



## Dimensions – 117<sup>th</sup> Edition

### Ruling under GST era

#### ***Udupi Nirmiti Kendra – Authority for Advance Ruling, Karnataka<sup>1</sup>***

##### Issue for Consideration

Interpretation of the term 'contract' for applicability of TDS provisions in the CGST Act, 2017 ('the Act'). In the absence of any contract whether single supply can be considered as a contract or aggregate value of purchase from the vendor for the whole year be considered as a contract for applicability of TDS provisions?

##### Discussion

- The Applicant is a society registered under the Karnataka Societies Registration Act, 1960 and is registered under GST. The objective of the society is to minimise the cost of housing for the benefit of the public. In this process, they procure goods / services and are dealing with execution of civil works contracts. They are bound by TDS provisions to deduct tax on supplies procured by them where the value of a contract exceeds ₹ 2,50,000/- ('threshold limit') as laid out under the Act.
- The Applicant does not have a contract with any supplier, and they procure the goods / services as

and when the need arises. Furthermore, they do not have any fixed terms of rate, credit period, discount, or support services.

- Section 51 of the Act mandates the specified class of persons to deduct tax at the rate of 1% of the total value of supply under a contract if it exceeds the threshold limit. The term 'contract' has not been defined under the Act or rules framed under the Act or under the relevant notification.
- The Applicant has filed an advance ruling before the Karnataka Authority for Advance Ruling ('the Authority') to seek a ruling on the applicability of TDS provisions under the following four situations:
  - Goods / services procured on need basis without any contract where individual invoices exceed the threshold limit;
  - Goods / services procured on need basis without any contract wherein individual invoices do not exceed the threshold limit but the aggregate purchases in a year exceed the threshold limit;
  - Goods / services procured on need basis under a contract for continuous supply where the individual invoice as well as annual purchases do not exceed the threshold limit; and

<sup>1</sup> 2021-VIL-229-AAR



- Goods / services procured on need basis under a contract for continuous supply wherein individual invoices do not exceed the threshold limit but the aggregate purchases in a year exceed the threshold limit.
- The Applicant has contended as follows:
  - In cases where no contract has been entered by the parties involved, individual tax invoices should be considered as separate ‘contracts’ for the purpose of TDS applicability.
  - In case a contract has been entered for continuous supply, TDS is applicable where aggregate value of purchases exceeds the threshold limit even if individual invoices are within the threshold limit.
  - Reliance is placed upon the Sale of goods Act, 1930 wherein ‘contract of sale’ means “*a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.*”
  - Section 5 of the Sale of Goods Act, 1930 states that “*a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.*”
  - A combined reading of above provisions suggests that absence of a contract of sale refers to absence of any commitment to procure goods for any past, present or future periods. Hence, every supply is subject to the respective purchase order and each tax invoice should be construed as a ‘contract’ for TDS applicability.
  - As per rule 46 of the CGST Rules, 2017, every tax invoice should have the signature or digital signature of the supplier or his authorised representative and hence each invoice shall constitute as an individual contract.
- The Revenue’s contentions are as follows:
  - ‘Contract’ defined under the Indian Contract Act, 1872 means “*an agreement which is enforceable by law*” and can be in written or oral form using formal or informal terms.
  - The main difference between an invoice and a contract is that a contract involves an agreement between the two parties wherein one party sets out the terms of the agreement and the other party accepts the terms.
  - An invoice does not involve an agreement between the parties but is merely a document created by one party and sent to the other party to request payment for the services rendered.
  - The officer stated that the goods / services are procured based on the purchase orders / documents furnished by the Applicant along with their application. Accordingly, as per the above explanation, goods / services are supplied as per the contract envisaged in section 51 of the Act, and TDS provisions are applicable in the present case.
- The Authority pronounced the advance ruling as follows:
  - Section 51 of the Act does not mention anything about the invoice value but only refers to the total value of supply under a contract. Hence, the invoice is not the criteria but the supply under a contract is the criteria for determining the applicability of TDS.
  - The term ‘supply under a contract’ would mean existence of supplier and recipient being distinct persons for a supply of goods / services and there is no requirement that such an agreement should always be in writing. The agreement to supply is governed under the Contract Act, 1872.
  - Sale of goods is only a subset of ‘supply’ as envisaged under GST and hence all contracts covered under the Sale of Goods Act, 1930 are also contracts under the Act.
  - An invoice is a commercial document which may cover the full contract or part of a contract. In case of a contract for continuous supply, only a part of the supplies under the contract may be covered by an invoice and hence the invoice would not be equated to the contract.



- In case of a continuous supply, the agreement is of prime consideration and the contract would include all the part supplies made under separate invoices.
- The Authority also referred to the definition of ‘continuous supply of goods’ to conclude that multiple part supplies made under an agreement for continuous supply would be a single ‘supply under the contract’.

### Ruling

- The Authority gave its ruling under each scenario as follows:
  - In the first scenario, TDS is applicable as the value of a single invoice exceeds the threshold limit.
  - In the second scenario, the invoice value does not exceed the threshold limit and assuming it is a single transaction as per the purchase order, TDS would not apply. However, if it is part of a contract for continuous supply, then TDS will be applicable if the total value of the contract exceeds the threshold limit.
  - In the third and fourth scenario, since it is a contract for continuous supply, TDS would be applicable if the total contract value exceeds the threshold limit.

### **Dhruva Comments:**

The term ‘contract’ has been rightly interpreted by the Authority by referring to the provisions under the Indian Contract Act, 1882 and Sale of Goods Act, 1930. This interpretation of the term ‘contract’ would be crucial in determining TDS liability in case of contracts for continuous supply of goods / services where individual invoices / value of annual procurements may not exceed the threshold limit, but the contract value may exceed the said limit.

## Judgment under GST era

### **Satyam Shivam Papers Pvt. Ltd. v. Assistant Commissioner (ST) and Others<sup>2</sup>**

#### Issue for Consideration

Whether tax and penalty is payable in case of a failure to extend the validity of an expired E-way bill (‘EWB’) if there is no intention to evade tax?

#### Discussion

- The Petitioner is engaged in the business of trading of paper. It made an intra state supply of paper on January 4, 2020 (Saturday) and generated EWB for delivery. Delivery of goods couldn’t happen on the same day due to a protest rally. The driver attempted to deliver goods on Monday, 6<sup>th</sup> January, however, due to expiry of EWB, the vehicle was detained.
- The Petitioner, on January 19, 2020, made payment of tax and penalty amounting to ₹ 69,000/- (CGST and SGST). The Respondents passed an order in form GST MOV-09 (‘impugned order’) for release of the goods ignoring the Petitioner’s submissions and stated that the Petitioner had admitted the tax and penalty payable by them.
- Aggrieved by the impugned order, the Petitioner filed a Writ Petition before the Hon’ble Telangana High Court and contended as follows:
  - Representations made on January 07 and 08, 2020 were not considered by the department at the time of passing the impugned orders. Reliance was also placed upon the Allahabad High Court judgment in the case of *Timexo Fasteners India Pvt. Ltd. v. State of UP & Ors.*<sup>3</sup>
  - The department unloaded the goods at a private premise in the house of their relative without providing any acknowledgement of the detention of goods. Such an act by the department was arbitrary, illegal and without authority of law. Some of the paper boxes were also missing at the time of release of the goods.

<sup>2</sup> 2021-VIL-448-TEL

<sup>3</sup> 2018-VIL-532-ALH



- The admission of tax and penalty payable are factually incorrect since it was never accepted. There was no document produced in which the tax and penalty were accepted. The representations made in fact showed that there was never any consent to the pay tax and penalty.
- There was no evidence of evasion of tax as there is a distinction between expiry of EWB and evasion of tax. The tax and penalty cannot be levied for a minor mistake of expiry of EWB which was beyond the control of the Petitioner. There was no occasion to levy penalty as the department had failed to prove any *mens rea* on the part of the Petitioner.
- The Hon'ble High Court observed as follows:
  - It is the duty of the department to consider the explanation offered by the Petitioner as to why the goods could not be delivered within the validity period of the EWB and instead the contention raised by the department that the validity of the EWB was not extended, is untenable.
  - The department has merely stated that there was evasion of tax and so they did not consider the explanation of the Petitioner. This is plainly arbitrary and illegal and violates Article 14 of the Constitution of India as there is no denial about the blockage of the road due to a political rally preventing the movement of the vehicle.
  - No evidence to sell the goods to another person was noticed on the day of detention. On account of non-extension of EWB, no presumption can be drawn that there was an intent to evade tax.
  - Further, we fail to understand as to why the goods were kept for safe keeping at a house of relative and not at any other place designated for such safe keeping.
  - There has been a blatant abuse of power by the department in collecting the tax and penalty from the Petitioner. The conduct of department

is deprecated by not even advertent to the response given by the Petitioner and to treat the expiry of the validity of the EWB as amounting to evasion of tax.

### Judgment

The Hon'ble High Court allowed the writ petition and held as follows:

- Refund of the tax and penalty collected from the Petitioner along with interest at the rate of 6% p.a. from the date of collection till the date of repayment.
- Department to pay costs of ₹ 10,000/- to the Petitioner in four weeks.

### **Dhruva Comments:**

As per rule 138(10) of the CGST Rules, 2017, the EWB is valid for upto a certain period depending upon the distance to be covered by the vehicle. Furthermore, the validity can be extended within a period of 8 hours from the time of its expiry. However, the rule does not prescribe any mechanism to be followed if the same has not been renewed within the prescribed time limit or the penalty that one has to pay.

Interestingly, the CBIC has issued a circular<sup>4</sup> wherein it has been clarified that the proceedings under section 129 of the CGST Act, 2017 (Detention and seizure of goods in transit) should not take place where there is an error in one or two digits of document number / vehicle number, error in pin code, etc. and in such situations a nominal penalty of ₹ 1,000 (CGST and SGST) should be levied. However, the said circular also does not consider the situation of expiry of EWB.

Accordingly, the Government should issue suitable clarifications for levy or non-levy of penalty in exceptional situations where the EWB has expired.

<sup>4</sup> Circular 64/38/2018-GST dated September 14, 2018





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