



**BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING
for the State of Andhra Pradesh (Goods and Service Tax)**

(Office at O/o Chief Commissioner of State Tax, Govt. of A.P., D NO 5-56, Block-B,
R.K.Spring Valley Apartment, Bunder Road, Edupugallu, Vijayawada,
Andhra Pradesh – 521151)

Present:

Sri PEEYUSH KUMAR (Member) (State Tax)

Sri NARESH PENUMAKA (Member) (Central Tax)

The 28th day of November, 2020

Order /AAAR/AP/ 08(GST)/2020

1	Name and address of the appellant	M/s. Halliburton Offshore Services Inc. (LIH), Plot No.5A3, Unit-2, ADB Road, Vakalpudi, East Godavari District-533004, Andhra Pradesh.
2	GSTIN	37AAACH5154M1ZC
3	Date of filing of Form GST ARA-02	01.09.2020
4	Hearing (Virtual)	17.11.2020
5	Authorized Representative	Sri Prasad Paranjape, Advocate
6	Jurisdictional Authority – Centre	Superintendent, Ramanayyapeta Range, Kakinada CGST Division.

(Under Section 101 of the Central Goods and Service Tax Act and the Andhra Pradesh Goods and Service Tax Act).

At the outset, we would like to make it clear that the provisions of both the CGST Act and the APGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the APGST Act.

The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017 [hereinafter referred to as “the CGST Act and APGST Act”] by M/s. Halliburton Offshore Services Inc. (LIH) (herein after referred to as the “Appellant”) against the Advance Ruling No. AAR No.16/AP/GST/2020 dated 13.05.2020 issued by the Authority for Advance Ruling, Andhra Pradesh.

1. Background of the Case:

- Halliburton Offshore Services Inc. (LIH) is a global service provider, engaged in providing various oilfield services to Exploration and Production companies across the globe. The appellant has contracted for supply of bundled oilfield services to support the various oil and gas related operations in KG Offshore, East Coast of Indian Offshore waters.

2. The appellant is required to undertake the following bundled services. The relevant excerpts of the clause 2 of the agreement is produced below for reference

- "2. Bundled Services Contract shall provide following services subject to detailed Scope of Work of each service:*
- i) Mud Logging Services along with crew and Mud Logging Unit (MLU). Mud Logging data to be integrated with Rig's communication system for Real Time Data transmission from Rig to OPERATOR's onshore base offices. CONTRACTOR shall provide all hardware and software necessary to hook-up with rig's power supply and communication system.*
 - ii) Mud Services including mud chemicals along with crew. CONTRACTOR should also provide & run mud plant of 15000 bbl. capacity and supply SOBM and Brine to rigs as per scope of work.*
 - iii) LWD, MWD, RSS & Mud Motor services along with crew. LWD & MWD data to be integrated with Rig's communication system for Real Time Data transmission from Rig to OPERATOR's onshore base offices. CONTRACTOR shall provide all hardware and software necessary to hook-up with rig's power supply and communication system.*
 - iv) Cementing Services including slurry design, additives and casing hardware etc. along with crew.*
 - v) Sea Logistics support for the day to day supply to the above rigs and anchor handling & Rig moves.*
 - vi) Shore Based facilities including jetties, warehousing and handling of equipment and materials including bulk. CONTRACTOR also to provide Drill water, Pot-water etc. for rigs, AHTSVs, PT/ and other OPERATOR's vessels as per Scope of Work. Vessels also have to carry HFHSD (free issue item by OPERATOR) for rigs from shore base.*
 - vii) Subsea Well Heads, Running Tools including drill ahead tool and services including Service Engineer.*
 - viii) Liner Hanger Service along with crew.*
 - ix) Miscellaneous Services like Coring (with Core Barrel & Core head), Casing & tubular running, Torque Turn (for premium casings & tubing up to 14" including tubing & landing string during completion), Hole openers, Under-reamers, Multiple Activation Circulating Bypass Tool (MACB), casing cutting & Fishing Tools, H2S equipment, 7" casing clean-out string and other tubular strings, odd size special drill bits, scrappers etc.*
 - x) Capable and experienced services crew at Rig/Base personnel as per List of (Crew) Personnel and scope.*
 - xi) It shall be responsibility of CONTRACTOR to provide any cross-overs between its tools and drill stems of various rigs for which CONTRACTOR shall coordinate with Rig Contractors.*
 - xii) It shall be responsibility of CONTRACTOR to provide any items / equipment for making its units of various services / equipment compatible with the rig power supply for which CONTRACTOR shall interact with the Rig Contractor for timely mobilization and commencement of services.*

xiii) It shall be responsibility of the CONTRACTOR to provide compatible units as per zonal requirements of Rig Safety like Zone 0, Zone 1 etc. and rig electrical supply.

xiv) To take-up the job in accordance with the various articles and Schedule of Responsibilities."

- 3.** In the course of supplying drilling/ mining services, the appellant uses its specialized equipment and tools for drilling oil and gas wells in offshore and onshore environment to pre-defined bottom hole targets which are carried out beneath the surface of the earth. The said equipment and tools are recorded as assets in books of the appellant.
- 4.** During the normal course of its business, the appellant was awarded a Contract bearing letter of award no. 9010024545 dated 05.10.2016 by Oil and Natural Gas Corporation Limited (hereinafter referred to as "ONGC").
- 5.** While executing the aforesaid contract and providing the aforesaid bundled services, at certain instances the equipment and tools used by the appellant stuck lost/ damaged due to uncontrollable or unforeseen down hole environmental situations in the oil and gas well and might not be retrievable (the equipment/ tools lost in hole or damaged beyond repair are herein after referred to as "LIH equipment"). In such cases, the appellant receives reimbursement from ONGC towards such LIH equipment in terms of Clause 31 of the Contract (the reimbursement received towards the LIH equipment is referred to as "LIH reimbursement"). Clause 31 of the Contract entered by the appellant with ONGC is reproduced here under:

"31.0 Loss or damage to CONTRACTOR's down hole equipment

OPERATOR shall reimburse CONTRACTOR for loss of or damage to CONTRACTORs down hole equipment, as under, provided that such loss or damage is not occasioned by normal wear and tear or negligence on the part of the CONTRACTOR or due to defective material.

- a. In the case of CONTRACTORs down hole equipment being damaged, Operator shall reimburse CONTRACTOR such repair cost, provided however, that OPERATOR shall not be required to reimburse CONTRACTOR any amount greater than that which would have been due had such equipment been lost and, therefore, calculated under sub-section (b) herein below: -*
- b. In the case of CONTRACTOR's down hole equipment being lost, OPERATOR will reimburse CONTRACTOR an amount limited to the original cost (F.O.B. nearest port) reduced by depreciation at the rate of 10% per year to be proportioned for each completed month or part thereof from the date of purchase of the lost equipment / tool subject to maximum depreciation of 50%. The CONTRACTOR should provide the cost along-with the date, of purchase of each equipment Unit with documentary evidence along with the invoice for Lost in Hole items. The above cost and date of purchase shall be taken for working out their claim for Lost in hole items.*

c. *Service tax on LIH (Lost in Hole), if applicable, shall be to CONTRACTOR'S account."*

6. The appellant has to immediately inform ONGC about the LIH equipment for ONGC's verification of the same. Post verification by ONGC, the appellant raises an invoice on ONGC for reimbursement of amount towards LIH equipment based on pricing methodology provided in the contract.
7. Post the implementation of GST, i.e. with effect from 01.07.2017, the appellant started raising invoices for the reimbursement towards LIH equipment by charging GST @ 18% (9% CGST and 9% SGST/UTGST) by classifying the said supplies as "agreeing to tolerate a situation" as prescribed under Sl.No. 5(e) of Schedule II to the CGST Act under the SAC/HSN No. 999794.
8. The appellant in terms of Section 97 of the CGST Act, made an application before the Authority for Advance Ruling, Andhra Pradesh seeking advance ruling on the following questions:
 - a. Whether reimbursement received towards LIH equipment can be considered as a "supply" as per section 7 of the CGST Act and hence liable to GST?
 - b. If reimbursement received towards LIH equipment can be considered as supply and liable to GST, what would be the classification and the rate of GST applicable on such supply? Whether the same would be treated as "agreeing to tolerate an act" as per clause 5(e) of schedule II of the CGST Act, 2017 and subject to GST at the rate of 18% or the same would be treated as a composite supply of works contract' service (as a part of main service under the Contract) and thus, GST can be charged at the rate of 12% equivalent to the GST rate applicable for supply of composite 'works contract' services?
9. The Authority for Advance Ruling Andhra Pradesh in ruling orders in AARNo.16/AP/GST/2020 dated 13.05.2020 held:
 - a) Reimbursement received towards LIH equipment is considered as a supply as per Section 7 of the CGST Act, 2017 and is liable to GST.
 - b) The reimbursement received towards LIH equipment is classifiable as 'Supply of Goods' in terms of Section-7 of the CGST Act, 2017. Depending upon the nature of actual goods involved in the subject activity, their classification is as per HSN notified for the goods and the Classification Rules made in this regard. Accordingly, the provisions relating to chargeability and levy of GST under the CGST Act and the Rules made there under as applicable to the supply of goods will apply.
10. Being aggrieved by the impugned Order, the appellant has filed the present appeal, inter alia, on the following grounds which are urged without prejudice to each other.

2. Grounds of Appeal:

1. The reimbursement of LIH, damaged beyond repair goods/ equipment is not a transaction of "supply of goods".
- 1.1. It is submitted that the LIH reimbursement at best can be treated as reimbursement arising out of the principal bundled supply in relation to drilling/ mining activities undertaken.
- 1.2. The LIH reimbursement is not towards any separate supply of any service or goods by the appellant to ONGC. Since, LIH reimbursement is contingent upon irretrievable loss, damage of goods/ equipment used in providing of drilling services, it is not possible for the appellant to include the same in the overall consideration for agreed services as per the contract.
- 1.3 In terms of Sr. no. 1(a) of the schedule II to the CGST Act, (a) any transfer of the title in goods is to be treated as a transaction of supply of goods.
- 1.4 Admittedly, there is no question of any transfer of title in the LIH equipment from the Appellant to ONGC. In fact, the reimbursement for LIH equipment is only made after an irretrievable loss of the said goods and consequently, there is no 'supply of goods' qua the reimbursement received towards LIH equipment. For qualifying a transaction to be of transfer of title in goods, there has to be pre-agreement to identify the goods and the goods should be in deliverable state and in fact been delivered. In the present case, none of these conditions get fulfilled and hence the transaction cannot qualify to be that of transfer of title in goods.
- 1.5 The LIH reimbursement is akin to an incremental contingent cost incurred in providing of drilling/ mining services, which is recovered by the appellant as per the value agreed in the contract, accordingly, it is an integral part of and connected with the main contract of providing drilling/ mining services.
- 1.6 In view of the aforesaid, it is submitted that the reimbursement made by ONGC to the Appellant for the LIH equipment and tools cannot be classified as independent supply of goods thereby attracting different rate of GST. It has to be treated as part of the overall bundle of services under the Contract, and accordingly charged to GST at the rate applicable to the principal supply made.
- 1.7 It is submitted that the Ld. Authority erred in holding that going by the methodology and nature of equipment/tools, the activity of reimbursement towards LIH/ damage beyond repair equipment/tools is rightly classifiable as "Supply of goods".

2. Reimbursement of LIH Equipment is a Composite Supply.

- 2.1. In terms of Section 2 (30) of the CGST Act, 2017, 'composite supply' is reproduced below:

(30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or

both, or any combination thereof; which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is principal supply."

2.2. Upon the perusal of the above definition, it is submitted that the key condition of Supplies to qualify as "composite supplies" are as follows:

- a. Supplies should be made by a taxable person to a recipient i.e. there is one common supplier and one recipient for both the supplies;
- b. Should entail two or more taxable supplies of goods or services or both; and
- c. The two or more taxable supplies should be naturally bundled and supplied in conjunction with each other in the ordinary course of business.

2.3. It is submitted that as per clause 2 of Annexure II of the Contract, the Appellant is required to undertake the bundled services in relation to the drilling/ mining services to be provided under the contract. The scope of work agreed under the contract itself prescribes that the Appellant is required to undertake bundled services. Apart from the services, the contract also envisages supply of certain goods by the Appellant to ONGC. All the goods and services stated in the Contract which are supplied by the Appellant to ONGC are taxable supplies. Accordingly, the conditions as per Sl.no (a) and (b) above are satisfied. It further needs to be evaluated whether the services are "naturally bundled" and "supplied in conjunction with one another".

3. Whether LIH reimbursement is naturally bundled with the supply of goods and bundled services provided under the contract

3.1. It is submitted that all the bundled services/supplies under the Contract are naturally bundled and supplied in conjunction with one another. The term "naturally bundled" is not defined under the CGST Act or the Rules framed thereunder. Reference in this regard is made to CBE&C Flyer No. 4 dated 01.01.2018 which in turn refers to the Service Tax Education Guide dated 20th June 2020 issued by the CBIC under the erstwhile Finance Act, 1994.

3.2. Upon the perusal of the above, following criteria can be used for determining whether the supplies are naturally bundled or not:

- a. Expectation of a typical customer
- b. Industry practice
- c. Whether the supplies are incidental or inter-dependent to each other

a) Expectation of the customer: In the present case, the expectation of a typical customer is to receive all the supplies in entirety for the drilling/ mining activity undertaken. LIH reimbursement is a part of the same contract which enables

the Appellant to recover the cost of equipment lost/ damaged during the course of providing the services.

b) Industry practice: The above approach is the standard process followed by the other players operating in the same industry who also follow a similar business model wherein the contract is for a bundled supply of services and it specifically provides for LIH reimbursement.

c) Whether the supplies are inter-dependent or incidental to each other: In the present case, as stated in the facts above, it is submitted that all the elements of the Contract are essential and inter-dependent. In absence of either of the element, the obligation under the Contract of providing drilling/ mining services cannot be concluded. Hence, the supplies are incidental and inter-dependent with each other. The contract itself terms the supplies to be made as bundled services.

3.3. Admittedly, undertaking drilling activity in offshore oil fields is a complex activity entailing providing of multiple services and goods, which are bundled together and LIH reimbursement is a part of the same activity. In view of the aforesaid, supplies under the Contract can be said to be naturally bundled in the ordinary course of business.

3.4. It is submitted that the term 'conjunction' or the phrase "in conjunction with" is not defined under the CGST Act/ IGST Act and the allied Rules. Therefore, reference is made to the definition of the term "conjunction" as defined under various dictionaries.

Oxford English Dictionary (Online version)

The action or on instance of two or *more events or* things occurring at the same point in time or space

Merriam Webster Dictionary (Online version)

The state of being conjoined (Conjoined- being, coming, or brought together so as to meet, touch, overlap, or unite)

Occurrence together in time or space

Chambers Dictionary (Online version)

A joining together combination

The coinciding of two or more events

Cambridge Dictionary (Online version)

The situation in which events or conditions *combine or happen together*

Upon the perusal of the above definitions, it appears that the term "in conjunction with" means supplied made at the same point in time or space.

3.5. It is submitted that in the present case intention of ONGC is not to receive

individual supply of goods or services but execution of entire scope of work in relation to their operations of DP rings of 1500m water depth capability and anchor moored rings of 600m water depth capability for drilling exploratory/ development/ water injection wells and work-over/completion operations including re-entry primarily in KG offshore, East coast of Indian offshore waters.

3.6. Admittedly, the bundled services provided by the appellant are provided continuously over the period of the contract and the reimbursement of LIH equipment pertains to the equipment lost while providing the services. Accordingly, the reimbursement of LIH equipment happens at the same time while the services are being provided. Hence the said reimbursement of LIH equipment is in conjunction with the main services provided.

3.7 Reference is made to the judgment of the Hon'ble Kerala High Court in the case of **Abbott Healthcare Pvt. Ltd. vs. Commr. Of Commercial Tax, Thrissur, 2020 (34) G.S.T.L. 579 (Ker.)**, wherein the Hon'ble High Court has held as follows:

"11. In my view, a finding as regards composite supply must be taken into account supplies as effected at a given point in time on "as is where is" basis. In particular instances where the same taxable person effects a continuous supply of services coupled with periodic supplies of goods/services to be used in conjunction therewith, one could possibly view the periodic supply of goods/services as composite supplies along with the service that is continuously supplied over a period of time."

In terms of the aforesaid judgement of the Hon'ble Kerala High Court it is clear that in respect of continuous supply like in the present case, the other periodic supplies are to be viewed as composite supplies.

3.8. It is submitted that the Ld. Authority has erred in placing reliance only on one clause of the entire contract i.e. clause 2.2 (ii) of the Letter of Award, which is a clarificatory clause inserted to safeguard the interest of ONGC.

3.9. It is a settled principle of law that an agreement/contract has to be read as a whole to understand its true purport and intention and cannot be referred to and relied upon in piecemeal. Reliance in this regard, is placed on the judgement of the Hon'ble Andhra Pradesh High Court in the case of **Rashtriya Ispat Nigam Ltd. Vs. Commercial Tax Officer, Company Circle, Vishakhapatnam, 1990 (077) STC 0182**, which has been affirmed by the Hon'ble Supreme Court and reported in **(2002) 126 STC 114 (SC)**.

3.10. The said clause referred to and relied upon by the Ld. Authority, reads thus:

"Some services may be required even after de-hiring of the last rig and as such the individual service (s) shall be successively de-hired as per the requirement of the last well of the last rig to be de-hired."

The said clause merely seeks to clarify that some services (out of the bundled

services under contract) may be required to be performed even after de-hiring of the last rig and as such the individual services shall be successively de-hired as per the requirement of the last well of the last rig to be de-hired.

3.11. In this regard, it is submitted that the aforesaid clause expands the scope of services provided by the Appellant to include certain services which the Appellant would be required to perform even after the last rig is de-hired. This does not alter the fact that the primary reason for which ONGC entered into a contract with the Appellant was to avail drilling/mining services.

3.12. It is submitted that the inference drawn by the Ld. Authority on the basis of the above clause at para 7.5 of the Ruling that it is clear from the distinctive nature of the each individual service (as given under scope of work as 'bundled service'), each of the individual services can be performed independently and they did not alter or affect the performance of other service or services as a whole is factually incorrect. Merely, because the Appellant is required to perform some of the services after the de-hiring of rig, it cannot be contended that all the services under the bundled services agreed to be provided under the contract can be performed independently.

3.13. It is submitted that in view of the aforesaid submissions, the Ld. Authority has erred in holding that the bundled services provided by the Appellant cannot be considered as a composite supply.

3.14. Reference is made to the Ruling of Ld. Authority in the case of **Ushabala Chits Private Limited (AAR No. 13/AP/GST/2020)**, wherein; while considering the taxability of interest/penalty collected for delay in payment of monthly subscription by the members of the Chit Fund, the Ld. Authority ruled that-

"The additional amount being charged or delayed payment termed as Interest, rate fee or penalty on the amount delayed in specified time cannot be bifurcated as such additional payment do not have its own classification. It is taking colour from original supply i.e., supply of financial and related services."

3.15. Without prejudice to the above, reference is made to foreign jurisprudence regarding "composite supply". In the case of *Levob Verzekeringen BV, OV Bank NV vs. Staatssecretaris van Financiën* reported in [2005] EUECJ C-41/04, the European Court of Justice held that where two or more elements or acts supplied by a taxable person to a customer are so closely linked that they form objectively, from an economic point of view, a whole transaction, which it would be artificial to split, all those elements or acts constitute a single supply for the purposes of application of VAT.

3.16. As stated above, all the elements of the Contract entered into

between the Applicant and ONGC are so closely linked that they have to be treated as a single supply for purpose of levy of GST.

3.17 Further, it is submitted that while determining the nature of transaction it is imperative to consider the reason for entering the contract/transaction. While deciding the issue whether leasing of immovable property and supply of associated services may constitute a single VAT exempt supply in the case of **Field Fisher Waterhouse Case** C392 / 11, the ECJ observed that the content of a lease may be a factor of importance.

3.18. In the aforesaid decision, the ECJ observed that the economic reason for concluding lease agreement was not only to obtain the right to occupy the premises concerned, but also for the tenant to obtain a number of services. Accordingly, the ECJ concluded that the lease designated a single supply between the landlord and the tenant. Further, ECJ appreciated that supply of associated services may exist independently of the letting of immovable property forever depending on the specific circumstances in particular the content of the contract, associated services may constitute ancillary supplies or be inseparable from the letting and form a single supply.

3.19. In view of the aforesaid, it is submitted that the reimbursement of LIH equipment is a supply, which is inseparable from the main contract for providing mining services and hence the same should be considered as a "composite supply" in terms of Section 2(30) of the CGST Act.

4. Rate of applicable GST

4.1. Section 8 of the CGST Act inter-alia provides that a composite supply comprising of two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply i.e. the rate of tax applicable will be that of the principal supply.

4.2. Section 2(90) of the CGST defines "principal supply" as under:

(90) "principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which no other supply forming part of that composite supply is ancillary.

4.3. In the present case, undoubtedly, the predominant element of the supply made to ONGC under the above contract is the supply of drilling/ mining services and the reimbursement of LIH equipment is ancillary and incidental to the above supply.

4.4. In view of the aforesaid, it is clear that the supplies made under the aforesaid contract to ONGC qualify as composite supply, where in the supply of drilling/ mining services is the principal supply.

4.5. Accordingly, in terms of Section 8 of the CGST Act, the rate of GST applicable to the supply of drilling/ mining services is applicable to both the supply of the said services and the reimbursement of LIH.

- 4.6.** Undisputedly the said drilling services are covered under SAC 9986 i.e., *"Support services to mining, electricity, gas and water distribution."* as prescribed under Notification No. 11/ 2017-CT (Rate) dated 28 June 2017 and the rate of applicable GST is 12% (CGST 6% + SGST 6%) post the amendment vide Notification No. 1/2018-CT (Rate) dated 25th January 2018. Prior to that, the rate of applicable GST was 18%(CGST 9%+ SGST 9%).
- 4.7.** It is submitted that the finding of the Ld. Authority that LIH reimbursement computed at an agreed depreciated value of the Original FOB Price of such equipment/tools and based on the methodology provided in the contract, the activity of LIH reimbursement is rightly classifiable as *'Supply of Goods'* in terms of Section 7 of the CGST Act is untenable in law.
- 4.8.** Without prejudice to the above, it is submitted that initially in the application filed before the Ld. Authority, on the basis of the advice received and its own interpretation of the law, the appellant was discharging GST @18% by classifying the LIH reimbursement as "agreeing to tolerate a situation" under the SAC/ HSN 999794 and hence, the Appellant had made submissions to that effect.
- 4.9.** However, the contentions raised by the appellant before the Advance Ruling Authority were rejected and it was held that the subject transaction does not qualify as "agreeing to tolerate a situation".
- 4.10.** Accordingly, the Appellant sought further advice and has raised alternative contentions in the present application for consideration for this Learned Appellate Authority. It is submitted that there is no estoppel in law to determine correct classification of a transaction and even if the Appellant were not to raise the correct contention, it was open for the Ld. Authority and is open for this Hon'ble Appellate Authority to determine the correct position regarding the taxability of LIH reimbursement. Reliance in this regard, is placed on the following judgments:
- a.** Jit Ram Shiv Kumar And Ors. Etc vs. State Of Haryana & Anr. reported in 1980 AIR 1285
 - b.** Dunlop India Ltd vs. Union of India and Ors, reported in 1977 AIR 597
- 4.11.** In view of the aforesaid, it is respectfully prayed that:
- a.** The impugned Ruling issued by the Ld. Authority be modified to hold that the subject transaction does not qualify as a supply of goods and/ or alternatively, the supplies made under the aforesaid contract to ONGC viz. the supply of drilling services and the reimbursement of LIH are composite supplies. The rate of GST applicable to the supply of drilling services, being the principal supply, should apply to all the above supplies made under the contract with ONGC.
 - b.** Grant a personal hearing and permit the Appellant to produce additional documents and other materials at the time of personal hearing.
 - c.** For such further and other reliefs as this Hon'ble Appellate Authority may deem fit in the facts and circumstances of the case.

3.Virtual Hearing:

The proceedings of Hearing were conducted through video conference on 17th November 2020, for which the authorized representative, Sri Prasad Paranjape, Advocate attended and reiterated submissions already made.

4.Discussions and Findings:

We have gone through the entire records of the appeal, facts of the case, and also considered the written and oral submissions made at length by the appellant as well, in light of the ruling pronounced by the AAR. The issue at hand is to decide

- a) The classification of supply of the 'reimbursement of LIH Damaged beyond repair goods/equipment'.
- b) Whether the supply of drilling services and reimbursement of LIH are composite supply or not and;
- c) Subsequently, in case of it being a composite supply, whether the rate of GST applicable to supply of drilling services, being the principal supply, should apply to all the supplies made under the contract with ONGC.

Primarily, the contention of the appellant is the reimbursement of damaged beyond repair goods/LIH equipment is not a transaction of "Supply of Goods". Now we examine whether the supply in discussion is 'goods or not'. Section 2(52) & 2(102) define goods and services. The extracts are reproduced below:

Section 2(52) "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

Section 2 (102) "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

In the instant case, the appellant uses certain specialized equipment / tools for drilling oil and gas wells in offshore and onshore environment to pre-defined bottom hole targets which are carried out beneath the surface of the earth. There is a probability that the equipment / tools used for drilling services might get stuck or lost due to uncontrollable or unforeseen down hole environmental situations in the Oil and gas well and might not be retrievable. When such equipment / tools are lost in hole or damaged beyond repair, drilling services cannot be performed until new equipment / tools are made available by the Applicant. This leads to disruption of services due to such LIH equipment. The payment made in the form of reimbursement for the damages / replacement of the Lost in Hole (LIH) equipment necessitates the appellant to replace the tools / equipment instantly in order to

continue the drilling services. Hence, the reimbursement of LIH is meant to buy and replace the lost goods. Section 7(1) defines supply as,

Section 7(1) For the purposes of this Act, the expression "supply" includes--

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

Thus, the reimbursement of LIH tools/equipment is nothing but the consideration received for the procurement of damaged goods i.e., the damaged tools/ lost in hole equipment, in the course of its business of drilling operations.

Now we scrutinize whether the supply of drilling services and reimbursement of LIH are composite supplies or not.

The composite supply under Section 2(30);

"(30) "Composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, 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 is evident from the above that the following are the parameters for determining the supplies as composite supplies

- a. There should be a taxable person and a recipient.
- b. Transaction should consist of two or more taxable supplies of goods or services or both; and
- c. The two or more taxable supplies should be naturally bundled and supplied in conjunction with each other in the ordinary course of business.

Now we examine whether all the above parameters are meted out by the present transaction in discussion. The taxable person, being the appellant makes the taxable supplies to the recipient, being ONGC. The supply of bundled services in relation to the drilling/mining services undertaken by the appellant comprise of supply of certain goods and services. While the LIH reimbursement is another supply comprising of the cost in case of damage of equipment or tools at an agreed depreciated value of the original FOB price of the equipment in case of the damages of equipment /tools beyond repair or loss. In context of the conditions of (a) and (b) cited, being satisfied, it now needs to be scrutinized whether the drilling services and LIH reimbursement are 'naturally bundled' and 'supplied in conjunction with each other' in the ordinary course of business.

In the absence of the clear cut explanation in the Act, regarding the concept of 'naturally bundled' the reliance is placed on Education Guide issued by CBEC (now CBIC) in the year 2012 as under –

"9.2.4 Manner of determining if the services are bundled in the ordinary course of business"

Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below –

- a) There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.*
- b) The elements are normally advertised as a package.*

.....

.....

No straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above.”

In the instant case the contract agreement expressly provides that there is no single price or at no point of time, the customer pays the same amount for both the supplies in discussion. Besides, the two supplies i.e., the drilling services and LIH reimbursement are nowhere expressly advertised as a package. Moreover under the stated facts and circumstances of the present case vide para 31.4 of the agreement, which reads as under,

"Separately, given the nature of the scope of work to be carried out, there is a possibility of accidents occurring, whereby certain the equipment/tools owned by the Applicant may be irretrievably lost during operations.”

The transaction of reimbursement towards lost in hole / damage beyond repair of equipment is a distinct event or rather an occurrence that may or may not happen in the regular course of business. LIH event is thus entirely contingent and outside the normal stream of supplies under the agreement. As per terms and conditions of the agreement signed between the appellant and ONGC, the appellant raises a separate invoice on ONGC for reimbursement of amount towards LIH equipment as per the calculation provided in the contract. Even in terms of the clauses under the Contract, reimbursement towards LIH equipment does not find mention under the scope of work at Annexure II to the General Conditions of the Contract, but is a separate clause under the Special Conditions of the Contract contemplating a potential event that may or may not occur during the tenure of the Contract. Thus, the said supplies are not made in conjunction with each other, which implies that they are not meant to be made together or in combination in the normal course of business as a single package of composite supplies.

It is clarified beyond doubt that the supply of drilling services and reimbursement of LIH are not composite supplies. Therefore, the rate of GST applicable to supply of drilling services shall not be applicable to all the supplies

made under the contract with ONGC. Basing on the nature of actual goods involved in the subject activity, and their HSN classification notified for the goods, the provisions relating to chargeability and levy of GST under the CGST Act and the Rules made there under are applicable to the supply of goods.

Accordingly, the order of the Authority for Advance Ruling, A.P. needs no interference.

Order

The Ruling of Authority for Advance Ruling, A.P. vide Ruling No.16/AP/GST/2020 dated: 13.05.2020, is upheld.

Sd/- Peeyush Kumar
Chief Commissioner (State Tax)
Member

Sd/- Naresh Penumaka
Chief Commissioner (Central Tax)
Member

//t.c.f.b.o//




Deputy Commissioner (ST)

DEPUTY COMMISSIONER (ST)
O/o. Chief Commissioner of State Tax,
Government of A.P., Vijayawada

TO

- 1) M/s. Halliburton Offshore Services Inc.(LIH),
Plot No.5A3, Unit-2, ADB Road, Vakalpudi, East Godavari District,
Pin.No.533004 (Andhra Pradesh). **(By Registered Post)**
- 2) M/s. Halliburton Offshore Services Inc.(LIH),
International Business Park, 17th Floor, Commerz II,
Oberoi Garden City, Off Western Express Highway, Goregaon (East),
Mumbai-400063 Maharashtra State.**(By Registered Post)**

Copy to

1. The Assistant Commissioner of State Tax, Kakinada Circle, Kakinada Division.
(By Registered Post)
2. The Superintendent of Central Tax, Ramanayyapeta Range, Kakinada CGST Division. **(By Registered Post)**

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Eedupugallu, Vijayawada.
2. The Chief Commissioner (Central Tax), O/o Chief Commissioner of Central tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035. **(By Registered Post)**