

GST ADVANCE RULING CA. C. B. Thakar, CA. Jinal Maru	
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Case: M/s PURANIK BUILDERS LTD [2021-TIOL-217] (MAHARASHTRA AAR)

Facts of the Case:

1. The applicant is engaged in the business of construction and sale of residential apartments.
2. Apart from consideration for the main construction activity, the Applicant also collects various other charges (hereinafter referred to as the 'Other Charges') from their customers at the time of entering into the Agreement and/or giving possession of residential apartments. Such charges are collected under the Agreement itself with their respective amounts separately identified in the Agreement. They have been collecting and discharging GST at the rate of 18% on the Other Charges collected from their customers in respect of sale of residential apartment. These other charges include charges for :
 - a) Electric meter State installation and security deposit for meter
 - b) Water connection charges
 - c) Share of municipal taxes
 - d) Advance maintenance
 - e) Club house maintenance
 - f) Development charges
 - g) Share money, application and entrance fee of the organisation
 - h) Formation and registration Formation and registration of the organization and legal charges in connection therewith
 - i) Infrastructure charges
 - j) Legal fees

Questions before AAR:

1. Whether the Other Charges received by the company will be treated as consideration for construction services of the Company and classified under HSN 9954 along with the main residential construction services of the Company or whether the same will be treated as consideration for independent service(s) of the respective head?
2. Consequently, what will be the applicable effective rate of GST on services underlying the Other Charges?

Arguments by Applicant:

1. Applicant receives the Other Charges under Agreements which are primarily for supply of construction services. The charges in question are received by the Applicant only from customers to whom construction services are supplied. The applicant never independently receives such amounts or provides such underlying services sans supply of the main construction services
2. The Other Charges may be treated as naturally bundled with supply of main construction services which are supplied in conjunction with each other in the ordinary course of business. In case these services are treated as Composite supply, construction services may be treated as principal supply of such composite supply since the same clearly constitutes predominant element of such transactions and is the primary supply giving rise to the associated or ancillary supplies. In this case, the amounts pertaining to the Other Charges will be added in the total value of construction services of the Company and the 1/3rd deduction from total value applicable as per Sr. No. 2 of the said Notification will be applied on such entire total value.

3. Applicant refers to decision of the Allahabad Bench of CESTAT in the case of Logix Infrastructure Pvt. Ltd. vs Commissioner of C. EX. & S.T., Noida (2019 (25) G.S.T.L. 59 (Tri. - All.)). The court held that the components such as preferred location charges, external development charges, etc. were part and parcel and for various elements of main service and thus entire consideration received was eligible for abatement.

Decision of AAR

1. On perusal of the said 'sale deed agreement', it seen that the charges for the construction of residential property and the other charges for providing different services are mentioned separately, which (according to applicant) are supplied during the construction of residential flat.
2. As per the provisions of the Bombay Stamp Act 1958, stamp duty is payable on sale of immovable property. From the receipt of the stamp duty paid by the applicant, it is seen that the applicant has paid stamp duty on the value of sale of flat. The Applicant has not considered the value of other services supplied as above or the payment of stamp duty to the government implying that, when the question of payment of stamp duty arises, the applicant treats these Other charges not as a part of supply of main construction service, but when question of payment of GST arises, the applicant tries to contend that the value of other charges collected is part and parcel of value of that main construction service. It is a legal principle that a party cannot be permitted to approbate and reprobate on the same facts and take inconsistent shifting stands.
3. On page 52 of the impugned agreement, is an express, essential, vital and integral term and condition of this Agreement that:-
 - g) The Developer are desirous of selling, transferring or otherwise allotting or disposing of Flat, and other areas including gardens/ terraces appurtenant to or adjoining or abutting and/or above certain Flat in or around the said buildings on what is popularly known as ownership basis and/or otherwise and they are entering into separate agreement for sale, transfer and/or disposal thereof with various purchasers or transferees thereof.

Thus, the applicant has not transferred those other areas or other amenities to the customers nor any right is created thereon in favor of the customers.

4. It is seen that the applicant has collected the basic flat sale price separately for the supply of residential unit and the charges are collected separately for supply of different services which are called as 'other charges'. Merely because the agreement is common will not make it a supply of bundled services.
5. We find that Heading 9954, Entry No. 3 covers 'construction services". The above entry is specifically related to construction of a Complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly.
6. Further, as per the explanatory note published by the Government, for the purposes of the CGST Act, 2017, the 'other services' provided by the applicant can be said to be classified under different SAC like (a) Installation services (b) Other Misc. services (C) Support services to water distribution (d) Legal Services.
7. In our opinion, the 'Construction services' and the 'other services' provided by the applicant are not naturally bundled and are not supplied in conjunction with each other in the ordinary course of business with main supply. These are the facilities/amenities provided by the applicant to its customers for the limited period because, for these facilities created the customers have not been given perpetual rights as per the said agreement
8. In view of above, the 'other charges' mentioned as above are held taxable as per their SAC under the GST Act, at 18% in terms of the respective and appropriate entries.
9. In the case of other services such as those relating to the electrical meter deposit and the water connection (deposit), claim of deduction of pure supply could have been raised, but same has not been raised by the applicant and therefore is not considered.

10. The 1/3rd deduction from total value as per Sr. No. 2 of the Notification (as claimed by the applicant) cannot be allowed as deduction from the Other Charges. A plain reading of the items or the list of other charges itself shows that services supplied against the said charges have no connection with land and therefore, question of considering the 1 /3rd deduction or rebate towards land cost does not arise, particularly, as the entries applicable to both of the above services are different.
11. The subject matter in the case laws referred to, by the applicant, are on different facts and under different laws as compared to the subject issue. Further, the issue regarding payment of the stamp duty in those cases is also not clear. Thus the said case law's will not be applicable in the subject case.

Case: M/s GUJARAT STATE ROAD DEVELOPMENT CORPORATION [2021-TIOL-240-AAR] (GUJARAT AAR)

Facts of the Case:

1. The applicant has submitted that the Govt. of Gujarat in order to have a developed, efficient and high quality system of road transportation, had formulated a Road Policy on December 1996 (Policy), to be implemented by the Roads and Building Department, GOG. The policy enables private participation in the development, construction, repair, up gradation, management, operation and maintenance of roads within the State of Gujarat.
2. The applicant GSRDC is wholly owned Government of Gujarat Company established under the Companies Act, 1956. The main object of the GSRDC is to act as an independent and autonomous body for the construction and development of the roads (state highways) and bridges as a part of the activities of the Roads and Buildings Department of Government of Gujarat under the BT, BOTT or BOLT projects.
3. They submitted the detail list of the completed and ongoing project under BOT as under :
 - (i) Widening & Strengthening of Himmatnagar By Pass (SH-9) on Build Operate Transfer (BOT) basis.
 - (ii) Construction of ROB in lieu of existing underpass near Chhayapuri
 - (iii) Improvement and strengthening of Kim-Mandavi Road (SH-65) on BOT basis
 - (iv) Improvement and Strengthening of Deesa-Panthavada-Gundri on BOT basis
4. That they are developing state highways, ROB, under-pass on land which falls under the jurisdiction of either Municipality or Panchayat.

Questions before AAR:

1. Whether the service of construction and development of state highway roads provided by GSRDC would qualify as an activity in relation to function entrusted to Panchayat or Municipality under Article 243G or 243 W respectively, of the constitution of India ?
2. Whether applicant would fall under the definition of Governmental authority or Government Entity ?

Arguments by Applicant:

1. That Pure service provided to the Central Govt., State Govt. or Union territory or local authority or a Governmental authority or a Govt. Entity has been exempted vide Sr. No. 3 of Not. No. 12/2017-CT (Rate) dated 28-6-2017
2. They submitted that construction and development of state highways roads as entrusted by the State Govt. does not appears to fall in the list of services enumerated under Schedule 12th of Article 243W or Schedule 11th of Article 243 G of the Indian constitution. Hence does not qualify as Govt. authority and accordingly, not eligible for benefit of Entry No. 3 of Not. No. 12/2017-CTR
3. GSRDC is a 100% Govt. of Gujarat Undertaking (i.e. 100% stake in equity held by Govt. of Gujarat) incorporated with main object of construction and development of State Highway roads, as entrusted by Govt. of Gujarat. Hence GSRDC is squarely covered under definition of government entity.

Decision of AAR

1. As per Government of Gujarat Resolution dated 20-2-99, GSRDC was established with objective to undertake the development of bridges and roads. We find that Government of Gujarat has established GSRDC as its wholly owned company and entrusted it with the development of roads and bridges. Thus, we find that GSRDC satisfies the definition of Government Entity.
2. That it constructs roads, sideways, paths on the land which falls under the jurisdiction of Municipality and Panchayat. We note that roads and bridges are activities entrusted to a municipality under Article 243W of our Constitution and to a Panchayat under Article 243G of our Constitution. Therefore in such specific cases where GSRDC constructs municipal roads/bridges or village roads/bridges, it satisfies the definition of Government Authority
3. Thus, GSRDC is a Government Entity. In addition to being a Government Entity, GSRDC shall also be a Government Authority, in such cases when it constructs i. Municipal Roads/ bridges; ii. Village Roads/bridges.

Case: M/s KAMDHENU AGROCHEM INDUSTRIES LLP [2021-TIOL-248] (MAHARASHTRA AAR)

Facts of the Case:

1. The Applicant is an importer and reseller of chemicals, having main place of business in the State of Maharashtra and further having warehouses in the State of Gujarat and State of Kerala and holding GST registration in all these 3 states.
2. The Applicant has been getting orders for imported chemicals from customers located in States where the Applicant is not registered under GST. One such purchase order dated 16.10.2019 was received from M/s. Greenpanel Industries Ltd for supply of 300 MT of urea at their place of business located in the State of Andhra Pradesh. Applicant placed further order for the required quantity of goods on the foreign exporter, who vide invoice dated 20.11.2019 sold the 300 MT of urea to the Applicant and consigned the goods to Krishnapatnam Port in the State of Andhra Pradesh. Applicant cleared the goods by filing the Bill of Entry dated 11.12.2019 at the Krishnapatnam port in the State of Andhra Pradesh on payment of requisite amount of customs duty and IGST under the Maharashtra GSTIN. Thereafter, Applicant directly sold the goods from port (DPD) to customer M/s. Greenpanel Industries Ltd. vide invoice dated 17.12.2019 issued under the Maharashtra GSTIN charging applicable IGST in the said invoice.

Questions before AAR:

1. Whether the Applicant is required to obtain the registration in importing States other than Maharashtra, if goods are imported, sold and delivered directly from CFS (Container Freight Station) / DPD (Direct Port Delivery) which is under the Customs Boundaries to customers from those States?
2. Whether the Applicant is required to obtain registration in State where the applicant is proposing to open a warehouse for sale of imported goods from such warehouse?
3. Whether issuing invoices under Maharashtra GSTIN is permissible in law for supply of imported goods from the proposed warehouse located in the State where the Applicant is not registered under GST?

Arguments by Applicant:

1. The Applicant is making supplies from the State of Maharashtra only. Though the goods are imported at other State ports, the Applicant will be clearing the goods under GSTIN of Maharashtra and the supply of the said goods are commissioned from the office of the applicant in the State of Maharashtra. From a plain reading of the said Section 22(1), the Applicant will be liable to obtain registration in the State from where the Applicant makes the taxable supply of goods or services
2. They rely on the two advance rulings as under for where in it has been held that Registered Person in Maharashtra is not liable for registration in other States from where the imported goods are sold:
 - a. Aarel Import Export Pvt. Ltd - 2019-TIOL-167-AAR-GST.
 - b. Gandhaar Oil Refinery (India) Ltd - GST ARA No. 112/2018-19 dated 15.04.2019

3. The Applicant further submits that the Applicant is not required to obtain registration in the states where the Applicant has opened warehouse for importing and supplying imported goods. They submit that the said warehouse is only used for supplying imported goods. The Applicant is not carrying out any business in the said State so as to be supplying from that State.
4. They further states that, whether the applicant supplies to local customers in those States where warehouse is located or the inter-State customers, the Applicant will be charging IGST on in its invoice. Thus, tax will be flowing to the consumption state where the customer is located.

Decision of AAR

1. As per the provisions of Section 7(2) of the IGST Act, 2017 , supply of goods imported into India shall be treated as supply of goods in the course of inter - state trade or commerce and as per Section 5(1) of the Act, liable to IGST at the point when duties of Customs are levied on the said goods under Section 12 of the Customs Act, 1962. In respect of goods imported into India, as per provisions of Section 11 (a) of the IGST Act, 2017, the place of supply shall be the location of the importer. In the present case since the importer is registered in Mumbai, the place of supply will be Mumbai, Maharashtra.
2. Since the applicant will be selling the goods before clearing the same for home consumption from the port of import, the place of supply shall be the place from where the applicant makes a taxable supply of goods which, in this case will be the Maharashtra Office. Hence, the applicant can supply the goods on the basis of invoices issued by the Maharashtra Office and, therefore, they need not take separate registration in the State of Import.
3. The second question raised by the applicant is with respect to a proposed opening of warehouse in a State other than Maharashtra. From the applicant's submissions, it appears that, the applicant after importing goods will be clearing the same for home consumption on payment of appropriate Customs Duty as well as IGST. After clearing the said goods for home consumption, the applicant would be storing the said goods in warehouse to be opened by them in the State where the import of goods is taking place. Further, sale of the goods would happen from the said warehouse. The sale of goods from such warehouse by the applicant is a transaction different from the import of goods by the applicant.
4. From the provisions of section 10 of IGST Act & 22 of CGST Act, it is clear that in respect of goods the subsequent sale after the import is important factor. The applicant is more focused on import of goods. But there is also a subsequent sale/supply of said goods in the same State where import happens and in that case, above sections shall apply, which requires for registration to be obtained in that State from where taxable supply originates. It is an origin based provision, requiring the registration to be taken in that State.
5. That, in the case of Aarel Import Export Pvt. Ltd., it was the submission of the applicant that it did not have any office in State of Odisha and that the goods would be cleared from the Rented Customs Warehouse at Paradip Port, Odisha. Thus in the said case the applicant was to effect sale of goods from the Customs warehouse i.e. prior to the good being cleared for home consumption on payment of Customs Duty and IGST. However in the subject case , in respect of the second question raised by the applicant, it is seen that they would be clearing the imported goods on payment of Customs Duty and IGST and store them in warehouse to be procured by them. Thus in the subject situation the question is related to further domestic sales after clearance of the imported goods into the country.
6. In the Gandhaar Oil Refinery (India) Ltd. case, the applicant had given stepwise transaction details wherein under Step 7 it was mentioned as "When the goods reach the port we unload the same at Port warehouse and remove the goods from the port warehouse to customer. We do not have any godown or storage facility in the state. Thus the facts, in the Gandhaar Oil Refinery (India) Ltd. case are also different from the facts of the subject case.

7. It appears that if the sites of supply is determined on the basis of movement of goods and delivery of goods, the criteria of location of supplier of goods cannot be a deciding factor for determining nature of supply. In the present scenario the applicant has submitted that it is proposing to take a new warehouse on the eastern coast of India near a port where imported goods in bulk would be stored after clearing the goods from the Customs Authorities and from where the Applicant would thereafter sell the goods as and when the customer approaches. Thus, if the applicant has procured a warehouse, say in Andhra Pradesh and stores the imported the goods in the said warehouse and further supplies the said goods by way of sale in the state of Andhra Pradesh, the same would be considered as intra-state supply in the State of Andhra Pradesh as provided in sub-section (1) of section 8 read with clause (a) of sub-section (1) of section 10 of the IGST Act.
8. Rajasthan Advance Ruling Authority in case of M/s K. M. Trans Logistics (P) Ltd. = 2019-TIOL-39-AAR-GST wherein the issue raised was whether having vacant lands on lease for parking of trailers/trucks at various cities for operational purpose required registration in various cities when billing, control, registered office, head office and management was centralized located at Jaipur. The said authority observed that, "The authority for advance ruling is created under SGST/UTGST Act and thus rulings are applicable within the particular state only, it is for this reason that question relating to registration of vacant lands taken on lease by the applicant is out of purview of the authority and hence no ruling is given on this aspect.
9. In view of the above discussions, if the situs of transaction in question is not within the state of Maharashtra, then as per provisions of section 96 of the CGST Act and similar provision under the MGST Act), the Maharashtra Advance Ruling Authority cannot acquire the jurisdiction over the questions raised, hence no ruling can be given on this question.