



Dimensions – 79th Edition

Rulings under GST era

M/s. Navneeth Kumar Talla – Authority for Advance Ruling, Telangana¹

Issues for Consideration

- Can GST be levied on the food supplied to Private and Government hospitals and autonomous bodies pursuant to an outsourcing contract?
- If not, whether the GST paid and remitted to the Government is recoverable from future bills?

Discussion

- The Applicant supplies food to MNG Cancer Hospital Hyderabad, an autonomous body, on outsourcing basis for the patients of the hospital.
- The Applicant was charging GST at the rate of 18% on such supply of food as per notification no. 8/2017-Integrated Tax (Rate) dated June 28, 2017.
- However, the hospital relied upon circular no. 32/06/2018-GST dated February 12, 2018 (which provided clarification regarding the levy of GST on healthcare services provided by a clinical establishment and food supplied to the patients) to state that no GST is payable on such supply of food.

Accordingly, the hospital declined to reimburse the GST charged and informed that the GST already paid by them would be adjusted against invoices raised for future supplies.

- The Applicant accordingly approached the Authority for Advance Ruling (“the Authority”) to determine the applicability of GST on the food supplied to the hospital.
- The Authority observed as follows:
 - The consumers of food and beverages do not make the payment to the Applicant. The recipient of service is the hospital which enters into a contract with the Applicant. It is deciphered that the Applicant is vested with the management of the canteen facilities of the hospital.
 - Entry no. 74 of notification no. 12/2017-Central Tax (Rate) dated June 28, 2017 provides an exemption from GST on supply of healthcare services provided by a clinical establishment. This exemption is available only when the clinical establishment itself provides the service of supply of food as a part of healthcare services to in-patients and such an exemption

¹ Ruling no. 07/2020, A.R.Com/22/2018 dated June 22, 2020



is not available when such supply of food is made by a person other than the clinical establishment. The said view is also supported by the circular (*supra*). Thus, the exemption is not applicable to the Applicant.

- With regards to the rate of tax, as per sl. no.7(v) of notification no. 11/2017-State Tax (Rate) dated June 29, 2017 (“the rate notification”), GST was payable on outdoor catering services at the rate of 18%.
- The said rate notification was subsequently amended vide notification no. 46/2017-State Tax (Rate) dated December 12, 2017 but there was no change in sl. no. 7(v) of the rate notification and continued to be taxable at the rate of 18%.
- Thereafter, on the recommendations of the GST council, sl. no. 7(v) of the rate notification was amended w.e.f. July 27, 2018 (vide notification no. 13/2018-State Tax (Rate) dated August 20, 2018) to tax the supply of food at the rate of 18% which are event based or occasional. Furthermore, sl. no. 7(i) of the rate notification was also amended to include the supplies earlier covered under sl. no. 7(v) and now taxable at the rate of 5% without availment of input tax credit (“ITC”). Thus, the services provided by the Applicant became taxable at the rate of 5% w.e.f. July 27, 2018.
- Sl. no. 7 of the rate notification was totally revamped by the 37th GST council meeting held on September 20, 2019 and notification no. 20/2019-Central Tax (Rate) dated September 30, 2019 was issued but the rate of tax on the supplies made by the Applicant continued to be 5% without availment of ITC.

Judgment

- The service of supply of food to the hospital is leviable to GST.
- The tax is payable at the rate of 18% with ITC for the period July 1, 2017 to July 26, 2018 and 5% without ITC for the subsequent period.

Dhruva Comments:

GST law grants exemption to health care services rendered by hospitals. Any food supplied to in-patients as advised by doctor / nutritionists shall be regarded as a part of composite supply of healthcare services. However, such exemption is not extended when such outdoor catering services are received by hospitals.

M/s. Prasa Infocom & Power Solutions Private Limited – Authority for Advance Ruling, Maharashtra²

Issue for Consideration

Can the supply of goods and services for setting-up of a data center qualify as a ‘works contract’ as per section 2(119) of the CGST Act, 2017?

Discussion

- The Applicant is engaged in the business of providing data center construction and contracting services. The Applicant has been awarded a sub-contract for setting-up a data center on turnkey basis which includes designing, civil and mechanical works, supply, loading and installation of items, testing and commissioning, operation manuals, detailed handover along with training to the end customer.
- The Applicant approached the Authority for Advance Ruling (“the Authority”) to contend that setting-up of the data center amounts to ‘works contract’ based on the following grounds:
 - Before the equipment are supplied, a civil structure is required to be constructed to house the equipment. The civil structure also requires various other ancillary equipment necessary in a civil structure such as UPS and batteries, fire alarm system, air conditioners, surveillance systems, etc. These activities are required to set up a data center as a whole. Thus, the contract involves a composite supply of goods as well as services that are naturally bundled in the course of setting up of a data center. The data center cannot be shifted to another

² Ruling no. GST-ARA-26/2019-20/B-43 dated March 18, 2020



- location without first dismantling and then re-erecting it at another site.
- For a contract to qualify as a 'works contract' under section 2(119) of the CGST Act, 2017 there shall be composite supply of goods as well as services resulting in the creation of immovable property as a whole.
 - As evident from the statement of work, it was agreed to complete the project on a turn-key, end-to-end basis to set-up data center as a whole. The predominant nature of the services undertaken is to provide an end-to-end solution to the contractor which is nothing but performance of 'works contract' service. In this regard, reliance was placed on the decision of the Hon'ble Bombay High Court in the case of *National Organic Chemical Industries v. State of Maharashtra*³.
 - Performance of 'works contract' must be in relation to an 'immovable property'. The term 'immovable property' has not been defined under the CGST Act, 2017 and accordingly, reliance was placed upon the Supreme Court judgement in the case of *T.T.G. Industries v. CCE*⁴ and the GST advance ruling in the case of *Fermi Solar Farms Pvt. Ltd.*⁵, to state that the supply of goods and services results in setting-up of a data center that cannot be shifted to another location without first dismantling it and then re-erecting it at another site and therefore, the data center shall be treated as an 'immovable property'. Thus, the supply amounts to 'works contract'. Various online web sources were also referred to explain the structure and design of a data center, to submit that a data center is referred to as an immovable structure with various security and temperature control features housing enormous servers which cannot be moved or shifted.
- The Authority after taking into account the various clauses of the agreement and the statement of work, observed as follows:
 - As per the documents, separate prices are indicated for the supply of various materials and the activity of installation, testing and commissioning, maintenance, etc. Furthermore, separate payment would be made for supply of works and supply of material / equipment. Thus, there is a clear bifurcation in the agreement with respect to supply of goods and services.
 - There is a clear demarcation of goods and services to be provided by the Applicant, but such supplies are naturally bundled and in conjunction with each other.
 - The majority of the contract is for the supply of goods. The goods supplied are used by the Applicant to provide services of installation, testing and commissioning of the data center. Without these goods, the services cannot be supplied by the Applicant.
 - Accordingly, there is a composite supply, where the principal supply is of goods but there is no building, construction, completion, etc. of any immovable property wherein transfer of property in goods is involved in the execution of contract. Therefore, there is no works contract involved in the supply.
 - The data center appears to be a space / room where the equipment, machinery and other various apparatus are installed. The value of civil construction shown is insignificant as compared to the value of goods / services. The major portion in this project is of sale of equipment, machinery and other various apparatus. There is absolutely no construction activity.
 - The machines / instruments / equipment are all replaceable and cannot be regarded as an immovable property.

Ruling

The supply of goods and services for setting up of the data center does not qualify as a 'works contract' as defined under section 2(119) of the CGST Act, 2017.

³ 2012 SCC Online Bombay 2128

⁴ 2004 4 SCC 751

⁵ 2018-VIL-14-AAR



Dhruva Comments:

The Applicant had a mandate to create a fully equipped and functional data center. In the present case, the Authority basis the value split amongst goods and services, categorised the transaction as a composite supply with supply of goods being principal supply and concluded that element of civil construction is insignificant.





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