

 सत्यमेव जयते	RAJASTHAN APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX NCR BUILDING, STATUE CIRCLE, C-SCHEME JAIPUR - 302005 (RAJASTHAN) Email : aaarjpr@gmail.com	
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Proceedings under Section 101 of the Central GST Act, 2017 read with Rajasthan GST Act, 2017

Before the Bench of

1. Sh. Pramod Kumar Singh, Member (Central Tax)
2. Dr. Preetam B. Yaahvant, Member(State Tax)

ORDER NO. RAJ/AAAR/01/2020-21 DATED 02.07.2020

Name and address of the Appellant	M/s. Clay Craft (India) Pvt. Ltd. Factory : F-766 A, Road No. 1-D, V.K.I. Area, Jaipur, Rajasthan 302013 Registered Office : B-12, MGD Market, Jaipur.
GSTIN of the appellant	: 08AAACC6866D1ZO
Issues under Appeal	(a) Whether GST is payable under Reverse Charge Mechanism (RCM) the salary paid to Director of the company who is paid salary as per contract. (b) Whether the situation would change from (a) above if the Director also is a part time Director in other company also.
Date of Personal Hearing	: 25.06.2020
Present for the appellant	: Shri Madhusudan Sharma, authorized representative
Details of Appeal	: Appeal No. RAJ/AAAR/APP/01/2020-21 against Advance Ruling No. RAJ/AAR/2019-20/33 dated 26.02.2020

(Proceedings under section 101 of the Central GST Act, 2017 read with section 101 of the Rajasthan GST Act, 2017)

At the outset, we would like to make it clear that the provisions of both the Central GST Act, 2017 and the Rajasthan GST Act, 2017 are same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central GST Act, 2017 would also mean a reference to the same provisions under Rajasthan GST Act, 2017.

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2. The present appeal has been filed under Section 100 of the Central GST Act, 2017 (hereinafter also referred to as 'the CGST Act') read with Section 100 of the Rajasthan GST Act, 2017 (hereinafter also referred to as 'the RGST Act') by M/s. Clay Craft (India) Pvt. Ltd., F-766 A, Road No. 1-D, V.K.I. Area, Jaipur, Rajasthan 302013 (hereinafter also referred to as 'the Appellant') against the Advance Ruling No. RAJ/AAR/2019-20/33, dated 26.02.2020.

Brief Facts of the case

3.1 The appellant, i.e. M/s. Clay Craft (India) Pvt. Ltd., F-766-A, Road No. 1-D, VKI Area, Jaipur (hereinafter also called as the "appellant") are engaged in the manufacture of bone China Crockery, Transfer Sheet Decalcomania, other Utensils Item and Moulds & Die falling under chapter heading No. 69111011, 49081000, 84801000 & 84801000 of the Tariff. They are registered with Goods & Services Tax department and are having GST registration No. 08AAACC6866D1ZO.

3.2 Presently Board of Directors of the appellant company consists of six (6) directors. It has been submitted that all the above-mentioned Directors are performing all the duties and responsibilities and duties as required under the laws. However along with that these all directors are also working in the company at different level of management in the company and each one of them is holding charge of procurement of raw material, production, quality checks, dispatch, accounting etc. In other words, they are also working as an employee of the company for which they are being compensated by the company by way of regular salary and other allowances as per the company policy and as per their employment contract. In fact, these Directors are treated at par with any other employee of the company as far as their employment is concerned. The company is deducting TDS on their salary and PF laws are also applicable to their service. Therefore, for all practical purposes, these directors are the employees of the company and are working as such besides being Directors of the company.

3.3 Recently, the Hon'ble Authority of Advance Ruling, Karnataka (Bengaluru) in the case of M/s Alcon Consulting Engineers (India) Pvt. Ltd. Bengaluru, has ruled that the appellant is the company and is located in the taxable territory and the Directors' remuneration is paid for the services supplied by the Director to the appellant company and hence the same is liable to tax under reverse charge basis under section 9(3) of the Central Goods and Services Tax Act, 2017.

3.4 In the backdrop of above circumstances, the appellant reconsidered the situation afresh and approached to Rajasthan Authority of Advance Ruling for clarification on the matter and put up the following question for their kind consideration:

- (a) Whether GST is payable under Reverse Charge Mechanism (RCM); the salary paid to Director of the company who is paid salary as per employment contract, after deduction of TDS as well as PF.

(b) Whether the situation would change from (a) above if the Director also is a part time Director in other company also.

3.5 The Authority of Advance Ruling, Rajasthan given Ruling No. RAJ/AAR/19-20/33 dated 26.02.2020 as under:

a. The consideration paid to the Directors by the applicant company will attract GST under reverse charge mechanism as it is covered under entry No. 6 of Notification No. 13/2017 Central Tax (Rate) dated 28.06.2017 issued under Section 9(3) of the CGST Act, 2017.

b. Situation will remain same as (a) above and will attract GST under reverse charge mechanism.

3.6 Aggrieved by the aforesaid Ruling, the appellant has preferred the present appeal before this forum.

GROUND OF APPEAL

4. The appellant in its Appeal has, *inter-alia*, mentioned the following grounds of Appeal:

4.1 The Authority for Advance Ruling has erred in deciding that the consideration paid to the Directors by the applicant company will attract GST under reverse charge mechanism as it is covered under entry No. 6 of Notification No. 13/2017 Central Tax (Rate) dated 28.06.2017 issued under Section 9(3) of the CGST Act, 2017.

4.2 It is submitted that in the impugned ruling of Authority of Advance Ruling, it has been ruled that the "consideration" paid to Directors would attract GST under reverse charge mechanism.

4.3 However the point submitted by the appellant was that whether the salary paid to the Directors who are working whole time in the company and were paid salary under a contract of employer employee, would attract GST under Reverse Charge Mechanism (hereinafter also called as the RCM).

4.4 It is submitted that Directors of the appellant company are working whole time for the company and their employment has been effected under a service contract of employer employee. Therefore they are in all practical purposes employee of the company. As submitted supra, the company have been deducting TDS and EPF from their salary as required under the Income tax laws and EPF provisions.

4.5 It is submitted that the term "whole term Director" has been defined under The Companies Act, 2013 as "whole-time Director includes a director in the whole-time employment of the company". This definition clarifies that a Director can be an employee of the company. Further the appellant refer to the judgment in *Ramaben A. Thanawala vs Jyoti Ltd And Othrs (AIR 1958 BOM 214, (1957) 59 BOMLR 67)* decided by the Hon'ble Bombay High Court, wherein it was mentioned that ".... It seems to us that the expression whole-time-Director

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must refer to a Director who spends his whole time in the management of the company in the same sense as Managing Director does*. This definition and citation clearly bring out the element of employment of whole-time Directorship.

4.6 In case of employee, there is a contract of service, while in the case of independent service provider there is a contract for service. The distinction between these terms has been upheld by a full bench of the Supreme Court in *Indian medical Association vs V.P. Shantha* [1956 AIR 550, 1995 SCC (6) 65].

A- Contract for service implies a contract whereby one party undertakes to render services e.g. professional or technical service, to or for another in the performance of which he is not subject to detailed direction and control but exercises professional or technical skill and uses his own knowledge and discretion.

4.7 Appellant further submits that the provisions of Reverse Charge Mechanism under the GST law and erstwhile Service Tax are similar. For ready reference these are mentioned below.

a. Under the Service Tax regime Notification No. 30/2012 -ST dated 20.06.2012 was amended vide Notification No. 45/2012-ST dated 07.08.2012 and an entry was inserted as under:

S.No.	Description of service	Percentage of Service Tax payable by the person providing service	Percentage of Service tax payable by any person liable for paying service tax other than service provider.
*5A	in respect of services provided or agreed to be provided by a director of a company to the said company	Nil	100%

b. Under the GST Notification No. 13/2017- Central Tax (rate) dated 28.06.2017 the entry is as under:

S. No.	Category of supply of Services	Supplier of Service	Recipient of Service
(1)	(2)	(3)	(4)
6	Services supplied by a director of a company or a body corporate to the said company or the body corporate.	A Director of a company or a body corporate	The company or a body corporate located in taxable territory

4.8 From the above provision it is amply clear that both in Service tax as well as in GST laws the provision for reverse charge payment of tax are similar

therefore the intention of the legislation was same under GST provisions as it was under Service Tax laws.

4.9 The appellant relies in the case of *Rent Works India (P) Ltd. Vs Commissioner of C. Ex., Mumbai 2016(04) LCX0103 Tri. Mumbai* wherein the Hon'ble Tribunal has held as under:

Para 7: *On perusal of the agreement with Mr. Alan Van Niekerk, we find that the said agreement is between appellant and one Mr. Alan Van Niekerk for rendering the services to appellant on the management of market and exclusive services. The said agreement provides for payment of an amount as monthly remuneration of Mr. Alan Van Niekerk and as also additional amount at the discretion of the board as percentage to Alan Van Niekerk. It is seen from the records and more specifically the balance sheet at 31-7-2007, Mr. Alan Van Niekerk has signed the balance sheet of the appellant as director on behalf of the board of directors. In our considered view, Shri Alan Van Niekerk was a director in the appellant's company and the amount which is paid to him during the period 18-4-2006 to 31-10-2006 was a remuneration as per agreement between the appellant and the said individual. We also fortified in our view, by the demand issued by Income Tax department for this amount paid to Mr. Alan Van Niekerk to be considered as salary paid. The Income Tax Department has considered this amount paid to the appellant to Mr. Alan Van Niekerk as a salary in adjudication proceedings. The adjudicating authority in the case in hand has summarily dismissed the submissions. If an amount paid by the appellant to Shri Alan Van Niekerk is considered as a salary by the Income Tax Department, a branch of Ministry of Finance, Department of Revenue, it cannot be held by the Service Tax Department, another branch of Ministry of Finance, Department of Revenue, as amount paid for consultancy charges and taxable under Finance Act. The same department of Government of India cannot take different stand on the amount paid to the very same person and treat it differently. In our considered view, the amount which is paid to Mr. Alan Van Niekerk, in the circumstances of this case as brought out herein above, has to be treated as salary to the director and the salary is not to be considered as to fall under the category of 'Management Consultancy Services' and liable for Service Tax.'*

4.10 It is submitted that the salary of their whole-time Directors is deductible to TDS under Income tax laws under section 192 of the said Act, treating it as a salary to an employee. Therefore, when the Income Tax Department considers the services of the Whole Time Directors as a services of an employee then how can the same Ministry (Ministry of Finance) consider the same as services liable to be taxed under GST. It is not possible that the same authority i.e. Government of India would consider it as salary to an employee in one Act whereas the same would be treated differently. The principle of Estoppel would prevent the Government to take any such step.

4.11 Therefore, based on the above submission the appellant submit that the decision taken by the Authority of Advance Ruling about the salaries paid by the appellant company to their whole time Directors being chargeable to GST under Reverse Charge mechanism is faulty one and need to be reversed.

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4.12 Further in respect of RCM under erstwhile Service Tax regime, circular No. 24/2012 dated 09.08.2012 was issued, wherein it was stated that:

"The Finance Act, 2012 has introduced Service Tax which is applicable to anyone who provides a service not covered under the negative/exempted list and if the value of the service annual revenue is more than Rs. 10 Lakh. The Non-Whole Time Director of the Company are presently not covered under the exempted list and as such, the sitting fee/commission payable to them by the company is liable to service tax."

4.13 The above circular makes it clear that only in respect of payments made to non-whole time Directors (who are not director employee of the company working regularly for the company), service tax liability arise to the company.

4.14 There is no difference in legal provision for the taxability in respect of directors of a company under GST and Service Tax laws therefore the interpretation / rulings and clarification issued under the Service Tax would apply in respect of GST also.

4.15 It is further submitted that the matter if decided in anyway would not bring any new revenue to the Government as any GST paid on salary to the director under reverse Charge mechanism would be available to any company as ITC therefore this whole exercise would be revenue neutral.

Personal Hearing

5. A personal hearing in the matter was held on 25.06.2020. Shri Madhusudan Sharma, authorized representative, appeared on behalf of the Appellant. He reiterated the contents of appeal and relied upon CBIC's Circular No. 140/10/2020 - GST dated 10.06.2020 on the issue and contented that their case is squarely covered by the said circular.

Discussion and Findings

6.1 We have carefully gone through the Appeal papers filed by the Appellant, the ruling of the AAR, as well as oral submissions made at the time of the personal hearing held on 25.06.2020. We find that the appellant had requested for Ruling on levability of GST under Reverse Charge Mechanism (RCM) on the salary paid to Director of the company who is paid salary as per employment contract, after deduction of TDS as well as PF.

6.2 The Rajasthan Authority for Advance Ruling (AAR) in its Ruling No. RAJ/AAR/2018-19/33 Dt. 26.02.2020 pronounced that the consideration paid to the Directors by the applicant company will attract GST under reverse charge mechanism and the situation will remain the same if the director is also a part time director in another company.

6.3 We find that the CBIC has recently issued a Circular No. 140/10/2020 - GST dated 10.06.2020 under File No. CBEC-20/10/05/2020 -GST and




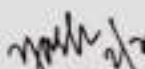
clarified the issue in appeal. It has been clarified that (i) remuneration paid by companies to the independent directors or those directors who are not the employee of the said company is taxable in hands of the company, on reverse charge basis; and (ii) the part of Director's remuneration which are declared as "Salaries in the books of a company and subjected to TDS under Section 192 of the IT Act, are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017.

6.4 In Para 5.4 of the above Circular, it is further clarified that the part of employee Director's remuneration which is declared separately other than "salaries" in the Company's accounts and subjected to TDS under Section 194J of the IT Act as Fees for professional or Technical Services shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST Act, and is therefore, taxable. Further, in terms of notification No. 13/2017 - Central Tax (Rate) dated 28.06.2017, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.

6.5 Hence, we find that remuneration, if any, paid by the appellant to the independent directors or those directors who are not the employee of the appellant is taxable in hands of the appellant, on reverse charge basis. Further, the part of Director's remuneration which are declared as Salaries in the books of the appellant and subjected to TDS under Section 192 of the IT Act, are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017. The part of employee Director's remuneration which is declared separately other than "salaries" in the appellant's accounts and subjected to TDS under Section 194J of the IT Act as Fees for professional or Technical Services shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST Act, and is therefore, taxable and in terms of notification No. 13/2017 - Central Tax (Rate) dated 28.06.2017, the recipient of the said services i.e. the appellant, is liable to discharge the applicable GST on it on reverse charge basis.

7. In view of the legal position discussed above, the appeal stands disposed of in the above terms.


(Pramod Kumar Singh)
Member (Central Tax)
2/7/2020


(Dr. Preetam B Yashvant)
Member (State Tax)



SPEED POST

M/s. Clay Craft (India) Pvt. Ltd.
Factory at: F-766 A, Road No. 1-D,
V.K.I. Area, Jaipur, Rajasthan- 302013

F. No. IV(16)AAAR/RAJ./01/2020-21/ 4230

Dated: 02.07.2020

Copy to:

1. The Chief Commissioner of CGST & Central Excise, Jaipur Zone, Jaipur.
 2. The Chief Commissioner, State Tax, Kar Bhawan, Ambedkar Circle, C-Scheme, Jaipur-302005.
 3. The Commissioner, CGST & Central Excise Commissionerate, Jaipur.
 4. The Deputy Commissioner, Special Circle-2, Jaipur, Zone-2, Jaipur (Jurisdictional Office- State Tax).
 5. The Member, Rajasthan Authority for Advance Ruling, Goods & Service Tax, Kar Bhawan, Ambedkar Circle, C-Scheme, Jaipur-302005.
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Umesh Kumar Agarwal
02/07/2020
(Umesh Kumar Agarwal)
Superintendent