



## Dhruva Alert for GST ADVANCE RULINGS – 3<sup>rd</sup> Edition

Sr No	Applicant	State	Issue for consideration	Final Order	Dhruva Comments / Observations
1	EMC Ltd. (11 <sup>th</sup> May 2018)	West Bengal	Whether GST is payable on freight and other ancillary services like in-transit insurance, loading/unloading of goods, etc., which forms part of the works contract service.	<p>The first contract for ex-works supply of materials cannot be executed independently of the second contract, which is for the transportation, loading / unloading of goods, erection of the towers, testing and commissioning of the transmission lines, etc.</p> <p>The two contracts, though awarded separately, are linked by a cross fall breach clause, whereby breach of one contract will be deemed to be a breach of the other contract. The authorities also held that these are indivisible composite works contract with a</p>	<p>As per the clauses of the two contracts, the authorities have stated that the entire transaction is composite in nature as the first contract cannot be performed satisfactorily unless the second contract is executed. Accordingly, it held that the contract is a composite supply, namely works contract service.</p> <p>However, “composite supply” has been specifically defined under GST. Further, Clause 6(a) of Schedule II states that a <b>composite supply of works contract</b> is regarded as a service</p>



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				<p>single source responsibility.</p> <p>Thus, the contracts are composite works contract as the supply of goods and the performance of allied activities cannot be separately enforced.</p> <p>Accordingly, it was held that freight and transportation are merely a component of works contract service supplied and not a separate activity and, therefore, GST @ 18% shall be applicable on the entire contract value, including the value of transportation / in-transit insurance.</p>	<p>transaction. A question may thus arise in a works contract transaction as to whether one needs to further ascertain the transaction as a composite supply in terms of Section 2(30), or it would be deemed to be composite supply.</p> <p>Further, it is extremely critical that the scope of work and other contractual clauses are clearly defined in the contract / bid documents so as to avoid disputes with the tax department.</p>
2	Shreenath Polyplast Pvt. Ltd. (12 <sup>th</sup> January 2018)	Gujarat	Taxability of interest charged by Del Credere Agent ('DCA')	The Applicant, a DCA, was appointed by the seller to promote sales, take orders for goods to be supplied, and to guarantee payment to the seller for the goods supplied. In the event the buyer fails to make a payment to the seller, the DCA extends short term loans to the buyer by making payment to the seller on behalf of the buyer. The DCA receives consideration by way of interest from	-



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				<p>the buyer. The taxability of the interest received by the DCA was placed for consideration before the AAR.</p> <p>It was held that such interest is covered by the exemption at Sl. No. 27 of the Notification No. 12/2017-Central Tax (Rate) dated 28<sup>th</sup> June 2017 i.e. interest received as consideration for services by way of extension of loans.</p>	
3	M/s Gogte Infrastructure Development Corporation Limited (21 <sup>st</sup> March 2018)	Karnataka	Whether Hotel accommodation & restaurant services provided to the employees and guests of SEZ units, be treated as supply to SEZ units?	<p>After referring to Section 16(1)(b) of the IGST Act and Rule 46 of the CGST Rules, the AAR concluded that supply of goods / services for authorised operations only should be treated as supplies to SEZ developer / unit.</p> <p>Further, after referring to place of supply of service for hotel accommodation and restaurant services, the AAR held that in the instant case, the services rendered by the applicant are neither part of authorized operations of SEZ nor consumed inside the SEZ and it cannot be</p>	<p>Section 7(5) of the IGST Act explicitly states that supply to SEZ unit should be regarded as inter-state supplies. However, the AAR has held that the instant transaction as intra-state supply without referring / discussing the said section.</p> <p>Further, Section 16(1)(b) of the IGST Act provides that supply to SEZ unit is a zero-rated supply. There is no additional restriction or condition mentioned in the said section for a transaction to qualify as zero-rated supply.</p>



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				<p>said to have been 'imported or procured' into SEZ unit. Therefore, the instant transaction cannot be treated as supply to SEZ unit and it should be considered as intra-state supply.</p>	<p>Also, the AAR has referred to Rule 46 of CGST Rules, to conclude that supply of goods for authorised operations only should be treated as zero rated supplies. However, the said Rule only prescribes a declaration to be mentioned on the invoice that the supply is meant for SEZ unit / developer for authorised operations.</p> <p>It is also important to note that 'accommodation service' is one of the service specifically mentioned in the default list of services for authorised operations.</p> <p>Further, there is a practical difficulty to treat supply to SEZ unit as intra-state supply, as once the SEZ GSTIN is entered on the GST portal, the system automatically recognises the said transaction as inter-state supply.</p>



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