

**AUTHORITY FOR ADVANCE RULING, TAMIL NADU
ROOM NO.206, 2ND FLOOR, PAPJM BUILDING,
NO.1, GREAMS ROAD, CHENNAI -600 006.**

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND UNDER
SECTION 98(4) OF THE TNGST ACT, 2017.**

Members present are:

Smt. D. Jayapriya, I.R.S., Additional Commissioner / Member, Office of the Principal Chief Commissioner of GST & Central Excise, Chennai -600 034.	Smt. N. Usha, Joint Commissioner (ST)/ Member, Office of the Authority for Advance Ruling, Tamil Nadu, Chennai-600 006.
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Advance Ruling No. 26 /AAR/2023, Dated: 24.08.2023

- 1. Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Rulings, Chennai as under Sub-Section (1) of section 100 of CGST Act / TNGST Act 2017, within 30 days from the date on the ruling sought to be appealed is communicated.*
- 2. In terms of Section 103(1) of the Act, Advance Ruling pronounced by the 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. In terms of 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. Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.*
- 5. The provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.*

GSTIN Number, if any / User id		33AABCF3459N1ZF
Legal Name of Applicant		Foster Wheeler (G.B.) Limited, Project Office.
Registered Address / Address provided while obtaining user id		6 th Floor, Zenith Building, Ascendas IT Park, CSTR Road, Taramani, Chennai , Tamilnadu - 600 113.
Details of Application		GST ARA – 01 Application Sl.No.18/2022/ARA dated 08.04.2022.
Concerned Officer		State : Adyar Assessment Circle, Chennai North Division. Centre : Chennai North Commissionerate Division: Adyar
Nature of activity(s) (proposed / present) in respect of which advance ruling sought for		
A	Category	Service Recipient
B	Description (in brief)	Legal charges incurred by FWEL, UK which was apportioned to the FWGB, Project Office.
Issue/s on which advance ruling required		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 the term.
Question(s) on which advance ruling is required		1. Whether the legal cost apportionment by FWEL to the Applicant amounts to the supply under GST? 2. If so, whether the Applicant is required to pay tax under Reverse Charge Mechanism (RCM)?

The Applicant is M/s Foster Wheeler (G.B.) Limited, Project Office, 6th Floor, Zenith Building, Ascendas IT Park, CSTR Road, Taramani, Chennai , Tamilnadu 600 113 (hereinafter referred as the Applicant) is registered under the GST Act, 2017 vide GSTIN No. 33AABCF3459N1ZF. The Applicant has sought Advance Ruling on the following questions:

1. Whether the legal cost apportionment by FWEL to the Applicant amounts to the supply under GST?

2. If so, whether the Applicant is required to pay tax under Reverse Charge Mechanism(RCM)?

2. In this regard the Applicant stated the following:

- That the Applicant is a Project Office established in India by M/s Foster Wheeler (G.B.), United Kingdom ("FWGB") for the purpose of carrying out onshore services in India, as FWGB and M/s Amec Foster Wheeler Energy Limited, United Kingdom ("FWEL"), were awarded the onshore and offshore contracts respectively for providing consultancy services to Paradip Refinery Project("Project") by M/s Indian Oil Corporation Limited("IOCL").
- That IOCL entered into an umbrella agreement with FWEL and FWGB on 09.07.2009 for overall management of various services(copy submitted).
- That the Project Office was established in India based on the permission given by Foreign Exchange Management Act(FEMA), 1999 and as per its guidelines.
- That FWEL entered into an inter-company agreement (copy submitted) with FWGB on 29.04.2009 for assisting FWGB in providing various services in relation to the execution of the Project and as per the said agreement, FWEL shall raise monthly invoices on FWGB for the services provided.
- That a notice of arbitration was issued by FWEL and FWGB to IOCL initiating arbitration proceedings in India. After hearing both the parties, Arbitral Tribunal issued four partial awards primarily in favour of FWEL and FWGB. IOCL contested and filed petitions for their annulment before the High Court of Delhi.
- That since the Project was nearing completion, IOCL, FWEL and FWGB entered into a Settlement agreement dated 11.10.2017 and as a result FWEL received a sum of money for the dues from IOCL.
- That FWEL would directly make the payment for expenses related to arbitration proceedings to the third party service providers, invoices raised by the service provider on FWEL, then the expenses will be recharged by FWEL to FWGB(Project Office) by apportioning the expenses incurred on cost to cost basis without any mark-up and the Applicant would pass an

accounting entry in the books upon receiving invoice in respect of such apportionment.

- That FWEL raised an invoice for GBP 45,68,086 (INR 41,33,69,300/-) on 28.03.2018 (copy submitted) on the Applicant towards such legal expenses and the Applicant accounted for such expenses in its book of accounts during March 2018.

3.0. In their interpretation of law in respect of the questions raised, the Applicant has stated the following:

3.1. The amount charged by FWEL is not leviable to GST as the transaction does not involve any supply. The activity of mere recharge of legal cost does not satisfy the specified requirements in the term 'Supply' as per Section 7(1) of the CGST Act, 2017, such as existence of mutual understanding/agreement to provide goods/services in the form of sale, transfer, barter, exchange, license, rental, lease or disposal, which will signify that there is an understanding of commercial nature to qualify as a service. Since the activity itself does not fall under the scope of supply under Section 7(1) of CGST Act, 2017, the same would not be subject to GST under reverse charge mechanism.

3.2. They had relied on various judgments to understand the term 'supply'. They also relied on Education Guide for taxation of services released by CBEC, which provides when an activity would qualify as a service.

3.3. They further stated that the apportionment of legal cost by FWEL to the Applicant does not qualify to be an import of service since in the first place, it does not qualify as 'Supply' itself. Moreover, the term consideration defined in Section 2(31) of the CGST Act, 2017, implies that there has to be a sufficient nexus between the payment and supply; Mere payment alone cannot constitute a supply unless such payment has a direct nexus with an underlying supply; In the instant case, there is clearly no identifiable activity for which the amount of legal expenses has been apportioned towards the Applicant; There is no positive act done by FWEL that could result in a supply except making payment for incurring expenses for the Applicant.

3.4. They relied upon some judgments that no tax can be levied on attendant monetary transactions and they contended that the Applicant is not required to discharge any tax under RCM for payment made to FWEL towards reimbursement

of legal expenses incurred. They also quoted few judgments to establish that sharing of expenses will not amount to service.

3.5. Hence they submitted that the payment to be made by the Applicant to FWEL is not for provision of any service by FWEL and thereby the Applicant is not liable to pay tax under RCM.

4. The State jurisdictional authority vide their letter dated 12.05.2022, submitted that legal cost apportionment by FWEL are taxable under RCM under GST Act. In respect of Centre jurisdictional Authority, no comments were received and hence it is presumed that there are no pending proceedings against the Applicant in Centre.

5.1. The applicant, after consent, was given an opportunity to be virtually heard on 17.05.2022. The Authorized Representatives (AR) of the applicant Mr. Sivarajan, (Partner PwC), Mr. Hariganesh V (Director PwC) and Mr. Anil Gobind Khiani (Manager PwC) appeared before the Authorities and reiterated the submissions. He stated that the services were performed before 01.07.2017 and therefore to such extent as per Section 142(11)(b) of GST Act, GST is not liable to be paid. He stated that the transaction is cost sharing between the partners and therefore not an activity liable to tax. He relied on the decision of the Apex Court in the case of Gujarat State Fertilizers and Chemicals Ltd & Anr Vs Commissioner of Central Excise, Gujarat and certain other tribunal decisions. For the question raised by the Members that when the Arbitration was completed, he stated that it was initiated in 2012 and settlement arrived in 2017 and since the cost allocation is during the GST regime, they had raised in question. The AR requested for another hearing.

5.2. Further to this the Applicant was given next opportunity to appear for virtual hearing on 20.07.2022 and again on 17.08.2022. The Applicant sought adjournment vide their mail dated 18.07.2022.

5.3. Since there was change in the Advance Ruling Authorities, another opportunity to be heard in person was given to the Applicant on 27.07.2023. The Applicant vide their letter dated 26.07.2023(sent by mail on 26.07.2023) stated that the Project Office has decided to withdraw the Advance Ruling application filed by them.

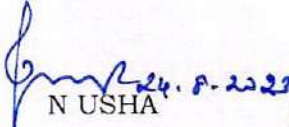
6. We have carefully examined the statement of facts, supporting documents filed by the Applicant along with application, submissions/Additional submissions made during personal hearing. We take on record, the letter dated 26.07.2023 (sent

by email on 26.07.2023) of the Applicant wherein they have stated that they have decided to withdraw the ARA application filed by them. As the Applicant has requested for withdrawal of their Advance Ruling Application, the application is treated as withdrawn without going into the merits or detailed facts of the case.

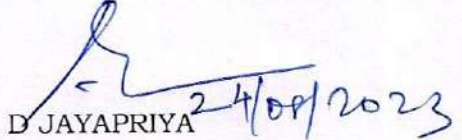
In view of the above, we rule as under:

RULING

The ARA Application Sl.No.18/2022/ARA dated 08.04.2022 filed by the Applicant seeking Advance Ruling is disposed as withdrawn as per the request of the Applicant.


N USHA
(MEMBER SGST)




D JAYAPRIYA
(MEMBER CGST)

To

M/s. FOSTER WHEELER (G.B.) LIMITED, PROJECT OFFICE,
6th Floor, Zenith Building, Ascendas IT Park,
CSTR Road, Taramani,
Chennai , Tamilnadu - 600 113.

(by RPAD)

Copy Submitted to:

1. The Principal Chief Commissioner of GST & Central Excise,
26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600 034.
2. The Principal Secretary/Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai-600 005.

Copy to:

1. The Commissioner of GST & Central Excise,
Chennai South Commissionerate,
Chennai-600 035.
2. The Assistant Commissioner (ST),
Adyar Assessment circle,
Chennai (East) Division.
3. Master File/ Spare-2 ✓