

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX
14 Beliaghata Road, Kolkata – 700015

Name of the applicant	EMC Ltd
Address	51 Canal East Road, Kolkata – 700085
GSTIN	19AAACE7582J1Z7
Case Number / ARN	07 of 2018
Date of application	February 12, 2018
Order No. & date	04/WBAAR/2018-19 dated 11/05/2018
Applicant's representative heard	Sri Sharat Bajaj, General Manager (Taxation)

1. The Applicant is stated to be a supplier of materials and allied services for erection of towers, testing and commissioning of transmission lines and setting up sub-stations collectively called the Tower Package. His question is related to contracts obtained mainly from M/s Power Grid Corporation of India (hereinafter the contractee). The contractee awards the Applicant contracts for supply of Tower Packages split up into two separate sets of contracts – one for supply of materials at ex-factory price (hereinafter the First Contract), and the other for supply of allied services like survey and erection of towers, testing and commissioning of transmission lines etc (Second Contract), which also includes inland/local transportation, in-transit insurance, loading/unloading for delivery of materials and storage of them at the contractee's site. The contractee agrees to reimburse the actual GST payable, except on the price component for inland/local transportation, in-transit insurance and loading/unloading. The applicant raises separate freight bills on the contractee as per the rate schedule annexed to the Second Contract.
2. The Applicant wants a Ruling on whether he is liable to pay tax on such freight bills. An Advance Ruling is admissible on this question under Section 97 (2)(a) & (e) of the CGST / WBGST Act, 2017 (hereinafter "the GST Act"). The Applicant also declares that the issue raised in the application is not pending or decided in any proceedings under any provisions of the GST Act. The concerned officer has raised no objection to admissibility of the application. The application is admitted.
3. The Applicant is not a goods transport agency (hereinafter the GTA) or engaged in insurance business. He will, according to the application, *arrange* such services and pay the GST as applicable on the consideration paid to the suppliers of such services. His service to the contractee for inland/local transportation, the applicant argues, is exempt under the GST Act. He refers to Notification No. 9/2017 – IT (Rate) dated 28/06/2017, which, according to him, grants exemption on transportation service provided by an entity other than GTA. As the applicant is not a GTA, his supply of transportation service, he claims, is exempt vide the above notification.
4. Before dealing with the above argument, it needs to be clarified that reference to a notification under the IGST Act should be contract specific, where an inter-state supply is taking place. In this application general nature of a supply is being dealt with rather than the place of any particular supply. Moreover, West Bengal Authority for Advance Ruling has no mandate to deal with questions involving inter-state supply. Reference is, therefore, being made to analogous Notifications under the GST Acts, viz Notification No. 12/2017-Central Tax (Rate) dated 28/06/2017 (1136-FT dated 28/06/2017 under State tax) (hereinafter "the Exemption Notification").
5. Serial no. 18 of the Exemption Notification exempts services by way of transportation of goods by road, except the services of a GTA. In his written submission the Applicant admits that he is not

transporting the goods, but hiring the service of a transport agency. Similarly, the Applicant is not providing the insurance service, but buying such services from an insurance service provider. The Applicant is, therefore, the recipient of such services and not a supplier thereof. The question of the Applicant *providing* transportation service, therefore, does not arise.

6. Before deciding the issue of taxability of the consideration payable under the Second Contract for inland/local transportation and ancillary services like in-transit insurance, which are included in the freight bills the contracts referred to above need to be examined.
7. The First Contract includes ex-works supply of all equipment and materials. The scope of the work includes testing and supply of transmission line towers, spares and accessories thereof, and all other materials required for successful commissioning of the transmission line.
8. The Second Contract includes all other activities required to be performed for complete execution of the tower package. The scope of the work includes transportation, in-transit insurance, loading/unloading and delivery of the goods to the contractee's site; detailed survey including route alignment, profiling etc; classification of foundations for the towers and casing of foundations based on the drawing supplied by the contractee; erection of the towers; dismantling of the existing 400kv transmission line; stringing of power line crossing section under live line condition; painting of the towers; testing and commissioning of the transmission lines etc.
9. It is immediately apparent that the First Contract cannot be executed independent of the Second Contract. There cannot be any 'supply of goods' without a place of supply. As the goods to be supplied under the First Contract involve movement and/or installation at the site, the place of supply shall be the location of the goods at the time when movement of the goods terminates for delivery to the recipient, or moved to the site for assembly or installation [refer to Section 10(1) (a) & (d) of the IGST Act, 2017]. The First Contract, however, does not include the provision and cost of such transportation and delivery. It, therefore, does not amount to a contract for 'supply of goods' unless tied up with the Second Contract. In other words, the First Contract has "no leg" unless supported by the Second Contract. It is no contract at all unless tied up with the Second Contract.
10. The contractee is aware of such interdependence of the two contracts. Although awarded under two separate contract agreements, clauses under both of them make it abundantly clear that notwithstanding the break-up of the contract price, the contract shall, at all times, be construed as a single source responsibility contract and the Applicant shall remain responsible to ensure execution of both the contracts to achieve successful completion and taking over of the facilities. Any breach in any part of the First Contract shall be treated as a breach of the Second Contract, and vice versa. It is expressly understood that any default or breach under the 'Second Contract' shall automatically be deemed as a default or breach of this 'First Contract' also and vice-versa, and any such default or breach or occurrence giving the contractee a right to terminate the 'Second Contract', either in full or in part, and/or recover damages there under.
11. The two contracts are, therefore, linked by a cross fall breach clause that specifies that breach of one contract will be deemed to be a breach of the other contract, and thereby turn them into a single source responsibility contract. Black's Law Dictionary defines that "a severable contract, also termed as divisible contract, is a contract that includes two or more promises each of which can be enforced separately, so that failure to perform one of the promises does not necessarily put the promises in breach of the entire contract". In terms of this definition, the 'cross fall breach clause', in the present context, settles unambiguously that supply of goods, their transportation to the contractee's site, delivery and installation, erection of towers and testing and commissioning transmission lines and

related services are not separate contracts, but form only parts of an indivisible composite works contract supply, as defined under Section 2(119) of the GST Act, with 'single source responsibility'.

12. Composite nature of the contract is clear from the clause that defines satisfactory performance of the First Contract (supply of goods) as the time when the goods so supplied are installed and finally commissioned in terms of the Second Contract. In other words, the First Contract cannot be performed satisfactorily unless the goods have been transported and delivered to the contractee's site, applied for erection of towers, the transmission lines laid, tested and commissioned in terms of the Second Contract. The two promises – supply of the goods and the allied services – are not separately enforceable in the present context. The recipient has not contracted for ex-factory supply of materials, but for the composite supply, namely works contract service for construction of the Tower Package.
13. The price components of both the First and the Second Contracts, including that for transportation, in-transit insurance etc are to be clubbed together to arrive at the value of the composite supply of works contract service as discussed above, and taxed at 18% in terms of Serial no. 3 (ii) of Notification No. 11/2017 – Central Tax (Rate) dated 28/06/2017 (1135 – FT dated 28/06/2017 under the State Tax).

In view of the foregoing we rule as under

RULING

The applicant supplies works contract service, of which freight and transportation is merely a component and not a separate and independent identity, and GST is to be paid at 18% on the entire value of the composite supply, including supply of materials, freight and transportation, erection, commissioning etc.

This ruling is valid subject to the provisions under Section 103 until and unless declared void under Section 104(1) of the GST Act.

Sd-
(VISHWANATH)
Member
West Bengal Authority for Advance Ruling

Sd-
(PARTHASARATHI DEY)
Member
West Bengal Authority for Advance Ruling