

Whether mere transfer of monetary proceeds by a wholly owned Indian subsidiary to its parent foreign without apparent import of service will be liable for payment of IGST under RCM ? Held in the affirmative being constructive support service

M/s. IVL India Environmental R&D (P.) Ltd. [2022] 145 taxmann.com 620 (Maharashtra Authority For Advance Ruling) dated 01-12-22

In favour of Revenue

Relevant Facts

The Municipal Corporation of Greater Mumbai (MCGM) had invited bids for the contract of "Project Management Consultancy Services" for various locations, pursuant to which IVL Sweden applied and were successfully awarded the said tender. However, as per the bidding eligibility criteria, the contract could only be executed by the wholly owned subsidiary of the foreign company. Hence, IVL Sweden incorporated IVL India in order to execute the said contract to obligate to the terms and conditions of the

bidding eligibility criteria.

IVL India interpreted that:

- i. IVL India was incorporated merely for the purpose of obtaining contract from MCGM.
- ii. IVL India did not have necessary expertise to provide the 'Project Management Services' in its own capacity.
- iii. The aforesaid contract was awarded to IVL India, on the basis of credentials/ expertise of the parent company. Thereby, as mandated, both IVL India and the IVL Sweden had jointly signed the contract with MCGM.
- iv. Therefore, it was evident that IVL India was not receiving any services from IVL Sweden. IVL Sweden was providing services to the ultimate recipient i.e., MCGM through IVL India, which was acting as a conduit for getting payments from MCGM.
- v. Hence in the absence of underlying service being provided by IVL Sweden to IVL India, the question of paying IGST under reverse charge in the hands of IVL India did not arise.

Held

The Maharashtra Authority For Advance Ruling held that-

- i. As per the minimum qualifying condition, only wholly owned subsidiary (in this case, the applicant) of the foreign company was eligible to quote based on the credentials of its parent/ sister concern.
- ii. The applicant, IVL India, was rendering services such as ensuring requisite insurances have been received, vetting of designs submitted by contractors, scrutinizing the contractors work program, carrying out day to day supervision of contractor's work, ensuring safety and quality compliance etc
- iii. The services were received by the applicant from IVL Sweden to further perform its services under the contract, for which monetary proceeds flew from the applicant to IVL Sweden.
- iv. The services were being supplied in taxable territory i.e., India.
- v. Therefore, in view of Sr. No 1, of [Notification No. 10/2017 of Integrated Tax \(Rate\) dated June 28, 2017](#) since the support services were being supplied by IVL Sweden located in a Non-Taxable territory to the applicant, the whole of integrated tax leviable under Section 5 of the Integrated Goods and Services Tax Act, was to be paid on reverse charge basis by the recipient of the such services, namely IVL India.

CNK Comments

The decision reiterates that GST under reverse charge mechanism (RCM) is required to be also paid on constructive support services supplied by an entity in a nontaxable territory to an entity in taxable territory.

Reimbursement of expenses incurred on behalf of the company not liable to tax

M/s. Yaadhvi Scientific Solutions (P.) Ltd. [2022] 146 taxmann.com 116 (The Authority For Advance Rulings, Karnataka) dated 2-12-22

In favour of Assessee

Relevant Facts

The assessee was an integrated Customs Research and Manufacturing Services (CRAMS) provider offering single point access to discovery services, Chemical Process Research and Development (CRPD), drug production development & regulatory support services and also pharmaceutical technologies to global pharma and biotech companies. They were performing such services which require extensive co-ordination with other research sites/ customer sites. Expenses incurred by the employees in performing these services include travel cost, printing & stationery, mobile charges, etc.

The employees took all the invoices in the name of the company along with the company GSTIN for domestic transaction invoices and the company took Input Tax Credit (ITC) in respect of eligible transactions. In respect of transactions with Goods Transport Agencies, Lawyers/ advocates and import of services, etc., the company discharged liability by paying under RCM.

The assessee sought an advance ruling in respect of the following questions:

- i. Whether reimbursement of expenses at actual cost which were incurred by the employees on behalf of company was liable to tax?
- ii. Whether RCM was applicable on reimbursement of expenses paid on behalf of the company at actuals which were incurred by the employees who was also a whole-time director of the company?

Held

The Authority For Advance Rulings Karnataka held that-

Services by an employee in the course of or in relation to his employment were covered under Clause 1 of Schedule III which relates to the activities or transactions which shall be treated neither as a supply of goods nor as a supply of

services. Hence the services provided by employees of the applicant to the applicant were not a supply.

The amount paid by the employee to the supplier of service represents the amount paid "by any other person" and were therefore covered under the term "consideration" paid by the applicant to the service provider for the services received by the employees on behalf of the company. This amount reimbursed by the applicant to the employee later on would not amount to consideration for the supplies received as the services of the employee to his employer in the course of his employment were not a supply of goods or supply of services in terms of clause 1 of the Schedule III of the CGST Act, 2017 and hence, the same were not liable to tax.

A director who has taken an employment in the company may be functioning in dual capacities, namely, one as a director of the company and the other on the basis of the contractual relationship of master and servant with the company (employment). As per the Circular, only part of employee director's remuneration which was declared separately as other than "salaries" in the company's accounts and subjected to TDS under section 194J of the Income Tax Act shall be treated as consideration for providing services which were outside the scope of Schedule III of the CGST Act, and hence taxable under reverse charge basis. Hence, RCM was not applicable on reimbursement of expenses on actuals, to a whole-time director of company who was also an employee of the company.

CNK Comments

A welcome decision clarifying the intent of the Government to not impose tax on reimbursements to employees. In case the employee has obtained bills in the name of the company, the same would not form part of the taxable value subject to GST.

Cost of diesel reimbursed from recipient of service is liable to be included in value of supply of renting of diesel generator set service

**M/s. Tara Genset Engineers [2022] 145 taxmann.com 573 (The Authority For Advance Rulings for the State of Uttarakhand) dated 31-10-22
In favour of Revenue**

Relevant Facts

The applicant was a partnership firm in the business of renting of diesel generator (DG) set to various customers in different districts of Uttarakhand and had entered into an agreement with them to install DG on hire basis for rent with reimbursement of diesel cost on usages of DG set. They had been discharging the tax @18% (CGST plus SGST) on DG set hiring charges plus on reimbursement of diesel cost incurred for running DG set.

One of the recipients of service believed that the taxes charged and collected by them on the component of the reimbursement of diesel charges for running the DG was erroneous, as the said commodity i.e., diesel did not come under the purview of GST.

The applicant sought for an advance ruling as to whether GST was applicable on cost of the diesel incurred for running DG set in the course of providing DG rental service?

Held

The Authority For Advance Rulings in the State of Uttarakhand held that- Section 15 of CGST Act, 2017 mandated that the value of supply shall include among other things, any other amount that the supplier was liable to pay in relation to such supply, but which had been incurred by the recipient of supply and not included in the price actually paid or payable for the goods or services or both.

The contract entered between the applicant and the recipient was for the hiring of DG Set and was a comprehensive contract with the

consideration having a fixed and a variable component. The fixed component was the monthly fixed rent charged in the invoice for the DG Set and the variable charge (running charges) was the charge for the diesel used. Both were part of the same consideration and were for the contract of supplying DG Set on hire. Though it appeared that the applicant was receiving the reimbursement of diesel cost, but we opine that the recipient was not paying for the diesel only but for the services of DG Set which have been hired on rent and the diesel was an integral part of the supply of DG Set rental service. There was no separate contract for supply of diesel and even single invoice was issued for the supply of rental service of DG Set although both the components were shown separately. Hence, the reimbursement of expenses as cost of the diesel, for running of the DG Set was nothing but the additional consideration for the renting of DG Set and attracted GST @18%.

CNK Comments

The decision has clarified the ambiguities of section 15 of CGST Act, 2017 dealing with value of taxable supply and held that cost of diesel shall form part of the value of supply though it may be out of purview of GST as cost of all inputs has to be included to determine taxable value under Section 15.

Tax paid on purchases made to meet obligations under Corporate Social Responsibility (CSR) under the Companies Act will be eligible for ITC

M/s. Bambino Pasta Food Industries (P) Ltd. [2022] 144 taxmann.com 207 (The Authority For Advance Rulings, Telangana) dated 20-10-22.

In favour of Assessee

Relevant Facts

The applicant Bambino Pasta Food Industries was a manufacturer of vermicelli and pasta products. During covid time, when oxygen was

scarce in the country, the applicant had donated oxygen plant to AIIMS hospital for the benefit of patients who were suffering with low oxygen levels. For this purpose, the applicant had purchased pressure swing adsorption (PSA) oxygen plant and its spare parts on payment of IGST. The applicant was of the opinion that the expenditure made by them comes under the CSR provisions as per Section 135 of the Companies Act, 2013.

The applicant filed for advance ruling application to know the admissibility of ITC on the CSR expenditure incurred by the Company.

Held

The Authority For Advance Rulings, Telangana held that-

As per the statutory provisions of the Companies Act, 2013, the Companies with a specified net-worth or net profit were obliged to incur a minimum of 2 % of their net profit towards their CSR and failure to do so would attract penalty under sub section 7 of sec.135 of the said Act which may go upto a maximum of Rs. 1 Cr.

Thus, the running of the business of a company would be substantially impaired if they did not incur the said expenditure.

Therefore, the expenditure made towards CSR under section 135 of the Companies Act, 2013, was an expenditure made in the furtherance of the business.

Hence the tax paid on purchases made to meet the obligations under CSR should be eligible for input tax credit under CGST and SGST Acts.

CNK Comments

A positive decision clarifying that CSR expense was in the course of furtherance of business and thereby allowing ITC on expenses incurred during discharge of CSR obligations. This ruling is line with all positive decisions given in this regard earlier.

CBIC Circular clarifying GST exemption on notice pay received from employee applies retrospectively

M/s. Manappuram Finance Ltd. v/s Assistant Commissioner of Central Tax and Excise [2022] 145 taxmann.com 422 (High Court of Kerala) dated 07-12-2022
In favour of Assessee

Relevant Facts

The petitioner was a non-banking finance company. The GST department held that the petitioner was liable to pay tax on notice pay received from the former employees of the petitioner. On appeal, the appellate authority upheld the orders of the original authority, which had rejected the claim for refund made by the petitioner for refund of GST paid on notice pay received from the erstwhile employees.

Since the GST Appellate Tribunal had not been constituted, the petitioner filed a writ petition before the High Court. The petitioner relied on the [CBIC Circular No. 178/10/2022-GST](#) and contended that with the issuance of the aforesaid Circular, it was now clear that the petitioner was clearly not required to pay any GST on notice pay received from employees.

Held

The High Court of Kerala, held that-
The Circular only clarified the existing law. "In that view of the matter, the question as to whether the Circular had any retrospective effect need not be considered. Even otherwise, in the light of the law laid down in *Suchitra Components Ltd* the provisions of a Circular will have to be deemed to apply retrospectively,"

The High Court allowed the writ petition and quashed all the orders which erstwhile rejected the application of the petitioner for a refund of GST paid on notice pay received by the petitioner from its employees.

CNK Comments

This judgement elucidates that the Circular

clarifies the existing law and asserts that a beneficial Circular applies retrospectively. It confirms that there is no liability of GST on notice pay received from employee. This judgement is also in line with various positive rulings given in this regard earlier.

KEY TAKE AWAY

- GST under RCM is applicable on mere transfer of monetary proceeds by a wholly owned Indian subsidiary entity to its parent foreign entity in case of constructive support service.
- Reimbursement of expenses incurred by employees including whole time director on behalf of the company are not liable to GST.
- Cost of diesel reimbursed by recipient of service is liable to be included in value of supply of renting service.
- Tax paid on purchases made to meet obligations under CSR under Companies Act will be eligible for input tax credit.
- Circulars are effective retrospectively if they are beneficial to the taxpayer.



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