



Dimensions – 28th Edition

Rulings / Judgments under GST era:

1. M/s Durga Projects & Infrastructure Pvt. Ltd. – Karnataka¹

Issues for Consideration	<ul style="list-style-type: none"> Whether GST is leviable on work executed under Joint Development Agreement ('JDA') on landowner's portion where work commenced during the pre-GST regime and continued under the GST regime? If yes, how would such transaction be valued for the purpose of payment of tax?
Discussion & Ruling	<p>Discussion:</p> <ul style="list-style-type: none"> The Applicant is engaged in construction and sale of residential apartments and residential complexes under the JDA. The Applicant has executed projects under the JDA with landowners for an agreed ratio of built-up area. Such projects commenced during the pre-GST regime and continued under the GST regime. Substantial portion of such projects have been sub-contracted to another registered person. The Applicant contended the following: <ul style="list-style-type: none"> - In terms of the High Court of Karnataka's remand order in the case of <i>State of Karnataka v. Vaswani Estates Developers Pvt. Ltd.</i> [(2014) 78 Kar.L.J 310 (HC) (DB)], the Tribunal held that JDA between the landowner and developer does not fall under the definition of sale or works contract but barter and not liable to tax under the Karnataka Value Added Tax Act, 2003 on the ground that the JDA is without any monetary consideration; - However, in terms of section 7 of the CGST Act, supply includes barter in the course or furtherance of business. Further, the term 'consideration' includes payment made

¹ Ruling No. KAR ADRG 17/2019 dated July 25, 2019



in money or **otherwise**. Hence, JDA can be construed as a supply and thereby leviable to GST;

- The value of the landowner's built-up area shall be the value of the land as on the date of entering into JDA in terms of section 15 of the CGST Act, read with rules 27 to 35 of CGST Rules 2017;
- In terms of section 142 of the CGST Act, the said service is taxable under the earlier law to the extent of the work executed under the earlier law whereas GST is applicable to the extent of the remaining work executed under the GST law.
- The Authority agreed with the Applicant's contention that the said transaction is a supply in terms of section 7 of the CGST Act, and further observed the following:
 - Para (b) of notification no. 4/2018-Central Tax (Rate) dated January 25, 2018 stipulates that the supplier of construction service is liable to pay GST for the service provided to the landowner in lieu of the development rights;
 - Further, the aforesaid notification also states that the liability to pay GST shall arise when the said developer transfers the right in the constructed complex, building or civil structure to the person supplying the development rights by entering into a conveyance deed or a similar instrument. In the instant case the possession of the landowner's share of flats would take place during the GST regime. Hence, the time of supply would fall under the purview of GST law and the entire transaction would be leviable to GST;
 - As per para 2 of notification no. 11/2017-Central Tax (Rate) dated June 28, 2017, the value of supply shall be the total amount charged for such supply less the value of land which shall be deemed to be one third of the total amount charged for such supply.

Ruling:

The Applicant is liable to pay GST towards work executed under JDA on landowner's portion, on the value to be arrived at in terms of para 2 of the notification no. 11/2017-Central tax (Rate) dated June 28, 2017 at the time of transfer of possession of the landowner's portion of flats.

**Dhruva
Comments /
Observations**

The applicability of notification no. 4/2018 (*supra*) to contracts / transactions executed party under pre / post GST regime is debatable. While the time of supply is linked to transfer of right in constructed area through execution of conveyance deed or similar instrument, it needs to be evaluated as to whether the applicability could be retroactive in nature and could apply to situations which were not taxable under the pre-GST regime? Would it not be an arguable point that since the JDA was signed pre-GST, the point of taxation ('POT') has already arisen in the pre-GST regime and hence, the current POT provisions would not apply in view of section 142 of CGST Act. Also, there is no discussion in the ruling on applicability of Service tax on rendition of construction service.



2. M/s MRF Limited – Tamil Nadu²

Issue for Consideration

Whether Input Tax Credit ('ITC') can be availed of full GST charged on supply of invoice or a proportionate reversal of the same is required in case of post purchase discount given by the Appellant?

Discussion and Order

Discussion:

- The Appellant intends to enter into an arrangement with M/s C2FO India LLP for setting up an interactive automated data exchange which can be installed for data interaction relating to sale and purchase of goods and services between Appellant (buyer) and a supplier (supplier of Appellant) in compliance with various ethical, accounting and business standards. Both supplier and Appellant are required to register themselves on C2FO platform.
- On the online platform, where post sale, post supply and post issue of invoice depending upon early payments schedule offered by supplier, the Appellant can accept discount and make payment. A commercial credit note is issued in this respect. The payment is only made once for each invoice at the discounted price along with GST on the undiscounted value.
- The Authority for Advance Ruling ('AAR') held that as per section 16 of the CGST Act, the Appellant can avail ITC only to the extent of the invoice value raised by the supplier, less the discounts as per C2FO software which is paid by him to the supplier.
- The Appellant contested the order passed by the AAR on the following grounds:
 - The interpretation accorded to section 16 of the CGST Act by the AAR is wholly erroneous as it seeks to categorize persons who have paid full commercial price to the supplier and persons who have not paid the full commercial price to supplier together and deny ITC in both cases, which is both against letter as well as spirit of section 16 of CGST Act;
 - The AAR is contrary to position set out in clarification of CBEC vide circular no. 122/3/2010 – S.T. dated April 30, 2010 wherein it has been clarified that in cases where the receiver of service reduces the amount mentioned in the invoice/ bill/ challan and makes discounted payment, then it should be taken as final payment towards provision of service;
 - Proviso to section 16 of the CGST Act has to be read in harmony with the main provision which stipulates conditions for entitlement of ITC;
 - Post-purchase discount extended by supplier is not allowable deduction under section 15(3) of the CGST Act since the requirements of said provision are not satisfied. Hence, GST is payable by supplier on the entire price of goods. Once the entire price is treated as transaction value, such value should be treated as being paid for the purpose of section 16 of CGST Act also.
- The Appellate Authority observed the following:

² Order No. GST-ARA-122/2018-19/B-68 dated June 10, 2019



- Section 9 makes it clear that GST shall be levied on value as determined under section 15 of the CGST Act;
- Section 15 states that the value of supply of goods or services or both shall be the transaction value, which is the price paid or payable for the said supply to unrelated parties. As per section 15(3) of the CGST Act, the value of supply shall not include any discount which is given before or at the time of supply if such discount has been duly recorded in invoice;
- Various discussions in GST Council meeting establishes that the intention of the provision as an anti-evasion measure and a provision to facilitate prompt payment to suppliers, especially from MSME sector. However, the said provision does not appear to have any applicability in the instant case;
- On examination of various circulars issued, the Appellate Authority observed that the circulars issued are in the context of another Act and are not binding. However, they do have persuasive value. The circulars support the view that taxes paid and not subsequently reduced would be fully available as credit to the recipient.

Order:

The Appellant can avail ITC of full GST charged on undiscounted supply invoice of goods or services by their suppliers. A proportionate reversal of credit is not required in case of post purchase discount given by supplier subject to other conditions provided under law and the GST paid is not reimbursed or re-credited to the Appellant in any manner by their supplier.

**Dhruva
Comments /
Observations**

The aforesaid order is in line with the CBIC Circular with respect to post sale discounts offered by vendors and corresponding requirement of proportionate reversal of credit by customers. It would also reduce potential litigations.



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