

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



ADVANCE RULING NO. GUJ/GAAR/R/01/2021

(IN APPLICATION NO. Advance Ruling/SGST&CGST/2018/AR/34)

Date: 20.01.2021

Name and address of the applicant	:	M/s. Enpay Transformer Components India Private Limited. Plot No. 112, Alindra , Manjusar GIDC, Savli, Vadodara-391775.
GSTIN of the applicant	:	24AACCE2260M1ZR
Date of application	:	06.07.2018
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(b) applicability of a notification issued under the provisions of this Act. (e) determination of the liability to pay tax on any goods or services or both.
Date of Personal Hearing	:	23.12.2020(Through online hearing)
Present for the applicant	:	Shri Rachit Shah CA

BRIEF FACTS

The applicant M/s.Enpay Transformers Components India Pvt.Ltd. Plot No.112, Alindra, Manjusar GIDC, Savli, Vadodara (hereinafter referred to as Enpay, India) is engaged in the business of manufacturing and supplying Transformer components. The applicant has stated that the company is importing goods from the Holding company located at Turkey namely M/s. Enpay Endstriyel Pzarlama ve Yatirim A.S. (hereinafter referred to as Enpay, Turkey) for which the payment terms is 120 days from the date of invoice for import of goods and if the company M/s.Enpay Transformer located at India does not pay to Holding company located at Turkey(outside India) on due date, the holding company is charging interest on late payment; that the company has obtained bank credit facility from CITI Bank based on the Corporate Guarantee issued by holding company Enpay Endustriyel Pazarlama ve Yatirim A.S. and they have paid Stamp tax in Turkey as per their land rules and they have raised reimbursement invoice of said payment to ENPAY India; that as mentioned above, the company is importing goods on CIF basis(cost including freight) and the invoice that is raised by the seller is clearly showing the amount of Sea freight and it is also noted that at the time of Bill of Entry, the assessable value calculated for payment of IGST includes the value of Sea Freight, hence, IGST is already paid on the value of sea freight at the time of customs clearance.

2. The applicant has asked the following questions seeking Advance Ruling on the same:

- (i) *Whether liability to pay GST on Reverse charge arises if amount is paid as interest on late payment of invoices of imported goods? If yes, then at what rate?*

- (ii) *Whether liability to pay GST on Reverse charge arises if amount is paid for reimbursement of Stamp tax paid as a pure agent by M/s. Enpay, Turkey on our behalf?*
- (iii) *Whether Entry No.10 of Notification No.10/2017 issued under IGST is applicable, if import of goods is made on CIF(Cost including Freight basis) where the supplier is charging sea/ocean freight in his invoice itself and IGST is already paid at the time of Bill of Entry by including the same value of ocean freight in the assessable value?*

3. The applicant has submitted his view of interpretation of law on the above issues stating that the stamp tax is paid by Enpay, Turkey on behalf of Enpay, India for proceedings of Corporate Guarantee/Bank Guarantee and Enpay, Turkey has also raised an invoice for the reimbursement of the same. The applicant has stated that the Explanation to Rule 33 of the GST Valuation Rules, 2017 gives following meaning of 'Pure Agent':

A. "Pure Agent" means a person who-

- (a) *enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;*
- (b) *neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;*
- (c) *does not use for his own interest such goods or services so procured; and*
- (d) *receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.*

3.1 The applicant has submitted that in this case, the Stamp duty paid by Enpay, Turkey is neither intending to hold any title for it and not for the use of his own interest; that also Enpay, Turkey has received only actual amount of stamp tax paid and considering the above facts, the value paid as a reimbursement to Enpay, Turkey should not be considered as import of services considering it as a payment made to pure agent and hence no IGST on RCM should be liable to pay. As regards the import of goods, the applicant has stated that the import of goods is made on CIF (Cost including Freight basis) where the supplier is charging sea/ocean freight in his invoice itself and IGST is already paid at the time of Bill of Entry by including the same value of ocean freight in the assessable value; that Enpay, India is not directly paying amount of sea/ocean freight to the Service provider and considering the above facts and considering that IGST is already paid on imports made on CIF basis, the entry No.10 of Notification No.10/2017 issued under IGST Act should not be made applicable and hence no IGST again should be paid on it under Reverse charge.

4. The applicant has given additional submission vide letter dated 09.01.2021(received vide email on 11.01.2021) wherein they have stated that during hearing they were asked to furnish details of Stamp tax paid and clarification regarding whether any markup/profit had been charged by Enpay Endustriyel Pazarlama ve Yatirim A.S.(Enpay, Turkey) from Enpay Transformer Components India pvt.ltd. while making payment of stamp tax on their behalf at the time of documentation of Corporate Guarantee Agreement executed on 13.04.2018; that accordingly they have obtained clarification in writing from Enpay Endustriyel Pazarlama ve Yatirim A.S. stating that no mark up (profit) was charged for the reimbursement of stamp tax paid against corporate guarantee issued to CITI bank as security/collateral for funded/non-funded facility used by Enpay Transformer Components India Private Limited and have attached a copy of the same. They have submitted the table for Stamp Tax Collection as under:

Particulars	BASE TAX (USD)	Exchange Rate USD/TL	BASE TAX (TL)	TAX RATE	Stamp Tax Charges (TL)	Stamp Tax Charges (USD)
CORPORATE GUARANTEE TAX	1,500,000	4,1358	6203,700	0.948%	58,811.08	14,220

The applicant has also stated that they have submitted a receipt of stamp tax issued by the Stamp Tax office for reference along with copy of invoice raised by Enpay, Turkey.

DISCUSSION & FINDINGS:

5. We have considered the submissions made by the applicant in their application for advance ruling, additional submission dated 09.01.2021 as well as the arguments/discussions made by their representative Shri Rachit Shah, C.A. at the time of personal hearing. We have also considered the issues involved on which Advance Ruling is sought by the applicant. Further, during the course of personal hearing, the representative of the applicant withdrew the third question of his application seeking Advance Ruling.

6. At the outset, we would like to state that the provisions of both the Central Goods and Services Tax Act, 2017 and the Gujarat Goods and Services Tax Act, 2017 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 similar provisions of the GGST Act. However, since the present application also involves import of goods by the applicant, we may be required to make references to the IGST Act, 2017 as well as the Notifications of Integrated Tax(Rate) issued under the said Act.

7. On going through the submission of the applicant, we find that 3 questions were asked seeking Advance Ruling on the same. However, since the representative of the applicant withdrew the third question during the course of personal hearing, only the first two questions need to be discussed. Further, during the course of personal hearing, the representative of the applicant was asked to submit a copy of contract signed between them and Enpay, Turkey in respect to the transactions between them. However, no copy of the contract/agreement has been submitted by the applicant so far. We, therefore, proceed to decide the issue on the basis of available records. Now, coming to the issue in hand, we find that there are two issues involved as detailed below:

- (i) The applicant is importing goods from the Holding company located at Turkey namely M/s.Enpay Endstriyel Pzarlama ve Yatirim A.S. (Enpay, Turkey) for which the payment terms is 120 days from the date of invoice for import of goods and if the company M/s.Enpay Transformer located at India does not pay to M/s. Enpay, Turkey on due date, M/s.Enpay, Turkey is charging interest on late payment.
- (ii) The applicant has obtained bank credit facility from CITI Bank based on the Corporate Guarantee issued by M/s. Enpay Endustriyel Pazarlama ve Yatirim A.S. (Enpay, Turkey)and they have paid Stamp tax in Turkey as per their land rules and they have raised reimbursement invoice of said payment to M/s. Enpay India. They have submitted a copy of the said Corporate Guarantee.

Based on the above, the applicant has asked the following questions seeking Advance Ruling on the same:

- (i) *Whether liability to pay GST on reverse charge arises if amount is paid as interest on late payment of invoices of imported goods? If yes, then at what rate?*

- (ii) *Whether liability to pay GST on reverse charge arises if amount is paid for reimbursement of Stamp tax paid as a pure agent by M/s.Enpay, Turkey on our behalf?*

8. We will discuss both the aforementioned questions one by one. As regards the first issue, the applicant is required to pay interest on the goods imported from M/s.Enpay Endstriyel Pzarlama ve Yatirim A.S., if there is delay in payment of more than 120 days from the date of the invoice, on the value of the goods. Since, the applicant has asked whether liability to pay GST on reverse charge arises on the amount paid as interest on late payment of invoices of imported goods, we first need to find out whether the said activity is covered under supply of service or supply of goods. For the purpose, we will be required to refer to Section 7 of the CGST Act, 2017 which covers the expression 'supply'. Section 7 of the said Act reads as under:

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;

(b) import of services for a consideration whether or not in the course or furtherance of business;

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; and

(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1),—

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.

8.1 On going through the provisions of Section 7 of the CGST Act, 2017, we find as per Section 7(1)(d), the activities to be treated as supply of goods or supply or services are covered in Schedule-II of the said Act. We, therefore, find it necessary to refer to Schedule-II of the said Act. The same reads as under:

ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

1. Transfer

(a) any transfer of the title in goods is a supply of goods;

(b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;

(c) any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.

2. Land and Building

(a) any lease, tenancy, easement, licence to occupy land is a supply of services;

(b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

3. Treatment or process

Any treatment or process which is applied to another person's goods is a supply of services.

4. Transfer of business assets

(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;

(b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services;

(c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—

(i) the business is transferred as a going concern to another person; or

(ii) the business is carried on by a personal representative who is deemed to be a taxable person.

5. Supply of services

The following shall be treated as supply of services, namely:—

(a) renting of immovable property;

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Explanation.—For the purposes of this clause—

(1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such

authority, from any of the following, namely:—

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and

(f) 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.

6. Composite supply

The following composite supplies shall be treated as a supply of services, namely:—

(a) works contract as defined in clause (119) of section 2; and

(b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

7. Supply of Goods

The following shall be treated as supply of goods, namely:—

Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

8.2 On going through the above, and comparing the same to the issue in hand, we find that the foreign buyer has tolerated the act of receiving payment after a lapse of a period of 120 days from the date of the invoice in respect of the goods supplied by them to the applicant for which interest is to be paid by the applicant. We, therefore, find that the aforementioned act will be covered under the Supply of Services under Entry No.5(e) of the aforementioned Schedule-II which reads as "(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act". However, since the payment of

interest made by the applicant to the foreign buyer is connected to the goods imported by them and is with regard to the late payment of the value of goods imported by them from the foreign buyer, we find it absolutely necessary to refer to Section 15 of the CGST Act, 2017 which covers the valuation aspect in respect of supply of goods and services. Section 15 of the said Act reads as under:

“ 15. (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include—

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.”

(3) The value of the supply shall not include any discount which is given—

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if—

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

Explanation.—For the purposes of this Act,—

(a) persons shall be deemed to be “related persons” if—

(i) such persons are officers or directors of one another’s businesses;

(ii) such persons are legally recognised partners in business;

(iii) such persons are employer and employee;

(iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family;

(b) the term “person” also includes legal persons;

(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

8.3 On going through the above, we find that Sub-section (2) of Section 15 pertains to all the things that shall be included in the value of supply. On going through the said sub-section, we find that as per Section-15(2)(d), value of supply also includes **“interest or late fee or penalty for delayed payment of any consideration for any supply.”** We, therefore, conclude that the payment of interest by the applicant will be covered under the supply of services under Entry No.5(2)(e) of Schedule-II of the CGST Act, 2017 and is liable to GST in view of the provisions of Section-15(2)(d) of the said Act.

8.4 The second part of the question is regarding the rate of GST payable on the interest paid for delayed payment on the goods. In this context, we find that the interest paid by the applicant for delay in payment of the amount/value of the imported goods (paid after a lapse of a period of 120 days from the date of the invoice) is included as a part of the value of the said goods as per the provisions of Section-15(2)(d) of the CGST Act, 2017 as discussed in the above para. In view of the above, we conclude that the rate of GST payable on the aforementioned interest will be the same as that of the IGST applicable on the aforementioned goods.

9. Coming to the second issue, we find that the applicant has obtained bank credit facility from CITI Bank based on the Corporate Guarantee issued by M/s.Enpay, Turkey who has paid Stamp tax in Turkey as per their land rules and they have raised reimbursement invoice of said payment to M/s.Enpay, India. The applicant, vide their additional submission dated 09.01.2021 (received vide email on 11.01.2021) have stated that they have obtained clarification in writing from M/s.Enpay Endustriyel Pazarlama ve Yatirim A.S. (Enpay, Turkey) stating that no mark up (profit) was charged for the reimbursement of stamp tax paid against corporate guarantee issued to CITI bank as security/collateral for funded/non-funded facility used by M/s.Enpay Transformer Components India Private Limited and have attached a copy of the same. The applicant has also stated that they have submitted a copy of receipt of stamp tax issued by the Stamp Tax office for reference along with copy of invoice raised by M/s.Enpay, Turkey. We have gone through the letter dated 09.01.2021 issued by M/s. Enpay, Turkey to M/s.Enpay Transformers Components India pvt.ltd. stating that no mark up (profit) was charged for the reimbursement of stamp tax paid against corporate guarantee issued to CITI Bank as security/collateral for funded/non-funded facility used by Enpay Transformers Components India pvt.ltd. Other than this, we find that the applicant has submitted certain documents which are in foreign language (perhaps Turkish), which is not understandable to us. Further, since no English translation of the same has been made available to us, we are not able to make out whether any of these documents pertain to receipt of stamp tax issued by Stamp Tax Office, Turkey or otherwise, as stated by the applicant.

9.1 Now, the applicant wants to know whether liability to pay GST on reverse charge arises if amount is paid for reimbursement of Stamp tax paid as a pure agent by M/s.Enpay, Turkey on their behalf. In this regard, while referring to the provisions of Rule 33 of the CGST Rules, 2017, the applicant has submitted that in this case, the stamp duty paid by M/s.Enpay, Turkey is neither intending to hold any title for it and not for the use of his own interest and M/s.Enpay, Turkey has received only actual amount of stamp tax paid and considering the above facts, the value paid as a reimbursement to M/s.Enpay, Turkey should not be considered as import of services considering it as a payment made to pure agent and hence no IGST on RCM should be liable to pay. In this context, we find it prudent to refer to the provisions of Rule 33 of the CGST Rules, 2017 which covers the value of supply of services in case of pure agent of the recipient of supply. The same reads as under:

“33.Value of supply of services in case of pure agent.-*Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely,-*

- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;*
- (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and*
- (iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.*

Explanation.- For the purposes of this rule, the expression “pure agent” means a person who-

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;*
- (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;*
- (c) does not use for his own interest such goods or services so procured; and*
- (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.*

9.2 In the instant case, the supplier of goods i.e. M/s.Enpay, Turkey has incurred the expenditure on stamp duty/tax on behalf of the applicant against the Corporate Guarantee entered into by them with CITI Bank for which they have raised reimbursement invoice of said payment, to M/s.Enpay, India. After going through the aforementioned provisions and comparing the same to the issue in hand, we find that, the expenditure or costs incurred by the supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if, and only if, the supplier i.e. M/s.Enpay, Turkey satisfies all the conditions envisaged in Rule 33(i) to (iii) as well as the conditions (a) to (d) envisaged in the Explanation to Rule 33 of the CGST Rules, 2017. We are, therefore, required to examine as to whether the supplier i.e. M/s.Enpay, Turkey satisfies all the conditions mentioned hereinabove and satisfies the conditions of a pure agent. But, before doing that, we find it necessary to refer to refer to Section 2(31) of the CGST Act, 2017, which defines ‘consideration’. Section 2(31) of the said Act reads as under:

(31) “consideration” in relation to the supply of goods or services or both includes—

“(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;”

The above definition of 'consideration' clearly includes any payment made or to be made, in respect of supply of goods or services or both by the recipient or by any other person. It also includes the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person. Comparing the aforementioned definition to the issue in hand, we find that in the instant case, the Bank Guarantee entered into by the supplier with the CITI Bank on behalf of the applicant, is in direct relation to the business connection/link that they are having with the applicant by way of supply of goods to them and therefore, the payment of stamp tax made by them to the bank (on behalf of the applicant) and demanded by them from the applicant as reimbursement through issuance of a reimbursable invoice would be considered to be payment made in respect of (or in relation to) the supply of goods made by them to the applicant. We have also gone through the provisions of Section 15 of the CGST Act, 2017 mentioned at para-8.2 above which covers the aspect of valuation and find that 'reimbursements' are not covered in the excluded clauses of value as appearing in sub-section(3) of Section-15. Therefore, the amount of stamp tax, which is paid as reimbursement by the applicant will undoubtedly form a part of the 'consideration' i.e. the value of the supply of goods provided by the supplier to the applicant and GST is liable on the same. However, taking into consideration the provisions of Rule 33 of the CGST Rules, 2017, we find that the amount of stamp tax incurred by the supplier on behalf of the applicant, shall be excluded from the value of supply, if, and only if, the supplier i.e. M/s.Enpay, Turkey satisfies all the conditions envisaged in Rule 33(i) to (iii) as well as the conditions (a) to (d) envisaged in the Explanation to Rule 33 of the CGST Rules, 2017. We, therefore, proceed to examine as to whether the supplier i.e. M/s.Enpay, Turkey satisfies all the conditions mentioned hereinabove and satisfies the conditions of a pure agent, which are enlisted hereunder:

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;

No such document, agreement or contract has been produced by the applicant which proves that they have authorised the supplier to make payment to the third party. In view of absence/non-submission of any such documents in this regard, we conclude that this condition is not satisfied.

(ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service;

In this regard, the applicant themselves have submitted that the supplier has issued them a separate invoice mentioning the reimbursable amount therein. We also find that the amount of stamp tax paid by the supplier on behalf of the applicant has been mentioned in a separate commercial invoice issued to the applicant. However, in the condition mentioned above, there is no mention of issuance of any separate invoice regarding payment made by pure agent. As per the said condition, the supplier was required to indicate the aforementioned payment amount (made on behalf of the recipient of supply), separately in the invoice issued by him to the recipient of service/goods i.e. it should form a part of the invoice (related to the supply of goods) issued by the supplier and should be indicated separately, therein. The applicant has not submitted any evidence to prove that the aforementioned amount paid as stamp tax by the supplier on behalf of the applicant has been indicated separately in the invoice related to the supply of goods made to them. Hence this condition is not satisfied.

(iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account;

In the instant case, the Bank Guarantee entered into by the supplier with the CITI Bank (the third party) on behalf of the applicant is in direct relation to the

business connection/link that they are having with the applicant by way of supply of goods to them and are not in addition to the supply of services/goods that they provide to the applicant on their own account. Hence, this condition is also not satisfied.

9.3 Further, as per Explanation to Rule 33 of the CGST Rules, 2017, the following conditions are also needed to be satisfied to qualify as a 'pure agent':

(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

No such document, agreement or contract has been produced by the applicant which proves that they have entered into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both. In view of absence/non-submission of any such documents in this regard, we conclude that this condition is not satisfied.

(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

The applicant has submitted that the stamp duty paid by the supplier M/s.Enpay, Turkey is neither intending to hold any title for it and not for the use of his own interest. However, they have not provided any documentary evidence to prove that the supplier neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply. Hence, this condition is not satisfied.

(c) does not use for his own interest such goods or services so procured;

In the instant case, the services procured by the supplier are used for his own interest only as the Bank Guarantee entered into by them with the CITI Bank on behalf of the applicant is in direct relation to the business connection/link that they are having with the applicant by way of supply of goods to the applicant. Hence, we conclude that this condition is not satisfied.

(d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply, he provides on his own account.:

The applicant has submitted that the supplier M/s.Enpay, Turkey has received only actual amount of stamp tax paid and considering the above facts, the value paid as a reimbursement to M/s.Enpay, Turkey should not be considered as import of services considering it as a payment made to pure agent and hence no IGST on RCM should be liable to pay. In this regard, we find that the applicant has submitted a copy of letter dated 09.01.2021 issued by M/s. Enpay, Turkey to M/s.Enpay Transformers Components India pvt.ltd. stating that no mark up(profit) was charged for the reimbursement of stamp tax paid against corporate guarantee issued to CITI Bank as security/collateral for funded/non-funded facility used by Enpay Transformers Components India pvt.ltd. The applicant has also stated that they have submitted a copy of receipt of the Stamp tax paid by the Stamp Tax Office, Turkey. However, since the documents, other than those mentioned above, are in foreign language(perhaps Turkish), which is not understandable to us and since no English translation of the same has been made available to us, we are not able to make out whether any of these documents pertain to receipt of stamp tax issued by Stamp Tax Office, Turkey or otherwise. We would also like to emphasize here than a mere letter issued by the supplier stating that no mark up(profit) was charged for the stamp tax paid by them or a receipt from the Stamp Tax Office, Turkey regarding Stamp Tax paid will not suffice to prove that no mark up was charged for the said reimbursement amount, but has to be backed up by proper documentary evidence such as financial records etc. of the supplier. Since no such documents have been produced by the applicant, we conclude that this condition is also not satisfied.

9.4 In view of the above discussions, we conclude that the supplier of the applicant does not fulfil/satisfy all the conditions required for being a 'Pure agent' in terms of the provisions of Rule 33 of the CGST Rules, 2017 and therefore, the expenditure or costs incurred by the supplier of the recipient of supply cannot be excluded from the value of supply in terms of the provisions of Rule 33 of the said rules and is liable to GST on reverse charge basis.

10. In light of the above circumstances, we rule, as under –

R U L I N G

Question-1: Whether liability to pay GST on reverse charge arises if amount is paid as interest on late payment of invoices of imported goods? If yes, then at what rate?

Answer: The applicant M/s.Enpay Transformers Components India pvt.ltd. Plot No.112, Alindra, Manjusar GIDC, Savli, Vadodara is liable to pay GST on reverse charge basis for amount paid as interest on late payment of invoices of imported goods for the reasons discussed hereinabove. The rate of GST will be the same as the rate of IGST leviable on the imported goods for the reasons discussed hereinabove.

Question-2: Whether liability to pay GST on reverse charge arises if amount is paid for reimbursement of Stamp tax paid as a pure agent by M/s. Enpay, Turkey on our behalf?

Answer: The applicant is liable to pay GST on reverse charge basis on amount paid for reimbursement of Stamp tax paid by the supplier M/s. Enpay Turkey on behalf of the applicant, since the supplier of the applicant does not fulfil/satisfy all the conditions required for being a 'Pure agent' in terms of the provisions of Rule 33 of the CGST Rules, 2017 for the reasons discussed hereinabove.

(SANJAY SAXENA)

MEMBER

(MOHIT AGRAWAL)

MEMBER

Place: Ahmedabad

Date: 20.01.2021.