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Indirect Tax Alert

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Rulings under GST era

Vertiv Energy Pvt. Ltd. – Appellate Authority for Advance Ruling, Maharashtra[1]

Issue for Consideration

Can the supply of goods and that of services made by different branches (distinct persons) of the same legal entity under a single contract be regarded as a composite supply?

Discussion

- The Appellant is engaged in the manufacture of various types of UPS systems and has its corporate office in Mumbai and factory in Ambernath, Maharashtra. The Appellant is registered under GST in the state of Maharashtra and New Delhi.
- The Appellant had entered into a contract with Delhi Metro Railway Corporation ("DMRC") for supply, installation, testing and commissioning of UPS systems in January 2014.
- As per the tender documents and the contract, separate consideration would be paid for the supply of goods and for services. The UPS systems are manufactured in Ambernath and supplied to DMRC in New Delhi. The service portion i.e. erection, installation and commissioning is undertaken by the New Delhi branch of the Appellant. The invoices for supply of goods were raised by the Maharashtra location and for services by the New Delhi location.
- During the Pre-GST regime, the Appellant was paying central excise duty and VAT on the sale of UPS systems and for the services it was being treated as a 'works contract service' and accordingly service tax was discharged.
- The Appellant had approached the Authority for Advance Ruling ("the Authority") to determine whether the contract entered into with DMRC could be regarded as a works contract as per section 2(119) of the CGST Act, 2017. The Authority vide its order[2] held as follows:
  - The supply does not qualify as a works contract;
  - The supplies made to DMRC would be treated as a single contract between DMRC and the Mumbai office;

[1] 2020 (10) TMI 47
[2] 2019 (10) TMI 481

- The supplies would be a composite supply, whereunder the principal supply would be of supply of UPS systems.

- The Appellant agreed with the ruling that the supply was not a works contract but disagreed with the decision treating the supply as a composite supply. Accordingly, it filed an appeal before the Appellate Authority for Advance Ruling ("the Appellate Authority") and contended as follows:

Ruling travels beyond scope and jurisdiction

- The Authority has travelled beyond its scope and jurisdiction since the Appellant had not raised the issue of whether the supplies made to DMRC would amount to composite supply or not. Accordingly, the ruling was liable to be set aside to such an extent.

Supplies cannot be regarded as composite supply

- There are two separate supplies being made under the contract i.e. supply of UPS systems and their erection, installation and commissioning.
- As per section 2(30) of the CGST Act, 2017 in a composite supply, the supplies should be naturally bundled and supplied in conjunction with each other. The supply of goods and services in the present case are not made in conjunction with each other since they are independent in nature. The contract states that separate consideration is payable for goods and services and separate invoices are raised for goods and services.
- The customer has the **option** to avail either of the supplies independently i.e. a UPS system can be bought from the Appellant and services of installation and commissioning from someone else, and vice versa.
- The services of erection, commissioning and installation is a significant portion of the contract and cannot be regarded as merely ancillary to the supply of the UPS system. Hence, the supply of the UPS system cannot be regarded as a principal supply.
- Reliance is also placed upon circular no. 47/21/2018-GST dated June 8, 2018, which clarified that in the case of servicing of cars that involved both supply of goods and services, and if the values are shown separately, then goods and services would be taxed at the rates applicable to them respectively. Accordingly, in the present case also, the supply of UPS system and the supply of services should be treated as individual supplies.

Supplies are made by two distinct persons and cannot be regarded as a composite supply

- Maharashtra and New Delhi locations, being a part of the same legal entity, would be regarded as distinct persons as per section 25(4) of the CGST Act, 2017
- As per section 2(71)(c)[3] of the CGST Act, 2017, the location of supplier for the service portion in the present case would be the Delhi location as it is directly concerned with the supply of erection, installation and commissioning of the UPS system.
- In order to qualify as a composite supply, it is essential that all the supplies under a contract are made by a single registered person. In the present case, the supplies are being made by two distinct persons i.e. Maharashtra and New Delhi and accordingly, the supplies cannot qualify as a 'composite supply'.
- In a normal course of a business transaction, it is natural for a buyer to enter into a single contract with the supplier for multiple services, at an entity level. The Maharashtra and New Delhi locations being distinct persons under GST, DMRC could not have entered into separate contracts with these locations.
- Merely because there is one contract for two different supplies, the supply made under the

[3] As per section 2(71)(c) location of supplier means where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provisions of the supply;

contract cannot partake the character of composite supply.

- Accordingly, the supply of goods and services under the contract cannot be regarded as composite supply.

- On the basis of the facts of the case, the Appellate Authority held that the moot question was whether the present transaction qualifies as a composite supply or not. Accordingly, it observed as follows:
  - In the present case, there are two taxable persons i.e. Maharashtra unit (supplying goods) and New Delhi unit (supplying services) which is also evident from the separate invoices being raised by each unit for their respective supplies. The presence of two taxable persons would preclude the supplies from being regarded as composite supply, since the essential condition for composite supply is that there should be a single taxable person who is undertaking all the supplies.
  - The supply of services cannot be regarded as in conjunction with the supply of UPS systems since the Delhi unit begins the supply only after the ownership / title of the goods is transferred from the Appellant to DMRC.
  - Both the supplies i.e. supplies of UPS and the various services, are equally important and indispensable and in the absence of either of these two, the objective and purpose of the subject agreement cannot be achieved. Thus, the key requirement of composite supply is not satisfied.

Order

The supplies of goods and services in the present case cannot be regarded as a composite supply.

Dhruva Comments:

A contract for supplies of goods and services though entered into at an entity level, it is relevant to identify the locations executing such supply, where supplies are effected from multiple locations. The essential test for a transaction to be regarded as a composite supply where such supplies are made by a single taxable person. This may require re-evaluation of tax positions where a single contract is executed by more than one branch, which are separately registered.

Kolhapur Foundry and Engineering Cluster - Authority for Advance Ruling, Maharashtra[4]

Issue for Consideration

Whether processing of waste sand to make it re-usable is supply of goods or job work service? Also, whether the 'nil' value of waste sand would have any impact on valuation?

Discussion

- The Applicant is registered under section 25 of the Companies Act, 1956, formed by five industrial associations on a No Profit No Loss basis. The Applicant was formed to cater to the foundry industry as a sand reclamation plant in Kolhapur District and also to benefit the environment by avoiding pollution in the region.

- This project is sanctioned by Government under Recast Industrial Infrastructure Up-gradation Scheme ("IIUS") and is funded as under:

Funding Source	Percentage
IIUS Grant: Central Government	73%
State Government Contribution	10%
Industry contribution	17%

- Since, waste sand of foundries cannot be used nor be dumped in the open due to environmental reasons, the Applicant receives such waste sand, processes the same and reclaims the sand. The procedure, in brief, is as under:
  - In the absence of any commercial value, the waste sand is received by the Applicant at zero

[4] 2020-VIL-280-AAR

value vide challan under rule 55 of the CGST Rules, 2017.

- The waste sand is stored at a common pool storage location, whereby foundry-wise segregation is not possible.
- The reclaimed sand is up to 80% of the input i.e. waste sand, and the balance 20% is lost during the process.
- Due to heat and other processes, the qualities of the sand are changed and become better for foundry use, compared to the freshly mined sand.

- The Applicant submitted that the process should not amount to job work service, and instead be treated as supply of goods in view of the following contentions:
  - There is no direct co-relation between the sand supplied by the foundries and later, received by them after processing. Hence, it is against the basic principle of job work.
  - In a Supreme Court decision[5], it was observed that where a principal sends minor inputs to a job worker and all other inputs/goods utilised in the final products belong to the job worker, then the said process cannot be considered as a job work.
  - Since, the value of waste sand received by the Applicant is zero, the value of reclaimed sand only consists of plant and machinery, operation cost and other overheads.
- The Applicant further submitted that the supply of reclaimed sand should be taxable at 5% under HSN 250510[6].
- While agreeing that the said process cannot be treated as a job work service, the jurisdictional officer contended that the same shall be taxable at 18% under HSN 3824[7].
- The Appellate Authority for Advance Ruling ("the Authority") observed that the input received is waste material, which is dumped at the Applicant's location. The intent of foundries is not to send the waste sand for treatment. The waste sand becomes raw material for the Applicant, which is made into usable sand after processing and sold to the foundries. Such sand is also not sold to the foundries in a fixed ratio to the waste received or in co-relation with the waste sand received. No processing charges are received by the Applicant. The Applicant sells the reclaimed sand to foundries at Rs.2.5 per kg, whereas the freshly mined sand is available at Rs.3 per kg.
- Accordingly, the Authority agreed with the Applicant's contention that the said process cannot be treated as a job work service and instead be treated as a supply of goods.
- The Authority also observed that the rate of ₹2.5 per kg on the sale of sand has taken into account the value of input sand at 'nil' value. In normal situations where there is a price for such inputs, it may have a proportionate impact on the rate of outward supply.

Ruling

Processing of waste sand to make it re-usable is a supply of goods. Further, waste sand, having 'nil' value, would have an impact on the valuation.

Dhruva Comments:

The ruling seems to be in line with the principle enunciated by the Supreme Court in the aforesaid decision, considering that the waste sand is merely dumped at the Applicant's location and usable sand is sold to the foundries without any one-to-one correlation with the waste sand received.

[5] *M/s. Prestige Engineering (India)* v. *Collr. of Central Excise, Merut* [1994 (73) E.L.T.497 (SC)]
[6] Silica Sands and Quartz Sands
[7] Prepared binders for foundry moulds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included

GSTN Update

Blocking of e-way bill generation for taxpayers[8]

In terms of rule 138E(b) of the CGST Rules, 2017, e-way bill generation facility will be blocked after October 15, 2020 for registered persons having aggregate annual turnover more than ₹5 crores (based on the PAN) and who have not filed Form GSTR-3B for two or more tax periods up to the tax period of August 2020.

Dhruva Comments:

With unlocking of the economy happening in phases, it becomes necessary for businesses to file their monthly returns in Form GSTR-3B to avoid blocking of e-way bill generation facility leading to delays / interruptions in shipments of products.

Press Release under GST

Clarifications on Form GSTR-9 and GSTR-9C[9]

- Representations were filed to seek clarification as to whether transactions pertaining to FY 2017-18 which have already been reported in GSTR 9 for FY 2017-18 are to be reported in the FY 2018-19 as well, considering the fact that the auto populated Form GSTR-9 for the year 2018-19 (Tables 4, 5, 6 and 7) also includes the data for FY 2017-18.
- It has been clarified that the taxpayers are required to report **only values pertaining to FY 2018-19 in Form GSTR-9 and ignore values pertaining to and reported in FY 2017-18**.
- Furthermore, no adverse action will be taken against taxpayers who have already filed their Form GSTR-9 for the FY 2018-19 capturing details of supply and input tax credit pertaining to FY 2017-18.

Dhruva Comments:

There have been instances where the transitional credits already reflected in Form GSTR-9 of FY 2017-18 have been auto-populated in the Form GSTR-9 for FY 2018-19 downloaded from the portal. The press release will indeed provide relief to people who have already filed their Form GSTR-9 with figures pertaining to FY 2017-18.

Circular under GST

Clarifications relating to application rule 36(4) of the CGST Rules, 2017 for the period from February to August 2020[10]

The CBIC has clarified the following in respect of implementation of proviso to rule 36(4) of the CGST Rules, 2017, dealing with mismatch in ITC availed as per Form GSTR-3B of a particular tax period with Form GSTR-2A during the tax periods from February 2020 to August 2020:

- Clarification issued earlier vide circular no. 123/42/2019-GST dated November 11, 2019 shall continue to remain applicable, except for cumulative application as prescribed in proviso to sub-rule (4) of rule 36 of the CGST Rules.
- Pursuant to proviso to rule 36(4) of the CGST Rules, 2017, the taxpayers are required to reconcile ITC availed in Form GSTR-3B filed during the period with the invoices uploaded by their suppliers in Form GSTR-1 for such period until the due date of furnishing Form GSTR-1 for the month of September 2020 such that the ITC availed does not exceed 110% of cumulative eligible ITC on invoices reflecting in Form GSTR-1 filed by the suppliers (i.e. Form GSTR-2A for the taxpayer).
- Any excess ITC availed due to the above reconciliation should be reversed while filing Form GSTR-3B (in Table no. 4(B)(2)) for the month of September 2020.

[8] GSTN update dated October 10, 2020
[9] Release ID 1663175 dated October 9, 2020 by PIB Delhi
[10] Circular No. 142/12/2020- GST dated October 9, 2020

- Taxpayers must reconcile invoices on which ITC can be availed in Form GSTR-3B of September 2020 with Form GSTR-2A and the 10% calculation mechanism as provided in rule 36(4) of the CGST Rules, 2017 shall be applied independently for the period from February to August 2020, and for September 2020.
- Furthermore, failure to reverse any excess ITC availed on account of cumulative application shall be considered as availment of ineligible ITC in the month of September 2020.

Dhruva Comments:

The circular has been issued at a time when relaxations provided on availment of ITC due to the outbreak of Covid-19 are being phased out. It is highly imperative that taxpayers appropriately reconcile their ITC availed and reverse excess ITC availed.

Notifications under GST

Due date for furnishing GSTR-1 for the period October 2020 to March 2021[11]

The Government has notified the due dates for furnishing the GSTR-1 returns for the period of October 2020 to March 2021 for registered persons having an aggregate turnover (ATO) of up to or more than ₹1.5 crores in the preceding financial year or current financial year. The due dates are as follows:

ATO	Return period	Due date
up to ₹1.5 crores	October 2020 to December 2020	January 13, 2021
up to ₹1.5 crores	January 2021 to March 2021	April 13, 2021
More than ₹1.5 crores	October 2020 to March 2021	11th day of the month succeeding such month

Due date for furnishing GSTR-3B for the period October 2020 to March 2021[12]

- The Government has notified the due dates for furnishing GSTR-3B returns for the period of October 2020 to March 2021 as 20th day of the month succeeding such month.
- Furthermore, if the taxpayer's aggregate turnover is up to ₹5 crores in the previous financial year, then the due date depending upon the place of business would be as follows:

Place of business	Due date
States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep	22nd day of the month succeeding such month
State of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi	24th day of the month succeeding such month

Filing of annual return

- The Government vide notification no. 47/2019-Central Tax dated October 9, 2019 ("the said notification"), had notified that registered persons whose aggregate turnover did not exceed ₹2 crores in the financial year 2017-18 and 2018-19 had the option to not to furnish their annual return (GSTR-9). Also, if the returns are not furnished before the

[11] Notification no. 74/2020 and 75/2020-Central Tax both dated October 15, 2020
[12] Notification no. 76/2020-Central Tax both dated October 15, 2020

due date then it would be deemed that the same has been furnished on the due date.

- The Government has issued notification no. 77/2020-Central Tax dated October 15, 2020 to extend such facility for the financial year 2019-20.

Number of HSN digits to be mentioned on the tax invoice

- The Government vide notification no. 12/2017-Central Tax dated June 28, 2017, had notified the number of HSN digits to be mentioned on the invoice. This notification has now been amended vide notification no. 78/2020-Central Tax dated October 15, 2020 to state that **w.e.f. April 1, 2021** the number of HSN digits on a tax invoice is as follows:

Aggregate turnover (ATO) in the preceding financial year	**Number of digits of HSN**
up to ₹5 crores	4
More than ₹5 crores	6

- Furthermore, if the ATO did not exceed ₹5 crores in the preceding financial year and the supplies are made to unregistered persons then such taxpayer may not mention the HSN digits on such invoices.

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