respect to Contract with Delhi Metro Rail Corporation ("DMRC") ("Application-1"): The said application –1 is with respect to contract with the DMRC dated 24.05.2013, which has been entered into between the parties for design, manufacture, testing, supply and commissioning of Rolling Stock for a lump sum price which is to be received by the applicant on a miles stone basis. Applicant is undertaking onshore integrated testing and commissioning of the train as per Cost Centre D of the Pricing Document. In terms of Clause 7.12 of the General Conditions of the Contract ("GCC"), applicant

is required to undertake integrated testing and system commissioning of the works. "Integrated Testing" has been defined in the Contract at Clause 1.1.4.2 of the GCC as tests performed by the applicant / Contractor at the direction of the Engineer for compatibility with the various sub-systems. Further, 'works' as defined in the Contract at Clause 1.1.6.12 of the GCC includes services to be carried out for integrated testing and commissioning of the Rolling Stock.

- (b) AAR/44/ST/32/2013 with respect to Hyderabad Metro Project with L&T Metro Rail Hyderabad Limited ("L&T") ("Application-2"). The said application -2 has been filed with respect to the Contract with L&T for design, manufacture, supply, testing and commissioning of Rolling Stock in Hyderabad. In terms of the said Contract, applicant is undertaking onshore testing & commissioning, integrated testing & commissioning, trial runs and performance as per Cost Centre E-3 of the Schedule of Prices. In terms of Clause 8.2.1.12, applicant is required to perform all the necessary testing and commissioning of the works including tests on completion. Further, integrated system testing is defined in Clause 1.1.75 to mean that the applicant has to undertake tests to L&T's satisfaction so that the system is compatible with the rest of the sub-systems of the metro rail system.

2. As the issues involved in both the applications are similar, as also the applicant is same in the applications; both the applications are taken up together, for common ruling. In the present application, the applicant has raised only one question which is common in both the applications and is as follows:

*Whether the applicant is eligible for claiming exemption from payment of Service Tax in terms of Notification No. 25/2012 dated 20.06.2012 for the activities in relation to Testing & Commissioning, Integrated Testing & Commissioning and Trial runs of Trains to be undertaken under the Contract?*

3. Applicant inter-alia submits that as per two Contracts, they are required to undertake testing to ensure integration of the Rolling Stock to the metro systems and said activity clearly amounts of "commissioning" of the rolling stock on to the metro rail system; that each metro rail system has its own requirements with respect to the various stations, signaling, gauge measurement etc. and therefore, the seamless integration by the applicant is required to undertaken by conducting testing, integrated testing and trial runs before the final commissioning of the Rolling Stock; that both the contracts are in relation to original works of setting up of metro rail at Delhi and Hyderabad; that conceptually, a metro rail is very different from any other mode of transportation including other rail project; that in a metro project, the EMU and the platforms have to be completely aligned, both in terms of physical proportions like length of the EMU, width of the EMU, placement of doors and the distance between doors as well as with the signaling systems of the EMU and the platform; that when the metro train pulls into a platform, the EMU and the platform have to be completely aligned; that a metro project is not complete unless the EMUs are installed, commissioned and aligned with the metro systems; that the integrated testing carried out is part of commissioning of the metro project and involves a live testing of not just the EMU but also the other sub-systems of the metro project and thus this activity relates to commissioning of the metro project itself. Applicant further submits that in



- (iii) Erection, commissioning or installation of plant machinery or equipment or structures, whether prefabricated or otherwise;

8. The word “commissioning” has not been defined under the Finance Act, 1994. Therefore, one has to resort to dictionary meaning of the word “commission”. The New Oxford American Dictionary, 2001, defines the word “commission” as under;  
*Bring (something newly produced) such as a factory or machine into working condition*  
The New Shorter Oxford Dictionary (3<sup>rd</sup> edition) defines “Commission” as under;  
*Bring (a machine, equipment etc.) into operation*

9. Clause 1 of the Contract Agreement – Contract RS 10 dated 24.05.2013 between Delhi Metro Rail Corporation Ltd and the applicant (Contractor) inter-alia states that both the parties would implement the design, manufacture, supply, testing, commissioning and training of 486 EMU (Passenger Rolling Stock) of Contract RS 10 of Mass Rapid System-Phase III Project under the terms and conditions specified in this Contract Agreement and other Contracts Documents attached. One of such document is the General Conditions of Contract. Relevant portions of General Condition of Contract (Tender RS 10) of Delhi Metro Rail Corporation Ltd (Mass Rapid System-Phase III) are as under;

*7.12.1. Tests on completion shall include Integrated Testing where applicable Tests on Completion shall also include Integrated Testing where applicable as per the contract conditions. The Contractor shall, following satisfactory completion of tests on his works, equipment, sub-systems or system, perform, at the direction of the Engineer, programme of tests to verify and confirm the compatibility and complete performance of his works, equipment, sub-systems or system with the works, equipment, sub-systems or system provided by others.*

*1.1.4.2 “Integrated Testing” in the contracts where applicable means the programme of tests performed by the Contractor at the direction of the Engineer following satisfactory completion of Contractor’s tests on his equipment, sub-systems or system to verify and confirm the compatibility and compliant performance of his equipment/sub-system/system with the equipment/sub-system/system provided by others.*

*1.1.6.12 “Works” means the work, both permanent and temporary, or services to be carried out, designed, manufactured, fabricated, delivered to Site, erected, installed, completed, tested, commissioned,(including Integrated Testing and Commissioning) and remedying of any defects, and/ or supplied in accordance with the Contract and include Plant, Rolling Stock and Materials and their accessories.*

10. Clause 4 of Contract Agreement dated 05.09.2012 between L&T Metro Rail (Hyderabad) Limited and the applicant (Contractor) mentions 3 documents, which shall be deemed to comprise the Contract. One such document is Conditions of Contract. Relevant portions of Conditions of Contract of L&T Metro Rail (Hyderabad) Limited (Tender Package D 0101: Rolling Stock) are as under;

## **8. CONTRACTOR’S OBLIGATIONS**

### **8.1. Objective and Nature of Contract**

#### **8.2 General Responsibilities**

*8.2.1.12 Perform all necessary testing and commissioning of the Works including Tests on Completion.*

### **1.1. DEFINITIONS**

1.1.75 “Integrated System Testing” means the tests described as such in the Testing and Commissioning Management Plans which shall be performed following satisfactory completion of the Contractor’s tests on its equipment, subsystems or system, to verify and confirm the compatibility and compliance performance of such equipment/subsystem/system supplied by the Contractor with the equipment/subsystem/system, provided by the Other Contractors of the Rail System.

11. It is observed that the applicant would be eligible to avail benefit of exemption Notification No. 25/2012-ST dated 20.06.2012, in case, services provided by the applicant are;

- a) by way of construction, erection, commissioning or installation
- b) of original work and
- c) pertaining to railways, including monorail or metro.

12. The word ‘Commissioning’ has not been defined under the Finance Act, 1994. Therefore, one has to refer to its dictionary meaning. As mentioned above, “commission” means to bring a machine, plant, equipment etc., into operation. Rolling Stocks are plant as well as machinery, as held by the Hon’ble Supreme Court in CIT vs. Mir Mohammad Ali (1964) 7 SCR 846 and CIT vs. Taj Mahal Hotel (1971) 3 SCC 550 respectively. Further, these Rolling Stocks are to be brought into operation by the applicant, which would fall under the meaning of word “commissioning”. Further, the General Conditions of Contract/ Conditions of Contract mention that tests on completion shall include Integrated Testing, wherein the contractor (applicant) shall follow satisfactory completion of tests on his equipment, sub-systems or systems to verify and confirm the compatibility and compliant performance of his equipment/sub-system/system with the equipment/sub-system/system provided by others Therefore, based on said compatibility and compliant performance, trial runs for the metro are undertaken. Therefore, this whole process is nothing but commissioning i.e. bringing Rolling stocks into operation. Therefore, we agree with the applicant that the services provided i.e. in relation to testing & commissioning, integrated testing and commissioning, trial runs of trains, are by way of commissioning.

13. Second issue is whether services provided by the applicant pertain to the original work. As per paragraph 2(y) of Notification No. 25/2012-ST dated 20.06.2012, “original works” is the meaning, assigned to it in Rule 2A of the Service Tax (Determination of Value) Rules 2006, wherein “original work” inter-alia means erection, commissioning or installation of plant, machinery or equipment or structures, whether fabricated or otherwise. We have already held in preceding paragraph that Rolling stock is at least plant and machinery and same would be commissioned by the applicant. Therefore, the applicant would satisfy this condition also i.e. providing services by way of commissioning of original work.

14. Third condition relates to providing said services pertaining to railways, including monorail or metro. This condition has not been opposed by the Revenue, as it is evident that the services relate to Delhi Metro Rail Corporation and L & T Metro Rail Hyderabad Limited.

15. In view of above, we rule as under;

*Applicant is eligible for claiming exemption from payment of Service Tax in terms of Notification No. 25/2012-ST dated 20.06.2012 for the activities in relation to Testing &*

*Commissioning, Integrated Testing & Commissioning and Trial runs of Trains to be undertaken under the contract.*

-Sd-  
**(S.S.Rana)**  
**Member(R)**

-Sd-  
**(V.S.Sirpurkar)**  
**Chairman**

-Sd-  
**(R.S.Shukla)**  
**Member(L)**