

**BEFORE THE AUTHORITY FOR ADVANCE RULINGS (INCOME TAX)  
NEW DELHI**

**7<sup>th</sup> Day of May, 2012**

**A.A.R. No.977 of 2010**

**PRESENT**

Justice Mr. P.K.Balasubramanyan (Chairman)

Name & address of the applicant	Roxar Maximum Reservoir Performance WLL, The Wind Tower, 7 <sup>th</sup> Floor, Office No.71 P.O. Box No.10838, Manama, Kingdom of Bahrain
Present for the applicant	Ms Anita Sumant, Advocate Mr. Sanjay Agarwal, CA Mr. Alok Kumar, Article
Present for the Department	-

**RULING**

The Oil and Natural Gas Corporation Limited, hereinafter referred to as ONGC, floated a tender calling for “services for supply, installation and commissioning of 36 manometer gauges” for carrying out its operations. The applicant was the successful bidder. ONGC and the applicant entered into a contract on 7.10.2009. In the contract ONGC is described as ‘Corporation’ and the applicant is described as ‘Contractor’. It will be profitable to set down the terms of the contract at this stage.

“Whereas CORPORATION is desirous of Services for Supply Installation and Commissioning of 36 manometer Gauges for carrying out CORPORATION’s operations conforming to specifications as set forth in the Scope of Work at Annexure-III of this Agreement. And Whereas the CONTRACTOR represents that it has the necessary experience for carrying out CORPORATION’s operations as referred to herein and has submitted a bid for providing the required services against CORPORATION’s Tender No.MR/MM/WS/SER/MG/050/P66NC08003 in

accordance with the terms and conditions herein and any other reasonable requirements of the CORPORATION from time to time.

And Whereas CORPORATION has accepted the bid of the CONTRACTOR and has placed Fax order / Notification of Award vide its letter No. MR/MM/WS/SER/MG/050/P66NC08003 dated 25.6.2009 on the CONTRACTOR.

Now it is hereby agreed to by and between the parties as under:-

In consideration of the payments to be made to the CONTRACTOR for the performance of work to be executed by the CONTRACTOR in the manner specified in this Contract, the CONTRACTOR hereby covenants with the CORPORATION that the CONTRACTOR shall and will duly provide, execute and complete the work described in the CONTRACT and shall do and perform all other acts and things mentioned or described in the Agreement or which are to be implied there from or may be reasonably necessary for completion of the WORK in the manner and subject to the terms and conditions or stipulations mentioned in the Contract. The CONTRACTOR assures, represents and warrants that the WORK shall be executed in the manner specified in the CONTRACT and shall ensure that it complies in all respects with the specification therein.”

2. The General Conditions of Contract, Special Conditions of Contract, scope of work, price schedule, performance bank guarantee, copy of firm order and copy of integrity pact were annexed to the contract.

3. The applicant approached this Authority with a plea that it had entered into a contract with ONGC for supply of manometer gauges, that the title to the goods passed outside India, that the payment therefor was received outside India and that the transaction of sale was not taxable in India. While allowing the application under section 245R(2) of the Income-tax Act, 1961 (Act), this Authority framed the following three questions for giving a ruling:-

1) *“On the facts and circumstances of the case, whether the amounts received/receivable by the applicant i.e. Roxar Maximum Reservoir Performance WLL, Bahrain (‘Roxar’) from Oil and Natural*

*Gas Corporation Ltd. (ONGC) under Contract No. MR/MM/WS/SER/MG/050/P66NC08003/9010012082 for offshore supply of 36 manometer gauges (hereinafter referred as ONGC Contract) is chargeable to tax in India under the provisions of Income-tax Act, 1961 (the 'Act')?*

*2) If the answer to question No.1 is affirmative, at what rate and at what portion of income arising from offshore supply of 36 manometer gauges would be taxable in India?*

*3) On the facts and circumstances of the case, whether the amounts received/receivable by the Applicant under the ONGC Contract for installation, erection and commissioning of 36 manometer Gauges is chargeable to tax under the provisions of Section 44BB of the Act?*

4. This Authority also reserved for consideration the question whether the transaction was designed for avoidance of tax in India, while considering the application under section 245R(4) of the Act.

5. It is argued on behalf of the applicant that the contract was an offshore supply contract, that the title to the goods passed to ONGC offshore, that the payment was received by the applicant offshore and that the taxing authorities under the Income-tax Act had no jurisdiction to tax the transaction in its entirety. The income to the applicant by the sale did not accrue or arise in India. Nor can it be deemed to have accrued or arisen in India. Learned counsel for the applicant placed heavy reliance on the decisions of the Supreme Court in *Ishikawajima-Harima Heavy Industries Ltd. vs. DIT* [(288 ITR 408) (SC)], *CIT and another vs. Hyundai Heavy Industries Company Ltd.* [(291 ITR 482) (SC)], on the Ruling of this Authority in *Hyosung Corporation vs. DIT* (AAR 773 of 2008) and other decisions.

6. Decisions and Rulings relied on by learned counsel of the applicant have now to be considered in the context of the pronouncement of the Supreme Court in *Vodafone International Holdings BV Netherlands vs. Union of India and another* (345 ITR 1 (SC)). In that recent decision, a three judge bench of the Supreme Court has laid down that what is needed is to consider the transaction in its entirety and to look at the transaction as a whole. The Supreme Court has

advocated that a transaction must be looked at and not looked through. The learned Chief Justice has held “it is the task of the Revenue / Court to ascertain the legal nature of the transaction and while doing so, it has to look at the transaction as a whole and not adopt a dissecting approach”. This injunction has been followed by this Authority in its recent Ruling in AAR 962 of 2010.

7. In Ishikawajima-Harima, a two judge bench of the Supreme Court had adopted a dissecting approach by dissecting a composite contract into two parts and holding one of the parts not amenable to taxation in India. The decision in Vodafone having been rendered by a three judge bench, it is not proper or open to this authority, to follow the approach made in the decision in Ishikawajima-Harima and to adopt a dissecting approach to the contract in question. What is called for is an understanding of the nature of the contract on an advertence to its terms.

8. A contract has to be read as a whole. The purpose for which the contract is entered into by the parties is to be ascertained from the terms of the contract. In the case on hand, ONGC clearly called for a contract for “services for supply, installation and commissioning of 36 manometer gauges”. The purpose of the contract is the installation of the gauges at site to enable ONGC to carry out its operations. I have quoted earlier the relevant portion of the contract. On a reading of the same, there cannot be any doubt that the contract in question was for erection and commissioning of 36 manometer gauges for the use of ONGC. The contract is clearly not one for sale of equipment. Nor is it one for mere erection of the equipment. It is a composite contract for supply and erection at sites within the territory of India. What is paid for by ONGC is for the supply and erection done in India. The payment is received by the applicant for the performance of the contract as a whole in India. It is therefore clear that the income to the applicant accrued in India.

9. A contract for sale of goods differs from a contract for installation and commissioning of a project. The tests relevant for considering where the title to the equipment, passed would not be relevant while construing the terms of a

supply and erection contract. Therefore the facts relied on by counsel for the applicant to argue that the title to the gauges passed outside the country, are of no avail.

10. An organization like ONGC, having issued a tender cannot go back on its terms while entering into a contract on acceptance of a bid in response. If the tender invited is for supply erection and commissioning, the contract entered into can only be for that. It cannot split up the contract or agree to its being split up at the instance of the bidder so as to affect the object of the tender or the terms of the tender notification. So, a separate payment schedule, if any, agreed to, cannot alter the terms of the tender.

11. Along with its written submissions filed on 25.04.2012, the applicant has produced the 'Invitation to Bid' floated by ONGC. The description of the work therein is "Hiring of Services for Supply, Installation and Commissioning of 36 manometer Gauges." The 'Scope of Work' included as Annexure III to that invitations reiterates that it is "Contract on Supply, Installation and Commissioning of Permanent manometer Gauges along with necessary accessories for 36 wells of Mumbai Offshore". The 'Scope of the Work' states:

"The permanent Manometer gauges are to be installed in total 36 wells in Mumbai Offshore. Out of these, 11 wells of B & S Asset (ML Area) and 25 wells are of Neelam & Heera Asset (15 ML plus 10 NML Area). Permanent Manometer gauges are to be installed above the packer to provide exact temperature and pressure of the reservoir at the surface to monitor reservoir conditions."

After indicating the sites, the scope of work is said to be based on supply of Equipments and Installation Services. The contractor is made responsible for the overall project. It is provided that the contractor shall be responsible for supply of equipment and materials and installation/commissioning of the equipments.

12. Based on the Invitation to Tender, it is argued that ONGC itself, while issuing it, envisaged independently, the supply of equipment and the installation. It is not possible to agree with this submission. Necessarily, these terms are also found in the contract entered into. On a proper reading of the Invitation to Tender and the contract entered into in the context of the object sought to be achieved by the contract, I have no hesitation in coming to the conclusion that it is a contract for installation of equipment which the tenderer itself is to supply. It is an indivisible contract. The object in floating the tender is to get the gauges installed at sites indicated, in furtherance of oil extraction. Hence on a look at the contract in the light of the objective sought to be achieved, I have no hesitation in overruling the argument that the contract contains two distinct parts and they have to be separated for the purpose of taxation. I am also not able to agree with the submission that both the parties to the contract intended to treat the two scopes of work to be treated separately.

13. Thus, on a true construction of the contract in question, I come to the conclusion that the income thereunder has arisen to the applicant in India.

14. Therefore, question No.1 formulated by the applicant has to be answered against the applicant by ruling that all payments received by the applicant under the composite contract with ONGC is income chargeable to tax in India under the provisions of the Income-tax Act. The contract entered into by the applicant is a composite contract and cannot be treated as an independent one for offshore supply of 36 manometer gauges and another one for erection of it.

15. In view of the conclusion that part of the payment towards price of the manometer gauges cannot be considered divorced from the payments received for the performance of entire obligations under the contract, Question No.2 formulated does not arise for consideration.

16. Question No.3 poses the question whether the payment received by the applicant for installation, erection and commissioning of the manometer gauges is chargeable to tax under section 44BB of the Act. In view of my interpretation of the contract and the conclusion recorded above, the contract of services for

supply, installation and commissioning of 36 manometer gauges is chargeable to tax under section 44BB of the Act, if it is found that the contract is for providing services or facilities in connection with prospecting for, or extraction of mineral oil. In the case on hand, services are rendered in connection with the prospecting and / extraction of oil by ONGC. Therefore, clearly, section 44BB of the Act is attracted. Hence, Question No.3, it is ruled that the, payment under the contract is taxable under section 44BB of the Act.

Accordingly, the ruling is pronounced on this the 7<sup>th</sup> day of May, 2012.

**(P.K.Balasubramanyan)**  
**Chairman**