

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

ADVANCE RULING NO. GUJ/GAAR/R/2017-18/3
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2017-18/AR/5)

Date :17.1.2018

Name and address of the applicant	:	M/s. R.B. Construction Company, 225, Someshwar Complex – 2, Jodhpur Cross Road, Satellite, Ahmedabad – 380015.
GSTIN of the applicant	:	24AADFR42887MZS
Date of application	:	19.08.2017
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(d) admissibility of input tax credit of tax paid or deemed to have been paid; (e) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
Date of Personal Hearing	:	15.11.2017
Present for the applicant	:	Shri Soham Mashruwala, CA Shri Rohit Bodiwala, Partner

The applicant submitted that they had bid in a tender issued by the Rajkot Municipal Corporation (RMC) to supply pipes, lay the pipes in desired formation as planned by the Government and to test the pipes against the leakages and then commission the project. The work to be executed as per the tender was to construct a pipeline network as per the specifications and design of the RMC. The release of the payment of the applicant fixed by the RMC is as follows :-

Sr. No.	Event / Milestone	% of payment released
A	Supply of pipes at location specified by RMC	70
B	Laying of pipes	20
C	Testing and commissioning of network of pipeline	10

Out of each milestone, a certain portion of the payment is withheld by RMC as retention. Based on the schedule of payments, the applicant had to raise an invoice, out of which the Government would retain some part as retention and release the balance amount. Upon final completion and testing of the network of the pipeline, the balance dues of the applicant are released marking the completion of the project.

2. The applicant was holding registration under Gujarat Value Added Tax Act and was holding a permission to pay tax on a lump sum basis under the erstwhile provisions of the Gujarat Value Added Tax Act. The nature of the work of the tender being a works contract, the applicant used to discharge its liability as per the rates specified in the Gujarat Value Added Tax Act without claiming any benefit of the input tax credit on any items purchased (big or small) and used in the work as specified in the tender.

3. The applicant submitted that they had bought pipes for the project of RMC. At the time of purchase, the applicant had paid Central Excise and VAT. Thereafter the applicant had undertaken excavation work whereby trenches are dug in order to lay the pipes. Once the desired level of depth of soil is dug, the work of laying of pipes started. A network of pipes is made by joining the pipes (either by lamination or welding) so that a permanent structure of pipeline network is formed. The inter-connection of the pipes is designed in such a way that the sewage / liquid / water passes through the network without any leakages. Out of the said network of pipes, the pipes can never be dismantled/ removed as such and in order to dismantle it, the entire pipe network has to be demolished and there is hardly any salvage. After the work of laying is over, the trenches are refilled (covered) and the pipeline network remains underground, invisible to the naked eye. Thereafter the work of testing of network takes place in order to check about leakages and achievement of desired flow of liquid / sewage / water (as the case may be).

4. The applicant submitted that while the project of RMC was unfinished, the Goods and Services Tax Act (GST) got implemented, posing a challenge to the applicant to enjoy the credit of material bought in pre-GST era as per the transition provisions. It is submitted that the milestones which are pending / complete are as below.

Event / Milestone	Status
Supply of pipes at location specified by RMC	Completed in pre-GST era
Laying of pipes	Completed in pre-GST era
Testing and commissioning of network of pipeline	Pending and will now be completed in Goods and Services Tax regime

5. In view of the foregoing facts, the applicant raised the following queries :-

(A) Does the work executed and invoice to be raised for the pending event of testing and commissioning by the applicant after the implementation of the Goods and Services Tax Act amount to supply, and specifically supply of works contract ?

(B) Is the applicant entitled to enjoy proportionate credit worth 10% duty of excise and VAT paid on materials bought vide invoices showing Excise and VAT separately, under the transition provisions so that there is no double taxation i.e. levy of tax on tax is avoided ?

6. The applicant has submitted that the nature of the work is such that an immovable property is created by virtue of the work done by them and unless the specified milestones are completed, the work of the applicant would be incomplete and the property in the goods vests with the applicant. The milestones which are fixed ensure that the applicant never has an option to run away from the project midway. They submitted that in their opinion, the milestone which is yet to be achieved under the GST regime is an extension and inextricably linked with the other two milestones which have been completed. They referred to Section 7 of the Central Goods and Services Tax Act, 2017 (herein after referred to as the 'CGST Act, 2017') and Gujarat Goods and Services Tax Act, 2017 (herein after referred to as the 'GGST Act, 2017') and submitted that the scope of the word 'supply' under the GST Act and the definition provided, in their opinion, makes it hard to define the nature of the work as supply as before the advent of GST, the structure of network is erected but the payment for the pipes cost is yet to be realized to the extent of balance payment being withheld.

7. The applicant submitted that without prejudice to the above, if at all the pending milestone is considered as a supply exigible to tax, it must be declared as a works contract because in pith and substance, the activity is nothing more but continuation of the creation of the immovable property i.e. network of pipelines. They referred to the definition of 'works contract' as provided under Section 2(119) of the CGST Act, 2017 and the GGST Act, 2017 and submitted that the nature of the work executed by them safely leads one to the conclusion that an immovable property is constructed, *ipso facto*.

8. With respect to second query about the admissibility of the claim of input credit under transition provisions, they referred to Section 140(6) of the CGST Act, 2017 and GGST Act, 2017 and submitted that they are in possession of the duty paid document and the element of Central Excise and VAT can be identified clearly. The recitals of the contract of RMC ensure that a sizeable cost of materials is not released to the applicant lest the project is abandoned half-way. It is submitted that the project being in a semi-finished stage, though physically, pipes are not visible as they are underground, entitles them to make a valid claim of credit of excise duty as well as VAT on the invoices of purchases of materials bought within 1 year before 1st July 2017. They submitted that the semi-finished stage of the project being a crucial fact enables the applicant to avail the credit in proportion of 10% of the unfinished work of the project.

9. It has been informed by the Central Excise & GST, Ahmedabad South Commissionerate that from the details of work to be carried out by the party, for providing and laying, commissioning of pipeline for Government of Gujarat (Rajkot Municipal Corporation) under tender, it appears to be falling under Works Contract and so far as matter related to benefit of tax credit under transitional provisions, the assessee may avail the benefit subject to the fulfillment of rule / provisions / conditions of ITC under CGST Act, 2017.

10. We have considered the submissions made by the applicant in their application for advance ruling and additional submissions made vide letter dated 15.11.2017 at the time of personal hearing. We have also considered the information and views submitted by the Central Excise & GST, Ahmedabad South Commissionerate.

11.1 The definition of 'works contract' has been given under Section 2(119) of the CGST Act, 2017 and GGST Act, 2017 as follows :-

“(119) “works contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;”

11.2 Thus, a contract for any immovable property wherein transfer of property in goods is involved in the execution of such contract fall within the definition of 'works contract'.

11.3 In the present case, the applicant had undertaken excavation work whereby trenches are dug and pipes are laid after desired level of depth of soil is dug and a network of pipes is made by joining the pipes either by lamination or welding so that a permanent structure of pipeline network is formed. After the work of laying of pipeline and joining them is over, the trenches are refilled with soil and the pipeline network so formed remains underground. Once the said network of pipes is created, the pipes cannot be dismantled or removed as such. In order to dismantle it, the entire pipe network has to be demolished and there is hardly any salvage.

11.4 We observe that the underground pipeline network created by joining the pipes either by lamination or welding cannot be dismantled without substantial damage and thus cannot be reassembled, therefore the pipeline network so created would be considered as immovable. As the applicant is engaged in the activity of construction of pipeline network which becomes immovable property wherein transfer of property in goods is involved, the said activity falls within the definition of “works contract” under the CGST Act, 2017 and the GGST Act, 2017.

12.1 As per clause 6(a) of the Second Schedule read with Section 7 of the CGST Act, 2017 and the GGST Act, 2017, the composite supply, namely works contract as defined in clause (119) of section 2 shall be treated as a supply of services.

12.2 The provisions related to determination of time of supply of services are contained in Section 13 of the CGST Act, 2017 and the GGST Act, 2017. As per sub-section 2 of Section 13 *ibid*, the time of supply of services shall be the earliest of the following dates namely :-

- (a) *the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or*
- (b) *the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or*
- (c) *the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply :*

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

Explanation. — For the purposes of clauses (a) and (b) —

- (i) *the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;*
- (ii) *“the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.”*

12.3 Therefore, the part of the supply made by the applicant wherein time of supply of service is after implementation of the CGST Act, 2017 and the GGST Act, 2017 are covered by the aforesaid provisions and the applicant is required to discharge Goods and Services Tax liability accordingly. Provisions have been made under sub-section (11) of Section 142 of the CGST Act, 2017 and the GGST Act, 2017 to ensure that the tax is not levied under the existing laws (Chapter V of the Finance Act, 1994 and Gujarat Value Added Tax Act, 2005) as well as under the GST Laws.

13.1 As regards the admissibility of input tax credit on pipes used in pipeline network, the applicant has referred to sub-section (6) of Section 140 of the CGST Act, 2017 and the GGST Act, 2017, which reads as follows :-

“(6) A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely :—

- (i) *such inputs or goods are used or intended to be used for making taxable supplies under this Act;*
- (ii) *the said registered person is not paying tax under section 10;*
- (iii) *the said registered person is eligible for input tax credit on such inputs under this Act;*
- (iv) *the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of inputs; and*
- (v) *such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.”*

13.2 We are informed that the work of supply of pipes at the location specified by the Rajkot Municipal Corporation and the work of underground laying of pipes had already been completed before the appointed date and the work of testing and commissioning of network of pipeline was pending. As submitted by the applicant, only the work of Testing and Commissioning of network of pipeline was pending on the appointed date, for which no input in stock was required to be used on or after the appointed date. Therefore, the condition prescribed at clause (i) of sub-section (6) of Section 140 *ibid* is not fulfilled. Testing and Commissioning of network of pipeline being part of the contract, Goods and Service Tax is leviable, however, since no input / material is required for such Testing and Commissioning of network of pipeline, transitional Input Tax Credit is not allowable.

13.3 In view thereof, the applicant is not entitled to avail input tax credit under Section 140(6) of the CGST Act, 2017 and the GGST Act, 2017.

14. In view of above, we rule as under -

RULING

(A) The work of laying of underground pipeline network falls under the definition of “works contract” provided under Section 2(119) under the CGST Act, 2017 and the GGST Act, 2017. In respect of that part of supply wherein time of supply is on or after the appointed date, Goods and Services Tax is required to be paid.

(B) The applicant is not entitled under Section 140(6) of the CGST Act, 2017 and the GGST Act, 2017 to avail input tax credit.

(R.B. Mankodi)
Member

(G.C. Jain)
Member

Place : Ahmedabad
Date : 17.1.2018.