



**TELANGANA STATE APPELLATE AUTHORITY FOR ADVANCE RULING  
(Goods and Services Tax)  
1<sup>st</sup> Floor, Commercial Taxes Complex, M.J. Road, Nampally,  
Hyderabad 500 001**

**AAAR.COM/05/2022**

**Dated:19.10.2022**

**Order-in-Appeal No. AAAR/11/2022**

*(Passed under Section 101 (1) of the Telangana Goods and Services Tax Act, 2017)*

Preamble

1. In terms of Section 102 of the Telangana Goods and Services Tax Act, 2017 (TGST Act, 2017 or the Act), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the applicant or the appellant has been given an opportunity of being heard.
2. Under Section 103 (1) of the Act, this advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only
  - (a) On the applicant who had sought it in respect of any matter referred to in sub-Section (2) of Section 97 for advance ruling;
  - (b) On the concerned officer or the jurisdictional officer in respect of the applicant.
3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.
4. Under Section 104 (1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-Section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

\* \* \* \* \*

Subject: GST – Appeal filed by M/s. Continental Engineering Corporation, F.No. 102, 1<sup>st</sup> Floor, Boston Towers, Upparpally, Rajendernagar, Ranga Reddy, Telangana – 500 048 under Section 100 (1) of TGSST Act, 2017 against Advance Ruling TSAAR Order No. 13/2021 dated 08.10.2021 passed by the Telangana State Authority for Advance Ruling – Order-in- Appeal passed – Regarding.

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1. The subject appeal has been filed under Section 100(1) of the Telangana Goods and Services Tax Act, 2017 (here in after referred to as “TGSST Act, 2017” or “the Act”, in short) M/s Continental Engineering Corporation, F.No. 102, 1<sup>st</sup> Floor, Boston Towers, Upparpally, Rajendernagar, Ranga Reddy, Telangana – 500 048 (hereinafter referred in short as “the appellant”). The appellant is registered under GST having GSTIN number 36AACCC6948C1ZQ, is a civil engineering construction company. They are engaged in the construction of highway, tunnel, bridge, mass rapid transit and high speed rail projects. The appeal is filed against the Order No.13/2021 dated 08.10.2021(“impugned order”) passed by the Telangana State Authority for Advance Ruling (Goods and Services Tax) (“Advance Ruling Authority”/ “AAR”/ “lower Authority”).

**Brief Facts:**

2. M/s Continental Engineering Corporation, F.No. 102, 1<sup>st</sup> Floor, Boston Towers, Upparpally, Rajendernagar, Ranga Reddy, Telangana – 500 048. They are engaged in the construction of highway, tunnel, bridge, mass rapid transit and high speed rail projects.

3. The applicant has sought clarification before the lower authority in respect of following activities vis a vis their taxability under Goods and Services Tax Act.

Sl. No.	Category	Description	Amount
1	Unpaid Amounts for the work executed including escalation	Difference in rate for excavation	99565351
		Unpaid amount for work – Laying of granule soil	3434507
		Unpaid amount for work-Laying of stone pitching	7763276
		Unpaid amount for work – back filling	6401809
		Payment of overhead on work	5956735
		Price adjustment / escalation	45725482
			168847160
2	Refund of excess deductions	Wrongful deduction of liquidated damages	166040728
		Wrongful deduction of labour cess	58856076
		Wrongful deduction of VAT for increase in rate of tax from 4% to 5%	9576882
		Wrongful deduction of seigniorage	16874440
			251348126
3	Interest on bills	Interest on delayed payment on interim payment certificates	95564910
4	Arbitration Cost	Cost of arbitration	600000000
5	Damages claimed	Compensation for delay in execution	1158062000
6	Interest on arbitration amount	Interest on arbitration amount	16000000

4. After following the due process of law, the lower authority had, inter alia, held that the following activities are to be treated as taxable under the Goods and Services Tax Act based on the discussions and findings observed in the impugned order.

**1. Cost of Arbitration:**

The consideration received by arbitral tribunal is taxable on reverse charge basis under CGST & SGST Act @ 9% each. The service tariff code is 998215. In the present case, Arbitration as service was supplied independently after the introduction of GST i.e., the tribunal was constituted conclusively on 20.11.2017 and rendered its orders on 09.05.2019 and therefore this supply is liable to tax on reverse charge basis under GST.

**2. Liquidated damages:**

These damages are claimed by the applicant from the contractee due to the delays in making available possession of site, drawings & other schedules by the contractee beyond the milestones fixed for completion of project. These damages are consideration for tolerating an act or a situation arising out of the contractual obligation. The entry in 5(e) of Schedule II to the CGST Act classifies this act of forbearance as follows:

5(e): Agreeing to the obligation to refrain from an act, or tolerate an act, or a situation, or to do an act.

Further Section 2(31)(b) of the CGST Act mentions that consideration in relation to the supply of goods or services or both includes the monetary value of an act of forbearance. Therefore such a toleration of an act or a situation under an agreement constitutes supply of service and the consideration or monetary value is exigible to tax.

The arbitration award speaks of many clauses in the agreement regarding certain milestones to be met and the cost to be paid to the applicant wherever such cost need to be paid according to the estimation made by the contractee.

As per the issues mentioned in the arbitration award, clauses 6.4 and 42.2 of the General Conditions of Contract (GCC) specifically state that in case of any delay in issuance of drawings or failures to give possession of site the engineer shall determine the extension of time and amount of cost that the contractor may suffer due to such delays in consultation with the employer and the contractor.

Therefore the time of supply of the service of tolerance is the time when such determination takes place. However, the contractee/employer has not determined the cost of delay prior to arbitration award. It was determined only by arbitration award on 09.05.2019.

Therefore the time of supply of this service as per Section 13 of the CGST Act is 09.05.2019. The Consideration received for such forbearance is taxable under CGST and SGST @ 9%

Each under the chapter head 9997 at serial no. 35 of Notification No.11/2017-Central/State tax rate.

**3. Interest on Arbitration Amount:**

The applicant is claiming interest on the amounts determined by the arbitrary tribunal under various heads. Under Section 15(2)(d) of the CGST/SGST Acts interest for delayed payment against a supply is consideration which is taxable under CGST/SGST Acts. Therefore the interest on amounts exigible to tax under CGST/SGST forms part of value of taxable supply.

4. Aggrieved by the impugned order, the applicant filed the present appeal before this Authority.

**Whether the appeal is filed in time:**

5. In terms of Section 100 (2) of the Act, an appeal against Advance Ruling passed by the Advance Ruling Authority, has to be filed within thirty (30) days from the date of communication thereof to the applicant. The impugned Order dated 08.10.2021 was received by the appellant on 01.11.2021 as mentioned in their Appeal Form GST ARA-02. They filed the appeal on 15.3.2022, which is beyond the prescribed time-limit.

6. The applicant vide their letter dt. 15.3.2022 had sought condonation of delay in filing the application on the ground that their office was functioning with limited staff due to Covid 19. Further, they also drew attention to the circular No. 157/13/2021-GST, dt. 20.7.2020 with regard to extension of limitation under GST law in terms of Hon'ble Supreme Court order dt.27.04.2021.

7. Having regard to the facts and circumstances expressed by the applicant, we condone the delay in filing the present application and proceed to address the issues raised by the applicant.

**Personal Hearing:**

8. In terms of Section 101(1) of the Act, the appellant was given personal hearing on 29.4.2022. Shri Rajat Mohan, CA and Ms. Priyanka Sachadev, CA and Authorised Representatives appeared for the Appellants. They reiterated their written submissions made along with the application. They requested to set aside the advance ruling in respect of said issue that are being contested and consider their appeal favourably.

**Discussions and Findings:**

9. The applicant has sought rulings before this Appellate Authority on the following questions:

- a) Whether GST is payable on the claim of INR Rs. 2,20,00,000/-for the HGCL share of sitting fees and other expenses paid by the applicant on the directions of the Arbitrators for an amount.
- b) Whether GST is payable on the claim of INR Rs.1,15,80,62,000/- (including interest amount) on account of compensation of additional cost incurred due to delay in issue of drawings and failure of HGCL to handover site on time and refusal to issue the taking over certificate.
- c) If the answer to questions (a) and (b) are in affirmative, then under what HSN Code and GST rate the liability is to be discharged by the Appellant, and at what time?

**10. Whether GST payable on the claim of Rs. 2,20,00,000/- for the HGCL share of sitting fee and other expenses paid by the applicant on the directions of the Arbitrators for an amount**

10.1. On this count, the lower authority had held that Arbitration as service was supplied independently after the introduction of GST i.e. the tribunal was constituted conclusively on 20.11.2017 and rendered its orders on 9.5.2019 and therefore this supply is liable to tax on reverse charge basis under GST.

10.2. Against the above, the applicant, inter alia contended that they had just received the Award for payment of money in the post-GST regime for the services rendered before GST. Money is neither a good nor a service.

10.3. It is observed by this Authority that the Government, vide Sl.No.3 of Notification No.13/2017. dt. 28.6.2017 has levied tax in respect of services provided by the Arbitrary Tribunals to be paid by any business entity located in the taxable territory, under reverse charge mechanism. The relevant tariff also provides SAC code of 998215 for such services @ 9% each under CGST and SGST.

10.4. Hence, the argument of the applicant that their activity do not attract GST has no legal backing.

**11. Whether GST is payable on the claim of INR of Rs. 1,15,80,62,000/- (including interest amount) on account of compensation of additional cost incurred due to delay in issue of drawings and failure of HGCL to handover site on time and refusal to issue the taking over certificate**

11.1. On this issue, the lower authority had, inter alia, observed that these damages are claimed by the applicant from the contractee due to the delays in making available possession of site, drawings & other schedules by the contractee beyond the milestones fixed for completion of project. These damages are consideration for tolerating an act or a situation arising out of the contractual obligation. As per the issues mentioned in the arbitration award, clauses 6.4 and 42.2 of the General Conditions of Contract (GCC) specifically state that in case of any delay in issuance of drawings or failure to give possession of site the engineer shall determine the extension of time and amount of cost that the contractor may suffer due to such delays in consultation with the employer and the contractor. Therefore the time of supply of the service of tolerance is the time when such determination takes place. However, the contractee/employer has not determined the cost of delay prior to arbitration award. It was determined only by arbitration award on 09.05.2019. There fore the time of supply of this service as per Section 13 of the CGST Act is 09.05.2019. The Consideration received for such forbearance is taxable under CGST and SGST @ 9% each under the chapter head 9997 at serial no. 35 of Notification No.11/2017-Central/State tax rate.


11.2. While denying, the applicant, submitted that the amounts claimed are towards there imbursement of additional costs incurred during extended period while performing the work. It is not a consideration towards the supply of goods and services. They also relied on some case law to support their submissions.


11.3. This Authority has carefully gone through the submissions and the case law cited. As per the claim documents submitted before the lower authority, not disputed by the applicant, the amount was towards compensation for delay in execution of the works and prolongation costs. When a subjective meaning is deciphered from the phrase used by the applicant themselves, the amounts were recovered as compensation for delay in execution of the works. That is to say that the applicant had received the amount to agreeing to the obligation to refrain from an act, or tolerating an act or a situation that arose due to delay in execution or protraction or elongation of work. This is nothing but compensation for refraining to do an act or tolerating to do an act. The consideration received for such act is taxable @ 9% each under CGST and SGST and falls under Ch Head 9997 at Sl.No. 35 of Notfn No. 11/2017-CT (rate).

12. In the light of the foregoing, we pass the following:

ORDER

The order passed by the lower authority is upheld. The subject appeal is disposed accordingly.

  
( Nectulu Prasad )  
Commissioner  
State Tax,  
Telangana State

  
( B.V.Siva Naga Kumari )  
Chief Commissioner  
Central Tax  
Hyderabad Zone

To:  
M/s. Continental Engineering Corporation,  
F.No. 102, 1st Floor, Boston Towers,  
Uppar pally, Rajendernagar, Ranga Reddy,  
Telangana – 500 048.

Copy submitted to:

1. The Telangana State Authority for Advance Ruling, CT Complex, MJ Road, Nampally, Hyderabad- 500 001.
2. The Chief Commissioner of Central Tax & Customs, Hyderabad Zone – for information and for forwarding copies of the order to the concerned / jurisdictional officer of Central tax.
3. The Commissioner of State Tax, Telangana State – for information and for forwarding copies of the order to the concerned / jurisdictional officer of State tax.