

2024 (85) G.S.T.L. 111 (A.A.R. - GST - Telangana)

BEFORE THE AUTHORITY FOR ADVANCE RULING UNDER GST, TELANGANA

S/Shri Sahil Inamdar, Member (Central Tax) and S.V. Kasi Visweswara Rao, Member (State Tax)

IN RE : RAMAGUNDAM FERTILIZERS AND CHEMICALS LTD.

TSAAR Order No. 1/2024, dated 2-1-2024 in A.R.Com/17/2023

Tax deduction at source - Notified person - PSU Applicant is a manufacturer of fertilizers and claims to be a public company - Applicant further submits that it is making supplies of fertilizers to National Fertilizers Limited (NFL) which is also a public sector undertaking - Applicant submits that NFL is making tax deduction at source under Section 51 of CGST Act, 2017 even though such tax deduction is exempted - Applicant sought Advance ruling on question whether applicant can be classified under notified person and whether applicant to pay GST TDS by deducting it from consideration payable to supplied - *HELD* : Applicant is to be classified as notified person and applicant supplier does not attract TDS - Section 51 of Central Goods and Services Tax Act, 2017 - Section 51 of Telangana Goods and Services Tax Act, 2017. [para 8]

Ruling in favour of assessee

NOTIFICATIONS CITED

Notification No. 12012/39/2011-FPP, dated 2-1-2013..... [Para 7]

Notification No. 33/2017-C.T., dated 15-9-2017..... [Paras 4.5, 5, 7]

Notification No. 50/2018-C.T., dated 13-9-2018..... [Para 7]

Notification No. 73/2018-C.T., dated 31-12-2018..... [Paras 4.6, 4.7, 7]

[Order]. - M/s. Ramagundam Fertilizers and Chemicals Limited, RFCL Fertilizers City, RFCL Plant, Ramagundam, Karimnagar, Telangana-505 210 (36AAHCR2335P1ZY) has filed an application in FORM GST ARA-01 under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules.

2. At the outset, it is made clear that the provisions of both the CGST Act and the TGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the TGST Act. Further, for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.

3. It is observed that the queries raised by the applicant fall within the ambit of Section 97 of the GST Act. The Applicant enclosed copies of challans as proof of payment of Rs. 5,000/- under

SGST and Rs. 5,000/- under CGST towards the fee for Advance Ruling. The Applicant has declared that the questions raised in the application have neither been decided nor are pending before any authority under any provisions of the CGST/TGST Act, 2017. The application is, therefore, admitted after examining it and the records called for and after hearing the applicant as per Section 98(2) of TGST Act, 2017.

4. Brief facts of the case :

4.1 M/s. Ramagundam Fertilizers and Chemicals Limited (hereinafter referred to either as “Applicant” or “RFCL”) was incorporated on 17 February, 2015 as a public company to set up natural gas-based ammonia urea complex along with offsite & utility facilities at Ramagundam. RFCL is formed as a Joint Venture Company of various Public Sector Undertakings National Fertilizers Limited (NFL), Engineers India Limited (EIL) and Fertilizer Corporation of India Limited (FCIL) (Promoters) and Govt. of Telangana with participation in equity and control over RFCL.

4.2 RFCL was incorporated to set up natural gas-based ammonia urea complex along with offsite & utility facilities at Ramagundam, Telangana with design capacity of 2,200 MTPD Ammonia Unit and 3,850 MTPD Urea Plant. In terms of the Joint Venture Agreement (JVA) responsibilities undertaken by the Promoters of Ramagundam Fertilizers and Chemicals Limited *inter alia* are as follows :

(a) EIL shall provide Engineering Procurement Construction Management (EPCM) services to RFCL for execution of the Project.

(b) NFL shall provide marketing services to RFCL in relation to the products produced by the JVC.

(c) FCIL executes the Concession Agreement and the Lease Deed in favour of the RFCL and shall also be responsible for handing over the existing usable assets at the Land to RFCL, free of all encumbrances.

(d) Both EIL and NFL shall assist in operations and maintenance activity (O&M) as per the requirements of RFCL.

4.3 RFCL is primarily engaged in production and supply of fertilizers Urea and Ammonia. The MRP of urea is statutorily fixed by the Government of India and the difference between the delivered cost of fertilizers at farm gate and MRP payable by the farmer is given as subsidy to the fertilizer manufacturer/importer by the Government of India. Currently, RFCL is supplying urea to NFL and NFL shall supply the same to the farmers.

4.4 As per Section 51 of Central Goods and Services Tax (‘CGST’) Act, 2017, the persons notified are required to pay GST TDS by deducting the same from its suppliers. A relevant extract of the provision is reproduced for ease of reference :

“Section 51. - Tax deduction at source. - (1) Notwithstanding anything to the contrary contained in this Act, the Government may mandate, -

(a) a department or establishment of the Central Government or State Government; or

(b) local authority; or

(c) Governmental agencies; or

(d) such persons or category of persons as may be notified by the Government on the recommendations of the Council,

(Hereafter in this section referred to as “the deductor”), to deduct tax at the rate of one per cent. from the payment made or credited to the supplier (hereafter in this section referred to as “the deductee”) of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees.”

4.5 The Government of India *vide* Notification No. 33/2017-CGST (Rate) has notified the following persons for operability of clause (d) of Section 51(1) as detailed above :

“(a) an authority or a board or any other body, -

(a) set up by an Act of Parliament or a State Legislature; or

(b) established by any Government, with fifty-one per cent or more participation by way of equity or control, to carry out any function.

(b) society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860)

(c) public sector undertakings”

4.6 Further, an additional proviso was inserted by the Government *vide* Notification No. 73/2018-CGST

“Provided also that nothing in this notification shall apply to the supply of goods or services or both which takes place between one person to another person specified under clauses (a), (b), (c) and (d) of sub-section (1) of section 51 of the said Act.”

4.7 Currently, the applicant is paying GST TDS on the payments made to the supplies on all the taxable supplies in compliance with Section 51 of the CGST Act, 2017. Further, the applicant is not availing the exemption under proviso to the Notification No. 73/2018 on the supplies made by the applicant to any other notified person.

5. Questions raised :

(1) Whether the applicant can be classified under notified persons under Section 51 of CGST Act, 2017 read with Notification No. 33/2017, dated 15 September, 2017?

(2) Whether the applicant is liable to pay GST TDS by deducting it from the consideration payable to the Supplies?

(3) Whether the exemption notification is applicable for the transactions undertaken by the applicant if other applicable conditions remain satisfied?

6. Personal hearing :

The Authorized representatives of the unit namely Sri Jaya Ram Yarram, Associate Director, Sri Vivek Manyam, Assistant Manager & Sri Rama Krishna V., Senior Manager, & AR attended the

personal hearing held on 6-9-2023. The authorized representatives reiterated their averments in the application. Further, the Authorised Representative/Applicant M M/s. Ramagundam Fertilizers And Chemicals Limited, reiterated that their case/Similar Case is not pending in any proceedings in the applicant's case under any of the provision of the Act and have not already decided in any proceedings in the applicant's case under any of the provisions of the Act.

7. Discussion & findings :

(1) The applicant is a manufacturer of fertilizers and claims to be a public company. The applicant further submits that it is making supplies of fertilizers to National Fertilizers Limited (NFL) which is also a public sector undertaking. The applicant submits that NFL is making tax deduction at source under Section 51 of the CGST Act even though such tax deduction is exempted under the 3rd proviso to Notification No. 50/2018, dated 13-9-2018 which was inserted *vide* Notification No. 73/2018, dated 31-12-2018.

(2) The Notification No. 73/2018, dated 31-12-2018 has inserted a 3rd proviso to Notification No. 50/2018, dated 13-9-2018 as follows :

In the said Notification, after the second proviso, the following proviso shall be inserted, namely "Provided also that nothing in this notification shall apply to the supply of goods or services or both which takes place between one person to another person specified under clauses (a), (b), (c) and (d) of sub-section(1) of section 51 of the said Act."

(3) The applicant has further submitted the following arguments to claim that it is established by Government and hence qualifies to be an establishment of Government under Sec. 51(1) of the CGST Act :

- That Department of Fertilizers established by Ministry of Chemicals & Fertilizers which is serving as a parent/governing body for fertilizer companies formed by Central Government which has released "Handbook on notifications issued under Fertilizers policies". In the handbook, the Government has announced new investment policy (NIP-2012) to facilitate fresh investment in urea sector and to make India self-sufficient in the urea sector.

- That Notification No. 12012/39/2011-FPP on New Investment Policy dated 2nd January, 2013 was issued under the same, post approval of the Central Government. Extract of the relevant text from the notification and Handbook is provided below for ease of reference.

"I am directed to convey the approval of Government of India for New Investment Policy-2012 (NIP-2012) in order to facilitate fresh investments in urea sector. The salient features of the NIP-2012 are as under :-

2.3 Revival of closed urea units :- The three closed urea units of Hindustan Fertilizer Corporation Ltd. (HFCL) at Barauni, Durgapur and Haldia and five closed urea units of Fertilizer Corporation of India Ltd. (FCIL) at Sindri, Talcher, Ramagundam, Gorakhpur and Korba being proposed for revival shal fall under "Revival of closed urea units."

- That as part of such new investment policy, Government mandated revival of five closed units namely Ramagundam, Talcher, Gorakhpur and Sindri of Fertilizer Corporation of India Limited (FCIL) and Barauni unit of Hindustan Fertilizer Corporation Limited (HFCL) under NIP-2012. Ramagundam unit of FCIL was thus revived by Government by forming a Joint Venture

company of nominated PSUs and accordingly, a Joint Venture company named Ramagundam Fertilizers & Chemicals Ltd. (RFCL) was incorporated.

- That website of Ministry of Chemicals and Fertilizers is an Official Government website portal which is operated under the auspices of the Ministry, has quoted on the they site also that Government of India has “MANDATED” a consortium of PSU’s to invest funds into the Applicant. They are enclosing the snapshot of the same for ease of reference.

- That Based on the above, it can be noted that the applicant is established by Government through the investment policy under Ministry of Fertilizers as a consortium of nominated Public Sector Undertaking and the same is approved by Central Government. Thus, the applicant submits that they are established by the Government through National Investment Policies. [Condition 2 is satisfied)

- That as mentioned in the above statement of facts, it is amply clear that the revival of RFCL is made on the directions of the government and nominated a group of Public Sector Undertakings for investment purpose. Accordingly, a significant part of shareholdings is jointly or severally held by Public Sector Undertakings.

- That RFCL is a Joint Venture Company of National Fertilizers Limited (NFL), Engineers India Limited (EIL) and Fertilizer Corporation of India Limited (FCIL) (Promoters) with 26% equity each by NFL & EL. FCIL has been granted 11% equity in terms of CCEA approval. Further, the remaining part of the shareholding is held by the State Government of Telangana and others.

N a m e o f t h e E n t i t y			Cumul holdin	Nature of the Entity
N a t i o n a l F e r t i l i z e r L i m i t e d		26		Centra l PSU
E n		26	52	Centra

	gineers India Limited				IPSU
	Fertilizers Corporation of India Limited	11	63		Central PSU
	State Govt. of Telangana	11	74		State Govt.
	GAIL India	14.3	87.3		Central PSU

a L i m i t e d			
F o r e i g n I n v e s t o r s		11.7	

- That in continuation to the above, the Board of directors are appointed by the shareholders of the Applicant which are public sector undertakings and the State Government. Further, the operations and decisions in the regular case of business are handled by the Board appointed by the stakeholders (PSUs and Government). The aforementioned public sector undertakings are owned and controlled by the Central and State Governments and thereby the Central and the State Governments, acting through the Government companies, are in a position to indirectly control the management or policy decisions of the Applicant.

- That the Applicant wishes to place emphasis on the word "Control". Control is not defined elsewhere in any of the GST Act; however, they would like to draw reference to Section 2(27) of Companies Act, 2013 which defines control as :

"control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights of shareholders agreements or voting agreements or in any other manner.

(4) The Notification No. 33/2017 has three (3) categories under clause (d) of sub-section (1) of section 51 :

(a) An authority or a board or any other body.

(i) Set up by an Act of Parliament or a State Legislature; or

(ii) Established by any Government with fifty-one percent or more participation by way of equity or control, to carry out any function.

(b) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);

(c) Public sector undertakings.

(5) As seen from the material evidence submitted by the applicant it is seen that :

(i) The Applicant is established by the Government under the ministry of fertilizer as a PSU.

(ii) Cumulative shareholdings in the company i.e., 87.3% belong to Central PSUs & the State Government of Telangana.

Thus the applicant falls under Section 51(1)(d) of the CGST Act.

(6) By virtue of the above status any supplies made to persons falling under clauses (a), (b), (c) & (d) of the sub-section (1) of Section 51 will not attract TDS at the hands of the recipients of such supplies by virtue of Notification No. 73/2018, dated 31-12-2018.

8. In view of the foregoing, we rule as follows :

In view of the above discussion, the questions raised by the applicant are clarified as below :

Questions	Ruling
1. Whether the applicant can be classified under notified persons under Section 51 of CGST Act, 2017 read with Notification No. 33/2017, dated 15 September, 2017?	Yes.
2. Whether the applicant is liable to pay GST TDS by deducting it from the consideration payable to the Supplies?	If the recipient is falling under clauses (a), (b), (c) & (d) of the sub-section (1) of Section 51 then the applicant supplier will not attract TDS.
3. Whether the exemption notification is applicable for the transactions undertaken by the applicant if other applicable conditions remain satisfied?	Same as in question (2) above.