

**THE AUTHORITY FOR ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU – 560 009**

Advance Ruling No. KAR ADRG 26/2022

Date : 12.08.2022

Present:

1. Dr. M.P. Ravi Prasad

Additional Commissioner of Commercial Taxes

. . . . Member (State)

2. Sri. T. Kiran Reddy

Additional Commissioner of Customs & Indirect Taxes

. . . . Member (Central)

| | | |
|----|---|---|
| 1. | Name and address of the applicant | M/s. HYUNDAI ROTEM COMPANY, # 277, II Floor, 4 th Main, 5 th D Cross, HAL 3 rd Stage, New Thippasandra Road, Bengaluru – 560 075. |
| 2. | GSTIN or User ID | 29AABCK6367L1ZY |
| 3. | Date of filing of Form GST ARA-01 | 02-03-2022 |
| 4. | Represented by | Sri. Sujit Ghosh, Advocate & Authorised Representative |
| 5. | Jurisdictional Authority – Centre | The Commissioner of Central Tax, Bangalore East Commissionerate, Bengaluru. (Range-BED5) |
| 6. | Jurisdictional Authority – State | ACCT, LGSTO-45 A, Bengaluru. |
| 7. | Whether the payment of fees discharged and if yes, the amount and CIN | Yes, discharged fee of Rs.5,000/- under CGST Act & Rs.5,000/- under KGST Act through debit from Electronic Cash Ledger vide reference No. DC2902220276593 dated 25.02.2022. |

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER SECTION 98(4) OF THE KGST ACT, 2017**

M/s. Hyundai Rotem Company (herein after referred to as 'Applicant' or 'HRC'), # 277, II Floor, 4th Main, 5th D Cross, HAL 3rd Stage, New Thippasandra Road, Bengaluru – 560 075, having GSTIN 29AABCK6367L1ZY, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of KGST Rules, 2017, in form GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act, KGST Act.



2. The applicant is a foreign company incorporated in South Korea and is predominantly engaged in manufacture, supply, testing, commissioning and training in respect of rolling stock. The applicant was a successful bidder to the tender invited by Delhi Metro Rail Corporation Limited ('DMRC') for design, manufacture, supply, testing, commissioning and training of 504 Standard Gauge Cars (passenger rolling stock) including training of operation & maintenance personnel and supply of spares & manuals. The applicant entered into a contract with DMRC, vide contract No.RS-10 dated 24.05.2013, for the purpose of execution of the contract awarded.

The applicant, to undertake the scope of work as agreed in the contract, is required to supply various goods and services to DMRC in a phased manner. The detailed instructions with respect to obligations of the applicant under the contract are specified through various Cost Centres under tender documents which form part of the Contract. The nature of supply undertaken by the applicant under each of the cost centres is tabulated here under:

| Cost Centre | Description |
|--------------------|--|
| A | Preliminaries and general requirements and design of Rolling Stock and provisions of mockup |
| B | Offshore manufacture, dispatch, completion of shipping to port in India, inland transportation in India, delivery and receipt of cars in depot |
| C | Indigenous manufacture, dispatch, inland transportation in India, delivery and receipt of cars in depot |
| D | Testing in the depot, integrated testing and commission of trains, service trails and final commissioning |
| E | Not used |
| F | Not used |
| G | Unit exchange spares, mandatory spares, recommended spares, consumable spares, special tools, testing and diagnostic, equipment, intermediate overhauling spares, trouble shooting and driving simulator |
| H | Training and manuals |

3. In view of the above, the applicant has sought advance ruling in respect of the following questions:

- a. Whether the supplies made under Cost Centres D, G and H (to the extent of training services) of Contract 'RS-10' to DMRC are to be considered as independent supplies of goods and services and GST rate applicable depending upon the nature of activity performed under such cost centres?



- b. Whether the supplies made by all the Cost Centres of RS-10 contract of DMRC are to be considered as 'composite supply' as defined under Section 2(30) of the Central Goods and Services Tax Act 2017 ('CGST Act') read with Section 8(1) of the CGST Act, thereby considering the supply of rolling stock undertaken under Cost Centre B and C as the principal supply and levying GST at 5% (upto 30 Sep 2019), 12% (from 1 Oct 2019 till 30 Sep 2021) and 18% (with effect from 1 Oct 2021) of the entire contract value.

4. **BRIEF FACTS OF THE CASE:** The applicant furnishes the following facts relevant to the issue:

4.1 The applicant, furnishing the summary of activities undertaken by them under each of the Cost Centres submitted that as per the pricing document ('Annexure ITT-2B to instructions to Tenderers') as amended vide DMRC letter No. DMRC/134/18/RS10/2200A/4130 dated 16.05.2018, the lump sum contract price that is chargeable for the whole of works has been apportioned among various const centres. The apportioned amount for each cost centre has been further distributed among various milestones included in that cost centre. The applicant also furnished the breakup of the contract price relatable to each of the cost centres.

4.2 The pricing document also categorically prescribes milestone payment schedule for each of the cost centres, specifying when and how much consideration would become due to the applicant upon fulfillment of prescribed activities. DMRC, vide its Circular No.19/2017 dated 11.12.2017, with regard to the tax payment on supplies under the contract, agreed, due to the promulgation of Goods and Services Tax w.e.f. 01.07.2017, that the GST as applicable will also be paid to the applicant based on the tax invoices issued by the applicant.

4.3 The supply by the applicant to the DMRC is an inter-state supply of the goods and services and liable for the tax under the provisions of IGST Act 2017. The rate of tax on these supplies are at present levied based on the nature of respective transaction for which the invoice is issued. The applicant furnished the present status and treatment of different supplies under the cost centres.

4.4 The DMRC vide its letter no. DMRC/134/21/RS10/GST/Reimb/Part-1/7004 dated 04 June 2021 has disputed the nature of supply and applicable rate of GST to be charged by applicant, on the following understanding of DMRC:

- Supply made by applicant under the contract is a 'composite supply' as defined under clause (30) of section 2 of the Central Goods and Services Tax Act, 2017 ('CGST Act') with the principal supply being the supply of rolling stock



- It is the understanding of DMRC that the supplies under the cost centre D to G are incidental / ancillary to the principal supply of rolling stock and supplied in conjunction with each other.
- In view of above understanding, DMRC has advised the applicant to revise the tax invoices for all the Cost Centres under the Contract as per the GST rate applicable to rolling stock i.e. 5% for supplies upto 30 Sept 2019, 12% for supplies from 1 Oct 2019 till 30 Sept 2021 and 18% for supplies made thereafter

4.5 The adoption of above change as advised by DMRC would affect the nature of supply and tax rate adopted by the applicant. DMRC, on account of disagreement on the nature of supply and applicable rate thereon, withheld the differential GST payment relatable to cost centres D, G and H. However the applicant has borne the cost of differential GST on its own and paid the said tax to the Government in a timely manner. Thus the applicant has filed the instant application for advance ruling.

5. **Applicant's Interpretation of Law:** The applicant furnished their understanding and interpretation of law as under:

5.1 The applicant, quoting various provisions of the law submits that the supplies made under Cost Centres D, G and H (H1 to H5) are not composite to the supplies under Cost Centres B & C and are as such independent supplies; that the Applicant is limiting their submissions to Cost Centres D, G and H (H1 to H5). It is undisputed that the supplies relatable to Cost Centre A and Cost Centre H (to the extent of manuals i.e. H6 to H11) are incidental to supplies made under Cost Centre B and C and therefore taxed at same GST rate as applicable to Cost Centre B and C.

5.2 Cost Centres B and C pertain to the offshore and indigenous manufacture of train cars

- It is submitted that under Cost Centre B and C, offshore/ indigenous manufactured train cars are supplied. The said train cars fall under the ambit of 'goods' as per Section 2(52) of the CGST Act.
- The Central Government vide Notification No. 1/2017-Integrated Tax (Rate), dated 28 June 2017, as amended, has notified the rate of tax on inter-state supply of goods falling under Schedules I, II and III at 5%, 12% and 18% respectively.

5.3 Cost Centre D covers the independent activity of "installation service"

It is further submitted that under Cost Centre D, the activity of commissioning and installation of train cars is carried out. Such activity



amounts to a supply of service in terms of Section 2(102) of the CGST Act and is classifiable under Heading 9987 as 'installation services' in terms of Notification 8/2017- Integrated Tax dated 28.06.2017 (relevant to the applicant for the discharge of IGST @ 18%).

- Delving further, it is submitted that the complete classification of the said service falls under SAC 998739 as 'Installation services of other goods nowhere else classified'. It is submitted that while Notification 8/2017- Integrated Tax dated 28.06.2017 does not contain the detailed SAC codes, the same are contained in Notification 11/2017 dated 28.06.2017, the relevant portions of which have been extracted for ready reference below:

| | | | |
|------------|--------------------|---------------|--|
| 490 | Group 99873 | | Installation services (other than construction) |
| 491 | | 998731 | Installation services of fabricated metal products, except machinery and equipment |
| 492 | | 998732 | Installation services of industrial, manufacturing and service industry machinery and equipment |
| 493 | | 998733 | Installation services of office and accounting machinery and computers |
| 494 | | 998734 | Installation services of radio, television and communications equipment and apparatus |
| 495 | | 998735 | Installation services of professional medical machinery and equipment, and precision and optical instruments |
| 496 | | 998736 | Installation services of electrical machinery and apparatus nowhere else classified |
| 497 | | 998739 | Installation services of other goods nowhere else classified |

- Moreover, it is submitted that Heading SAC 998739 is based on the Modified United Nations Central Product Classification, Heading 998739 of which, has been extracted below: -

998739 Installation services of other goods n.e.c.

This service code includes installation of home theatre systems and other consumer electronics, household goods, **and goods not elsewhere classified**

- In the light of the above, it is the submission of the applicant that train cars definitely fall within the residuary category of "goods nowhere else classified" and installing and commissioning of the same at DMRC's depots merits classification under the heading "Installation services of goods nowhere else classified".
- Further, Annexure ITT-2B (Instruction to Tenderers) expressly lays down the scope of all works associated with the Cost Centre D and the consideration payable by the Employer in the event of successful completion of such works. Moreover, the aforesaid Annexure also provides for a distinct Milestone



Completion Date for each, and every separate work associated with Cost Centre D.

- In summary, Cost Centre D bears the features of distinct scope of work which are to be completed before different Milestone Completion Dates and that the consideration payable upon such completion has also been expressly apportioned against each work associated with Cost Centre D. Hence, in light of Cost Centre D bearing the aforementioned features, it is an independent supply from all other Cost Centers forming part of Contract RS-10.

5.4 Cost Centre G covers an independent supply of goods i.e. the “supplies of spares”

- Cost Centre G covers work relating to the supply of spares of different natures, trouble shooting and driving simulator.
- The spares supplied under Cost Centre G are independent of the supplies made under other Cost Centres and thus it further corroborates that each supply is distinct and separate. Under the said Cost Centre, there are several types of spares and the classification and rate of tax for such supply of spares are dependent on the type of spares i.e., whether lubricants, grease, gaskets, oil, filters etc. supplied to DMRC.
- Further, Annexure ITT-2B (Instruction to Tenderers) specifies the scope of work to be completed as part of Cost Centre G, the consideration payable upon such completion of work and the milestone completion date by which the works associated with Cost Centre G are to be completed.
- Moreover, it is submitted that supplies under Cost Centre G are completely contingent upon the requirement of spares by DMRC. The said fact is evident from the footnote 6 of the Pricing document which stipulates that DMRC at its discretion may exercise the option to increase/decrease the quantities (to any extent) of spares indicated under milestones. Relevant extract is reproduced below:

“Employer at his sole discretion may exercise the option to increase/ decrease the quantities (to any extent) of spares indicated under milestone G1, G2, G3, G4, G5 and G6. For increased quantities, payment to the contractor shall be on the basis of actual supplies made and quoted unit rates and no escalation or any other additional sums shall be payable”

- In conclusion, Cost Centre G is an independent supply from all other Cost Centers forming part of RS-10 due to the scope of works to be completed being clearly demarcated, express apportionment of consideration payable of conclusion of each milestone work and specific Milestone Completion Dates within which the works are to be completed.



5.5 Cost Centre H pertains to the independent service of training of operation and maintenance personnel

- Cost Centre H pertains to services rendered for the training of operation and maintenance personnel of the rolling stock. These services relate to SAC Code 999294 contained in Notification 11/2017 dated 28.06.2017, which has been extracted below:

| | | | |
|------------|--------------------|---------------|---|
| 596 | Group 99929 | | Other education and training services and educational support services |
| 597 | | 999291 | Cultural education services |
| 598 | | 999292 | Sports and recreation education services |
| 599 | | 999293 | Commercial training and coaching services |
| 600 | | 999294 | Other education and training services nowhere else classified |
| 601 | | 999295 | Services involving conduct of examination for admission to educational institutions |
| 602 | | 999299 | Other educational support services |

- The aforesaid classification is based on the Modified UNCPD, the relevant portions of which are extracted below:-

999294 Other education and training services n.e.c.

This service code **includes**:

- training for car, bus, lorry and motorcycle driving licences
 - training for flying certificates and ship licences
 - computer training services
 - management training services
 - services provided by music camps, science camps, computer camps and other instructional camps, except for sports
 - education services not definable by level**
- With reference to Cost Centre H, Annexure ITT-2B (Instruction to Tenderers) clearly demarcates the scope of works to be completed, the Completion of Milestone Dates before which each work is to be completed and the consideration payable upon successful completion of works.
 - Moreover, with respect to the supply of training services under Cost Centre H (H1 to H5), it is mentioned in the footnote 2 of the Cost Centre H that the dates of operation of the Milestone Activities for Milestones H1 to H5 will be at the discretion of the Employer. Hence, it establishes that the supplies under Cost Centre H (H1 to H5) are independent of the supplies made under other cost centres.



5.6 The supplies made under Cost Centre D, G and H are independent supplies in view of the following which run a common thread amongst the aforementioned Cost Centres:

- Clause B.1 of Annexure ITT-2A (Instruction to Tenderers) expressly provides that the whole of the work forming subject matter of Contract RS-10 is divided into Cost Centres, with each Cost Centre representing a major item associated with such work.
- Further, Clause B. 2 of the said Annexure provides that a lumpsum amount for the works covered under each Cost Centre shall be apportioned, except Cost Centre G and H, and that such apportioned amount will be further distributed amongst the Milestones listed out in the respective Cost Centres.
- A conjoint reading of the aforementioned clauses of Annexure ITT-2A (Instruction to Tenderers) demonstrates that there exists a conclusive demarcation of services to be rendered/goods to be supplied and that there is also further bifurcation of the amounts apportioned to the Cost Centres depending upon the Milestones achieved. Therefore, a clear demarcation of supplies and consideration for such supplies has been provided for under Cost Centres D, G and H.
- Further, as in the Contract, separate and distinct scope of work has been identified and separate consideration has been prescribed for each Cost Centre, accordingly each supply should be considered as separate and the contract would not amount to a composite one. Furthermore, milestones have been prescribed and consideration has been apportioned against each milestone as per Annexure ITT-2B of the Contract. Accordingly, the Applicant is raising invoices based on the fulfillment or completion of each milestone. For Annexure ITT-2B, refer Page no. 94 of the contract documents enclosed as Appendix 1.
- Instruction G of Annexure ITT-2A of the DMRC Tender RS-10 categorically provides that cost centers and milestones thereunder are fixed and shall not be changed by the tenderer. These represent the major work items of the work for which DMRC will pay the contractor. For Instruction G of Annexure ITT-2A, refer Page no. 93 of the contract documents enclosed as Appendix 1.
- Further as per Clause 11.4 of the General Conditions of Contract (GCC) (enclosed as **Appendix 6**), payment would be made by DMRC only upon the completion of specified milestone of each cost center. Relevant extract is reproduced below:



“...The Contractor shall be entitled to submit to the Engineer requests for interim payments only upon the achievement of one or more of the Milestones described in the Cost Centre....

...If any Milestone is not achieved by the end of the month in which it is scheduled to be achieved, the Engineer shall suspend the payment relating to the Cost Centre in which the Milestone is included.”

- Further, a particular milestone is not considered as achieved until the conditions/qualifications specified with respect to such milestone are satisfied in entirety and same is accepted by DMRC as well. For instance – Para 8.2 of the Employer’s Requirements: General Specification specifies the necessary conditions with respect to supply of Unit Exchange Spares under cost centre G as under:

“8.2.1 The Contractor shall supply the Unit Exchange Spares as listed in the Appendix 6 of this Employer’s Requirements – General Specification. The Unit Exchange Spares shall be supplied in the Depot nominated by the Employer. The delivery requirements of different lots are mentioned in the Appendix-6. These shall be delivered as per the key dates defined.”

- Therefore, with such contract structure, the activities covered under Cost Center D, G and H are independent supplies.
- The scope of work under Cost Centre D,G and H (to the extent of training services) are entirely independent and specific to their respective cost centre only. Reference in this regard is made to the milestone completion date specified against each milestone under all the cost centres of the RS10 contract. The Annexure-I of the Contract lists down the key dates for the various activities under the Contract ‘RS10’ basis which it can be easily identified that the work under Cost Centre D commences only on completion of all activities with respect to a particular train set as listed under milestone for Cost Centre B and C. Similarly, the work undertaken by Cost Centre G and H (training service H6 to H11) commence only on completion of all the milestone activities of Cost Centre C and D. Therefore, this further corroborates that each Cost Centre is independent and every supply made under each Cost Centre is an independent transaction.
- Moreover, it is apposite to refer to the descriptions listed out for Cost Centres B, C and D within Annexure ITT-2B wherein it has been explicitly provided that the aforementioned Cost Centres comprise of obligations and activities which are not directly associated with any other Cost Centres. This in itself demonstrates the intention of the parties that the scope of work for Cost Centres B, C and D would be an independent supply centre to all other Cost Centres. Assuming but not accepting that Cost Centres B and C would serve as the principal supply under Contract



RS-10, Annexure ITT-2B makes it abundantly clear that these Cost Centres would be independent of all other Cost Centers, particularly Cost Centre D, thereby meaning that the remaining Cost Centres cannot be treated as ancillary/incidental to Cost Centres B and C.

- In the present case, a perusal of the Cost Centres clarifies that the intention of the parties is not only to supply/ receive rolling stock but also supply/ receive other specified services for an agreed distinct consideration. The same is evident from Clause 7.8 of the GCC (Page 217 of the contract documents enclosed as Appendix 1) which categorically states that transfer of ownership in the goods takes place at delivery itself. Hence, a view can be taken that separate rights are arising out of each constituent/ cost centre of the RS-10 contract.
- It is submitted that apart from the taxability of the transaction within the defined contours of law, the intention of the parties to the contract is of paramount importance to determine the scope of supplies and its taxability.

5.7 In this regard, reliance is placed on the decision of the Hon'ble Supreme Court in the case of **Bharat Sanchar Nigam Limited vs Union of India [2006 (2) STR 161(SC)]** wherein, the Hon'ble Apex Court laid down the dominant nature test for a transaction to qualify as composite transaction. The key observation was as follows:

*"43. The reason why these services do not involve a sale for the purposes of Entry 54 of List II is, as we see it, for reasons ultimately attributable to the principles enunciated in Gannon Dunkerley's case, namely, if there is an instrument of contract which may be composite in form in any case other than the exceptions in Article 366(29-A), unless the transaction in truth represents two distinct and separate contracts and is discernible as such, then the State would not have the power to separate the agreement to sell from the agreement to render service, and impose tax on the sale. **The test therefore for composite contracts other than those mentioned in Article 366 (29A) continues to be - did the parties have in mind or intend separate rights arising out of the sale of goods. If there was no such intention there is no sale even if the contract could be disintegrated. The test for deciding whether a contract falls into one category or the other is to as what is the substance of the contract. We will, for the want of a better phrase, call this the dominant nature test.**"*

- Further, the principles emerging from the above judgment were also relied upon by CBEC in its **Circular no. 334/1/2012-TRU dated 16 March 2012**, wherein the CBEC clarified as under:

"The test whether a transaction is a 'composite transaction' is that did the parties intend or have in mind that separate rights arise out of the



constituent contract of sale and contract of service. If no then such transaction is a composite transaction even if the contracts could be disintegrated.”

- Hence, in case the parties to the contract intend or have in mind that separate rights arise out of the constituent contract of sale and contract of sale, then the transaction is not a composite transaction.
- Reliance may also be placed on the decision of the Apex Court in the case of **Mahindra and Mahindra Limited [1995 (2) SCR 595]** wherein it was held that a contract has to be interpreted in a manner from the apparent tenor of the agreement and apparently it has to be accepted as the real state of affairs.
- Further, reference here is made to **Gannon Dunkerley & Co. [1958 AIR SC 560]** wherein the Apex Court held that there can be two separate contracts though a single instrument may embody them. The relevant extract is reproduced below:

*“It is possible that the parties might enter into distinct and separate contracts, one for the transfer of materials for money consideration, and the other for payment of remuneration for services and for work done. In such a case, **there are really two agreements, though there is a single instrument embodying them**, and the power of the State to separate the agreement to sell from the agreement to do work and render service and to impose a tax thereon cannot be questioned, and will stand untouched by the present judgment.”*

- In the instant case, the scope of activities to be undertaken has been clearly demarcated in the Contract and accordingly each cost center is making separate supplies based on their defined scope of work. Therefore, for the purpose of invoicing, works performed under each respective Cost Centre is a criterion and on fulfillment of the same invoices are raised accordingly.
- In addition to the above judicial precedents, reference is made to the e-flyer issued by the Central Government on the concept of ‘Composite Supply and Mixed Supply’ under the GST regime. Though such e-flyer has no legal sanctity, it has the persuasive value and reflects the legislative intent and hence reference has been made to the same. The relevant portions are reproduced below:

*“The taxable event under GST is supply of goods or services or both. GST will be payable on every supply of goods or services or both unless otherwise exempted. **The rates at which GST is payable for individual goods or services or both is also separately notified. Classification of supply (whether as goods or services, the category of goods and services) is essential to charge applicable rate of GST on the particular supply. The application of rates will pose no problem if the supply is of individual goods or***



services which is clearly identifiable and the goods or services are subject to a particular rate of tax.

But not all supplies will be such simple and clearly identifiable supplies. Some of the supplies will be a combination of goods or combination of services or combination of goods and services both. Each individual component in a given supply may attract different rate of tax. The rate of tax to be levied on such supplies may pose a problem in respect of classification of such supplies. It is for this reason, that the GST Law identifies composite supplies and mixed supplies and provides certainty in respect of tax treatment under GST for such supplies."

(Emphasis supplied)

- Basis above, an understanding can be drawn that the concept of Composite supply and Mixed supply is relevant where the supply of individual goods or services is not clearly identifiable. However, in the instant case, the presence of specific milestones and scope of work to be performed under each Cost Centre along with distinct and separate consideration makes the nature of each individual supply as clear and distinctly identifiable. Therefore, the present case cannot be treated as a case of bundled/ combination of supply requiring application of concept of Composite or Mixed Supply.
- Reliance is also placed on **Para 2.2 of CBIC Circular No. 47/21/2018-GST, dated 8 June 2018**, wherein the Board in the context of servicing of cars involving both supply of goods (spare parts) and services (labour), where the value of goods and services are shown separately, has clarified that where the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately.

Relevant extract from the said Circular is reproduced below for ease of reference:

| | | |
|---|---|--|
| 2 | How is servicing of cars involving both supply of goods (spare parts) and services (labour), where the value of goods and services are shown separately, to be treated under GST? | <p>2.1 The taxability of supply would have to be determined on a case to case basis looking at the facts and circumstances of each case.</p> <p>2.2 Where a supply involves supply of both goods and services and the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately.</p> |
|---|---|--|

Thus, it is clear that as long as value of goods and services are shown separately, the goods and services would be liable to tax at the rate as



applicable to such goods and services separately. In the instant case, the Contract has clear and categorical bifurcation of supply of goods and supply of services, and separate obligations and responsibility, milestones to each Cost Centre are mutually agreed by both the parties. Therefore, the supplies are to be classified, assessed and applicable taxes are to be paid as per the nature of each supply and not by treating the supplies as a combination and thereby considering the contract as a composite supply, when the intention of the contract is completely inverse.

- Further, reliance can also be placed on the decision of Hon'ble Delhi Tribunal in the case of **Alstom Projects India Ltd. Vs Commissioner of Service Tax, Delhi [2011 (23) S.T.R. 489 (Tri. - Del.)]** wherein the issue dealt was whether the contract executed by applicant with DMRC would be construed as a composite contract or different cost centres are to be treated as individual supplies.

In said ruling, the Hon'ble Delhi Tribunal relied on the decision of **Hon'ble Supreme Court, in the case of State of Tamil Nadu v. Anandam Vishwanathan reported in (1989) 1 SCC 613** wherein it was held that nature of a contract is to be found out on the basis of the intention of the parties. The intention has to be ascertained from the terms of the contract. For example, when a person, who wants to get a house constructed on a plot of land owned by him, negotiates with a building contractor-cum-Architect after telling him about his requirement - plinth area, number of bedrooms, size of drawing room etc. and enters into contract with him for construction of house for a specified sum, even though the job may include preparation of detailed design of the house before starting the construction, the contract will be a contract for - construction service. But if as per his contract with the building contractor, first detailed design of the house is to be prepared by the contractor as per his requirement and satisfaction and only after finalization of the drawing, the construction work is to be started and based on the charges for preparation of drawing and charges for construction, including material used for construction, a lump sum price is fixed after negotiation, this will be a composite contract for architect's service as well as construction service.

In view of above, the Hon'ble Delhi Tribunal held as under –

"4.5.2 In view of the above facts, we are of the view that there is clear intention in the contract for providing the services of designing & other technical assistance, erection, installation, commissioning, for consideration as mentioned in the contract -the consideration for designing and other technical assistance in cost centres A & B of each section and for erection, installation & testing & commissioning in cost centre D & E of each section. Similarly, the supply of equipment and parts thereof and other materials like cables, optic fibre, etc., for specified amounts, as mentioned in cost centre C of each section is also



evident. Therefore, this is a contract for sale as well as services and not an indivisible works contract as contended by the appellant. In fact there is nothing in this contract from which such a conclusion can be drawn."

Basis above, a view can be taken that the RS-10 Contract is not an indivisible contract and supplies made under cost centres D, G and H (training service) of RS-10 Contract to DMRC may be considered as independent supplies of goods and services and applicable GST depending upon the nature of activity performed under different cost centres may be applied.

5.8 Advance rulings where supplies under contracts with different Cost Centres, considerations and milestones have been considered to be separate supplies

- The Applicant wishes to highlight the recent advance ruling pronounced by Karnataka Appellate Authority of Advance Ruling in case of **Assistant Commissioner of Central Tax, Bangalore vs M/s BEML Limited [2021-VIL-42-AAAR]**. Copy of the ruling is attached herewith as **Appendix 11**.

In this ruling, the contract entered between M/s BEML Limited ("BEML") and M/s Bangalore Metro Rail Corporation Limited ("BMRCL") for supply of Standard Gauge Intermediate Cars also contained various cost centres such as preliminaries and general requirement for rolling stock including design, delivery and receipt of offshore manufacturing, delivery and receipt of indigenous manufacturing, commissioning and acceptance of cars in depot etc. for which separate and distinct consideration was stipulated in the contract in the similar manner as is mentioned in the RS10 contract.

As per the facts provided in the ruling, BEML was raising separate invoices based on the nature of the transaction mentioned in the cost center and accordingly was charging GST on individual supplies. On the other hand, it was the understanding of BMRCL that supplies under the contract are essentially composite supply taxable at the rate of 5%/ 12% i.e., the rate applicable to principal supply of Rolling stock and that other supplies in the cost center D to G are incidental.

While Karnataka AAR took a view that supplies under multiple cost centers would be treated as composite supply, but the Karnataka AAAR has set aside the ruling passed by lower authority and the appeal filed by the Assistant Commissioner of Central Tax, Bangalore is allowed by concluding that supplies made under cost centers C, D, E and G are to be considered as independent supplies of goods and services. Some of the key observations of authority are reproduced below –

- For a supply to be considered as a composite supply, its constituent supplies should be so integrated with each other that one cannot be



supplied in the ordinary course of business without or independent of the other.

- In this case, although there is only one contract, the scope of work under each cost center are clearly specified and identifiable and is not associated with any other cost center.
- The form of the agreement is not important, instead it the nature/ substance has to be seen to arrive at the correct conclusions. The clear-cut demarcation of activities to each cost center demonstrates the intention of the contracting parties that each cost center is independent supply center undertaking either the supply of goods or supply of services.

Hence, above ruling has clarified that each cost center of such contracts has to be seen separately to decide on GST applicability on supply of goods or services.

It is relevant to note that the Hon'ble AAAR passed the above ruling after accepting the contentions of the State of Karnataka through the Assistant Commissioner of Central Tax in the said appeal. Thus, the GST department itself is contending that each of the cost centres amount to independent contracts and will be construed separately.

- Additionally, reference is made to the case of **Kalyan Toll Infrastructure Ltd. [2020 (32) G.S.T.L. 288 (A.A.R. - GST - M.P.)]**(copy enclosed as **Appendix 12**) wherein the question before the Hon'ble Authority of Advance Ruling was whether works undertaken under a single contract wherein the scope and payment schedule is bifurcated constitute composite contract or is it separate contract for each work under taken. It was held that tender document was not a consolidated contract and each supply under said contract was chargeable to tax individually, depending upon individual classification of such supplies and rate of tax applicable at time of supply.
- It is submitted that the reasoning of the above decisions are squarely applicable in the instant case and accordingly the supplies made by separate Cost Centres should be treated distinctly as also understood from the intention of the parties to the Contract.

5.9.1 Other relevant factors

- It is submitted that Contract RS-10 is a legally accepted contract between two major businesses who are not new to complex nature of contract/agreement for turnkey projects. At the time of entering into contract, both HRC and DMRC had mutually agreed to the terms of the contract, fully understanding that separate invoices will raised be on completion / achievement of respective milestones of each Cost Centres. It is only in June 2021, that DMRC contested



that supply under contract C was a Composite supply and lower rate of GST would be applicable on cost centre D, G and H (training services) also.

After the enactment of Goods and Services Tax with effect from 1 July 2017, the GST treatment on supplies under various contracts by informed by DMRC vide its Circular no. 19/2017 dated 11 December 2017 (enclosed as Appendix 3), but there was no indication in that Circular that such supplies may be treated as composite supply under GST regime.

- HRC is currently raising separate invoices for cost centre D, G and H (training services) based on the nature of transaction mentioned in each Cost Centre and accordingly charging applicable GST rates on such supply. Thus, it is a clear case where each scope of work, consideration, milestone for raising invoices and DMRC has also approved such consideration and invoices and payments. Therefore, it is a case where various types of supplies both goods and services are made with clear understanding that the services or goods or both are to be assessed as they are presented at the time of delivery/supply in terms of the mutually agreed technical and costing details.
- If it were to be a simple supply of intermediate cars, there was no need for such an elaborate contract. But, in reality, the said contract with all its terms and conditions, cannot be summarised as a Composite supply taking into account the finer aspects, submitted above.
- Under pre-GST regime, the activities of sale of goods and provisioning of services were taxed separately under VAT/CST law and service tax law respectively. HRC used to discharge applicable VAT/CST on the consideration against the Cost Center involving sales of goods (cars or spares). Whereas the service of testing and commissioning of cars (i.e. Cost centre D) was treated as independent service and exempt from the levy of service tax under Notification no. 25/2012-ST dated 17 March 2012.
- The Authority of Advance Ruling, New Delhi had also taken a view in the case of HRC in its ruling dated 22 April 2016 that the testing and commissioning of Standard Gauge cars under RS-10 is a separate contract and exempt from the levy of service tax. Thus, the AAR took a view that separate contracts for sale of goods and supply of services exist under RS-10 and the same cannot be treated as a composite contract.

PERSONAL HEARING PROCEEDINGS HELD ON 08.09.2021

6. Sri Sujit Ghosh, Advocate & Authorised Representative of the applicant appeared for personal hearing proceedings and reiterated the facts narrated in their application.



FINDINGS & DISCUSSION

7. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in pari-materia and have the same provisions in like matters 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 would also mean reference to the corresponding similar provisions in the KGST Act.

8. We have considered the submissions made by the applicant in their application for advance ruling. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts along with the arguments made by the applicant & the submissions made by their learned representative during the time of hearing.

9. The applicant, being a successful bidder to the tender invited by Delhi Metro Rail Corporation Limited ('DMRC') for design, manufacture, supply, testing, commissioning and training of 504 Standard Gauge Cars (passenger rolling stock) including training of operation & maintenance personnel and supply of spares & manuals, entered into a contract No.RS-10 dated 24.05.2013 with DMRC for the purpose of execution of the contract awarded.

The applicant, to undertake the scope of work as agreed in the contract, is required to supply various goods and services to DMRC in a phased manner. The detailed instructions with respect to obligations of the applicant under the contract are specified through various Cost Centres (**A to H**) under tender documents which form part of the Contract.

The nature of supply undertaken by the applicant under each of the cost centre is tabulated here under:

| Cost Centre | Description |
|--------------------|--|
| A | Preliminaries and general requirements and design of Rolling Stock and provisions of mockup |
| B | Offshore manufacture, dispatch, completion of shipping to port in India, inland transportation in India, delivery and receipt of cars in depot |
| C | Indigenous manufacture, dispatch, inland transportation in India, delivery and receipt of cars in depot |
| D | Testing in the depot, integrated testing and commission of trains, service trails and final commissioning |
| E | Not used |
| F | Not used |
| G | Unit exchange spares, mandatory spares, recommended spares, consumable spares, special tools, testing and diagnostic, equipment, intermediate overhauling spares, trouble shooting and driving simulator |
| H | Training and manuals |



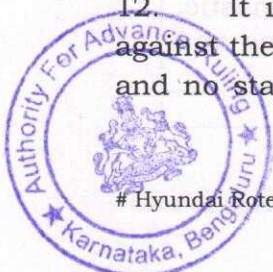
In view of the above, the applicant has sought advance ruling in respect of the questions mentioned at para 3 supra.

10. We find that the facts and circumstances brought out in the application are similar to those on which advance ruling was sought by M/s BEML, (AAR ruling KAR/ADRG 20/2020 dated 6-4-2021) Bengaluru. M/s BEML had a similar contract with M/s BMRCL. It is observed that the contracts in both the cases are for supply of rolling stock, its installation/integration and testing, training the staff etc., and the cost centres in both the cases have similar schedule of activities. The Advance Ruling Authority, Karnataka had ruled that the supplies made by the applicant under cost centres form a composite supply, wherein the principal supply is the supply of intermediate cars.

11. Aggrieved by the said ruling the Asst. Commissioner of Central Tax filed appeal against the said order of the Authority for Advance Ruling, Karnataka before the Appellate Authority for Advance Ruling, Karnataka. The Appellate Authority vide order No. KAR/AAAR-08/2021 dated 03.09.2021 has set aside the ruling passed by lower authority and allowed the appeal by concluding that supplies made under cost centres C, D, E and G are to be considered as independent supplies of goods and services. Some of the Key observations of the AAAR, Karnataka are as under:

- For a supply to be considered as a composite supply, its constituent supplies should be so integrated with each other that one cannot be supplied in the ordinary course of business without or independent of the other.
- In this case, although there is only one contract, the scope of work under each cost center is clearly specified and identifiable and is not associated with any other cost center.
- The concept of "Naturally Bundled", as used in Section 2(30) of the CGST Act'2017, lays emphasis on the fact that the different elements in a composite supply are integral to the overall supply and if one of the elements is removed the nature of supply will be affected. In the instant case, supplies in the corresponding cost centers are not naturally bundled.
- The form of the agreement is not important, but its nature/ substance has to be seen to arrive at the correct conclusions. The clear-cut demarcation of activities to each cost center demonstrates the intention of the contracting parties that each cost center is independent supply center undertaking either the supply of goods or supply of services.

12. It is learnt that M/s BMRCL, being the aggrieved party, filed an appeal against the ruling of AAAR, Karnataka, before the Hon'ble High Court of Karnataka and no stay has not been granted. Since stay has not been granted in the said



case, we are inclined to follow the observations drawn by the AAAR, Karnataka as the facts and circumstances are similar.

13. The Applicant has also relied on the said ruling of the Appellate Authority in the case of M/s BEML, also requested for the ruling in terms of the aforesaid ruling of the AAAR, Karnataka, stating that their case is also very much similar and the cost centers in both the cases have similar schedule of activities.

14. In view of the foregoing, we pass the following

RULING

- 1) The supplies made under Cost Centres D, G and H (to the extent of training services) of Contract 'RS-10' to DMRC are to be considered as independent supplies of goods and services and GST rate applicable depending upon the nature of activity performed under such cost centres. This ruling is subject to the outcome of the judgment of the Hon'ble High Court of Karnataka in the appeal filed by M/s BMRCL.
- 2) The supplies made by all the Cost Centres of RS-10 contract of DMRC are not to be considered as 'composite supply', in view of the ruling at para 1 and hence the instant question is redundant.


(Dr. M.P. Ravi Prasad)

Member

Karnataka Advance Ruling Authority
Place : Bengaluru
Date : 12-08-2022


(T. Kiran Reddy)

Member

MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

To,

The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Central Tax, Bangalore East Commissionerate, Bengaluru.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-45 A, Bengaluru.
5. Office Folder.

