GST leviable on 'Mobilization Advance' as on July 1, 2017 received for works contract service: AAR

Synopsis: The West Bengal AAR in the matter of Siemens Ltd. has ruled that the Applicant is deemed to have supplied works contract service to KMRCL on July 1, 2017 to the extent covered by the lump-sum that stood credited to its account on that date as mobilisation advance and GST is leviable thereon accordingly.

Facts:

M/s Siemens Ltd. (**"the Applicant"**) entered into a contract with M/s Kolkata Metro Rail Corporation (**"KMRCL"**) for 'design, supply, installation, testing and commissioning' of the power supply and distribution system, third rail system and SCADA system for the entire line and depot of the Kolkata East-West Metro Rail Project.

The contract included supply of equipment, training of the personnel, etc. The Applicant has been awarded onshore scope of work for the contract under an open consortium arrangement with the offshore contractor Siemens AG.

In accordance with the contract, the Applicant received ₹ 16,33,33,924/- on June 24, 2011 as mobilisation advance, which was 10% of the original contract value. The lump-sum mobilisation amount so received is recoverable as adjustment towards the payment due for the tax invoices that the Applicant raises on attaining contract progress milestones. Of the total lump-sum amount ₹ 13,80,74,549/- is stated to be outstanding on June 30, 2017.

Issue involved:

Whether GST shall be charged on the gross amount of the invoice or the net amount after adjusting the lump-sum amount outstanding as on June 30, 2017?

Held:

The Hon'ble Authority for Advance Ruling (AAR), West Bengal while observing Section 13(2) and Section 15(1) of the CGST Act, 2017 (**"CGST Act"**), Rule 2A(i) of the Service Tax (Determination of Value) Rules, 2006 (**"Service Tax Valuation Rules"**), vide ***Order No. 18/WBAAR/2019-20 dated August 19, 2019*** held as under:

- In the pre-GST regime, the Contract was divisible for the purpose of taxation as a contract for the sale of goods and a service contract. However, no tax was leviable on the advance payment under either the West Bengal Value Added Tax Act, 2003 or the Central Sales Tax Act, 1956.

- As the value of the taxable service was not ascertainable before the invoice was raised, no payment received in advance could be included in the gross amount

charged for such taxable service except the portion adjusted in the service bills, as per Rule 2A(i) of the Service Tax Valuation Rules.

- Therefore, the unadjusted portion of the advance as on July 1, 2017 has not suffered tax under the pre-GST regime under either of the above Acts.

- After the GST comes into force, the works contract is no longer divisible, and it is a service contract. **The entire unadjusted mobilisation advance as on July 1, 2017, according to the Contract, applies towards payment of consideration for the works contract service**.

- Mobilisation advance is meant specifically for inducing the contractor to spend for provisioning the works contract service. The contract provides a mechanism in the form of a bank guarantee that ensures that the advance is not diverted or misappropriated. It's application as payment for inducing the supply is, therefore, direct and unambiguous. **It is, therefore, 'consideration', whether or not in the form of a deposit, for the supply of the works contract service**.

- The Applicant is, therefore, **deemed to have supplied works contract service to KMRCL on July 1, 2017** to the extent covered by the lump-sum that stood credited to its account on that date as mobilisation advance in terms of Section 13(2) of CGST Act; and GST is leviable thereon accordingly.

- The value of the supply of works contract service in the **subsequent invoices** as and when raised should, therefore, be reduced to the extent of the advance adjusted in such invoices, and **GST should be charged on the net amount that remains after such adjustment** to avoid double taxation.

Citation: TS-650-AAR-2019-NT

Our Comments: The AAR in the given case has relied upon provisions of Section 13(2) of the CGST Act to fasten liability of GST on the Applicant. Importantly, it has been held that the Applicant is deemed to have supplied works contract services to recipient **on July 1, 2017**. The basis for the same lies under Explanation (i) to Section 13(2) of the CGST Act, according to which, if the supplier receives any advance payment as consideration, the supply shall be deemed to have been made to the extent covered by the payment.

As a matter of fact, the AAR has wisely considered the aspect of avoiding double taxation by holding that value of supply of works contract service in the subsequent invoices, as and when raised, should be reduced to the extent of advance adjusted in such invoices, and GST should be charged on the net amount that remains after such adjustment. **But, at first place, can it be said that taxability on such mobilisation advance arose on July 1, 2017?**

At this juncture, it is important to note that the definition of 'consideration' under Section 2(31) of the CGST Act, categorically provides that a **'deposit'** given in respect of the supply

of goods or services shall **not** be considered as payment made for such supply **unless the supplier applies such deposit as consideration** for the said supply. Hence, till such time the amount of initial deposit is appropriated towards supply of services, the same may not constitute 'consideration' for chargeability of GST. Accordingly, even in above case, taxability of mobilization advance, ideally, must arise at the time of appropriation of such amount against the estimated expenditure and not on July 1, 2017.

Further, next important question arises that if we go hypothetically with the above ruling, then, leviability of interest on such advance amount may arise, considering as supply made as on July 1, 2017.

In recent times it is seen that majority of AAR rulings are driven on 'pro-revenue' trends, deciding the matter in favour of the Department. At the same time, it is also seen that there are divergent rulings also on same transaction. Though envisaged as a forum for GST dispute redressal, the AAR & AAAR are losing their importance in the eyes of taxpayers, making them hesitant to take recourse to this route.

To promote ease-of-doing business and to generate confidence amongst assessees, it is mandatory that the Authority, which at present is manned only by revenue officers, should be a quasi-judicial body consisting of a Judicial Member and a Technical Member. In this manner, the AAR & AAAR would act independently and judiciously to decide the disputes coming up to them.

Relevant provisions:

Section 13(2) of CGST Act:

> *"(2) The time of supply of services shall be the earliest of the following dates, namely:-*
>
> > *(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or*
> >
> > *(b) the date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier"*

Section 2(31) of the CGST Act:

> *"(31) "consideration" in relation to the supply of goods or services or both includes—*
>
> > *(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;*

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply"

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