



Dimensions – 128th Edition

Ruling under GST era

M/s Global Vectra Helicorp Limited – Appellate Authority for Advance Ruling, Gujarat¹

Issue for Consideration

Should reimbursement of the cost of aviation turbine fuel ('ATF') from the customer at actual cost be included in the value charged for charter hire services?

Discussion

- The Appellant has a fleet of helicopters / aircraft and is engaged in the business of providing aircraft on a rental basis with or without operators ('charter hire services').
- As per the agreement with the customer, the customer is responsible for procuring ATF required for flying the aircraft. However, at locations where the customer is unable to provide the ATF, the Appellant procures the ATF on behalf of the customers, and subsequently the cost of ATF is reimbursed by the customers at actual cost.
- The Appellant was of the view that the ATF reimbursed at actual cost from the customer should not form part of the value of services for GST purposes and accordingly filed for an Advance

Ruling with the Authority for Advance Ruling at Gujarat.

- The Authority for Advance Ruling passed its order² wherein it held that the ATF cost recovered at actual cost by the Appellant from the customer was includible in the value of services.
- Aggrieved, the Appellant filed the present appeal before the Appellate Authority for Advance Ruling at Gujarat ('the Appellate Authority') contending as follows:
 - The Appellant is responsible for providing rental services only where the consideration is fixed as monthly charges and hourly flying charges.
 - The amount charged for ATF is not a consideration for charter hire services and hence the reimbursements for ATF cannot be subject to GST.
 - The amount for ATF is merely a reimbursement by the customer and cannot be interpreted to mean a consideration for charter hire services provided by the Appellant.
 - The arrangement of ATF by the Appellant is for administrative convenience only and the recovery of ATF cost does not have any direct

¹ 2021 (10) TMI 118

² 2020-VIL-262-AAR



- nexus with the charter hire services. Hence, GST should not apply on recovery of ATF cost.
- As per the accounting policy of the Appellant, the reimbursement of ATF cost is not debited to the Profit & Loss account but is treated as receivables from the customers wherein on recovery from customers, the amount is adjusted against these receivables.
 - The cost of ATF is required to be borne by the customer and the arranging of ATF by the Appellant is not in relation to the provision of charter hire services. Furthermore, the reimbursement for ATF charged by the Appellant is not in respect of the supply of services agreed to be provided to the customer. Hence, as per section 15(2)(b)³ of the CGST Act, 2017, the value of ATF cannot be included in the value of charter hire services.
 - The Appellant does not derive any benefit / profit from the value of the ATF reimbursed by customer.
 - The amount charged for ATF is not the price paid / payable for the charter hire services provided by the Appellant, and hence the reimbursements for ATF cost cannot be subjected to GST as per section 15(1) of CGST Act, 2017.
 - ATF cost is not an incidental expense in respect of charter hire services and hence section 15(2)(c) of the CGST Act, 2017 should not be applicable.
 - The Appellant is acting as a “pure agent” and hence reimbursement of ATF cost cannot be subjected to GST as per rule 33 of CGST Rules, 2017.
 - The present case involves the supply of renting of helicopters and not transportation services. Therefore, the supply takes place when the helicopters are made available to customer.
- Thus, any amount charged by way of reimbursement for ATF that is made available after the supply of services should not be included in the value of supply.
- As per Section 9(2) of the CGST Act, 2017, tax is not leviable on supply of ATF, and hence tax cannot be levied on ATF indirectly by including it in the value of supply.
 - The supply of charter hire service cannot be treated as mixed supply because the amount towards ATF is shown separately on the invoice / debit note and cannot be treated as a composite supply because in the aviation industry, it is a settled business practice to provide aircraft on a charter basis with an operator and without ATF. Thus, the supply of ATF cannot be said to be naturally bundled in the ordinary course of business. Hence, since ATF is not leviable to GST, GST should not be applicable on the reimbursement of ATF cost.
 - Reliance was placed on the GST circular⁴ and various judgments.
- After considering the contract between the Appellant and the customer and the contention of the Appellant, the Appellate Authority observed as follows:
 - As per the contract between the parties, in most of the cases, it is the Appellant’s responsibility to arrange for the ATF where the customer is unable to provide ATF. Hence, the Appellant is primarily responsible / liable to arrange for ATF.
 - In cases where the customer provides ATF free of charge, the amount of such ATF is not includable in the value of supply as per section 15(2)(b) of the CGST Act, 2017.
 - The amount charged by the Appellant as reimbursement of ATF should be covered under Section 15(2)(c)⁵ of the CGST Act, 2017

³ Section 15(2)(b) of CGST Act, 2017- “(2) The value of supply shall include—... (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;”

⁴ Circular no. 47/21/2018-GST dated June 8, 2018

⁵ Section 15(2)(c) of CGST Act, 2017- “(2) The value of supply shall include—... (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;”



as the Appellant is providing ATF in the aircraft at the time of or before the supply of services to their customer and the Appellant is charging the amount for the ATF from the customer as reimbursement. Further, provision of ATF in the aircraft is an activity done 'in respect of supply' of charter hire services.

- It is not possible for the Appellant to provide the charter hire services without ATF being filled in the aircraft and therefore, the amount of reimbursement charged for ATF is in respect of supply of services.
- The scope of work in the contract contains specific mention regarding the provision of ATF. Hence, provision of ATF should be considered as part of the Appellant's service.
- The payment made by the customers to the Appellant would include both the payment for charter hire services and amount towards ATF. Hence, the amount of ATF should form part of the consideration, i.e. the value of services provided by the Appellant for GST purposes.
- Lack of benefit in the form of mark-up etc. from the reimbursement of ATF from the customer is not the sole factor for determining value of supply.
- ATF is an essential component of supply as without ATF, the aircraft would not fly and there would be no supply of charter hire services.
- On perusal of contract clauses, the reimbursement of ATF cannot be said to be "pure agent" services as per rule 33 of CGST Rules, 2017 due to the following main reasons:
 - o The Appellant is primarily responsible for the provision of ATF.
 - o Provision of ATF is essential for providing the charter hire services.
 - o The Appellant supplies ATF for its own interests of supply of charter hire services.

Hence, the cost of ATF cannot be excluded from the value of supply.

- With regards to the reimbursement not being debited to the Profit and Loss Account, the

Authority observed that value of supply needs to be determined in accordance with the provisions of GST law and is not dependent on the accounting treatment given to any expenditure or cost.

- The GST circular referred to by the Appellant is not applicable to the facts of the present case as the issue in the circular pertains to the manufacture of goods using equipment such as moulds and dies whereas the present case is different from that issue.
- The Appellate Authority distinguished the case laws relied upon by the Appellant as not being applicable to the facts of the present case.

Ruling

The Appellate Authority rejected the appeal filed by the Appellant and held that ATF procured for use in the aircraft provided on rent to customer is includable in the value of services provided by the Appellant.

Dhruva Comments:

It is imperative to understand the nature of supply and the consideration payable for the same which is agreed upon between the parties. The valuation provision provides for inclusion of an amount which the supplier is liable to pay but incurred by the recipient. Thus, it needs to be debated in the present construct whether ATF is part of supply / to be incurred by the supplier but incurred by recipient for its inclusion in value of supply.

Circular

Clarifications issued based on decisions taken in the 45th GST council meeting

The Government has issued circular no. 164/20/2021-GST dated October 6, 2021 providing clarifications in respect of the decisions taken during the 45th GST council meeting held on September 17, 2021. The key clarifications are as follows:



Service by cloud kitchen / central kitchens

- The explanatory notes to the classification of restaurant service includes takeaway services and door delivery services for consumption of food which are also considered as restaurant service and thus, the supply of service by way of cooking and supply of food, even if exclusively by way of takeaway or door delivery or through or from any restaurant would be covered under restaurant service. This would thus include cloud kitchen / central kitchens.
- Accordingly, the service provided by cloud kitchen / central kitchen would be covered under restaurant service taxable at 5% without input tax credit.

Supply of ice cream by ice cream parlours

- Ice-cream parlours which supply already manufactured ice-cream stand on a different footing than a restaurant as they do not engage in any cooking or preparing activity. Their activity is of supply of ice-cream as goods (a manufactured good) and not as a service, even if certain ingredients of service are present. Thus, the ice-cream sold by such parlour or any similar outlet would attract GST at the rate of 18%.

GST on overloading charges at toll plaza

- Services by way of access to a road or a bridge on payment of toll charges is exempt⁶.
- Overloading vehicles are allowed to ply on the national highways after payment of fees with a multiplying factor which is certain times of the rate of toll.
- It has been clarified that overloading charges at toll plaza would also be exempted like the toll charges.

Admission to indoor amusement park

- As per sr. no. 34 of the service rate notification⁷ (prior to October 1, 2021), the services by way of admission to -

- amusement parks including theme parks, water parks, joy rides, merry-go rounds, go-carting and ballet was taxable at 18%;
 - entertainment events or access to amusement facilities including casinos, race club, any sporting event such as Indian Premier League ('IPL') was taxable at 28%.
- Clarification was sought for the rate applicable in case of indoor amusement park / family entertainment centres post the amendment made vide notification no. 6/2021-Central Tax (Rate) dated September 30, 2021.
 - It has been clarified that the rate of 28% would apply for admission to a place having casino or race club (even if it provides certain other activities) or event like IPL. Further, the rate of 18% would apply for admission to amusement parks, or place having joy rides, etc. whether indoor or outdoor so long as there is no access to casino or race club.

Services by contract manufacturers to brand owners for manufacture of alcoholic liquor for human consumption

- Services by way of job work in relation to food and food products falling under chapters 1 to 22 in the first Schedule to the Customs Tariff Act, 1975 were taxable at 5% in terms of sr. no. 1(f) of service rate notification. Clarification was sought as to whether under the said entry, the services supplied to brand owners for manufacture of alcoholic liquor for human consumption would also be covered.
- It has been clarified that food and food products in the said entry excludes alcoholic beverages for human consumption. In common parlance, alcohol is not considered as food. Accordingly, it is clarified that such activity would attract GST at the rate of 18%.

⁶ Sr. no. 23 of notification no. 12/2017-Central Tax (Rate) dated June 28, 2017

⁷ Notification no. 11/2017-Central Tax (rate) dated June 28, 2017





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