



TELANGANA STATE AUTHORITY FOR ADVANCE RULING
CT Complex, M.J Road, Nampally, Hyderabad-500001.
(Constituted under Section 96(1) of TGST Act, 2017)

Present:

Sri J. Laxminarayana, Additional Commissioner(Grade-I) (State Tax)

Sri B. Raghu Kiran, IRS, Joint Commissioner (Central Tax)

A.R.Com/23/2018

Date.02 -03-2020

TSAAR Order No.03/2020

(Under Section 100(1) of the CGST/TGST Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this Order)

1. M/s. Penna Cement Industries Limited, Lakshmi Nivas 705, Road No. 3, Banjara Hills, Hyderabad- 500 034, Telangana, (GSTIN No. 36AABCP2290D1ZP) have filed an application in **FORM GST ARA-01** under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules, seeking Advance Ruling seeking clarification as to what tax should be charged by them on ex-factory inter-State sales made by them.
2. At the outset, it is made clear that the provisions of both the CGST Act and the TGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the TGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.
3. It is observed that the query raised by the applicant falls within the ambit of Section 97(2)(e) of the GST ACT read with 20(xviii) of the IGST Act, 2017. The Applicant enclosed copies of challans as proof of payment of Rs. 5,000/- for SGST and Rs. 5000/- for CGST towards the fee for Advance Ruling. The Applicant has declared that the questions raised in the application have neither been decided by nor are pending before any authority under any provisions of the GST Act. The application is therefore, admitted.

4. Brief facts:

The facts, in brief, that were reported by the applicant are as follows:

- a. They are manufacturers of cement having two cement plants in Telangana;

- b. They occasionally make inter-State sale of cement on ex-factory/works basis from their plants in Telangana;
- c. As per Sec. 10(1)(a) of IGST Act, 2017, place of supply shall be where movement of goods terminates; When they make ex-factory sales from their plant, delivery terminates at their factory gate itself and therefore, CGST and SGST should be charged on such type of supplies.
- d. However, in the said section it is also mentioned that the movement of goods can be by supplier or the recipient or any other person and place of supply shall be location of recipient where delivery terminates to recipient. In respect of ex-factory sale, though for them supply terminates at factory gate, yet further movement is carried by the recipient or transporter (other person) of goods up to the billing address state. Thus, the delivery in such cases terminates in another that State and therefore they should charge IGST in respect of such supplies.

5. Questions raised:

With the above background, the applicant raised the following query:

- i) What tax should be charged on ex-factory inter-State supplies made by them?

6. Contention of the concerned officer :

The concerned Officer opined that in the light of the provisions contained under Sec. 10(1)(a), IGST should be charged in respect of the supplies mentioned in the application.

7. Personal Hearing:

Mr. K. Raghava Reddy, DGM & M. Ramakrishna, AGM, authorized representative of M/s. Penna cement Industries Limited, appeared for the personal hearing held on 20.12.2019 and reiterated the facts mentioned above and sought for ruling in respect of the query raised in their application.

8. Discussion & Findings:

8.1 We have considered the submissions made by the applicant in their application for advance ruling as well as at the time of personal hearing. The applicant sought for advance ruling on the nature of tax chargeable on ex-factory inter-State supplies. To determine the said point, reference shall be made to the legal provisions concerning levy of IGST and CGST& SGST.

8.2 Sec. 9(1) of GST Act provides for levy of CGST and SGST on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption. Further, Sec. 5(1) of the IGST Act, 2017 prescribes the levy of IGST on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption.

8.3 'Inter-State' and 'intra-State' supplies have explicitly been defined in Section 7(1), 7(2) and 8(1), 8(2) of the IGST Act respectively. These provisions in essence lay down that where the 'location of the supplier' and the 'place of supply' are in the same State or Union Territory, the supply shall be considered as intra-State supply and where they are in different States or in different Union Territories or in a State and a Union Territory, the supply shall be classified as inter-State supply. Thus, 'place of supply' and

'location of supplier' determine whether a supply can be treated as an intra-State supply or an inter-State supply. In the case on hand, the applicant has no uncertainty as regards to 'the location of supplier' and they sought clarity only with regard to the 'place of supply'. This leads us to refer to Sec. 10(1)(a) of IGST Act, 2017 which contains provisions relating to determination of 'place of supply' of goods where the supply involves movement. The same is reproduced below:

"10. (1) The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under –
(a) where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time movement of goods terminates for delivery to the recipient."

In terms of the above provision, it is apparent that place of supply in respect of goods (where supply involves movement of goods) shall be the location of goods at the time when movement of goods terminates for delivery to the recipient.

8.4 As stated by the applicant, there is a scope for inference that in case of ex-factory sales, since the delivery of goods to recipient takes place at factory gate so far as supplier is concerned, location of the supplier's factory can be reckoned as place of supply. However a careful appraisal of the provisions of Sec. 10(1)(a) does not suppose such inference. We noted that the usage of the words 'whether by the supplier or by recipient' after the words 'where the supply involves movement of goods' under the said section perceptibly indicates that the movement can be effected by the supplier or by the recipient or by any other person authorized by the recipient. This leads to the conclusion that, in terms of Sec. 10(1)(a), movement of goods in case of ex-factory inter-State sales does not conclude at factory gate but terminates at the place of destination where the goods finally are destined as per the billing address. Accordingly, it can be inferred that the place of supply in respect of goods where the supply involves movement of goods whether by the supplier or by the recipient or by any other person authorized by him has to be determined with reference to the location where the movement of goods ultimately terminated.

8.5 What we perceive from the statement made by the applicant, is that, in case of ex-factory inter-State sales affected by the applicant, the goods are made available by the supplier to the recipient at the factory gate, but this is not the point where movement terminates since the recipient subsequently assumes the charge for transportation of the goods up to the destination in another state. Thus, termination of the movement of goods evidently takes place at the location (in a different state) to which the goods are consigned/destined and such movement is effected by the recipient or by any other person such as transporter authorized by the recipient. Applying the inference made by us in the preceding para to the facts of the case on hand, the place (in the other state) where the goods are destined turns out to be the 'place of supply' in terms of Sec. 10(1)(a) *ibid*. Consequently, the 'location of supplier' and the 'place of supply' fall under different states and the supply qualifies as inter-State supply. Accordingly, we hold that, the supplier in the stated instance is liable to charge IGST in respect of ex-factory inter-State supplies made by them.

Advance Ruling

9. In view of the observations stated above, the following ruling is issued :

Q1. What tax should be charged on ex-factory inter-State supplies?	Ans: IGST is chargeable on ex-factory inter-State supplies.
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Sd/- J. Laxminarayana
ADDL. COMMISSIONER (State Tax)

Sd/- B. Raghukiran
JOINT COMMISSIONER (Central Tax)

To
M/s. Penna Cement Industries Limited,
Lakshmi Nivas 705, Road No. 3,
Banjara Hills, Hyderabad- 500 034.

Copy submitted to :

1. The Commissioner (State Tax) for information

Copy to:

1. The Commissioner (Central Tax), Medchal Commissionerate
11-4-649/B, 1st, 2nd, 3rd and 4th Floors, Opp. Mehedi Function Palance,
Lakdikapool, Hyderabad - 500 004.

2. The Joint Commissioner (State Tax), Nalgonda.

3. The Dy. Commissioner (ST) (LTU), Nalgonda.

//t.c.f.b.o//

Additional Commissioner (ST) (Grade-I)