



Dimensions – 61st Edition

Judgments under GST era

*The Union of India & Ors. v. M/s LC Infra Projects Pvt. Ltd.*¹

Issue

Whether the demand for interest on belated payment of tax and attachment of bank account without issuance of show cause notice (SCN) is sustainable under the GST law?

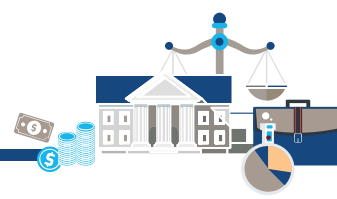
Discussion

- The Petitioner issued a notice of demand for interest under section 50(1) of the CGST Act, 2017 on belated payment of tax and thereafter attached the bank account of the Respondent for its recovery.
- The matter was considered by a Single member bench of the Hon'ble High court.
- It was noted that notice under section 73 of the CGST Act, 2017 was not issued before quantification of interest and attachment of bank account. The Learned Single Judge quashed the demand notice and action of bank account attachment on grounds of determination of interest without issuance of SCN which resulted in breach

of principle of natural justice. Aggrieved by the said order, the Petitioners filed a Writ Appeal before the Hon'ble High Court.

- The Hon'ble High Court on perusal of section 50 and 73 of the CGST Act, 2017 observed as follows:
 - Under section 50(1) of CGST Act, 2017, interest can be demanded on account of failure to pay tax, either whole or any part thereof, within the prescribed timelines;
 - Section 73 of CGST Act, 2017 is applicable only in cases involving short or non-payment of tax. Further, SCN can be issued seeking response from the taxpayer to justify why he should not pay the amount specified in the notice along with interest thereon;
 - Assuming section 73 was not applicable in the instant case, principles of natural justice ought to be complied with before making a demand for interest;
 - The Bench agreed with the view taken by the Learned Single Judge that issuance of SCN is sine qua non to proceed with the recovery of interest.

¹ 2020-VIL-170-KAR – The Hon'ble High Court of Karnataka



Judgment

The Hon'ble High Court set aside the demand for interest and bank account attachment order.

Dhruva Comments

The above judgment is in line with the decision pronounced by the Hon'ble High Court of Jharkhand in case of *M/s Godavari Commodities Ltd v. The Union of India & Ors*².

Adherence to principles of natural justice is the clear directive from the Court and would certainly guide the department when such powers are summarily invoked.

Rulings under GST era

M/s Karnataka State Electronics Development Corporation Limited – Karnataka³

Issues

- Whether street lighting activity under an Energy Saving Contract (ESCO contract) project tantamount to supply of goods or services, or a composite supply of goods and services?
- What would be the applicable rate of tax and time of supply of such transaction?

Discussion

- Applicant has been awarded ESCO contract by the Thane Municipal Corporation (TMC) under which the Applicant is required to remove the existing streetlights, install new LED lights and smart electric panels for automation, metering and undertake operation and maintenance of the same. The new streetlights would be under the ownership of the applicant till the end of the contract i.e. seven years.
- At the end of the contract, the LED lights and system installed are to be surrendered to TMC at no cost.
- Applicant would receive consideration in terms of 'Energy Savings Fee', which is equal to 90% of the

actual energy saved and multiplied by the standard electricity tariff.

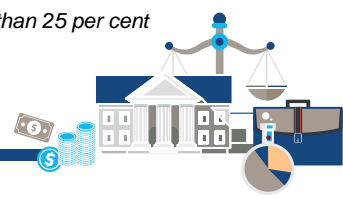
- The invoices would be raised on a monthly basis, but the payment would be released after 30 days from the submission of the energy audit report which is also verified by a third-party energy auditor.
- The Applicant approached the Authority in respect of the above-mentioned issues and contended as follows:
 - The activity amounts to pure supply of service since -
 - dominant object of contract is street lighting and not supply of LED lights;
 - no separate consideration is received for supply of LED lights and the control and access of system is with the Applicant;
 - transaction is not composite supply;
 - LED lights are capitalised as fixed assets in the books of accounts, and not as saleable inventory;
 - activity of street lighting is a function of municipality which falls under Article 243W of the Constitution of India.
 - This activity being a pure service would be covered under sl. no. 3 of the exemption notification no. 12/2017-Central Tax (Rate) dated June 28, 2017⁴. Further, even if the supply is regarded as composite supply, it would be covered under sl. no. 3A of the said exemption notification⁵ (*supra*);
 - If the activity is regarded as a 'supply of service', then, it would be a continuous supply of service as per section 2(33) of the CGST Act, 2017. Further, the time of supply would be 30 working days from the submission of approved energy saving report;
 - Further, if the activity is regarded as a 'supply of goods', then, the time of supply would be the end of tenure of contract as the goods (LED

² 2019-VIL-596-JHR – The Hon'ble High Court of Jharkhand.

³ Order no. KAR ADRG 07/2020 dated March 10, 2020

⁴ Sr. no. 3 reads as *Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided toentrusted to a Municipality under article 243W of Constitution.*

⁵ Sr. no. 3A reads as *Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent of the value of the said composite supply provided toentrusted to a Municipality under article 243W of Constitution.*



lights) are handed over only at the end of the contract.

- The Authority after detailed scrutiny of the terms of the contract, observed as follows:
 - The entire contract depends on supply of LED lights without which the other aspects of the contract cannot be fulfilled. The contract involves more than two taxable supplies such as supply of LED lights, fixtures and other equipment, and its installation, commissioning, operation and maintenance etc.;
 - Further, the supplies of goods and services are in conjunction with each other in the ordinary course of business and hence, the impugned transaction satisfies the criteria of composite supply as defined under section 2(30) of the CGST Act, 2017;
 - Principal supply is supply of goods (i.e. LED lights) as without installation, there can be no day to day management, operation and maintenance of LED lights;
 - LED lights fall under HSN 9405 and are taxable at the rate of 12%;
 - The Applicant will not be eligible for the benefit of exemption under sr. no. 3 or 3A of exemption notification (*supra*), since the present supply is not of pure service and the principal supply is of goods;
 - As per para 1(c) of Schedule II of the CGST Act, 2017⁶, the title in goods i.e. LED lights, fixtures, feeder panels etc. would pass to TMC at the end of contract period. The consideration received by the Applicant throughout the contract period i.e. seven years, on a monthly basis is attributable to the supply of LED lights also. Therefore, in terms of section 12(2)(a) of the CGST Act, 2017, the time of supply is the date of issue of invoice by the Applicant.

Ruling

- The street lighting activity is a composite supply, where the principal supply is that of goods (LED lights).
- The rate of tax applicable is 12%.
- No exemption benefit is available.
- The time of supply is the date of issue of invoice and the consideration is equal to the value of invoice.

Dhruva Comments:

Composite supply transactions are vexed question of law and factual circumstance. It is vital to examine the nature of activities being carried out and the terms of the contract so as to assess GST implication thereon. A similar ruling has also been given in the case of *Ujjwal Pune Ltd.*⁷

Circular under GST era

Clarification on challenges faced in implementation of GST provisions⁸

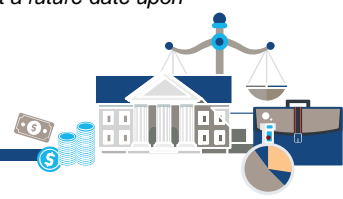
On account of certain challenges being faced by taxpayers to meet the compliance requirements under various provisions of the CGST Act, 2017, the CBIC has now provided clarifications which is summarized below:

- Issue of tax invoice with GST for an advance received, for a service contract but the contract is cancelled subsequently, or goods supplied, and tax invoice issued, but the goods are returned by the recipient
 - The supplier is required to issue a credit note in terms of section 34 of CGST Act, 2017 and disclose the same in the return for the month during which the credit note is issued and the tax liability should be adjusted accordingly;
 - However, if there is no output liability to adjust the credit note then a refund claim can be filed by filing FORM RFD-01 under the category of “Refund of excess payment of tax”.

⁶ Para 1(c) reads as ‘any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods’

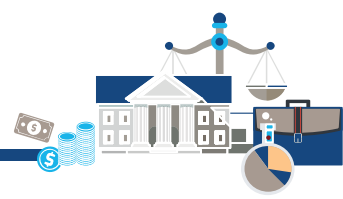
⁷ 2019 (24) GSTL 309 (AAR-GST)

⁸ Circular no. 137/07/2020-GST dated April 13, 2020



- Issue of receipt voucher and GST is discharged on the advance received for a service contract, but the contract is cancelled subsequently
 - Refund voucher should be issued in terms of section 31(1)(e) of the CGST Act, 2017 read with rule 51 of CGST Rules, 2017;
 - Supplier can file refund claim of such GST paid by filing FORM RFD-01 under the category of “Refund of excess payment of tax”.
- LUT has expired on March 31, 2020
 - Time limit for filing of the LUT for FY 2020-21 is extended to June 30, 2020 vide the extension notification⁹;
 - Taxpayer can continue to make the supply without payment of tax under LUT by quoting the reference number of LUT of FY 2019-20, provided the FORM RFD-11 for FY 2020-21 is furnished on or before June 30, 2020.
- Due date for deposit of TDS under section 51 of CGST Act, 2017
 - Due date for furnishing of return in FORM GSTR-7 along with the deposit of TDS where due date falls within March 20, 2020 to June 29, 2020 has been extended to June 30, 2020 vide the extension notification (*supra*).
- Due date for filing of refund claim under section 54(1) of CGST Act, 2017
 - The due date for filing of a refund claim which fall within March 20, 2020 and June 29, 2020 has been extended to June 30, 2020 vide the extension notification (*supra*).

⁹ Notification no. 35/2020-Central Tax dated April 3, 2020





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