GST ADVANCE RULING

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The Maharashtra Goods and Services Tax Act,2017

Amnesty Scheme, 2023

The Government of Maharashtra has announced waiver scheme (Amnesty, 2023) under MVAT and Allied Laws and for the said purpose Maharashtra L.A. No. XII of 2023 dated 16.3.2023 is introduced in Assembly.

Maharashtra Profession Tax Act,1975

The Maharashtra Profession Tax Act, 1975 is amended by Maharashtra Act No. XIX of 2023 dated 6.4.2023. The Profession Tax payable by women in certain circumstances is exempted as well as exemption to disabled persons is streamlined.

Notification

The Government of Maharashtra has issued notification no. VAT-1523/CR-15/Taxation-1 dated 23.3.2023 under MVAT Act to reduce rate of tax on Aviation Turbine Fuel under entry B-6.

Circular

The Commissioner of State Tax has issued Circular no. 9T of 2023 dated 5.4.2023 by which clarifications regarding GST rate and classification of 'Rab' given by the CBIC vide circular no.191/03/2023 GST dated 27.3.2023 are accepted in State of Maharashtra.

1. Case: M/s AP POWER DEVELOPMENT CO. LTD [2023-4-TMI -205] [ANDHRA PRADESH AAR]

Facts of the Case:

1. The Applicant is a special purpose vehicle which was originally setup to implement mega power projects in the state of Andhra Pradesh. It runs a thermal power project, Sri Damodaram Sanjeevaiah thermal power station, in krishnapatnam, Andhra Pradesh
2. The Applicant has entered an agreement with Chettinad logistics private limited for supply of certain services which includes :
    a. Liasoning with M/s. MCL, east coast railways, paradip and adani Krishnapatnam ports for coordination and supervision of coal loading,
    b. Liasoning with east coast Railways for arranging rakes, transportation of raw coal, crushing of boulders to -100 mm size, storage and handling at paradip port,
    c. Further movement to Sri Damodaram sanjeevaiah thermal power station, handling at Adani krishnapatnam port and from Adani krishnapatnam port to SDSTPS site by dedicated conveyor system and also by ensuring minimum of transit loss
3. In the event of failure in performance of job assigned to the service provider (Chettinad logistics), the service receiver (APPDCL) will collect liquidated damages for increase in moisture of raw coal over the loading end, for increase in ash percentage, penalties for late transportation of coal and also penalty for short supply of coal, as per the penalties clause 11 of the contract

Questions before AAR:

1. Whether liquidated damages collected by the APPDCL for non-performing of an act constitute as supply as per Section 7 of GST act?
2. What is the classification under GST for such liquidated damages ?
3. What is the applicable rate of tax if the answer to the question number 1 is affirmative ?

Arguments by Applicant :

1. That as per Section 73 of the Contract Act, 1972, when a contract has been broken, the party which suffers by such breach is entitled to receive from the other party compensation for any loss or damage caused to him by such breach. The compensation is not by way of consideration for any other independent activity; it is just an event in the course of performance of that contract.
2. That further, section 74 of the Contract Act, 1972 provides that when a contract is broken, if a sum has been named or a penalty stipulated in the contract as the amount or penalty to be paid in case of breach, the aggrieved party shall be entitled to receive reasonable compensation not exceeding the amount so named or the penalty so stipulated.
3. That as per the provisions laid down under section 7 of the CGST Act, the expression "supply" includes all forms of supply of goods/services for a consideration by a person in the course and furtherance of business. Schedule II Para 5(e) makes it amply clear that in order to invoke the above as taxable activity, there needs to be an agreement to tolerate a situation between APPDCL and CHETTINAD LOGISTICS PRIVATE LIMITED.
4. These liquidated damages arise on mutual acceptance of both parties on account of an 'unintentional occurrence' which both parties actually intend to avoid. Hence, liquidated damages cannot be said to be a consideration received for tolerating the breach or nonperformance of contract. They are rather payments for not tolerating the breach of contract.
5. Payment of liquidated damages is stipulated in a contract to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance. It is an expression of dissatisfaction or a form of penalty resulting, from unsatisfactory performance or breach of the contract.
6. Liquidated damage are a measure of loss and damage that the parties agree would arise due to breach of contract. They do not act as a remedy for the breach of contract. They do not restitute the aggrieved person.
7. Such liquidated damages or penalties are not the desired result or intended to be a source of revenue for APPDCL.
8. There is no agreement, express or implied, by the applicant receiving the liquidated damages, to refrain from or tolerate an act or to do anything by service provider. Liquidated damages received by APPDCL is mere a flow of money from the service provider, who causes breach of the contract to APPDCL, who has suffered loss or damage due to such breach. Hence, such payments do not constitute consideration for a supply and are not taxable.
9. References were made to the circular 178/10/2022 and contended that the case is covered by the circular and the circular had provided that the damages collected by the appellant are not taxable as per the said circular.

Decision of AAR :

1. In the present case, liquidated damages are claimed by the applicant from the contractor due to increase in moisture of raw coal over the loading end, for increase in ash percentage, penalties for late transportation of coal and also penalty for short supply of coal.
2. The moot point here is whether the activity is supply or not. It is immaterial to decide whether the amount collected by the applicant is for tolerating the act or for not toleration the act.
3. In the present case, the service provider in paying certain amount to the applicant is neither ad-hoc, unconditional nor at the whims of any service provider nor the applicant. There is a clear mathematical formula as to calculation of such amount and the conditions/scenarios contingent upon which the amounts are payable are clearly narrated in the agreement itself.
4. It is simply inconceivable that any prudent business person will pay amounts for no merit and benefit. It is certain that the service provider is paying the said amounts only for certain advantage derived or to ward-off any disadvantage incurred. Hence it is only in response to something done to the applicant. It is inconsequential whether the payment is for tolerating the mistake or not-tolerating.
5. The circular is only meant to clarify the position of law and shall be applied reasonably having regard to the facts of the case. The circular had clearly mentioned, inter alia, vide para 7.1.6 that "Therefore, such payments, even though they may be referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where such supply is taxable. Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply.
6. Therefore, in the light of section 7 read with definition of consideration u/s 2(31), liquidity damages paid by defaulting party to the non-defaulting party for tolerating the act of non performance or breach of contract have to be treated as consideration for tolerating

of an act or a situation under an agreement. Such an activity constitutes supply of service and the liquidity damages are exigible to tax under CGST and SGST @9% each under the chapter head 9997 al serial no. 35 of Notification No.11/2017-Central/State tax rate.

2. Case: M/s BRANDIX APPAREL INDIA PVT LTD [2023-4-TMI-203] (ANDHRA PRADESH AAR)

Facts of the Case:

1. The applicant is engaged in the business of manufacture of apparels and export of the same outside India.
2. They have hired a third-party contractor for providing canteen services to the employees in the factory. The third-party contractor raises invoice on the company for provision of canteen services. The total amount charged by the canteen service provider per employee per month is Rs.1,538.25/-. Out of the total canteen expense Rs.578/- is recovered from each employee per month and the applicant bears the balance cost of Rs.960.25 per month per employee.
3. Further, they have also hired a contractor for providing transportation services to the employees of the company. The total amount charged by the bus transport service per employee Rs.2,277/-. Out of the total transportation expense only Rs.350/- is recovered each employee per month and the applicant bears balance cost of Rs.1927/- per employee per month.

Questions before AAR:

1. Whether GST would be applicable on the amount recovered from employees for canteen facility provided to them?
2. Whether GST would be applicable on the amount recovered from employees for transportation facilities provided to them?

Arguments by Applicant:

1. The applicants argue that they are engaged in the business of manufacture of apparels and not in the business of providing canteen facility. However, since employees are the vital resources to carry out day to day functioning of the business, the applicant provides the canteen facility as a welfare measure. The canteen services are not connected to apparel manufacturing.
2. The provision of canteen facility by the applicant to its employees is not a transaction made in the course or furtherance of business, and since in terms of Section 7 of the CGST Act, 2017, for a transaction to qualify as supply, it should essentially be made In the course or furtherance of business, the canteen services provided by the applicant to its employees cannot be considered as a "supply.
3. The said employees' portion of the canteen charges Is collected by the applicant and paid to the canteen service provider without retaining any profit margin and it is a pure reimbursement of the employees' portion of canteen charges.
4. The applicant relies on the advance ruling of the Maharashtra Authority of Advance Ruling In the case of M/s Emcure Pharmaceuticals Limited. They also rely on another advanced ruling passed by Gujarat Authority for Advance Ruling in case of M/s. Cadila Healthcare Limited.
5. The Applicant submits that recovery made from the employees is towards supply of food which is also to comply with the mandate under Factories Act.
6. Further, the amount of partial cost recovered from the employees for the bus facility provided is between employer and employee in due course of employment, hence the same will not be liable to be taxed under GST law. The submissions made by the Applicant in respect of canteen recovery equally applies so far as the bus transportation is concerned.
7. The judicial precedents which have held that GST is not applicable on such employee recoveries on bus transportation of employees is by Maharashtra Authority of Advance Ruling in case of M/s Tata Motors Limited.

Decision of AAR :

1. It is clearly seen that the provision of service of canteen is by the third-party to the applicant and not by the applicant to their employees. As per Section 7 of the CGST ACT, supply includes all forms of supply of goods or services for a consideration by the person in the course or furtherance of business. The applicant is involved in the supply of manufacture of apparel and not in the activity of provision of canteen service. The canteen service is not an output service of the applicant as it is in the business of apparel manufacture. In fact, the canteen services are being received by the applicant from the third-party providers. Further, the applicant is merely collecting a part of the canteen expenses from the employee and this does not tantamount to supply.
2. A reference to the GST Policy wing Circular 172/04/2022 dated 6th July 2022, para 2, serial no 5, clarifies that any perquisites provided by the employer to its employee in are In lieu of the services provided by the employee to the employer in relation to the employment and therefore the perquisites provided by the employer to the employee will not be subjected to GST. As provision of canteen facility

is a mandate as per Factories Act, 1948, we see that even considering the employee and employer transaction solely, GST is not applicable.

3. Similarly, the transportation services are being supplies by the third-party to the applicant and they are receiver and not supplier of the same. Therefore, it can be concluded that the GST is not applicable for the recoveries from the employees for the transportation services provided to them.

3. Case: M/s PURANIK BUILDERS LTD [2023-4-TMI -155] [MAHARASHTRA AAAR]

Facts of the Case:

1. The Appellant is engaged in the business of construction and sale of residential apartments. The terms of sale of an under construction residential apartments by the Appellant are governed by an "Agreement for Sale" entered between the Appellant and the customers, which upon completion of construction is supplemented by a sale deed.
2. As a part of terms of Agreement for Sale, the Appellant is to provide certain other services (hereinafter referred as "other services"). The consideration towards the other services is provided for in the sale agreement which is collected under the respective heads. They are distinctly identified in the sale agreement. The said charges generally recovered by appellant were as under :
   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
3. The appellant was discharging the liability at the rate of 12% for sale of under construction flats as the residential project doesn't fall under affordable housing category. They have been collecting and discharging GST at the rate of 18% on the Other Charges collected from its customers.
4. The AAR passed an order rejecting the contention of the appellant that other services are part of a composite supply with construction services being the principle supply. It held that "other charges" will not be treated as a consideration for construction services and will be treated as consideration received against supply of independent services of the respective heads. It held that other charges would be taxable as per the respective SAC codes prescribed under Rate Notification and taxable @ 18%without any abetment.
5. The AAR rejected the contention of the appellant on following grounds :
   a. The contract entered into vide impugned agreement is for supply of construction services.
   b. For payment of stamp duty consideration towards construction services is only taken into account. The appellant cannot take different and conflicting stand about considerations for the same activity before the two independent authorities.
   c. The agreement was intended to transfer the ownership right in flats only and not of the adjoining area and other amenities for which charges are collected.
   d. The charges for construction of residential unit and other services are shown separately.
   e. These facilities/ amenities provided by the applicant to its customers for the limited period because, for these facilities created the customers haven't been given perpetual rights as per the said agreement. Therefore, it is held that the impugned transactions are not part of a composite supply.
6. Being aggrieved by the order of AAR, the Appellant has filed an appeal before the Appellate Authority of Advance Ruling (AAAR)

Questions before AAAR:

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 Appellant :

1. That supply of construction services and other services is a composite supply, supplied in conjunction with each other, naturally bundled and supplied in the ordinary course of business. He also submitted that the payment of stamp duty shouldn't be considered for determining the nature of services
2. The Appellant submitted that principles laid down in the Education Guide to Taxation of Services dt.20.6.2012 as regards how to determine that Whether the services are bundled in the ordinary course of business, are applicable in the present case in terms of,
   a) perception of the service receiver,
   b) majority of service providers provide similar bundle of services,
   c) other charges are in the nature or incidental or ancillary services,
   d) they are advertised as single package, and
   e) further it is claimed they are not available separately.
3. The Appellant has relied upon the Supreme Court observations in respect of "dominant intention test' in case of composite contracts *(BSNL vs. Union of India (2006) 145 STC 91 (SC).*
4. They also relied upon Maharashtra AAR in the case of M/s Joyville Shapporji Housing Private Limited (hereinafter referred to as "Joyville").

Decision of AAAR :

1. The perception of the consumer or the services receiver is an important factor in determining whether the services provided are bundled or not. In the construction of residential apartment sector, services in relation to water supply connection charges, electricity meter installation and security deposit for meter, development charges paid to Government authority/local authority, legal fees for transaction of sale of residential apartments can reasonably be expected to be supplied by the builder/ developer/ promoter of a residential project. They are inextricably linked to a residential apartment or dwelling. Without these aspects, the property may not be used.
2. However certain other charges like advance maintenance, clubhouse maintenance, infrastructure charges, share money application and entrance fee of the organization are not expected by every customer.
3. The analysis of indicative indicators of bundled services show that they are largely not applicable to the case in hand. The other charges are received separately. It means indicator no a) perception of the service receiver and c) other charges are in the nature or incidental or ancillary services are not complied with/ fulfilled.
4. Also, first part of the indicator no. d) is absent i.e. there is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use in the present case.
5. The type of supplies or charges received in this case like advance maintenance charges, club house charges, share of municipal taxes (pertaining to period after occupancy), share money, application & entrance fee of the organization, formation and registration of the organization and legal charges in connection therewith and infrastructure charges (for development of common area infrastructure) are independent from construction service. Even though any one or all of them is removed from the contract, the supply of services of construction of residential apartment / dwelling goes unabated.
6. These agreement for sale bring out the intention of the parties that customer will not have any claim other than the Apartment agreed to be taken by him/her. Even the benefits arising out of building will be available to promoter/Appellant only.
7. There is another clause that grants Promoter the right to use some of the common areas and external facilities to adjoining plot or any other plot in the vicinity of the said property (clause 33 (g)). All these clauses bring out the real nature of the services provided other than construction services. The property in such services (in terms of use, ownerships, etc.) isn't fully transferred to the

customers. Hence it is logical and legal to treat such services as not having any inextricable link to the construction services and need to be treated as independent supply of services.

8. Reliance is placed on decision of Hon. High Court of Delhi in *SURESH KUMAR BANSAL Versus UNION OF INDIA [2016(43) S.T.R.3(Del.)]* has held the Preferential Location Service as a taxable service.

9. In view of above, it is clear that charges in respect of some services are inextricably linked while other services are independently provided to the customer & therefore the rate of tax on the inextricably linked services would be 12%. Therefore, following services are clearly identifiable as bundled services :

   a. Water connection charges;

   b. Electric meter installation and deposit for meter;

   c. Development charges;

   d. Legal fees.

10. On the other hand, following services are determinable as independent supplies. The rate of tax thereon would be as per the respective service codes as mentioned in rate notification

    a. Club House Maintenance;

    b. Advance Maintenance;

    c. Share of Municipal Taxes (pertaining to period after occupancy)

    d. Formation and registration of the organization and legal charges in connection there with;

    e. Share money, Application & entrance fee of the organization;

    f. Infrastructure charges