

2024 (85) G.S.T.L. 245 (A.A.R. - GST - W.B.)

BEFORE THE AUTHORITY FOR ADVANCE RULING UNDER GST, WEST BENGAL

Dr. Tanisha Dutta, Member (Central Tax) and Shri Joyjit Banik, Member (State Tax)

IN RE : SUN KNOWLEDGE PVT. LTD.

Order No. 29/WBAAR/2023-24, dated 31-1-2024 in Case No. WBAAR 20/2023

Hiring of electrical equipment, air-conditioning system, sprinkler system comprising fire detectors, DG set with accessories - Leasing or rental services - Without operator - Heading 9973 - Classification Mixed supply - Applicant enters into an agreement with TCG Urban Infrastructure Holdings Pvt. Ltd. to avail facilities, hiring of electrical equipment, air-conditioning system, sprinkler system comprising fire detectors, DG set with accessories and services installed in building to provide required facilities and services through such assets to sub-leased space acquired by applicant in such building - Applicants have no control/title over said fit outs and assets, but had right to use facilities and services on payment of agreed rate as hire charges - Tax is charged at rate of 28% by TCGUIH declaring same under SAC 9973 14, however, applicant contended that instant supply of services would attract tax at rate of 18% - *HELD* : Applicant receives multiple supplies for a single price and to qualify such supplies to be a composite supply, there must be only one principal supply - However, from agreement between applicant and TCGUIH, no such predominant element, as defined under clause (90) of Section 2 of GST Act, 2017, is there, therefore, instant supply cannot be treated as a composite supply - Moreover, air-conditioning system and fire extinguishing systems which have been installed in building have lost its character of a movable property and thereby cannot be regarded as goods - Therefore, rate of tax on supply of hiring services of air-conditioning system and fire extinguishing system will not be determined vide Serial No. 17(iii) of Notification No. 11/2017-C.T. (Rate), dated 28-6-2017 - Each of supplies will attract tax at rate of 18% under Serial No. 17(viii) of said Notification as leasing or rental services i.e., supply which attracts highest rate of tax - Section 2(74) read with Sections 2(30), 2(62) and 2(90) of Central Goods and Services Tax Act, 2017 - Section 2(74) read with Sections 2(30), 2(62) and 2(90) of West Bengal Goods and Services Tax Act, 2017. *[paras 1.22 to 1.27]*

Input Tax Credit - Availability of - Electrical equipment, air-conditioning system, sprinkler system comprising fire detectors, DG set with accessories and services installed in building to provide required facilities and services through such assets to sub-leased space - Tax paid by applicant on hiring charges of electrical equipment, air conditioning system, sprinkler system comprising fire detectors, DG set with accessories and services installed in building to provide required facilities and services through such assets to sub-leased space is not restricted under sub-section (5) of Section 17 of GST Act, 2017 - Therefore, applicant is eligible to take credit of input tax which has been charged by supplier on account of hiring of such facilities, subject to fulfilment of all conditions under Section 16 of GST Act, 2017 - Section 16 read with Section 17 of Central Goods and Services Tax Act, 2017 - Section 16 read with Section 17 of West Bengal Goods and Services Tax Act, 2017. *[paras 1.28 and 1.29]*

Ruling in favour of assessee

CASES CITED

Commissioner v. Solid & Correct Engineering Works — 2010 (252) E.L.T. 481 (S.C.) — **Distinguished** [Para 1.24]

Varachha Co-Op. Bank Ltd. — 2024 (82) G.S.T.L. 77 (App. A.A.R. - GST - Guj.) — *Followed* [Para 1.26]

NOTIFICATIONS CITED

Notification No. 1/2017-C.T. (Rate) dated 28-6-2017..... [Para 1.22]

Notification No. 11/2017-C.T. (Rate), dated 28-6-2017..... [Paras 1.18, 1.22, 1.27]

West Bengal State Notification No. 1125 F.T., dated 28-6-2017..... [Paras 1.18, 1.22]

REPRESENTED BY : S/Shri Kamal Kejriwal and Sujit Kumar Nayak, Authorized Representatives, for the Assessee.

[Order]. - At the outset, we would like to make it clear that the Central Goods and Services Tax Act, 2017 (the CGST Act, for short) and the West Bengal Goods and Services Tax Act, 2017 (the WBGST Act, for short) have the same provisions in like matter except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the WBGST Act. Further to the earlier, henceforth for the purposes of these proceedings, the expression 'GST Act' would mean the CGST Act and the WBGST Act both.

1.2 The applicant submits that being a 100% Export Oriented Unit registered with Software Technology Park of India, Kolkata, it provides ITes services to its clients located in USA. The applicant, as a sub-lessee, has entered into a 'Sub-Lease Deed' with M/s. Bengal Intelligent Parks Private Limited (hereinafter referred to as, BIPPL) whereby the sub-lessor grants the applicant to use a specified area on the 11th floor in the Building Omega of Bengal Intelligent Park, Block EP & GP, Sector V, Salt lake to conduct business activities from the said premises.

1.3 The applicant submits further that BIPPL has made arrangements with M/s. TCG Urban Infrastructure Holding Pvt. Ltd. (hereinafter referred to as, TCGUIH) to provide assets and fit outs on hire to the licensees and sub-lessees of the said building. Accordingly, the applicant has entered into an agreement with TCGUIH to avail facilities and services installed in the building which includes *inter alia* central air conditioning system, DG set, electrical equipment, sprinkler system etc.

1.4 The applicant clarifies that it has no control or transfer of title over the said fit outs and assets. The applicant enjoys only the right to use facilities and services of such fit outs, fixed assets and services on payment of agreed rate as per the agreement between the applicant and TCGUIH. As per Second Schedule of the agreement dated 9-11-2022, there are two types of hiring, viz. :

(i) Hiring of electrical equipment, sprinkler system, Air-Conditioning system and DG set emergency power supply for sub-leased space

(ii) Hiring of electrical equipment, DG set with accessories, sprinkler system and fit outs for common area.

1.5 TCGUIH issues tax invoices to the applicant for such supply of services charging tax @ 28% [Central Tax @ 14% + State Tax @ 14%] under SAC 9973 14. The applicant submits that tax is charged @ 28% by TCGUIH due to the reason that the supplier considers it as a mixed supply which shall be treated as a supply of air-conditioner thereby attracting tax @ 28%.

1.6 In light of aforesaid circumstances, the applicant has filed this application under sub-section (1) of Section 97 of the GST Act and the rules made thereunder raising following issue *vide* Serial Number 14 of the application in FORM GST ARA-01 :

Rate at which CGST & SGST is to be charged under SAC Code 9973 14 as appeared in the invoices submitted by the service provider TCG Urban Infrastructure Holdings Private Limited having GSTIN No. 19AADCS8821M1ZS.

1.7 The applicant contends that in spite of the fact that different types of goods are given together on hire to the applicant by TCGUIH, it cannot be classified as a composite or as a mixed supply. According to the applicant, in the instant case, goods supplied on hire are not naturally bundled in normal course of business and therefore such supply cannot be termed as a composite supply. Further, it shall not be treated as a mixed supply on the ground that *“there is purely supply of services and no supply of goods”*. The applicant argues that the instant supply would be classified as “leasing or rental services concerning office machinery and equipment (except computers) with or without operator” under SAC 9973 14 and therefore would attract tax @ 18%.

1.8 In terms of clause (a) of Section 95 of the GST Act, an advance ruling means a decision provided by this authority or the appellate authority, as the case may be, on matters or any questions specified in sub-section (2) of Section 97 or sub-section (1) of Section 100 of the GST Act in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. In the instant case, the question on which the applicant seeks an advance ruling is not in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant rather it is found to be in relation to supply being received by the applicant.

1.9 Further, sub-section (1) of Section 103 of the GST Act categorically speaks that the ruling pronounced is binding only on the applicant and on the concerned officer or the jurisdictional officer in respect of the applicant. Therefore, if an application is filed by the recipient of goods or services or both on the taxability of his inward supply of goods or services and ruling is pronounced accordingly, such ruling shall be binding only on him and on the concerned officer or the jurisdictional officer of him. In no way, the ruling shall be binding on the supplier of such goods or services. In the instant case, the applicant has sought an advance ruling on the applicable rate of tax to be charged by its supplier namely TCGUIH. However, as discussed earlier, ruling on this question is binding only on the applicant and on the concerned officer or the jurisdictional officer in respect of the applicant. The supplier TCGUIH cannot be directed to follow the ruling.

1.10 During the course of personal hearing, the aforesaid observation was brought to the notice of the applicant. The applicant submits that as an Export Oriented Unit, the applicant is eligible for claiming refund of unutilized input tax credit on export of services. Any wrong credit of input tax may be disallowed in future by the revenue department. The applicant, thus, has made prayer to consider the instant application as a subject matter of admissibility of input tax credit. The

authorised representative of the applicant draws our attention to the submission uploaded by the applicant on the common portal in support of the application for advance ruling which reads as follows :

'It is imperative that we get refund of ITC because we are 100% EOU and any wrong ITC credit is not desirable under any circumstances as per the provisions of the GST Act. Moreover, we are always careful to get the refund of ITC because any wrong ITC shall be disallowed at any time in future by the GST Audit authority. We are apprehensive that TCGUIH are unknowingly charging GST @ 28% which seems to be unjust and wrong and may invite lot of complications in future'.

1.11 On due consideration of the aforesaid prayer, we have decided to admit the instant case and to express our view upon analyzing the issues involved. The applicant, as it has been stated, has entered into a sub-lease agreement with BIPPL for their new office space at the 11th Floor, Building Omega, Bengal Intelligent Park, Block-EP & GP, Sector-V, Salt Lake, Kolkata-700091 for their business operations. It has also been stated that BIPPL has made arrangements with TCGUIH to provide assets and fit outs on hire to the licensees and sub-lessees of the building including the said sub-leased space.

1.12 The applicant has also entered into an agreement with TCGUIH to avail facilities and services installed in the building as well as sub-leased space. It has been informed that inside the building, there is a central air-conditioning plant in order to provide air-conditioning facilities and supply of cooling air to each floor through installed Air Handling Unit (AHU) Duct systems. Also, there is common DG set in order to provide emergency power back up for each floor. There are also fit outs, assets like electrical equipment, fire extinguishing sprinkler system etc. installed to provide required facilities and services through such assets to the said sub-leased space. The applicants have no control/title over the said fit outs and assets, but have the right to use the facilities and services of such fit outs, fixed assets and services on payment of agreed rate as hire charges.

1.13 As per the agreement between TCGUIH and the applicant, the legal possession of the assets shall be with TCGUIH at all times. The applicant only has right to use the said fit outs and assets, facilities/services till the period of the agreement. Hence, nature of agreement between TCGUIH and the applicant is not that of hire purchase but only operational service lease.

1.14 The applicant has furnished copies of few invoices wherefrom it is noticed that tax has been charged @ 28% by TCGUIH declaring the same under SAC 9973 14. However, the applicant contends that the instant supply of services would attract tax @ 18% for the following reason :

- As per Second Schedule of the agreement made between TCGUIH and the applicant, there are two types of hiring, viz. :

- (i) Hiring of electrical equipment, sprinkler system comprising fire detectors for true ceiling, air-conditioning system up to the floor Air Handling Unit with existing ducting's and diffusers, DG set emergency power supply for sub-leased space;

- (ii) Hiring of electrical equipment, DG set with accessories, sprinkler system comprising fire detectors, alarm panel, sprinklers pipe and sprinklers, fit-outs as per warm shell provisions for common area.

1.15 The taxpayer contends that the instant supply, though involving different types of goods being provided on hire, cannot be considered as composite supply for the following reason :

Composite supply means a supply comprising of two or more goods/services which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply. It means that the items are generally sold as a combination and cannot be supplied separately. Clearly, in the instant case, it is not a composite supply.

1.16 The taxpayer further contends that even if the instant supply is considered to be a mixed supply, then also there is purely supply of services and no supply of goods. In the instant case, no transfer of title of goods takes place, so there is no question of supply of goods. The supply involves transfer of right in goods without the transfer of title and therefore it is purely a supply of services. As per different provisions of the GST Act, hiring of such goods is merely supply of services falling under the class of head "leasing or rental services" concerning office machinery and equipment (except computers) with or without operator which attracts GST @ 18%.

1.17 We have gone through the records of the issue as well as submissions made by the authorised representatives of the applicant during the course of personal hearing. In this context, it is to be mentioned that the officer concerned from the revenue has not expressed any view on the issue raised by the applicant. The applicant contends that the supply received by him from TCGUIH is neither a composite supply nor a mixed supply and would be taxable @ 18% being supply of "leasing or rental services concerning office machinery and equipment (except computers) with or without operator" under SAC 9973 14.

1.18 Rate of tax of leasing or rental services under Heading 9973 has been specified in Serial Number 17 of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 (corresponding West Bengal State Notification No. 1135 F.T., dated 28-6-2017), as amended from time to time. As on date, the said entry reads as under :

Sl. No	Chapter, Section, Heading	Description of Services	Rate (percent)	Condition

		G r o u p S e r v i c e C o d e (T a r i f f)		
17	H e a d i n g 9 9 7 3 (L e a s i n g o r r e	(i) omitted		
		(ii) Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right.		9
		(iii) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.		§
		(iv) Any transfer of right in goods or of undivided share in goods without the transfer of title thereof.		§

n t a l s e r v i c e s , w i t h o u t o p e r a t o r)	§ Same rate of State tax as on supply of like goods involving transfer of title in goods		
	(v) omitted		
	(vi) Leasing of motor vehicles purchased and leased prior to 1st July, 2017;		Ω
	(vii) omitted		
	(viiia) Leasing or renting of goods		§
	(viii) Leasing or rental services, without operator, other than (i), (ii), (iii), (iv), (vi), and (viiia) above.		9
	Ω 65 per cent of the rate of State tax as applicable on supply of like goods involving transfer of title in goods. Note : - Nothing contained in this entry shall apply on or after 1st July, 2020		

1.19 In the instant case, admittedly the applicant receives multiple supplies for a single price. We therefore proceed to analyze whether the supply may be classified as a composite supply as defined in clause (30) of Section 2 or as a mixed supply as defined in clause (74) of Section 2 of the GST Act or as a 'leasing or rental services' as contended by the applicant. We find that the applicant has entered into an agreement with TCGUIH to receive supplies in respect of hiring of certain goods *e.g.*, electrical equipment, air-conditioning system, sprinkler system comprising fire detectors, DG set with accessories. To qualify such supplies to be a composite supply, there must be only one principal supply. The term 'principal supply' has been defined in clause (90) of Section 2 of the GST Act as 'the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary'. However, from the agreement made between the applicant and TCGUIH, we do not find any such predominant element as well as any other supplies which are ancillary to that predominant element. Even the intention of the applicant and the supplier both do not appear to be so. We are therefore on the same page of the applicant that the instant supply cannot be treated as a composite supply.

1.20 Now to determine whether the instant supply may be treated as a mixed supply, we need to examine whether the supply involves following characteristics :

- (1) that the supply is consisting of two or more individual supplies of goods or services, or any combination thereof;
- (2) that such different supplies are made in conjunction with each other for a single price;
- (3) that the supply does not constitute a composite supply.

We have already expressed our view that the instant supply does not constitute a composite supply. Further, the supplies are made for a single price. Furthermore, in the instant case, we find that two or more individual supplies, independent of each other, are supplied in conjunction with each other out of which any particular supply does not bear the predominant element. In other way, the supply is a combination of two or more individual supplies without any principal supply against a single price. We are of the view that all the conditions specified in clause (74) of Section 2 of the GST Act get satisfied in respect of the instant supply and we, therefore, hold the supply to be a mixed supply.

1.21 Tax liability on composite supply and mixed supply has been laid down in Section 8 of the GST Act. As we have held the supply to be a mixed supply, we reproduce the relevant portion of the said section hereinunder :

The tax liability on a composite or a mixed supply shall be determined in the following manner, namely :-

- (a) xx xx xx
- (b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

1.22 So, in order to determine the rate of tax of the instant supply, it is necessary to ascertain the supply that attracts highest rate of tax. As per Serial Number 17(iii) of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017, transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration attracts same rate of tax as on supply of like goods involving transfer of title in goods. We find that the supplies received by the applicant include hiring of air-conditioning system up to the floor Air Handling Unit with existing ducting's and diffusers, sprinkler system comprising fire detectors for true ceiling. As per Serial Number 119 of Schedule IV of Notification No. 1/2017-Central Tax (Rate), dated 28-6-2017, as amended (corresponding West Bengal State Notification No. 1125 F.T., dated 28-6-2017), 'Air-conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated' under Tariff Heading 8415 attracts tax @ 28%. Further, 'Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines [other than and Nozzles for drip irrigation equipment or nozzles for sprinklers] under Tariff Heading 8424 attracts tax @ 18% vide Serial Number 325 of Schedule III of the said notification. In this context, Notes 4 and 5 of Section XVI of the Customs Tariff Act may be referred to which reads as follows :

4. Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function.

5. For the purposes of these Notes, the expression “machine” means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85.

1.23 It thus appears that hiring of air-conditioning machine and fire extinguisher would attract tax @ 28% and @ 18% respectively being the same rate applicable for supply of such items and when such are supplied in conjunction with each other for a single price, the supply being a mixed supply would attract tax @ 28%. However, in the instant case, we are of the view that air-conditioning system and the fire extinguishing systems which have been installed in the building have lost its character of a movable property and thereby cannot be regarded as goods.

1.24 In *CCE v. Solid and Correct Engineering Works* [2010 (252) E.L.T. 481 (S.C.)], the Hon'ble Supreme Court of India observed that attachment of the plant in question with the help of nuts and bolts to a foundation intended to provide stability to the working of the plant and prevent vibration/wobble free operation does not qualify for being described as attached to the earth. The Court further held that manufacture of the plants in question do not constitute annexation hence cannot be termed as immovable property for the following reasons :

- '(i) The plants in question are not *per se* immovable property.
- (ii) Such plants cannot be said to be “attached to the earth” within the meaning of that expression as defined in Section 3 of the Transfer of Property Act.
- (iii) The fixing of the plants to a foundation is meant only to give stability to the plant and keep its operation vibration free.
- (iv) The setting up of the plant itself is not intended to be permanent at a given place.

The plant can be moved and is indeed moved after the road construction or repair project for which it is set up is completed.'

1.25 However, in the case at hand, there can be no dispute in this regard that the intention of annexation of air-conditioning system and fire extinguishing system involves significant degree of permanence. Further, contrary to the observation made by the Hon'ble Apex Court that 'the plant can be moved and is indeed moved after the road construction or repair project', air-conditioning system and fire extinguishing system are not intended to be moved and indeed not moved after they are installed in the building.

1.26 In *Varachha Co-op. Bank Ltd.* [2023] 156 taxmann.com 4 (AAAR - Gujarat) = 2024 (82) G.S.T.L. 77 (App. A.A.R. - GST - Guj.) [4-10-2023], the Hon'ble Appellate Authority for Advance Ruling, Gujarat also observed that Central Air-Conditioning Plant and Fire Safety Extinguishers becomes a part of building once it is installed and therefore ceases to be a movable property. Relevant part of the order is reproduced hereinunder :

“15.3in a central air-conditioning system, all the components of the system are grouped together in one central room and conditioned air is distributed from the central room to the required places through extensive duct work. The whole system can be divided into three parts :

- (i) Plant room, which includes compressor, condenser and motor
- (ii) Air Handling Unit (AHU room)
- (iii) Air distribution system (Ducting)

15.4 The plant room is located away from the room to be air-conditioned. Other components are grouped together in a AHU and conditioned air is circulated through air distribution system *i.e.*, ducting with the help of fan or blower to the room to be air-conditioned. The air, which is to be conditioned, is directly allowed to flow over the evaporator coil. Low pressure and the temperature refrigerant passing through evaporator coil absorb heat from the air. Thus the air gets cooled.

15.6 As the construction of central air conditioning plant *via* a works contract services as pointed out above, makes it an immovable property, it ceases to be a plant and machinery.

19.3 In the present case too we find that there is an intention to install the “Fire Safety Extinguishers’ permanently to the building. The Fire Safety Extinguishers once fitted, no longer remains movable goods as it gets assimilated in a permanent structure *i.e.*, the administrative building of the appellant”.

1.27 In the light of foregoing discussions, we are of the opinion that in the instant case, rate of tax on supply of hiring services of air-conditioning system and fire extinguishing system would not be determined *vide* Serial Number 17(iii) of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017. According to our view, each of the supplies would attract tax @ 18% under Serial Number 17(viii) of the said notification as leasing or rental services and therefore, the supply received by the applicant from TCGUIH, being a mixed supply, would also be taxable @ 18% *i.e.*, supply which attracts the highest rate of tax.

1.28 The issue now left with us is to determine whether the applicant is eligible to avail the credit of tax being paid by him to the supplier. The term ‘input tax’ has been defined in clause (62) of Section 2 of the GST Act which reads as under :

“input tax” in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax *charged* on any *supply of goods or services or both made to him* and includes

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- (a) the integrated goods and services tax charged on import of goods;
- (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;
- (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
- (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or

(e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,

but does not include the tax paid under the composition levy;

[Emphasis supplied]

1.29 A registered person is eligible to avail credit of input tax if all the conditions laid down in Section 16 of the GST Act get fulfilled and such credit is not restricted under sub-section (5) of Section 17 of the Act *ibid*. In the instant case, tax paid by the applicant on hiring charges is not restricted under sub-section (5) of Section 17 of the Act. As a result, we hold that the applicant is entitled to take credit of input tax charged by his supplier namely TCGUIH subject to fulfillment of all the conditions under Section 16 of the GST Act.

2. In view of the above discussions, we rule as under :

RULING

3. Supply on account of hiring of electrical equipment, sprinkler system comprising fire detectors for true ceiling, air-conditioning system up to the floor Air Handling Unit with existing ducting's and diffusers, DG set emergency power supply as received by the applicant would attract tax @ 18%. However, the applicant is eligible to take credit of input tax which has been charged by his supplier subject to fulfillment of all the conditions under Section 16 of the GST Act.