

**GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING  
GOODS AND SERVICES TAX  
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,  
AHMEDABAD – 380 009.**



ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2025/11  
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2024/AR/01)

Date 28.02.2025

Name and address of the appellant	:	Tecnimont Private Limited, Laxmi Chamber, Navjivan Press Road, Ahmedabad, Gujarat- 380 014.
GSTIN of the appellant	:	24AAACI2628B1Z8
Jurisdiction Office	:	Center Commissionerate – Ahmedabad North Division – VII- S G Highway East Range –I
Advance Ruling No. and Date	:	GUJ/GAAR/R/2024/02 dated 5.1.2024.
Date of appeal	:	12.2.2024
Date of Personal Hearing	:	21.1.2025
Present for the appellant	:	Shri Kevin Gogri, Advocate and Shri Sandeep S Khedeker.

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as the ‘CGST Act, 2017’ and the ‘GGST Act, 2017’ are *pari materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean reference to the corresponding similar provisions in the GGST Act, 2017.

2. M/s. Tecnimont Private Limited, [for short ‘appellant’] is a wholly owned subsidiary of Tecnimont S.P.A. Milan, Italy is an EPC<sup>1</sup> Company and is registered with the department.

3. Briefly, the relevant facts concerning this appeal as is canvassed by the appellant, is as under:

<sup>1</sup> Engineering Procurement and Construction



- that they have entered into a **turnkey contract** with IOCL<sup>2</sup>, for executing EPC work of Acrylic Acid Unit (90 KTA) and Butyl Acrylate Unit (150 KTA) at Vadodara;
- that the contract No. 44AC9100-EPCC-1 entered into with IOCL, identifies two separate set of supplies for the turnkey project
  - [i] works contract for EPC work pertaining to EPCC-1 project and
  - [ii] supply of imported materials for the same project;
- that the contract value is fixed on a lump sum price of Rs. 18,72,00,48,047.50;
- that contract is divisible in nature; that the intent was always to treat supply of imported goods and the remaining EPC services, separately;
- that during the course of importation, before the goods reach the Customs frontier in India, they enter into HSS<sup>3</sup> agreement with IOCL, transferring the ownership of the goods to IOCL at the price agreed in the contract. The appellant raises a custom invoice with respect to such goods; that IOCL then files a B/E as the importer of the said goods and discharges customs duty and IGST by clearing the goods for warehousing or home consumption. The applicant treats this as a separate supply of goods distinct from the works contract supplies;
- that the supply of goods in the course of import into India cannot be subject to tax as intra-state supply;
- sale of goods on HSS basis cannot form part of a composite supply of works contract service.

4. In view of the foregoing facts, the appellant sought Advance Ruling on the following questions, viz:

1. Whether the transaction of sale of goods by Tecnimont Pvt. Ltd. (TCMPL) to Indian Oil Corporation Ltd. (IOCL) on High Seas Sale basis in terms of Contract No. 44AC9100-EPCC-1 would be covered under Entry No. 8(b) of Schedule III of the CGST Act and shall be excluded from the value of work contract service for charging GST?

2. Whether the transaction of sale of goods on high seas sale basis by the Applicant to IOCL in terms of Contract No. 44AC9100-EPCC-1 would be treated as works contract and whether Applicant is liable to charge GST on the goods sold on high seas sale basis to IOCL? If yes, what will be the applicable rate of tax on such goods supplied?

5. Consequent to personal hearing, the GAAR<sup>4</sup> recorded the following findings viz:

- the appellant ignores the fact that it is a lumpsum turnkey EPC contract; that to divide a turnkey EPC contract into two parts, is legally not tenable; that post the contract, IOCL and the applicant had a rethink & carved out the foreign supply of goods [HSS] from the turnkey EPC contract, primarily to avail the benefit of Manufacture and other Operations in Warehouse Regulation, 2019 [MOOWR] and EPCG by fictionally dividing an otherwise single turnkey contract into [a] supply of goods and [b] supply of services;
- in terms of Schedule III, read with section 7(2) of the CGST Act, 2017, supply on High Sea Sale basis, is treated as neither a supply of goods nor a supply of services and hence the question of levy of GST on such supply does not arise;
- The EPC contract, encompasses both the supply of goods and services. The applicant, in terms of the contract, is liable to provide the goods [supplied on HSS basis] and hence the submission that this value is not to be included in the transaction value in respect of works contract service is legally not tenable more so since the applicant is contractually bound/liable to supply both the goods and the services. Therefore, in terms of section 15, *ibid*, the value of such imported goods would form a part of the transaction value for payment of GST;
- issue of whether free supply would form a part of transaction value, is no longer *res integra* having been decided by the Hon'ble Chhattisgarh High Court in the case of M/s. Shree Jeet

<sup>2</sup> Indian Oil Corporation Ltd

<sup>3</sup> high seas sale

<sup>4</sup> Gujarat Authority for Advance Ruling



Transport<sup>5</sup> wherein though the recipient of the supply was legally bound via the agreement to provide for free diesel, yet the Hon'ble High Court, held that the free supply of diesel would form part of the transaction value, for the purpose of GST.

- the argument that it is a divisible contract entailing [a] supply of imported goods and [b] supply of services is not borne out from the reading of the contract and the relevant documents thereof.
- that the imported goods supplied on HSS basis are subject to tax as intra state supply belies fact, since what is supplied under the works contract is not the imported goods but Acrylic Acid & Butyl Acrylate Unit of Acrylic /Oxo-Alcohol Project.

6. The GAAR, thereafter, vide the impugned ruling dated 30.5.2024, held as follows:

1. The transaction of sale of goods by Teenimont Pvt. Ltd. (TCMPL) to Indian Oil Corporation Ltd. (IOCL) on High Seas Sale [HSS] basis in terms of Contract No. 44AC9100-EPCC-1 is covered under Entry No. 8(b) of Schedule III of the CGST Act. However, in terms of the findings recorded supra, the value of such HSS supply would form a part of the transaction value under section 15, *ibid*, for computing the value of work contract service for charging GST.

2. The transaction of sale of goods on high seas sale [HSS] basis by the applicant to IOCL in terms of Contract No. 44AC9100-EPCC-1 as has been held supra, is covered under entry 8(b) of Schedule III of the CGST Act, 2017 and therefore the HSS supply is neither a supply of goods nor a supply of services.

7. Aggrieved, the appellant is before us, raising the following contentions, *viz*

- that the impugned ruling in so far as it holds the value of HSS supply to form part of transaction value u/s 15 for computing the value of WCS for charging GST, is erroneous;
- that contract no. 44AC9100-EPCC-1 evidences supply of imported materials from rest of the EPC contract & hence is divisible in nature;
- that supply of imported goods under HSS is not a part of WCS; that such sale is a distinct element in the contract & is separately identifiable from the rest of the EPC work;
- that they would like to rely on the case of BSNI,<sup>6</sup> wherein it was held that whether a contract would represent two separate transaction and separate rights arising out of the contract depends entirely on the intention of the parties;
- that the contract cannot be treated as an indivisible contract since imported supply is a distinct supply;
- that they would like to rely on the case of Power Grid Corporation Ltd<sup>7</sup>, Gannon Dunkerly & Company<sup>8</sup>, L. S. Chandramouli and Co<sup>9</sup>, Mahindra and Mahindra<sup>10</sup>, Mirah Exports P Ltd<sup>11</sup>, Bhopal Sugar Industries Ltd<sup>12</sup>, Indure Ltd and Ors<sup>13</sup>, L. & T<sup>14</sup>
- that once the supplies are held to be distinct, the consideration of one supply cannot be added to the value of separate distinct supply for the purpose of GST;
- that even if it is held that the contract is indivisible, since the supply of HSS would form part of inter state trade or commerce no GST can be levied on the same component as an intra state supply of WCS;
- that since supply of goods on HSS do not constitute a taxable supply, it cannot form part of the composite supply;
- that unlike in the case of Shree Jeet Transport, where fuel was the most crucial element, this rationale is not applicable in the present case.

<sup>5</sup> Writ Petition (T) No. 117/2022 decided on 17.10.2023

<sup>6</sup> 2006(2) STR 161 (SC)

<sup>7</sup> 2007 (108) ITD Hyd

<sup>8</sup> 1958 AIR 560

<sup>9</sup> 1966 (18) STC 325

<sup>10</sup> 1995 (76) ELT 481 SC

<sup>11</sup> 1998 (98) ELT 3 SC

<sup>12</sup> 1977 AIR 1275

<sup>13</sup> 2010 9 SCC 461

<sup>14</sup> 2015 SCC online Hyd 866

8. Personal hearing in the matter was held on 21.01.2025 wherein Shri Kevin Gogri, Advocate and Shri Sandeep S Khedeker, appeared and reiterated the submissions made in the appeal. The submitted a synopsis of the case along with a compilation containing the relevant statutory provisions, circulars and case laws relied upon by the appellant.

#### **FINDINGS :-**

9. We have carefully gone through and considered the appeal papers, written submissions filed by the appellant, submissions made at the time of personal hearing, the impugned Advance Ruling and other materials available on record.

10. The averments canvassed before us can be divided into the following viz

- (i) that the contract is a divisible contract;
- (ii) that the provisions of section 15(2)(b) of the CGST Act, 2017 has been misinterpreted;
- (iii) that the reliance on the judgement of M/s. Shree Jeet Transport of the Hon'ble Chattisgarh High Court is misplaced;
- (iv) that even if the contract is considered indivisible, no tax can be levied on that part of the goods which are sold on HSS basis;
- (v) that the sale of imported materials would not form part of the composite supply & hence would not form part of the overall works contract;
- (vi) that the sale of goods on HSS suffers IGST & hence treating it as a part of the works contract would result in double taxation.

11. Moving on to the first averment that the contract is a divisible contract, we find that the GAAR vide its impugned ruling dated 5.1.2024 after dwelling into what is a works contract in terms of section 2(119), *ibid*, and further relying on the judgement of Kone Elevator India Private Limited<sup>15</sup> held that [i] works contract for EPC work pertaining to EPCC-1 project; & [ii] supply of imported materials for the said project, is a lumpsum turnkey EPC contract & hence division of a turnkey EPC contract into two parts, is legally not tenable.

12. The reliance of the appellant on the judgement of BSNL and Gannon Dunkerley & Co., *supra*, to aver that it is a divisible contract is not tenable owing

<sup>15</sup> 2014 (304) E.L.T. 161 (S.C.)





to the fact that in terms of the contract the applicant was contractually bound/liable to supply both the goods and services.

13. Moving on to the next averment that even if the contract is considered indivisible, no tax can be levied on that part of the goods which are sold on HSS basis and that since the goods suffered IGST, treating it as a part of the works contract would result in double taxation. We find that in terms of Schedule III, read with section 7(2) of the CGST Act, 2017, supply on High Sea Sale basis, is treated as neither a supply of goods nor a supply of services. We find that the impugned ruling clearly states that the EPC contract encompasses both the supply of goods and services and that in terms of the contract, the appellant is liable to provide the goods [supplied on HSS basis]. Therefore, the submission that the value is not to be included in the transaction value in respect of works contract service is legally not tenable more so since as is already mentioned, the applicant is contractually bound/liable to supply both the goods and the services. The averments even otherwise, stand answered in paragraph 34 of the impugned ruling. Hence, we agree with the finding that in terms of section 15, *ibid*, the value of such imported goods invariably forms an integral part of the Transaction value. Thus, the averment that the GAAR had mis-interpreted the provisions of section 15(2)(b) of the CGST Act, 2017 is not a plausible argument.

14. The next averment raised is that the sale of imported materials would not form part of the composite supply & hence would not form part of the overall works contract. The averment has already been answered in paragraphs 21 and 33 of the impugned ruling. Since nothing is produced compelling us to interfere with the said finding, we agree with the findings of the GAAR in this regard.

15. The appellant has further averred that the reliance on the judgement of M/s. Shree Jeet Transport, *ibid*, of the Hon'ble Chattisgarh High Court is misplaced. The appellant has in-fact relied upon the judgement of the Hon'ble Uttarkhand High Court in the case of New Jai Hind Transport Service<sup>16</sup>. The appellant has further stated that in this judgement the emphasis is on the nature of the business & that the Hon'ble Court seems to have completely ignored the pre-

<sup>16</sup> Writ Petition M/S No. 646/2023




requisite of an obligation to fall under the scope of Section 15(2)(b) of the CGST Act, 2017. While making this argument the appellant ignores the inclusions in the letter of acceptance, which is reproduced in paragraph 29 of the impugned ruling, which clearly depict that the averment that there is no obligation for supply of impugned goods is not factually true. Given the facts of the case, the findings recorded by the Hon'ble Chattisgarh High Court, we are in agreement with the view taken by the GAAR by relying on this judgement.

16. Moving on to the other averments raised we observe that the averments have already been raised by the appellant during the course of proceedings before the GAAR. The same have been answered in detail by the GAAR. The appellant we find has repeated the averments already made before the GAAR has not been in a position to point out or place any material which would call for an interference with the impugned ruling.

17. In view of the foregoing, we uphold the impugned ruling dated 5.1.2024 and reject the appeal.

18. In view of the above, we reject the appeal filed by appellant M/s. Tecnimont Private Limited against the Advance Ruling No. GUJ/GAAR/R/2024/02 dated 5.1.2024, passed by the Gujarat Authority for Advance Ruling.

  
( Rajeev Topno )  
Member (SGST)

  
(B V Siva Naga Kumari)  
Member (CGST)

Place: Ahmedabad  
Date 24.02.2025

