

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
14 Beliaghata Road, Kolkata – 700015
(Constituted under section 96 of the West Bengal Goods and Services Act, 2017)

BENCH

Ms Susmita Bhattacharya, Joint Commissioner, CGST & CX
Mr Parthasarathi Dey, Additional Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Act, 2017 or West Bengal Goods and Services Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Act, 2017, within a period of thirty days from the date of communication of this ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	M/s Maninder Singh (Under trade name Mideast Pipeline Products)
Address	09, Old Court House Street, Kolkata - 700001
GSTIN	19AJGPS2503P1ZQ
Case Number	11 of 2020 dated 03/08/2020
ARN	AD1907200038090
Date of application	31/07/2020
Order number and date	10/WBAAR/2020-21 dated 12/10/2020
Applicant's representative heard	Mr Ashish Saraf, Advocate

1. Admissibility of the Application

1.1 The Government of India and The Government of Bangladesh have signed a Memorandum of Understanding for construction of an oil pipeline from Siliguri in India to the depot of the Bangladesh Petroleum Corporation (hereinafter BPC) at Parbatipur in Bangladesh. The work will be monitored by Ministry of External Affairs (hereinafter called "MEA"), Government of India, which has engaged M/s Numaligarh Refinery Ltd (hereinafter called "NRL") as the implementation agency.

1.2 NRL has awarded the applicant the contract for the installation of the pipeline by HDD method.

1.3 The applicant wants to know:

- (i) whether its supply is works contract service;
- (ii) whether the supply of service to NRL for the above construction in Bangladesh is an export and exempt under the GST Act;
- (ii) if the answer to the above query is negative, then what should be the appropriate tax rate;
- (iv) whether the applicant is entitled to input tax credit on its inward supplies for the service rendered in the construction of Bangladesh portion of the pipeline on behalf of NRL;

(v) whether the applicant is liable to pay tax on goods or services procured locally within Bangladesh for the purpose of construction of Bangladesh portion of the pipeline on behalf of NRL;

(vi) whether the applicant is entitled to input tax credit on procurement of such goods or services in Bangladesh used in the construction of Bangladesh portion of the pipeline on behalf of NRL;

(vii) if all the queries come out with responses that led the applicant taxable, then what will be the proper method of valuation of tax.

These questions, except the one on the applicability of local taxes in Bangladesh, are admissible under section 97(2)(c)(d)(e)&(g) of the GST Act.

1.4 The concerned officer from the revenue submits that questions raised in the application are not pending or decided in any proceedings of the GST Act. As such, he does not object to the admissibility of the application. The application is, therefore, admitted.

2. Submissions of the Applicant

2.1 The applicant submits that the ultimate recipient of its service is BPC located in Bangladesh. NRL is merely an intermediary working on behalf of MEA. The recipient being located in Bangladesh and the place of supply being outside India, the applicant's service is export as defined under section 2(6) of the Integrated Goods and Services Act, 2017 (hereinafter IGST Act).

2.2 In its reply to the submissions of the concerned officer from the revenue, the applicant states that it is supplying works contract service. It contests the revenue's view that NRL is the recipient of the service. Without prejudice to its stated position, the applicant argues that even if NRL were considered the recipient, the supply should be treated as deemed export taxable @ .01%.

2.3 Applicant further submits that NRL receives the land from BPC for construction of the pipeline. The entire strip of land from India border to the Parbatipur Depot should, therefore, be considered the 'location for the receipt of services' as defined under section 2(14)(c) of the IGST Act, and location of the establishment most directly concerned with the receipt of the supply (in this case Bangladesh) should be the place of supply.

2.4 The applicant submits that the provisions of the IGST Act are inadequate for determining the place of composite supply of works contract. Although not clearly articulated, its reference to section 13(13) of the IGST Act is a prayer for notification so that it can be spared from taxation.

3. Submission of the Revenue

3.1 The concerned officer from the revenue argues that NRL issued the Work Order No. 4300061778 dated 19/02/2020 to the applicant for installation of the hydrocarbon pipeline in Bangladesh. The applicant is making a composite supply involving the transfer of property in goods in the course of the construction of immovable property, namely pipeline for transportation of hydrocarbon. As both the supplier and the recipient are located in India, the place of supply shall be India in terms of the proviso to section 12(3) of the IGST Act. The question of treating the applicant's supply as export in terms of 2(6) of the IGST Act, therefore, does not arise.

3.2 It follows that the applicant is eligible for taking credit of the input tax on the goods or services procured in India for the construction of the pipeline in Bangladesh subject to the conditions laid down in section 16 & 17 of GST Act.

3.3 The applicant is eligible to claim the input tax credit on the goods or services procured in Bangladesh if it pays GST on such inward supplies. The question does not arise as the applicant admittedly uses such procurement for executing the works contract in Bangladesh, and such goods and services do not cross the customs frontier of India and do not attract IGST.

3.4 As the service of the applicant is admittedly a composite supply of works contract (SAC 9954), it is taxable @ 18% under serial 3(xii) of Notification No. 11/2017 Central Tax (Rate) dated 28/06/2017, as amended from time to time (hereinafter Rate Notification).

4. Observations and findings of the Authority

4.1 NRL has awarded the contract to the applicant for construction of the pipeline in Bangladesh and pays the consideration. NRL is, therefore, the recipient in terms of section 2(93)(a) of the GST Act.

4.2 A strip of land extending over more than a hundred kilometre is not a fixed establishment in terms of section 2(7) of the IGST Act. Location of the recipient in the present context cannot, therefore, be determined by applying the provisions under section 2(14) (b) or (c) of the IGST Act. NRL being registered and resident of India, the location of the recipient of the service shall be in India in terms of section 2(14)(d) of the IGST Act.

4.3 The place of supply of the service should, therefore, be determined in terms of proviso to section 12(3)(a) of the IGST Act for carrying out the construction work of immovable property. It shall be in India, being the location of the recipient.

4.4 The applicant's service will not, therefore, be the export of service within the meaning of section 2(6) of the IGST Act.

4.5 The provisions for deemed export under section 147 of the GST Act is available for supply of goods only. The applicant's supply of service cannot, therefore, be considered 'deemed export' under the GST Act.

4.6 This Authority agrees with the submissions of the revenue, as discussed in para no. 3.2 to 3.3 above, which follows once the applicant's supply of works contract service is adjudged a supply within the territory of India.

4.7 Although a public sector undertaking NRL is not a Govt Entity as defined in clause 4(x) of the Rate Notification (direct Govt participation in equity is less than 90% in NRL). The concessional rate in terms of Entry No. 3(iii)(c) of the Rate Notification is, therefore, unavailable. It will, therefore, be taxable @ 18% under Entry No. 3(xii) of the Rate Notification.

Based on the above discussion, we rule as under,

RULING

- (i) The applicant's supply is works contract service.
- (ii) It is not an export of service.
- (iii) The applicant's service is taxable @ 18% in terms of Entry No. 3(iii)(c) of Notification No. 11/2017 – CT (Rate) dated 28/06/2017, as amended from time to time.
- (iv) The applicant is entitled to input tax credit on the GST paid on procurement.
- (v) As the applicant has not paid GST on purchasing goods or services in Bangladesh used in the construction of the pipeline, the question of the input tax credit does not arise.
- (vi) GST shall be payable on the consideration receivable for the applicant's service.

This ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.

(SUSMITA BHATTACHARYA)

Member

West Bengal Authority for Advance Ruling

(PARTHASARATHI DEY)

Member

West Bengal Authority for Advance Ruling