

GUJARAT AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING NO. GUJ/GAAR/R/2018/05
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2017/AR/33)

Date: 04.03.2019

Name and address of the applicant	:	M/s. Aditya Birla Nuvo Limited (Grasim Industries Limited) Halol, ABI, Panchmahal, Gujarat – 389 350.
GSTIN/User ID of the applicant	:	241700000052AR9
Date of application	:	15.12.2017
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
Date of Personal Hearing	:	21.06.18
Present for the applicant	:	Deepak kulkarni

2 The Applicant M/s. Aditya Birla Nuvo Limited has question on Charging of GST on Freight and Insurance.

2.1 The applicant thereafter, vide letter dtd. 05.04.18, specifically mentioned their queries as under:

- a) Whether the Ex works plus freight and insurance to be treated as composite supplies
- b) Whether showing and charging freight and insurance portion separately in invoice would attract GST.
- c) If as per (b) above, no GST is chargeable, whether they can have two different type of treatments i.e. in one case GST is being paid on freight (since all other state electricity boards have agreed to pay GST on freight and insurance portion) and in other case of PG, GST on freight being intended/not paid.
- d) whether as per the inclusion specified in section 15(2) which is to be added to the transaction value i.e. “incidental expenses, such as commission and packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods or as the case may be supply of services”, encompasses payment of freight and insurance, which is being reimbursed by the buyer (not on an actual cost basis

but on pre-contracted fixed freight per unit of the product); that the arranging of delivery of goods is the responsibility of supplier and accordingly transportation & insurance (anything done before delivery of goods) being arranged by supplier; that the actual freight cost incurred by supplier varies with pre contracted price with buyer.

- 3.1. The Applicant M/s. Aditya Birla Nuvo Limited, vide Annexure-I to their application dated 08.12.17, has submitted that they are charging GST on freight and insurance considering it as a composite supply against which Power Grid contends that GST should not be charged on Freight and insurance and chargeability is on basic amount.
- 3.2. The applicant, has submitted that as per terms of contract, price is exclusive of Excise duty, VAT and CST, Entry Tax and other Applicable Taxes and duties which are reimbursable and payable by power grid.
- 3.3. The applicant has further mentioned in their annexure I that; under GST, a composite supply would mean a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply:
Illustration: Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply”
- 3.4. The applicant mentioned that as per the given definition and considering nature of product, ABI is a principal supply and freight and insurance is part of composite supply; that applying contention of naturally bundled product, it is not possible to sell the product without freight and insurance; that if it had been situation if ABNL is not selling goods to Power Grid, it will never charge for freight and insurance and that not with standing with above, if Adity Birla Insulator is not charging GST on freight, then, liability would be of power grid to pay ST on Reverse charge mechanism; that Aditya birla insulator is not authorized to sell any insurance and hence insurance is for the product of sell and it is a clear reimbursement of expenses; that in that case insurance should be taken by power grid and reimbursement can be charged as pure agent services.
- 3.5. The applicant has mentioned that in their opinion and based on the definition they conclude that ABI is providing composite supply. GST would be liable on composite supply i.e including Freight and insurance.
- 3.6. The applicant vide their letter Dated. 05.04.18 has mentioned that their Contract Price consist of Ex works and Local transportation, insurance and other incidental services.; that the value of Rs. 26.68 cr is the consideration for the performance by the supplier of its obligations and that the said price is exclusive of taxes and duties as mentioned in the purchase order. The applicant has further raised queries as mentioned in para 2.1 above.
- 3.7. The applicant vide their letter dtd. 10.05.2018, inter alia, has mentioned that their client Power Grid Corporation of India Ltd. (PGCIL) is not agreeing to pay GST on freight element and that they believe it is the contractor who has to check their position on applicability of GST or otherwise and that the contractor may opt for advance ruling on the matter for better clarity. Hence the applicant has approached to Advance Ruling Authority for a decision in the matter.
4. The Central Goods and Services Tax Additional Commissioner, Vadodara-II *inter-alia* informed that the The Grasim Industries Limited’s opinion is according to Definition of composite supply as per GST Act.

- 5.1 The composite supply is defined under **section 2(30)** of The Central Goods and Service Tax Act, 2017

““composite supply” means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply; Illustration.— Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;”

- 5.2 It is specifically mentioned in the illustration that Goods packed and transported with insurance, then supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply.

- 6.1 One of the several indicators, to ascertain a composite supply, as defined in C.B.E. & C. Flyer No. 4, dated 1-1-2018, is reproduced below :

“The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. For example, service of stay in a hotel is often combined with a service or *laundry* of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.”

The case of the applicant clearly falls in the above category.

- 6.2 “The different elements are integral to one overall supply - if one or more is removed, the nature of the supply would be affected” is also indicative of bundling of services in ordinary course of business as mentioned in the CBEC & C Flyer no. 4 and the case of the applicant is the similar one.

The above is applicable to the case of the applicant and hence Ex works plus freight and insurance to be treated as composite supplies

- 6.3 It is clearly mentioned in the CBEC & C Flyer no. 4 dtd. 01.01.2018, under “Determination of tax liability of Composite and Mixed Supplies” that

“The tax liability on a composite or a mixed supply shall be determined in the following manner, namely :-

- (a) *a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and*
.....”

In the case of the applicant the ex works is principal supply and accordingly the tax liability.

- 6.4 Further, if freight and insurance portion are shown and charged separately in invoice, it would not change the fact that the supply is a composite supply and hence there cannot be different type of treatments of tax liability of supply of different goods/services naturally bundled together.

- 6.5 The section 15(2) of The Central Goods and Service Tax Act, 2017, clearly defines the expenses that are to be included in value which is reproduced as follows :

“(2) The value of supply shall include—

- (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services*

Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) 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;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments. Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.”

As per the above, it is very clear that freight and insurance, charged by the supplier to the recipient of a supply, is included in the value for charging of tax under The Central Goods and Service Tax Act, 2017 and Gujarat Goods & Services Tax Act, 2017.

6.6 Now the question:

One of the inclusions specified in section 15(2) which is to be added to the transaction value under GST is:

“Incidental expenses, such as commission and packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods or as the case may be supply of services”

Whether above inclusion rule encompasses payment of Freight and insurance which is being reimbursed by the buyer (not on an actual cost basis but on pre-contracted fixed freight per unit of the product). The arranging of delivery of goods is the responsibility of supplier and accordingly transportation & insurance (anything done before delivery of goods) being arranged by supplier. The actual freight cost incurred by supplier varies with pre contracted price with buyer.

GST is applied on supply of goods or services. If there are two values of any supply, then GST is to be taxed on the higher value of supply. Hence in this case, the higher of the two value i.e. the actual cost of Freight and insurance or the pre contracted fixed freight per unit of the product, shall be included in the value of composite supply.

7. In view of the foregoing, we rule as under –

RULING

Question1: Whether the Ex works plus freight and insurance to be treated as composite supplies ?

Answer: Yes, supply of principal goods/services alongwith freight and insurance is a composite supply as defined under **section 2(30)** of the Central Goods and Service Tax Act, 2017

Question2: Whether showing and charging freight and insurance portion separately in invoice would attract GST.

Answer: GST is chargeable. There cannot be different type of treatments of tax liability on supply of different goods/services naturally bundled together.

Question3: If as per (2) above, no GST is chargeable, whether they can have two different type of treatments i.e. in one case GST is being paid on freight (since

all other state electricity boards have agreed to pay GST on freight and insurance portion) and in other case of PG, GST on freight being contended/not paid.

Answer: not applicable as GST is chargeable.

Question 4: One of the inclusions specified in section 15(2) which is to be added to the transaction value under GST is:

“Incidental expenses, such as commission and packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods or as the case may be supply of services”

Whether above inclusion rule encompasses payment of Freight and insurance which is being reimbursed by the buyer (not on an actual cost basis but on pre-contracted fixed freight per unit of the product). The arranging of delivery of goods is the responsibility of supplier and accordingly transportation & insurance (anything done before delivery of goods) being arranged by supplier. The actual freight cost incurred by supplier varies with pre contracted price with buyer.

Answer : Where the value of freight as per pre contracted fixed freight per unit of product is different from the actual cost, the higher of the two value shall be included in the value of composite supply.

(R.B. Mankodi)
Member

(G.C. Jain)
Member

Place : Ahmedabad
Date :04.03.2019