

Escalated value received under service contract to be considered for the payment of GST

The AAR, Maharashtra in the matter of *B P Sangle Constructions Pvt. Ltd. [Advance Ruling No. GST-ARA-44/2020-21/B-41 dated March 31, 2022]* held that, escalated value received under a contract for service of construction of road during the Goods and Services Tax (“GST”) regime, shall be added to the original contract value and the actual transaction value should be considered for payment of tax.

Facts:

M/s. B P Sangle Constructions Pvt. Ltd. (“**the Applicant**”) was awarded a contract by National Highways Authority of India (“**NHAI**”) for construction of road for an agreed consideration of INR 65,90,98,099/- which included VAT. However, during the course of completion of service as per the contract, there was an escalation in the contract value against goods and services took place due to the introduction of the GST regime w.e.f. July 01, 2017.

As per the contract, in case of any change in the rates of labour, steel, cement, plant, machinery, spares, bitumen, spares, lubricants etc., the contract price shall increase or decrease as per the formula provided in the contract notice and in the event of such escalation of value, the same shall be recovered in addition to contract value from NHAI.

The Applicant went to the AAR to seek whether such escalated value shall be added to taxable value u/s 15 of the Central Goods and Services Tax Act, 2017 (“**the CGST Act**”).

Issue:

Whether value escalated during construction of road is to be added to the transaction value for payment of GST as per the provision of Section 15 of the CGST Act?

Held:

The AAR, Maharashtra in *Advance Ruling No. GST-ARA-44/2020-21/B-41 dated March 31, 2022* held as under:

- Noted that, the contract for construction of roads was made during the pre-GST regime but the execution of the same took place after the introduction of GST.
- Observed that, there was no supply of goods or services during the pre-GST regime and the execution of the contract entirely took place during the GST regime and in order to

ascertain the value of service, time of supply during the GST regime shall be taken into consideration.

- Analysed the provision of Section 15 of the CGST Act and noted that the actual transaction value which includes the escalated value that is recovered from NHAI by the Applicant, should be considered for payment of tax.
- Held that, the escalated value shall be added to the original value of the contract and the total of the escalated value plus the original value of the contract will be the transaction value on which GST must be discharged by the Applicant.

Relevant Provision:

Section 15 of the CGST Act:

“Value of Taxable Supply

15. (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.”

(2) The value of supply shall include—

- (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;*
- (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;*
- (c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;*

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

(3) The value of the supply shall not include any discount which is given—

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if—

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.”

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