



Dimensions – 41st Edition

Ruling / judgment under GST era:

1. M/s Radox Laboratories India Pvt. Ltd. - Karnataka¹

Issues for Consideration

- Whether the Applicant is liable to pay GST on the equipment given to the customers under Reagent Rental Placement Contract (RRC) or Part Reagent Rental Placement Contract (PRC) models / contracts?
- Whether the supply of reagents along with machine rental and services in the aforesaid contract is separate supply or mixed supply or composite supply? If considered composite, what is the principal supply?
- What is the rate of tax on supply of machines under the RRC / PRC models?
- What is the value on which GST is to be paid and what is the time of supply?
- Whether the Applicant is eligible to claim input tax credit (ITC) on purchase of equipment used in the aforesaid models?

Discussion & Order

Discussion:

- The Applicant is engaged in the business of trading medical diagnostic reagents and diagnostic equipment. In the majority of cases, the sales are made to customers through distributors.
- The Applicant supplies the equipments to the customers under two models and the features of the same are as follows:

RRC

- There is supply of equipment, reagents, controls and services in conjunction;

¹ Order no. KAR ADRG 118/2019 dated September 30, 2019



- The equipment is supplied to the customer on a returnable basis and returned to the Applicant unless they are sold at the end of the contract period or the contract is renewed;
- In lieu of such supply, the customer is required to procure minimum levels of reagents through the authorised distributors and if not done, then is required to pay penal charges.

PRC

- This is the same as RRC model, except that an additional upfront non-refundable deposit is obtained from the customer.
- In respect of the various issues raised (*supra*) the Applicant contended as follows:
 - As there is no transfer of title, the supply of machine would be regarded as supply of service. Further, basis the individual HSN classification of machine and reagents, the rate of tax in respect of supply of machines is 18% and of reagents is 12%;
 - In terms of section 7, section 9 and section 2(31) of the CGST Act, the machines rentals, reagents, and services under the RRC / PRC model are taxable under GST;
 - The RRC model ensures that the customer is not burdened with the high costs of equipments / machinery and a minimum commitment from the customer is also obtained for the reagents, which is the primary product of the Applicant. The reagents can be used only with the machines and not independently;
 - The reagents are naturally bundled with the supply of machines. Reference was also made to the concept of 'naturally bundled' as explained in the '*Taxation of Services: An Education Guide*'. The sale value and margins of reagents are much higher than that of machines. Accordingly, the sale of reagents along with the machines is a composite supply and the principal supply is sale of reagents;
 - The transaction being a composite supply wherein the principal supply is sale of reagents, the rate of tax for supply of machines should accordingly be 12%;
 - The value of supply should be the sale value of the reagents and no other value should be separately assigned for supply of machines. The time of supply should be based on principal supply i.e. sale of reagents;
 - Further, the non-refundable deposit in the case of the PRC model shall be applied as consideration and should be taxed upon receipt of this at the rate of 12%;
 - The machines are being used in the furtherance of business and are not specifically excluded under section 17(5) of the CSGT Act, accordingly, the ITC should be eligible on the same.
- The Authority observed as follows:
 - **RRC model**
 - The reagents are sold by the Applicant to the distributors who sell the same to the customers. In respect of the equipments there is no value charged and thus, there is no 'consideration' involved and the ownership lies with the Applicant.



Thus, there is no supply as per section 7 of the CGST Act in respect of the equipment;

- There are three transactions involved which are independent but linked to each other and their time of supply would be as follows:
 - Equipments provided free of cost – It is not a supply as there is no consideration;
 - Supply of reagents – date of sale of goods;
 - Supply of services in the nature of toleration of an act (penal charges) – when such charges are received.
- The supply of equipments is detached from the supply of reagents. The delivery of equipments is not a supply and thereby, there cannot be a composite supply involving it. The supply of reagents and supply of services of toleration of an act are not supplied in conjunction, they also cannot be regarded as composite supply;
- The value of supply of reagents would be the transaction value as per section 15 of the CGST Act.
- **PRC model**
 - This model is the same as RRC except for the case of non-refundable deposit which is made for the supply of the equipment and not for the reagents. This payment would be regarded as ‘consideration’ and time of supply would be when the equipment is supplied to the customer.
 - The rate of tax for equipments under the PRC model would be 18% and the reagents would be 12%. Further, the services of tolerating an act (penal charges) would be taxable at 18%;
 - The equipments are capitalized in the books of accounts and are used in the course of furtherance of business and the ITC on the same should be eligible subject to condition and limitation prescribed under section 16(3) and section 17 of CGST Act, 2017.

Ruling:

- The Applicant is liable to pay GST on the equipment given to the customers under PRC model however in case of RRC model, the Applicant is not liable to pay GST on equipment;
- The supply of reagents along with the machine rental service in both models is a separate and independent supply;
- The supply of rental service of equipment is chargeable at 18%;
- In both models, the value of supply for reagents shall be the transaction value and for supply of service in nature of toleration of an act (penal charges) the value of supply shall also be the transaction value;



	<ul style="list-style-type: none">• The time of supply for reagents and equipments would be when the same are supplied and for penal charges when the charges are received;• The ITC on equipment is available.
Dhruva Comments / Observations	<ul style="list-style-type: none">• In the present case, while there are two taxable supplies i.e. reagents and machines, the same are supplied to two different persons i.e. distributor and customer. Thus, the transaction fails the test of composite supply.• Interestingly, in the case of Abbott Healthcare Pvt. Ltd.², the Applicant had a similar business model as RRC (<i>supra</i>) wherein the machines were supplied to the laboratories at free of cost and the consideration was charged only for the supply of reagents. The Appellate Authority upheld the order of the Advance Ruling Authority and held that the supply of reagents and the machines are conjoined and interdependent, which constitutes a composite supply. The essential nature of the transaction is to supply the machines and the supply of reagents is only ancillary to the right of use of the machine. Thus, the principal supply is of right to use the machine and accordingly, the rate of tax is 18%.• While the business models in both cases appear similar, the construct of the agreement and modus operandi adopted are different leading to different tax implications.

2. M/s Hewlett Packard Enterprise India Private Limited - Karnataka³

Issues for Consideration	<ul style="list-style-type: none">• Whether the proposed activity of setting up of data centre facilities would qualify as 'works contract' under GST law?• What would be the rate of GST applicable on the said activity?
Discussion & Ruling	<p>Discussion:</p> <ul style="list-style-type: none">• The Applicant, engaged in sale of IT products and providing services, proposes to set-up data centre facilities for the clients, by undertaking end-to-end activities in relation to design and implementation the facilities, preparation of blueprints thereon etc.• The draft scope of work provided for the following various stages:<ul style="list-style-type: none">- <u>Civil, interior and exterior architectural and finishing work</u>, namely, false flooring, painting, gypsum partition, etc.;- <u>Mechanical work</u>, namely, piping for chilled water, chiller and its platform, etc.;- <u>Electrical works</u>, namely UPS with batteries, DG with diesel tanks and exhaust, electrical panels, cables, etc.;- <u>Building management products</u>, namely, CCTV, fire detection centre, etc.;- <u>Obtaining various statutory approvals</u>, namely, occupancy certificate, etc.

² 2019 (23) GSTL 49 (App. AAR – GST)

³ Order no.KAR ADRG 121/2019 dated September 30, 2019 / [2019 (11) TMI 1145]



	<ul style="list-style-type: none">• In certain cases, the clients may want the Applicant to only perform civil, mechanical and electrical works on standalone basis or as a combination of the same. Further, the Applicant would be charging a consolidated fee for undertaking the proposed activity.• The Applicant referred to the following factors for an activity to be determined as works contract as per the definition prescribed under section 2(119) of the CGST Act:<ul style="list-style-type: none">- the contract should be for building, construction, erection, installation, improvements, repair etc.,- there should be transfer of property in goods, and- the activities should be carried out in relation to an immovable property.• Relying upon various judicial decisions and the definition of 'works contract' under GST law, the Applicant contended that the proposed activity should be construed as 'works contract' under GST law, liable to GST at the rate of 18%.• The Authority referred to the definition of 'works contract' under the GST law and observed that:<ul style="list-style-type: none">- the Applicant would undertake extensive activities which not only involve employment of labour force to carry out tasks but also result in transfer of property in goods to the recipients;- the activities undertaken by the Applicant involves civil works, electrical works and mechanical works to the civil structure, that have a sense of permanence and cannot be removed or relocated without substantial damage. Thus, the contracted activities and supply of required materials are in relation to immovable property. <p>Ruling:</p> <ul style="list-style-type: none">• The proposed activities would be covered in the definition of 'works contract' under the GST law, liable to GST at the rate of 18%.
Dhruva Comments / Observation	<ul style="list-style-type: none">• The ruling determines the transaction to be works contract which would also have a bearing on input tax credits.• The instant ruling would have a persuasive value to the activities which are proposed to be undertaken by various industry players.

3. M/s V.N. Mehta & Company v. The Assistant Commissioner and others⁴

Issue for Consideration	Whether recovery proceedings under section 79 of the CGST Act can straightaway be initiated merely on admission of liability by the taxpayer?
Discussion & Judgment	<p>Discussion:</p> <ul style="list-style-type: none">• The Petitioner filed a Writ Petition challenging the proceedings initiated by the authorities for recovery on account of tax, cess and interest from the account maintained by the Petitioner.

⁴ W.P.No.26187 of 2019 - The High Court of Judicature at Madras



- The Petitioner contended that the recovery proceeding had been initiated without assessment or initiating proceedings for making the assessment and section 79 of the CGST Act cannot be invoked for recovery in absence of any arrears. The recovery proceedings were initiated basis statement of the Petitioner that ITC was availed on some fake invoices. This statement was subsequently retracted, and the Petitioner submitted that ITC had been availed on goods received along with invoices.
- The Respondents submitted that the recovery proceedings had been initiated on admission of liability. Revenue contended that mere admission of liability was enough to invoke recovery proceedings and issuance of show cause notice was not necessary in such circumstances. Further, the Respondents resorted to section 83 of CGST Act to protect the interest of the Revenue.
- The Hon'ble High Court observed as under:
 - Barring the proceedings under section 79 of the CGST Act, no other proceedings have been initiated against the Petitioner for determination of the impugned tax liability;
 - The phrase '*any amount payable by a person*' in terms of section 79 of the CGST Act should be construed as a liability arising **only** after determination of such amount in a manner known to law;
 - Even though Petitioner's statements were contradictory, the admission of liability relied upon by the Respondents was no longer available on being retracted;
 - The authorities should determine the tax liability basis procedures laid down under the law rather than initiating proceedings straightaway under section 79 of the CGST Act on the basis of admission which was subsequently retracted;
 - Proceedings under section 83 of the CGST Act must be initiated only in cases where proceedings are pending are pending under section 62, 63, 64, 67, 73 or 74 of the CGST Act.

Judgment:

The Hon'ble High Court ruled in favour of the Petitioner by setting aside the proceedings initiated by the Department.

**Dhruva
Comments /
Observations**

- The Hon'ble High Court laying emphasis on the phrase '*any amount payable by a person*' covered under section 79 of the CGST Act has clarified that recovery proceedings cannot be initiated in absence of determination of liability under the Act.
- This is a welcome judgment and would provide necessary aid when such powers are invoked by the tax department.



Circular under GST:

1. Clarification on job work services⁵

Background

Vide notification no. 20/2019 - Central Tax (Rate) dated September 30, 2019, the Ministry of Finance, Government of India ('MoF) inserted a new entry (id) with effect from October 1, 2019 under heading 9988 of notification no. 11/2017-Central Tax (Rate) dated June 28, 2017 prescribing a reduced rate of 12% GST on job work services. The MoF has issued present circular to clarify doubts raised in respect of this newly inserted entry.

Clarification

A brief synopsis of the circular is outlined below:

- After the insertion of the new entry (id), Notification no. 11/2017-Central Tax (Rate) provides for below two residual entries:

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (%)	Condition
26	Heading 9988 (Manufacturing services on physical inputs (goods) owned by others)	(id) Services by way of job work other than (i), (ia), (ib) and (ic) above;	6	-
		(iv) Manufacturing services on physical inputs (goods) owned by others, other than (i), (ia), (ib), (ic), (id), (ii), (iia) and (iii) above.	9	-

- In the absence of present clarification, the abovementioned existing entry (iv) covering manufacturing services on physical inputs (goods) owned by others with a GST rate of 18% appears to be redundant after the insertion of new entry (id), which prescribes the reduced GST rate of 12% for all services by way of job work.
- The scope of the above two entries (id) and (iv) has been clarified below:
 - Section 2(68) of the CGST Act defines job work as follows:

"Job work means any treatment or processing undertaken by a person on goods belonging to another registered person and the expression 'job worker' shall be construed accordingly."
 - Since entry (id) provides for job work services, it covers services by way of treatment or processing undertaken by a person on goods belonging to another registered person only;
 - Furthermore, entry (iv) specifically excludes the services covered under entry (id) and therefore, covers only such services which are carried out on physical inputs / goods that are owned by persons other than those registered under the CGST Act.

⁵ Circular no. 126/45/2019 - GST dated November 22, 2019



ADDRESSES

Mumbai

11th Floor,
One IndiaBulls Centre, Tower 2B,
841, Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai 400 013
Tel: +91 22 6108 1000 / 1900

Ahmedabad

B3, 3rd Floor, Safal Profitaire,
Near Auda Garden,
Prahlanagar, Corporate Road,
Ahmedabad - 380 015
Tel: +91-79-6134 3434

Bengaluru

Prestige Terraces, 2nd Floor
Union Street, Infantry Road,
Bengaluru 560 001
Tel: +91-80-4660 2500

Delhi / NCR

101 & 102, 1st Floor, Tower 4B
DLF Corporate Park
M G Road, Gurgaon
Haryana - 122 002
Tel: +91-124-668 7000

Pune

305, Pride Gateway, Near D-Mart, Baner,
Pune - 411 045
Tel: +91-20-6730 1000

Kolkata

4th Floor, Unit No 403, Camac Square,
24 Camac Street, Kolkata
West Bengal – 700016
Tel: +91-33-66371000

Singapore

Dhruva Advisors (Singapore) Pte. Ltd.
20 Collyer Quay, #11-05
Singapore 049319
Tel: +65 9105 3645

Dubai

WTS Dhruva Consultants
U-Bora Tower 2, 11th Floor, Office 1101
Business Bay P.O. Box 127165
Dubai, UAE
Tel: + 971 56 900 5849

Bahrain

WTS Dhruva Consultants
2301, Level 23, P.O. Box No. 60570,
Harbour Tower (East), Bahrain Financial Harbour,
Kingdom of Bahrain
Tel: +973 1663 1921

New York

Dhruva Advisors USA, Inc.
340 Madison Avenue, 19th Floor, New York,
New York 10173 USA
Tel: +1-212-220-9494

Silicon Valley, USA

Dhruva Advisors USA, Inc.
5201 Great America Parkway,
Santa Clara, California 95054
Tel: +1 408 930 5063

KEY CONTACTS

Dinesh Kanabar (Mumbai)

Chief Executive Officer
dinesh.kanabar@dhruvaadvisors.com

Ritesh Kanodia (Mumbai)

ritesh.kanodia@dhruvaadvisors.com

Niraj Bagri (Mumbai)

niraj.bagri@dhruvaadvisors.com

Ranjeet Mahtani (Mumbai)

ranjeet.mahtani@dhruvaadvisors.com

Amit Bhagat (Delhi / NCR)

amit.bhagat@dhruvaadvisors.com



Dhruva Advisors has been named **“India Tax Firm of the Year”** for 2017, 2018 and 2019 by International Tax Review

Dhruva Advisors has been named **“India Disputes and Litigation Firm of the Year 2018”** by International Tax Review

Dhruva Advisors ranked as a **Tier 1 Firm** in India in Tax and Transfer Pricing by International Tax Review.

Disclaimer:

This information contained herein is in summary form and is therefore intended for general guidance only. This publication is not intended to address the circumstances of any particular individual or entity. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. This publication is not a substitute for detailed research and opinion. Before acting on any matters contained herein, reference should be made to subject matter experts and professional judgment needs to be exercised. Dhruva Advisors LLP cannot accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication