

WEST BENGAL AUTHORITY FOR ADVANCE RULING

GOODS AND SERVICES TAX

14 Beliaghata Road, Kolkata – 700015

(Constituted under section 96 of the West Bengal Goods and Services Tax Act, 2017)

Members present:

Tanisha Dutta, Joint Commissioner, CGST & CX

Joyjit Banik, Senior Joint Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Tax Act, 2017 or West Bengal Goods and Services Tax Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Tax Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act.

Every such appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed there under, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	GANGA STP PROJECT PRIVATE LIMITED
Address	Ward No. 49, Howrah Sewage Treatment Plant, Arupara Road, Ramrajatala, Howrah, PIN: 711104
GSTIN	19AAHCG7703L1Z7
Case Number	WBAAR 15 of 2023
ARN	AD1903230056094
Date of application	April 19, 2023
Jurisdictional Authority (State)	Howrah Charge
Jurisdictional Authority (Central)	Howrah Commissionerate, Shibpur Division
Order number and date	16/WBAAR/2023-24 dated 13.07.2023
Applicant's representative heard	Mr Boudhayan Bhattacharyya, Advocate Ms. Stuti Bansal, Advocate

1.1 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 he has been awarded a Water Treatment project jointly by the National Mission for Clean Ganga (NMCG) & Kolkata Metropolitan Development Authority (collectively "Project Authority"), under the Hybrid Annuity Model (HAM) basis as part of the Namami Gange Program of Central Government.

1.3 Under the said HAM model, the project Capex is being funded by a mix of public and private participation. Projects are awarded to the concessionaire under the terms that 40% of the Capex shall be paid by NMCG during the period of construction as a grant and the balance 60% of Capex shall be paid in 60 equal quarterly instalments over a 15- year period along with an interest on the 60% balance Capex payment, at an interest rate linked to SBI MCLR.

1.4 The applicant has made this application under sub section (1) of section 97 of the GST Act and the rules made there under seeking an advance ruling whether the said quantum of interest on 60% of the capex, payable over and above on the consideration value at the rate linked to SBI MCLR attracts the levy of GST or not.

1.5 The aforesaid question on which the advance ruling is sought for is found to be covered under clause (c) and (e) of sub-section (2) of section 97 of the GST Act.

1.6 The applicant states that the question raised in the application has neither been decided by nor is pending before any authority under any provision of the GST Act.

1.7 The officer concerned from the revenue has raised no objection to the admission of the application.

1.8 The application is, therefore, admitted.

2. Submission of the Applicant

Submission of the applicant made along with the application (FORM GST ARA 01):

2.1 The project is funded by a mix of debt, equity and grant. Debt allowed to be taken by the concessionaire from banks / financial institutions as per the concession agreement is allowed upto 75% of the 60% balance Capex as mentioned above. The interest on such debt taken from the banks and financial institutions are not subject to GST and hence no equivalent input credit is available vis-à-vis the interest paid by NMCG to the concessionaire.

2.2 The applicnat (Concessionaire) is currently charging GST on the 40% Capex payment being paid as grant by the NMCG and the balance 60% of Capex to be received as annuity payment by the Concessionaire from KMDA which will be subject to GST at the applicable rates.

2.3 The Project Authority i.e. KMDA is of the view that the interest on 60% Capex payment over 15 years is exempted from levy of GST, since the HAM model is not considered as delayed payment and interest paid at the rate linked to SBI MCLR is a time cost.

2.4 The applicant submits that the interest paid by KMDA to him is an attempt to minimize the loss incurred by the applicant arising out of the delayed payment of the 60% of Project Capex cost, which is received by the applicant by way of annuity after a considerable amount of time of completing the Project/Contract and that too not by a single one shot payment but by way of regular instalments.

2.5 Hence, it is plain that such payments towards interest is made by the KMDA at the rate linked to SBI MCLR in order to augment and/or partially reimburse the extra cost that is being incurred by the Applicant Company in borrowing the money which is required for completing the Project/Contract. It is to be further appreciated that since payment made by the way of annuity is essentially a delayed or deferred payment, the loss incurred by the recipient of the annuity must be factored in. Consequent upon such factoring in, such aspect of 'delay', which is certain to be made as the mode of payment is by way of annuity, this interest quotient over and above the consideration money is being allowed to the recipient i.e. the Applicant Company by the KMDA that is to say the awarder of the Project/Contract.

2.6 Thus, this part of interest payable at the SBI MCLR rate, does not form a part of the consideration part of the value of the Project/Contract i.e. to say it does not form a part of the "supply value" of the Project/Contract, relevant to the GST laws for the purpose of the calculation of GST.

2.7 In the said premises, the applicant submits that the instant quotient of interest on the 60% of the Capex, payable over and above the consideration value of the Project/Contract, should not be liable for GST to be paid on such quantum.

To summarize, the applicant holds the view that tax should not be levied on the interest amount since it does not form a part of the value of supply. However, in course of personal hearing, the authorised advocates of the applicant contend that tax will be calculated and determined on the interest quantum received as payments by the applicant.

Submission by the authorised advocate of the applicant during personal hearing:

2.8 The interest payments serve to compensate for the loss incurred due to the delayed payment of the 60% Capex, which is received as annuity payments over an extended period after project completion. The interest rate, linked to SBI MCLR, reflects the time cost associated with such delayed payments.

2.9 Further, the annuity payment is essentially a deferred payment and therefore the recipient's loss must be factored in. Thus, the additional interest component paid by KMDA should be considered part of the consideration for the project and subjected to application of GST.

2.10 The instant works contract between the parties is a supply of service; hence the applicability of GST, calculation and discharging of tax liability on services shall arise at the time of supply, in accordance with section 13 of the GST Act. Section 13 of the GST Act outlines the principles for determining when a service has been supplied, i.e. "Time of Supply of Services", which then determines when the service provider must pay the GST to the Government. It further lays down that what quantum should be considered to be a quantum relating to "supply of services".

2.11 As per the terms and conditions of the Concession Agreement, the applicant as the concessionaire is designing, financing, constructing, renovating and operating and maintaining of the Facilities in accordance with the said Agreement during the concession period and transferring it to the Government on completion of the concession period. The cost of the construction, operation and maintenance is recovered by the applicant by way of annual annuity payments as per the terms and conditions of the said Agreement for 15 years. On completion of the payment of the cost of construction and maintenance for 15 years through annual annuity as fixed by the agreement, the Facilities are transferred to the Government. The services of construction, operation and maintenance of the said work is a supply as defined under Section 2(119) of the relevant GST Act.

2.12 Moreover, the Explanation (i) to sub-section (2) of Section 13 of relevant GST Act makes it abundantly clear that any 'payment' made to the supplier of services or goods will be treated as to be consisting its quantum of supply. Hence, in terms of such provision, GST will be calculated and determined on the interest quantum received as payments by the applicant.

2.13 The service by way of access to a road or a bridge on payment of annuity is exempted from GST in terms of Entry No. 23A of the Notification No. 12/2017. GST is exempted only on services falling under Heading 9967 by way of access to a road or a bridge on payment of annuity and the services provided by the applicant, in this case, do not come under Heading 9967. In the instant case, the nature of the works as per the Concession Agreement is not falling within the purview of this notification as the work does not anyway relate to construction of roads. Hence, the above referred notification for exemption of applicability of GST does not apply here and the applicant is very well liable to calculate GST on the interest of the annuity payments receivable as and when issued.

3. Submission of the Revenue

The officer concerned from the revenue has not expressed any view on the issue raised by the applicant.

4. Observations & Findings of the Authority

4.1 We have gone through the records of the issue as well as submissions made by the authorised advocates of the applicant during the course of personal hearing.

4.2 The applicant is a concessionaire who has been entrusted the work for development of sewage treatment plants in Kolkata Metropolitan Development Authority (KMDA) Area. As a consideration for the said work, the applicant would be paid certain amount during the period of construction work and thereafter the balance amount would be paid to the applicant in instalments along with interest. The only issue involved in the instant case, as we find, is to determine whether the amount of interest agreed to be paid by KMDA to the applicant due to the delayed payment of the 60% Capex should be considered as a part of the consideration for the project and subjected to application of GST or not.

4.3 Section 15 of the GST Act deals with value of taxable supply. As per clause (d) of sub-section (2) of section 15, the value of supply shall include 'interest or late fee or penalty for delayed payment of any consideration for any supply'. In the instant case, the applicant has entered into a contract for Water Treatment project jointly by the National Mission for Clean Ganga (NMCG) & Kolkata Metropolitan Development Authority under Hybrid Annuity Model (HAM) where the applicant will receive the consideration for such supply as follows:

- (i) 40% of the Capex shall be paid by NMCG during the period of construction; and
- (ii) the balance 60% of Capex shall be paid in 60 equal quarterly instalments over a 15- year period along with an interest on the 60% balance Capex payment, at an interest rate linked to SBI MCLR.

4.4 It therefore appears that KMDA has agreed to pay interest for delayed payment of consideration against supply of services and such interest will be included in value of supply in terms of clause (d) of sub-section (2) of section 15. The authorised advocate of the applicant, in course of personal hearing, has also expressed that GST will be payable on the interest quantum received as payments by the applicant.

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

RULING

In the instant case, interest on 60% of the capex payable over and above on the consideration value at the rate linked to SBI MCLR will be a part of value of supply and would be taxed accordingly.

(TANISHA DUTTA)
Member

West Bengal Authority for Advance Ruling

(JOYJIT BANIK)
Member

West Bengal Authority for Advance Ruling

Place: Kolkata

Date: 13th July, 2023

To,

GANGA STP PROJECT PRIVATE LIMITED

Ward No. 49, Howrah Sewage Treatment Plant,

Arupara Road, Ramrajatala, Howrah, PIN: 711104

Copy to:

- (1) The Principal Chief Commissioner, CGST & CX, GST Bhavan, 180, Shantipally, R.B.Connector, Kolkata-7000107
- (2) The Commissioner of State Tax, West Bengal, 14, Beliaghata Road, Kolkata-700015.
- (3) The Senior Joint/Joint Commissioner, Howrah Charge, 7/1, Mackenzie Lane, Howrah-71110
- (4) The Commissioner of CGST & CX, Howrah Commissionerate, Customs House, 15/1, Strand Road, Fairley Place, B.B.D. Bagh, Kolkata, West Bengal 700001
- (5) Office Folder