



TELANGANA STATE AUTHORITY FOR ADVANCE RULING
CT Complex, M.J Road, Nampally, Hyderabad-500001.
(Constituted under Section 96(1) of TGST Act, 2017)

Present:

Sri B. Raghu Kiran, IRS, Additional Commissioner (Central Tax)

Sri S.V. Kasi Visweswara Rao, Additional Commissioner (State Tax)

A.R.Com/08/2019

Date:08.04.2022

TSAAR Order No.20/2022

[ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SECTION 98(4) OF THE TEALANGANA GOODS AND SERVICES TAX ACT, 2017.]

1. M/s. The Singareni Collieries Company Limited, Head Office, Kothagudem Collieries, Kothagudem, Badradri, Telangana, 5071014 (36AAACT8873F1Z1) has filed an application in FORM GST ARA-01 under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules.
2. At the outset, it is made clear that the provisions of both the CGST Act and the TGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the TGST Act. Further, for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.
3. It is observed that the queries raised by the applicant fall within the ambit of Section 97 of the GST ACT. The Applicant enclosed copies of challans as proof of payment of Rs. 5,000/- for SGST and Rs. 5,000/- for CGST towards the fee for Advance Ruling The concerned jurisdictional officer also raised no objection to the admission of the application. The application is therefore, admitted

4. Brief facts of the case:

M/s. Singareni Collieries Company Limited is entering into contracts with a host of vendors/suppliers for extraction of coal. The applicant is also recovering liquidated damages for lapses on the part of supplier of service. The applicant is desirous of ascertaining whether such liquidated damages/penalties constitute consideration exigible to tax under the scheme of GST. Therefore this application.

5. Questions raised:

Whether, in the facts and circumstances of the case, liquidated damages/penalties received by the applicant can be said to be for any 'supply' under the Central Goods and Services Act, 2017, thereby attracting the levy of 'GST' or should be treated as price adjustment to the main supply?

6. Personal Hearing:

The Authorized representatives of the unit namely Sri S. Ananthanarayanan, CA & AR and Sri B. Sridhar, DGM Finance attended the personal hearing held on 12-11-2021. The authorized representatives reiterated their averments in the application submitted and raised new contentions other than those raised in the application:

1. The authorized representative has submitted fresh material in form of written submission and averred that similar and identical question was raised before Hon'ble Tribunals and High Courts of India.
2. That in view of the case laws submitted collection of penalty/liquidated damages for breach of contract including missing of milestones will not amount to tolerating an act and exigible to tax as a supplier under Entry 5(e) of Schedule II to GST Act.

7. Discussion & Findings:

Penalties and Liquidated damages are demanded by the applicant from their contractors on lapses in performance of the contract including delays, under performance with respect to targeted extraction and breach of terms of the contract.

When the parties to a contract specify the time for its performance, it is expected that either party will perform his obligation at the stipulated time. But if one of them fails to do so, the question arises what is the effect upon the contract. This scenario is answered by Section 55 of the Indian Contract Act, 1872, which is extracted below:

"Effect of failure to perform at fixed time, in contract in which time is essential-When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee if the intention of the parties was that time should be of the essence of the contract.

Effect of such failure when time is not essential.-If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of acceptance of performance at time other than that agreed upon-If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so".

A combined reading of the provisions (1) & (3) of Section 55 of the Indian Contract Act, 1872 reveals that a failure to perform the contract at the agreed time renders it voidable at the option of the opposite party and alternatively such party can recover compensation for such loss occasioned by non-performance.

Similarly Section 73 & 74 of the Indian Contract Act enables recipient of supplies under a contract to be compensated with damages for breach of any provision of the contract.

In the present case, Liquidated damages are claimed by the applicant from the contractor due to the delay in performance of the contract, beyond the date prescribed in such contract by the contractor. Similarly, penalties are fixed for breach of the provisions of the contract. These amounts are consideration for tolerating an act or a situation arising out of the contractual obligation. The entry in 5(e) of Schedule II to the CGST Act classifies this act of forbearance as follows:

5(e): Agreeing to the obligation to refrain from an act, or tolerate an act, or a situation, or to do an act.

Further Section 2(31)(b) of the CGST Act mentions that consideration in relation to the supply of goods or services or both includes the monetary value of an act of forbearance. Therefore such

a toleration of an act or a situation under an agreement constitutes supply of service and the consideration or monetary value is exigible to tax.

The Consideration received for such forbearance is taxable under CGST and SGST @9% each under the chapter head 9997 at serial no. 35 of Notification No.11/2017- Central/State tax rate

8. The ruling is given as below:

In view of the above discussion, the questions raised by the applicant are clarified as below:

Questions	Ruling
Whether, in the facts and circumstances of the case, liquidated damages/penalties received by the applicant can be said to be for any 'supply' under the Central Goods and Services Act, 2017, thereby attracting the levy of 'GST' or should be treated as price adjustment to the main supply?	Liquidated damages and penalties received by the applicant due to breach of conditions of the contract from the contractor are exigible to tax under CGST and SGST Acts.



(S.V. KASI VISWESWARA RAO)
ADDL. COMMISSIONER(STATE TAX)

(B. RAGHU KIRAN)
ADDL. COMMISSIONER(CENTRAL TAX)

[Under Section 100(1) of the CGST/TGST Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this Order]

To
M/s. The Singareni Collieries Company
Limited, Head Office, Kothagudem Collieries,
Kothagudem, Badradri, Telangana, 5071014.

Copy submitted to :

1. The Commissioner (State Tax) for information.
2. The Commissioner (Central Tax), Rangareddy Commissionerate, Posnett Bhavan, Tilak Road, Abids, Hyderabad 500 095

Copy to:

1. The Superintendent (Central Tax) Kothagudem Range. NMDC Ltd., Sponge Iron Unit, Quarter No.B3, Type-II, Bhadrachalam Road, Kothagudem, Bhadradri- 507154.

//t.c.f.b.o//

Superintendent (Grade-I)