



Dimensions – 82nd Edition

Rulings under GST era

M/s Global Vectra Helicorp Ltd. – Authority for Advance Ruling, Gujarat¹

Issue for Consideration

Whether reimbursement of the cost of aviation turbine fuel (“ATF”) received from the customer at actual cost, should be included in the value charged for charter hire services?

Discussion

- The Applicant is engaged in providing aircrafts on charter hire basis. The consideration consists of a fixed monthly charge and a charge based on the flying hourly charges (“rental charges”). The Applicant is discharging GST on the entire consideration.
- In certain cases, as per the terms of the contract entered into with the customer, the Applicant procures ATF, required for flying the aircraft, on behalf of its customers and subsequently, the cost of ATF is reimbursed by the customer to the Applicant at actual cost (without any mark-up). The

Applicant raises debit note on its customers for recovering the cost of ATF.

- The Applicant approached the Authority for Advance Ruling (“the Authority”) to contend that GST is not leviable on the debit notes raised on the customer for recovery of the cost of ATF on the basis of the following grounds:
 - As per the contract, the customer is responsible for procuring ATF and only at locations where the customer is unable to procure ATF, it is procured by the Applicant and reimbursed at actual cost and it does not form part of the flying hour charges. The debit notes are reimbursement and not a ‘consideration’ for charter hire services as per section 2(31) of the CGST Act, 2017.
 - The arrangement of providing ATF by the Applicant was only for administrative purposes and the debit notes raised does not have any nexus with the charter hire services.
 - As per the contract, the rental charges are the only consideration paid or payable to the Applicant for the charter hire services and

¹ 2020-VIL-262-AAR



should be regarded as the value of supply as per section 15 of the CGST Act, 2017.

- In the books of account, the ATF reimbursements are not treated as service income and the purchase of ATF is not recorded as service expenses but rather treated as receivable from customers and, on recovery, adjusted against receivables. Such practice clearly establishes that ATF cost reimbursed is not a consideration for charter hire services.
- As per section 67 of the Finance Act, 1994, the value of supply is the gross amount charged for providing the taxable service. The same principle can also be applied for section 15 of the CGST Act, 2017. In this regard, reliance was placed on the judgment of the Hon'ble Supreme Court issued under the Service Tax regime in the case of *Union of India v. Intercontinental Consultants and Technocrats Pvt. Ltd.*² wherein the Court held that value of service cannot be anything more or less than the consideration paid as quid pro quo for rendering such service.
- Procurement of ATF cannot be regarded as 'incidental' to the provision of main supply of charter hire service so as to be included in the value of main supply as per section 15(2)(c)³ of the CGST Act, 2017, since the procurement of ATF is the responsibility of the customer and is procured by the Applicant, on his behalf, to ensure uninterrupted provision of charter hire services.
- Further, the Applicant is acting as a pure agent of the customer as the ATF cost is being recovered at actuals and all other conditions as per rule 33 of the CGST Rules, 2017, is being fulfilled. Hence, the value of the debit notes raised should not be included in the value charter hire services.

- The Authority observed as follows:
 - The term 'consideration' as per section 2(31) of the CGST Act, 2017, includes any payment made or to be made by the recipient in respect of the supply of goods or services. In the present case, the payment made or to be made by the customer includes payment towards services rendered by the Applicant and also the amount towards the ATF filled in the aircraft by the Applicant. Hence, reimbursement of ATF will form part of 'consideration' and would be liable to GST.
 - As per section 15(1) of the CGST Act, 2017, the Applicant and the customer being unrelated parties, the value of supply would be the price actually paid or payable i.e. the rental charges and the amount of ATF filled in the aircraft.
 - The judgment of Intercontinental Consultants and Technocrats Pvt. Ltd. (*supra*) pertains to the pre-GST regime, prior to the amendments made on May 14, 2015. However, under the GST law, the term 'consideration' has been clearly defined. Also, section 15 of the CGST Act, 2017, specifies the things to be included in the value of supply. Thus, all the aspects of valuation have been covered in the CGST Act, 2017 itself.
 - As per section 15(2)(c) of the CGST Act, 2017, the value of supply would include any amount charged for anything done by supplier at the time of or before the supply. In the present case, the Applicant is filling the ATF in the aircraft before supply of charter hire service to the customer and the amount charged from the customer is received by the Applicant as consideration. Hence, the ATF amount received as reimbursement from customers would fall within section 15(2)(c) and would form part of the value of supply.

² 2018 (10) G.S.T.L. 401 (S.C.)

³ Section 15(2)(c) reads as incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;



- The Applicant is not acting as a pure agent in respect of reimbursements received from the customer, for procurement of ATF, as it is not fulfilling the conditions of pure agent prescribed under rule 33 of the CGST Rules, 2017 -
 - The Applicant has not produced any documentary evidence to prove that the reimbursement received from the customer is at actual cost and without any mark up and the Applicant has not separately indicated on the invoice the amount of ATF paid by him on behalf of the customer. The condition prescribed is to disclose the amount on the invoice and not by raising debit notes.
 - The ATF procured by the Applicant is filled in the aircraft which is then used to provide charter hire services. Therefore, the ATF procured is not in addition to the services the Applicant supplies on his own account but a part of the service only as the ATF filled in the aircraft would enable it to fly and thereby render the charter hire service to the customer. Further, it also cannot be said that the Applicant neither intends to hold nor holds any title to the goods (i.e. ATF) so procured or supplied as pure agent of the recipient of supply (i.e. customer).
 - The ATF procured by the Applicant is used for his own interest i.e. to enable him to provide charter hire service.

Ruling

The amount recovered by the Applicant from the customers in respect of the ATF procured is to be included in the value of services provided by the Applicant and liable to GST.

Dhruva Comments:

The 'value' of a supply between unrelated parties shall be the 'transaction value' agreed between the parties

under the contract. The Supreme Court judgments in the case of *Commissioner of Service Tax v. Bhayana Builders Pvt Ltd.*⁴ and *Intercontinental Consultants (supra)* would be of much significance in determining the 'transaction value' and interpreting the term 'consideration' which is agreed between the parties for rendition of supply of service.

Equally, it would be imperative for assesseees to produce adequate documentary evidence to substantiate their claim for reimbursement.

M/s Karma Buildcon – Authority for Advance Ruling, Gujarat⁵

Issue for Consideration

Can actual cost of land be deducted for computing the taxable value of supply involving sale of residential / commercial property with undivided rights of land?

Discussion

- The Applicant purchases land and develops residential / commercial property on such land as a developer and consequently enters into an agreement with prospective buyers for transfer of such property inclusive of land or undivided share of land.
- The Applicant approached the Authority for Advance Ruling ("the Authority") to contend that it should be entitled to deduct the actual cost of land for the purpose of arriving at the taxable value of supply on the following grounds:
 - The cost of land, being transferred on an inclusive of land or undivided share of land basis, is distinctly determinable and is more than the deduction of a one third portion of the value of consideration as prescribed under the notification nos.11/2017-Central Tax (Rate) and 8/2017-Integrated Tax (Rate) both dated June 28, 2017.

⁴ (2018) 3 SCC 782

⁵ 2020-VIL-264-AAR



- Rule 18(A)(A) of the erstwhile Gujarat Value Added Tax Rules, 2006 (“GVAT Rules”) provides that when the amount of labour involved in the execution of a works contract is not ascertainable, a lumpsum deduction shall be admissible. The intent behind allowing deduction of value of land in construction is that GST is not applicable on the sale of immovable property. Such deemed value of deduction can be applied only when the value of land is not ascertainable. If the same is ascertainable, then deemed deduction should not apply.
- The value of land cannot be the same at all places and varies from place to place and even at different locations in the same city / town. Therefore, a uniform deduction of 33% for land value as prescribed by the notification is contrary to the ground reality.
- The Authority observed and held as follows:
 - The Applicant’s contention to allow the deduction of actual value of land is not legal. Paragraph 2 of notification no.11/2017-Central Tax (Rate) dated June 28, 2017, prescribes that the value of land or undivided share of land shall be deemed to be one third of the total amount charged for such supply.
 - Reliance on rule 18(A)(A) of the GVAT Rules is not warranted as the Value Added Tax Act is no more in existence and does not have any legal value in determination of GST liability since the value of supply is to be arrived at in terms of the provisions of the GST Act.

Ruling

The Applicant is required to deduct one third value of land or undivided share from the total value charged for the subject supply in terms of the notification no.11/2017-Central Tax (Rate) dated June 28, 2017.

Dhruva Comments:

The FAQs⁶ issued on real estate sector clarified that actual value of land involved in sale of unit cannot be deducted, as the valuation mechanism prescribed in paragraph 2 of notification no.11/2017-Central Tax (Rate) dated June 28, 2017 clearly prescribes one third abatement towards the value of land. Further, the Authority for Advance Ruling in different States⁷ have also pronounced similar rulings.

It would be interesting to evaluate whether the vires of the notification can be challenged prescribing deemed deduction even for the cases where actual value of land is ascertainable.

GSTN update

Delinking of credit note / debit note from invoice⁸

- Presently, while reporting the credit / debit note in GSTR-1 and GSTR-6, it was mandatory to report the corresponding original invoice number.
- The GST portal has now delinked the reporting of the credit / debit note from the invoice number. The facility now provided on the portal is as follows:
 - A single credit / debit note can be reported in GSTR-1 / GSTR-6 for multiple invoices;
 - The note supply type should be selected as Regular, SEZ, Deemed Export, Export, etc. to identify the table to which the note pertains;
 - Place of Supply should be mentioned against each note to identify the supply type (inter-state or intra-state);
 - Notes can be declared without taxable value but with tax;
 - Similar changes have been made for reporting amendments to such credit / debit notes.

⁶ F.No.354/32/2019-TRU dated May 7, 2019

⁷ M/s. Kara Property Ventures LLP [Ruling No.01/AAR/2019 dated January 21, 2019]; Shree Sanjeev Sharma [Ruling No.03/DAAR/2018 dated March 28, 2018]

⁸ Dated September 17, 2020



- The facility has also been made available in the refund module.

Dhruva Comments:

The delinking of credit / debit notes eases compliance efforts and was much sought for by the industry. Corresponding changes in the refund module is also a welcome one and would quicken the refund verification process.





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