



## Dimensions – 56<sup>th</sup> Edition

### Rulings under GST era

#### ***JSW Energy Limited – Maharashtra Appellate Authority***<sup>1</sup>

##### Issue

Whether supply of coal for generation of electricity would be treated as 'job work' under GST?

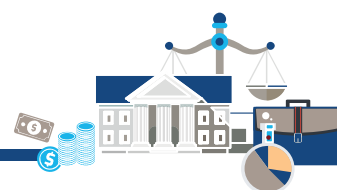
##### Discussion

- JSW Steel Limited ('JSL') supplied coal to the Appellant for generation of electricity. The Appellant would use its own input such as air and water to generate electricity. The Appellant would recover 'job work' charges for such conversion.
- The Appellate Authority vide its order<sup>2</sup> had rejected the claim of the Appellant that the transaction would not qualify as job work under GST, and held as follows:
  - a) Coal was not an input for manufacture of electricity and thereafter steel as per the SION norms under the FTP;
  - b) Coal consumed in the process would be irretrievable after conclusion of job work and therefore, the condition prescribed in section

- a) 143 of the CGST Act to get back the same inputs would not be fulfilled;
  - c) There is no guarantee of return of inputs in the form of electricity since the Appellant had to depend upon the permissions of regulator, Maharashtra State Electricity Distribution Co. Ltd (MSDECL);
  - d) Since air and water belonging to own account, which is of considerable proportion, as compared to coal supplied by JSL, is being used in the job work process would not remain a job work process
- The Appellant filed writ petition before the High Court to contend that the grounds (a) and (b) mentioned above were never raised before the Advance Ruling Authority and they were not put to notice in respect of the same. The Hon'ble High Court directed the Appellate Authority to reconsider the appeal based on the new grounds raised and the submissions made in this behalf.
  - The Appellant contended as follows:
    - As per the Memorandum of Association of JSL, generation of power is one of their business activities and accordingly, the coal used for

<sup>1</sup> TS-133-AAAR-2020-NT

<sup>2</sup> Order No. MAH/AAAR/SS-RJ/01/2018-19 dated July 02, 2018



such business activity qualifies as input. Reliance was placed upon a GST circular<sup>3</sup> wherein, it was clarified that coal is an input used in the captive generation of aluminium which is further exported under bond/LUT and accordingly, refund can be claimed of the compensation cess paid on coal;

- Further, reliance was also placed upon the Hon'ble Supreme Court judgment in the case of *Maruti Suzuki Ltd. v. CCE*.<sup>4</sup> wherein it was held that inputs used in the generation of power which is in turn used for manufacture of final products would be considered as input for manufacturing activity;
- A transaction would be regarded as job work even if the identity of the inputs is lost. Reliance was placed upon the Bombay High Court judgment in the case of *CCE, Nagpur v. Indorama Textiles Ltd.*<sup>5</sup> which was upheld by the Supreme Court<sup>6</sup>;
- The cost of air and water used by the Appellant does not exceed 0.5% of the cost of coal and other inputs. Accordingly, the addition of minor inputs by job worker would not alter the nature of the transaction. Reliance was placed upon the Supreme Court judgment in case of *Prestige Engineering (India) Ltd. v. Collector of Central Excise, Meerut*.<sup>7</sup>
- The grid of MSEDCL is only a medium for transfer of power. The involvement of a third-party regulator would not have any impact on the transaction. Reliance was placed upon the Bombay High Court judgment in the case of *CCE, v. Endurance Technologies Pvt. Ltd.*<sup>8</sup>
- The Appellate Authority after considering all the submissions made agreed with the contentions raised by the Appellant.

## Ruling

The Appellate Authority repealed its earlier order dated July 02, 2018 and held that the supply of coal and other

inputs to the Applicant for generation of electricity would be construed as job work transaction.

## **Dhruva Comments**

The ruling critically examines the aspect of job work on the basis of several past precedents and concludes that the test of receiving back the inputs in terms of Section 143 (1)(a) of CGST Act stands fulfilled. It is a welcome ruling and shall be good reference in decoding complex job work transactions.

## **Automotive Component Technology India Private Limited – Tamil Nadu<sup>9</sup>**

### Issue

- Whether GST would be applicable on transfer of title in moulds from Applicant to Indian buyer without physical importation of moulds into India?
- If yes, whether the Indian buyer would be eligible to take input tax credit (ITC) of the GST paid to the Applicant for the said purchase?

### Discussion

- The Applicant is engaged in supply of automotive components (parts and moulds). It proposes to undertake a transaction whereby it would take order from Indian buyers and in turn place the order for manufacturing on a foreign supplier.
- Out of the parts and moulds manufactured, only parts are physically imported into India and not the moulds.
- There is only a transfer of title in moulds from foreign supplier to the Applicant and from Applicant to the Indian buyer. The physical possession of moulds is retained by the foreign supplier and is disposed off as waste by the foreign supplier.
- Also, no consideration is received by the Applicant or the Indian buyer for disposal of the moulds as no value is attributable to the said waste moulds.

<sup>3</sup> Circular no. 79/53/2018 dated December 31, 2018

<sup>4</sup> 2009 (240) ELT 641 (SC)

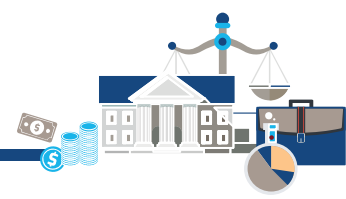
<sup>5</sup> 2010 (260) ELT 382 (Bom HC)

<sup>6</sup> 2010 (260) ELT A83 (SC)

<sup>7</sup> 1994 (73) ELT 497 (SC)

<sup>8</sup> 2015-TIOL-1371-HC

<sup>9</sup> Order no. 05/ARA/2020 dated January 31, 2020



- Separate invoices are raised for parts and moulds by the foreign supplier on the Applicant and thereafter, by the Applicant on the Indian buyer.
- The Applicant approached the Authority to contend that no GST is payable on transfer of title in mould to Indian buyer on the following grounds:
  - As per section 10(1)(c) of the IGST Act, the place of supply would be location of goods at the time of delivery i.e. outside India. Hence, the transaction should be treated as an inter-state supply;
  - IGST Act is applicable only within the territory of India and since the transfer of title of moulds is taking place outside the territory of India, GST is not applicable on the transfer;
  - Transfer of title in moulds does not constitute import of goods as there is no physical movement of goods (moulds) into India;
  - If the GST is leviable then the Indian buyer should be eligible to claim the ITC.
- The Authority observed as follows:
  - As per section 7 of CGST Act read with clause 1(a) of Schedule II of the CGST Act, transfer of title in goods is a supply of goods.
  - In the present case, there is a transfer of title in mould for a consideration and the said supply is in the course of business.

### Ruling

- GST is applicable on transfer of title in moulds from the Applicant to the Indian buyer.
- The question of eligibility of ITC to the Indian buyer is not within the Authority's ambit as per section 97(2)(d) of the CGST Act.

### **Dhruva Comments**

The instant ruling confirms the applicability of GST without determining the place of supply. Considering the peculiar facts, it would be relevant to examine provisions of Section 7 read with Section 10 of IGST Act.

## **Swapna Printing Works Private Limited – West Bengal<sup>10</sup>**

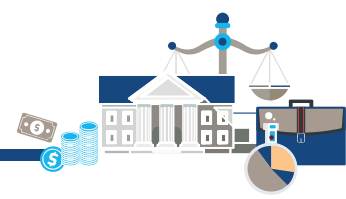
### Issue

Whether the activity of procuring orders from a foreign buyer to printing texts, basis the content received from foreign supplier and thereafter, delivery of printed material to various places in India would tantamount to export of service since the consideration is received in convertible foreign exchange?

### Discussion

- The Applicant was awarded a contract by a foreign entity for printing booklets in various Indian languages. The Applicant uses its own inputs like paper, ink etc and prints the content and binds it into booklets.
- These books are then delivered to places in India and consideration is received in foreign currency from foreign entity.
- The Applicant approached the Authority to contend that the supply amounts to export of service since:
  - As per section 2(93)(a) of the CGST Act, recipient means the person liable to pay consideration, which in the present case is foreign entity;
  - Only in a case where there is no consideration, then the recipient is the person to whom service is rendered;
  - As per section 13(2) of the IGST Act, the place of supply (POS) of printing service is outside India since the recipient (foreign company) is outside India. Further, section 13(3)(a) of IGST Act, is not applicable since the foreign entity has not provided any goods for printing;
  - The recipient is outside India and consideration is received in foreign currency thus, the activity qualifies as an export of service.
- The Authority observed as under:
  - The predominant element of supply is supply of printing service and the goods supplied (books) have no use other than display of printed material. Reliance was placed upon the GST

<sup>10</sup> Order no. 45/WBAAR/2019-20 dated March 06, 2020



circular<sup>11</sup> clarifying the taxability of printing contracts;

- Being a composite supply, printing service is inseparable from supply of printed booklets. Therefore, the place where the books are delivered will be the POS of printing service;
- As per the bank letter, the foreign entity has paid the consideration for supply of booklets to different locations in India;
- The definition of recipient is exhaustive. It is impossible to make a separation between the person to whom supply is made and one liable to pay consideration. The person who receives supply in India should be considered as recipient, being inseparable from the foreign entity;
- POS being in India the service does not qualify as export in terms of section 2(6) of IGST Act.

### Ruling

The transaction is a composite supply of printing service and liable to GST.

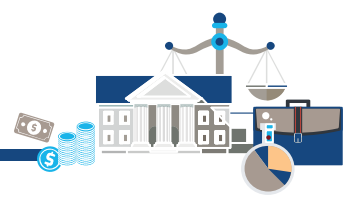
### **Dhruva Comments**

The term 'recipient' cannot be interpreted to mean the beneficiary of the service and thereby, the interpretation adopted by the Authority could likely be challenged. It is also not very clear whether the conclusion is based upon delivery of 'goods' or provision of service to come to a conclusion that the place of supply is the beneficiary in India.

In the case of *Ansys Software Pvt Ltd.*<sup>12</sup>, the Applicant had provided post sales technical service to the Indian customers of its Foreign Parent Company. The consideration was paid by the foreign company for such service. The Authority had held that the foreign company would be regarded as a recipient of service in terms of section 2(93) of the CGST Act, as the consideration is received from the parent company.

<sup>11</sup> Circular no. 11/11/2017-GST dated October 20, 2017

<sup>12</sup> 2019 (30) GSTL 563 (AAR-GST)





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