

whether the supply of precast manhole using the steel and cement within the scope of recipient is a supply of service or supply of goods? What should be appropriate classification of the same? HELD Supply of precast manhole using the steel and cement within the scope of recipient is a supply of goods. HSN Code for supply of precast manhole is 68109990 and 18% respectively. (2) Whether the price to be charged from the recipient i.e. M/s Larsen & Toubro Ltd by the applicant for supply of precast manhole shall be transaction value in terms of Section 15(1) of the CGST / RGST Act 2017? HELD No (3) Whether the material which are to be made available free of cost by the recipient and are not within the scope of applicant for supply of precast manhole shall form part of the transaction value for the purpose of levy of tax? HELD Yes

ADVANCE RULING NO. RAJ/AAR/2022-23/26, Dated 22nd March, 2023

RAJASTHAN

AUTHORITY FOR ADVANCE RULING

GOODS AND SERVICES TAX

KAR BHAWAN, AMBEDKAR CIRCLE,

NEAR RAJASTHAN HIGH COURT

JAIPUR - 302005 (RAJASTHAN)

Umesh Kumar Garg Joint Commissioner		Member (Central Tax)
Mahesh Kumar Gowla Additional Commissioner		Member (State Tax)
Name and address of the applicant		M/s Natani Precast, 22 Bajrang Colony Jhotwara Jaipur-302012, Rajasthan
GSTIN of the applicant		UN-REGISTERED
Clause(s) of Section 97(2) of CGST/SGST Act, 2017, under which the question(s) raised		(a) Classification of any goods or services or both (g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
Date of Personal Hearing		10.01.2023 & 03.02.2023
Present for the applicant		Sh. Yash Dhadda, C.A & Miss Shaifali Bang
Date of Ruling		22.03.2023

Note: Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the RGST Act 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 the same provision under the RGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / RGST Act would be mentioned as being under the "GST Act".

The issue raised by M/s Natani Precast LLP (hereinafter referred to as "applicant"), an unregistered partnership firm under the provisions of the Central / Rajasthan Goods and Services Tax 2017, incorporated with an intention to manufacture and supply Precast Manholes and Rises to various government and non government entities is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2) (b), (e) & (g) given as under:

(a) Classification of any goods or services or both

(g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

A. SUBMISSION OF THE APPLICANT: (in brief)

1. M/s Natani Precast LLP (hereinafter referred to as "applicant"), has been incorporated with an intention to manufacture and supply Precast Manholes and Rises to various government and non government entities. The said supply of precast Manhole requires following inputs / raw materials / consumables for its manufacturing namely: ^

- Cement,
- Steel (TMT & Bars)
- Coarse Aggregate
- Fine Aggregate/Sand/Dust~

The applicant submitted that the manufacturing process of said precast Manholes can be explained in brief as under^

- a. A steel cage as per drawing and size of manhole and rings is prepared.
 - b. Subsequently, the said cage is casted in the molds as per size of manholes and rings
 - c. Afterwards, concrete (combination of cement, coarse aggregate, fine aggregate and water) is prepared and filled in the molds.
 - d. Then after some time, molds are opened for finishing of the product i.e. precast manhole and after finishing the said item is moved for the curing stage.
 - e. After curing of the item, the finished goods are ready for the dispatch as per requirement.~
2. The applicant M/s Natani Precast LLP, has recently received request for quotation (hereinafter known as the RFQ) for supply of precast Manholes for a specific project site by M/s Larsen & Toubro Ltd. The said request for quotation contained the detailed scope of BOQ (Balance of Quantity) with specific numbers / quantity requirements along with standard terms and conditions.
3. The applicant M/s Natani Precast LLP further submitted that two basic ingredients used for manufacturing of precast manholes were kept outside the scope of applicant and same have been specified to be included in the scope of M/s Larsen & Toubro Ltd. In fact the scope matrix appended with the said RFQ also clearly lies down that out of 298 line items forming part of scope matrix, two were excluded from the scope of the applicant. The proposed recipient i.e. M/s Larsen & Toubro Ltd has raised RFQ with clear mandate that same shall be within the scope of Larsen & Toubro Ltd and for supply of precast manholes, the applicant is not responsible to procure the same.
4. The applicant M/s Natani Precast LLP intimated that he has to quote the rates for finalization of the contract with M/s Larsen & Toubro Ltd in context of supply of precast manholes. The said rates have to be quoted keeping in consideration the RFQ received by it. The applicable GST shall be extra. Those items whose cost is not required to be borne by the applicant (free of cost material) shall not form of price which shall be charged from the recipient.
5. The applicant M/s Natani Precast LLP, stated with illustration that applicable GST Rate and HSN Code for supply of precast manhole is 68109990 and 18% respectively. However the applicable GST on manufacturing activity done for other is classified as service under HSN Code 9988 and is taxable at 18%. Further in accordance with the provisions of Section 9 read with Section 15 of the CGST / RGST Act 2017, the tax is charged on the transaction value as given under Section 15(1) of the Act, subject to certain inclusions and exclusions as given under Section 15(2)/ (3) of the Act.

B Interpretation and understanding of applicant on question rose (in Brief)

The applicant submitted his interpretation which is under-

1. That according to the charging provision of the GST law under Section 9 of the CGST Act, there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both except the exclusions mentioned therein at such rates as may be notified. The said section also clearly specifies that tax is calculated on the value determined under Section 15 of The Act.
 2. That the tax is applicable either on supply of goods or on supply of services. The term goods and services have been defined under Section 2 of the CGST Act 2017 as under^
 - a. Section 2(52): "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;
 - b. Section 2(102): "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;~
- [Explanation. - For the removal of doubts, it is hereby clarified that the expression "services " includes facilitating or arranging transactions in securities;]
3. That further there is definition of job work given under Section 2(68) of the Act which is read as under
- (68) "job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker " shall be construed accordingly;

4. That further under Schedule-II as mentioned under Section 7(1A) of the Act, certain transactions are classified by the law either as supply of goods or as supply of service. The relevant portion of the Section and Schedule II are read as under

Section 7 (1A): where certain activities or transactions, constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II

Schedule-II: ACTIVITIES [OR TRANSACTIONS] TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

3. Treatment or process

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

5. That on perusal of above it is clear that services have been defined in a residuary manner and anything which does not qualifies as goods as per the definition of goods are treated as services. However whenever any treatment or process is undertaken on

goods belonging to other person then same is classified as service under CGST Act 2017.

6. That as explained in the facts in given case, the inputs required to manufacture the precast manhole are^

- a. Cement
- b. Steel (TMT & Bars)
- c. Coarse Aggregate
- d. Fine Aggregate / Sand / Dust~

7. That out of same, the two major inputs i.e. Cement and Steel (TMT & Bars) are within the scope of recipient and ownership of same will never be transferred to the applicant. Rather they shall be made available to the applicant by the recipient using which the manufacturing activity shall be carried out by the applicant.

8. That other inputs and consumables shall be used and brought by the applicant and it will be within the scope of the applicant. But the base structure shall be manufactured using the inputs belonging to the recipient only.

9. That on perusal of above it appears that applicant has been engaged to the manufacture the precast manhole by undertaking such activity using the basic inputs which shall be within the scope of the recipient. Those goods (Steel and Cement) shall never be billed to the applicant by the recipient. Hence the process of manufacture shall be carried on goods belonging to the recipient.

10. That in this regard, reference to drawn to the clarification in Circular No. 52/26/2018, dated 9-8-2018 for arriving at the understanding about classification of given activity as supply of goods or supply of service, wherein applicable GST on the bus body building activity is clarified as under :

"12.1 Applicable GST rate for bus body building activity: Representations have been received seeking clarifications on GST rates on the activity of bus body building. The doubts have arisen on account of the fact that while GST applicable on job work services is 18%, the supply of motor vehicles attracts GST @ 28%.

12.2 Buses [motor vehicles for the transport often or more persons, including the driver] fall under headings 8702 and attract 28% GST. Further, chassis fitted with engines [8705] and whole bodies (including cabs) for buses [8707] also attract 28% GST. In this context, it is mentioned that the services of bus body fabrication on job work basis attracts 18% GST on such service. Thus, fabrication of buses may involve the following two situations :

(a) Bus body builder builds a bus, working on the chassis owned by him and supplies the built-up bus to the customer, and charges the customer for the value of the bus.

(b) Bus body builder builds body on chassis provided by the principal for body building, and charges fabrication charges (including certain material that was consumed during the process of job work).

12.3 In the above context, it is hereby clarified that in case as mentioned at Para 12.2(a) above, the supply made is that of bus, and accordingly supply would attract GST @ 28%. In the case as mentioned at Para 12.2(b) above, fabrication of body on chassis provided by the principal (not on account of body builder), the supply would merit classification as service, and 18% GST as applicable will be charged accordingly. "

11. That the fact matrix of above circular is similar to that of the applicant. In given case of the applicant also, the ownership of Steel and Cement shall not be passed on to the applicant and working of structure shall be done on it. Hence in light of the given circular (supra), the given activity of manufacturing shall be treated as manufacturing service classified under Notification No 11/2017-CT (Rate) dated 28.06.2017 as under

S. No.	Chapter, Section or Heading	Description of Service	Rate %	Condition
26	9988 (Manufacturing services on physical inputs (goods) owned by others)	(iv) Manufacturing sei-vides on physical inputs (goods) owned by others, other than (i), (ia), (ii), (iia) and (iii) above	9	

12. That thus it appears that given activity to be undertaken by the applicant classifies as supply of service under HSN Code 9988 and taxable at 18%.

On Valuation

13. That on perusal of Section 15(1) of the CGST / RGST Act 2017 it is clear that value of supply of goods is called transaction value. Further under the same Section 15(1) of the Act, transaction value has been defined as price actually paid or payable for supply of goods or services or both. However said price being the transaction value is subject to two conditions that^

- a. Supplier and the recipient are not related
- b. Price is the sole consideration for the supply.~

14. That in given case, it is an undisputed fact that applicant has been approached by the recipient to supply precast manhole. For said supply of pre-cast manhole which are goods, a competitive price has been sought from the applicant. The applicant is expected to execute the order for supply which, if in case is awarded to it, is required to be executed at a price which shall be pre-agreed.

15. That term 'price' is not defined under the Act. The term is defined in Black's Law Dictionary as "The amount of money or other consideration asked for or given in exchange for something else."

Further, consideration is defined under Sec. 2(31) 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:

Also, in Black's law dictionary, 'Payment' is defined as:

"Performance of an obligation by the delivery of money or some other valuation thing accepted in partial or full discharge of the obligation. "

16. That on perusal of above, it is clear that price has direct nexus with the activity or performance which is required to be undertaken in a contract. In fact "price" is the outcome of elements of Indian Contract Act 1872 which are applicable in given case.

17. That the said elements applicable to a contract are as under-

Elements	Indian Contract Act
Proposal	(a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal;
Promise	(b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise
Promisor / Promisee	(c) The person making the proposal is called the "promisor", and the person accepting the proposal is called the "promisee"
Consideration	(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise
Agreement	(e) Every promise and every set of promises, forming the consideration for each other, is an agreement;
Reciprocal Promises	(f) Promises which form the consideration or part of the consideration for each other are called reciprocal promises

18. That on perusal of above, it is evident that consideration flows from a contract. Further when such consideration is in money terms then same is treated as "price". Since on perusal of the email received by the applicant for quoting of best rates for supply of precast manholes, the said rate which shall be quoted and agreed between the parties shall tantamount to "price" as mentioned in Section 15(1) of the CGST Act 2017.

19. That hence the rate to be quoted by the applicant and as agreed by the recipient has all the necessary characteristics of price as mentioned under Section 15(1) of the Act.

20. That it is also explained that applicant as supplier and recipient are not related parties as mentioned under Explanation to Section 15 of the CGST / SGST Act 2017.

21. That in fact, the price as mentioned above, is the sole consideration for the applicant to execute the supply of precast manhole. The definition of term consideration as given under Section 2(31) of the Act. It clearly lays down that any payment made in respect of, in response to or for inducement of supply is treated as consideration. In given case of the applicant, except the rate which shall be finalized between the parties, no other amount shall accrue, arise or shall be available at benefit of the applicant. The applicant shall not be entitled for receipt of any money, goods or services as a reward or consideration for the supply of precast manholes.

22. That any consideration, whether monetary or otherwise, should have flown or should flow from the payer to the payee and should accrue to the benefit of the later for being included in the assessable value. The above theory remains unchanged and does not get affected even after applying the inclusive part of the definition of 'consideration' as it attempts to cover the payments/acts done in response to the supply but nowhere overrides the above-stated principle that such payment/act should accrue to the benefit of the applicant.

23. That thus the issue of cement and steel by the recipient to the applicant to be used for manufacturing and supply of precast manhole is not a consideration for the applicant. No benefit of same accrues or arises to the applicant from the same and those raw material are required to be used only for the purpose of precast manhole for the recipient. Contractually same have been kept by the recipient in its scope and shall no be procured by the supplier in any case whatsoever.

24. That thus going by this analogy, it can be said that "free supplies" would not constitute a consideration remitted by the recipient to the supplier, more so when no part of the free supplies accrues to or is retained by the supplier.

25. That in this connection, reference is made to the decision of Hon'ble Apex Court in the case of Ku. Sonia Bhatia v. State of U.P. and Others - AIR 1981 SC 1274 wherein after considering the expression in the Contract Act and referring to Black's Law Dictionary, other dictionaries, English judgments and Corpus Juris Secundum, the Hon'ble Supreme Court held that "inescapable conclusion that follows is that consideration means a reasonable equivalent for other valuable benefit passed on by the promisor to the promisee or by the transfer of to the transferee.".

26. That no benefit passes to the noticee when the material not in scope of the applicant are made available to it by the recipient to be used for manufacturing of precast manhole which shall eventually be supplied to the said recipient only. Hence such material cannot tantamount to consideration at all for the supplier.

27. That hence, the rate which shall be charged by the applicant from recipient shall be price of supply of precast manholes and it will also be sole consideration. Thus same shall tantamount to value as mentioned under Section 15(1) of the Act and will be treated as transaction value for the purpose of levy of tax.

28. That, further for the purpose of levy of tax, the transaction value has to be subsequently adjusted on account of instances as mentioned under Section 15(2) of the CGST / SGST Act 2017.

29. That provisions of Section 15(2) of the Act are read as under

(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.~~

30. That on perusal of above, it is evident that the value of material made available by the recipient to the applicant shall not be included in the transaction value by virtue of provisions of Section 15(2)(b) of the Act also. The provisions of Section 15(2)(b) of the Act are applicable only when^

a. An amount which the supplier is liable to pay and

b. The amount should be in relation to the supply, but

c. Amount is actually incurred by the recipient of supply and

d. The said amount is not included in the price actually paid or payable for the goods or services or both~

31. That the value of steel and cement which the recipient had procured and made available to the supplier is no doubt is in relation to the supply of precast manhole. The said amount for procurement of such items has been actually incurred by the recipient of supply and it is not included in the price (rate) for supply of these items. However the same amount was required to be payable by the applicant i.e. supplier but was within the scope of recipient only..

32. That the applicant was asked to supply precast manhole without incurring any cost for procurement of steel and cement (free of cost material). Thus steel and cement's procurement responsibility was not within the scope of the applicant. Had that been the case, it was not required by the recipient to share with the applicant scope matrix with the applicant for quoting of rates.

33. That the commercial understanding between the parties cannot be challenged by adding artificially the value which was not agreed between the parties. The contract or the commercial understanding between the parties needs to be read in total and the law needs to be applied on the basis of such commercial understanding.

34. That in fact it has been held in many judgments that the agreement and the conduct of the parties demonstrate the real state of affairs. Precedents which support the same are enumerated as under[^]

a) Union of India v. Mahindra and Mahindra [1995 (76) E.L.T. 481 (S.C.)]

Ordinarily the Court should proceed on the basis that the apparent tenor of the agreements reflect the real state of affairs.

b) M/s. VISA International Limited v. Continental Resources (USA) Limited, [2009 (2) SCC 55],

27. What is required to be gathered is the intention of the parties from the surrounding circumstances including the conduct of the parties and the evidence such as exchange of correspondence between the parties.

c) Rajasthan Spg. & Wvg. Mills Ltd. v. Commissioner of C. Ex., Jaipur [2001 (131) E.L.T. 594 (Tri. - Del.)],

Transacting parties being fairly big public limited companies bearing responsibility for its end of deal, lease agreement not to be considered a sham and process house owner not to be regarded as real manufacturer-

d) M/s. Ishikawajma- Harima Heavy Indus. Ltd. v. Dir. of Income Tax, Mumbai, 2007 (6) S.T.R. 3 (S.C.)

Terms and conditions of contract are to be read as a whole - It must be construed keeping in view intention of parties - Applicability of tax laws depends upon nature of contract, but it should not be construed keeping them in view.

Thus the sum & substance of these decisions is that the no third person cannot question the commercial wisdom of the parties entering into an agreement and must proceed on the basis that what is stated in the contract reflects the true nature of the intent and transaction and that it is therefore impermissible even for the tax authorities to go behind the language of the contract or act contrary to it without producing evidences.

35. That in this context in addition to the above, a relevant observation was given in the case of Bhopal Sugar Industries Ltd. v. Sales Tax Officer, Bhopal on 14 April, 1977 (Equivalent citations : AIR 1977 SC 1275, 1977 SCR (3) 578) which is read as under:

"It is well settled that while interpreting the terms of the agreement, the Court has to look to the substance rather than the form of it. The mere fact that the word 'agent' or 'agency' is used or the words 'buyer' and 'seller' are used to describe the status of the parties concerned is not sufficient to lead to the irresistible inference that the parties did in fact intend that the said status would be conferred. Thus, the mere formal description of a person as an agent or buyer is not conclusive, unless the context shows that the parties clearly intended 'to treat a buyer as a buyer and not as an agent.'"

It is clear from the observations made by this Court that the true relationship of the parties in such a case has to from the nature of the contract, its terms and conditions, and the terminology used by the parties is not decisive of the said relationship."

36. That thus when parties have agreed that supplier is required to supply precast manhole without including steel and cement within their scope, the said contractual understanding cannot be questioned unless the otherwise is proved as contrary.

37. That further, on similar issue, on taxability of free supplies which are not within the scope of the applicant, the Hon'ble Supreme Court in the case of Commissioner v. Bhayana Builders (P) Ltd. - 2018 (10) G.S.T.L. 118 (S.C.) has held that:

The value of taxable services cannot be dependent on the value of goods supplied free of cost by the service recipient. The service recipient can use any quality of goods and the value of such goods can vary significantly. Such a value, has no bearing on the value of services provided by the service recipient. Thus, on first principle itself, a value which is not part of the contract between the service provider and the service recipient has no relevance in the determination of the value of taxable services provided by the service provider.

38. That from perusal of above it is clear that value of material which are not agreed to be supplied by the applicant are not required to be included in the value of supply. In fact the Hon'ble Supreme Court in case of Union of India v. Intercontinental Consultants and Technocrafts Pvt. Ltd. — 2018 (10) G.S.T.L. 401 (S.C.) held that

Valuation (Service Tax) - Material supplied free by service recipient - Its value cannot be treated as 'gross amount charged' as it is not consideration for rendering services - Hence, value of diesel and explosives supplied free by recipient of service of 'Site Formation and Clearance, Excavation and Earthmoving and Demolition service' was not includible in value for assessment to Service Tax - Section 67 of Finance Act, 1994. [para 31]

39. That the above principle laid down by the Hon'ble SC clearly explains that when something is not a consideration for the supplier (applicant in given case) then value of said goods/ services cannot be included in the transaction value.

40. That further, the wordings of Section 15(2)(b) of CGST Act, 2017 also does not make the 'free supplies' as taxable value as it mandates the liability of the supplier at first instance (contractual obligation to procure cement and steels in the above-stated case), which is completely missing in the context of 'free supplies'. However, in a case wherein it was initially agreed that supplier would incur the entire cost but the same was actually incurred by the recipient and adjusted in the payment, the value of 'free supplies' may have to be includible and liable for GST. But that is not the case here.

41. That very recently, the Government has issued a Circular No. 47/21/2018-GST, dated 8-6-2018 [2018 (13) G.S.T.L C55] clarifying that the value of free supplies need not be added to the value of supply. The relevant extract reads as follows :

S. No.	Issue	Clarification
1	Whether moulds and dies owned	1.1 Moulds and dies owned by tire

<p>by Original Equipment Manufacturers (OEM) that are sent Free Of Cost (FOC) to a component manufacturer is leviable to tax and whether OEMs are required to reverse input tax credit in this case?</p>	<p>Original Equipment Manufacturer (OEM) which are provided to a component manufacturer (the two not being related persons or distinct persons) on FOC basis does not constitute a supply as there is no consideration involved. Further, since the moulds and dies are provided on FOC basis by the OEM to tire component manufacturer in the course or furtherance of his business, there is no requirement for reversal of input tax credit availed on such moulds and dies by the OEM.</p> <p>1.2 It is further clarified that while calculating the value of the supply made by the component manufacturer, the value of moulds and dies provided by the OEM to the component manufacturer on FOC basis shall not be added to the value of such supply because the cost of moulds/dies was not to be incurred by the component manufacturer and thus, does not merit inclusion in the value of supply in terms of section 15(2)(b) of the Central Goods and Services Tax Act, 2017 (CGST Act for short).</p> <p>1.3 However, if the contract between OEM and component manufacturer was for supply of components made by using the moulds/dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on FOC basis, the amortised cost of such moulds/dies shall be added to the value of the components, in such cases, the OEM will be required to reverse the credit availed on such moulds/dies, as the same will not be considered to be provided by OEM to the component manufacturer in the course or furtherance of the former's business</p>
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42. That on the basis of above, it is clear that even if some material is essential for manufacture and supply of any specific goods, if contractually same are included with the scope of the supplier, then value of said material if supplied free of cost by the recipient then same shall not be included in the transaction value by virtue of Section 15(2)(b) of the Act.

43. That it is also explained that the said material i.e. steel and cement was actually not supplied to the applicant but was made available for use as per instructions of the recipient for the goods to manufactured for them. Hence these were not supplied to the applicant and were not required to be supplied at all to the applicant. Hence the value of same cannot be included in value for purpose of levy of tax under Section 15(2) (b) of the Act.

C QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT:-

Q..1 whether the supply of precast manhole using the steel and cement within the scope of recipient is a supply of service of supply of goods? What should be appropriate classification of the same?

Q.2 Whether the price to be charged from the recipient i.e. M/s Larsen & Toubro Ltd by the applicant for supply of precast manhole shall be transaction value in terms of Section 15(1) of the CGST/ RGST Act 2017?

Q..3 Whether the material which are to be made available free of cost by the recipient and are not within the scope of applicant for supply of precast manhole shall form part of the transaction value for the purpose of levy of tax?

D. PERSONAL HEARING

In the matter personal hearing was granted to the applicant on 10.01.2023 & 03.02.2023. Sh. Yash Dhadda, C.A & Miss Shaifali Bang, Authorized Representatives appeared for personal hearing. They reiterated the submission already made in written submission. He requested for early disposal of the application.

E. COMMENTS OF THE JURISDICTIONAL OFFICER

The application is Un-registered.

F. FINDINGS, ANALYSIS & CONCLUSION:

At the outset we would like to make it clear that the provisions of CGST Act and GGST Act are in pari materia and have the same provisions in like matter 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 GGST Act

1) We have carefully examined the statement of facts, supporting documents/photographs filed by the Applicant along with application, oral and written submissions made at the time of hearing and the comments of the Central Tax Authority. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts. We would like to discuss the submission made by applicant and will take up the above question for discussion one by one.

2) The applicant M/s Natani Precast, 22 Bajrang Colony Jhotwara Jaipur-302012, Rajasthan) have intention to manufacture and supply Precast Manholes and Rises to various government and non government entities. The main inputs of precast Manhole are 1) Cement, 2) Steel (TMT & Bars), 3) Coarse Aggregate, 4) Fine Aggregate / Sand / Dust.

3) The applicant submitted that the manufacturing process of said precast Manholes can be explained in brief as under:-^

a. A steel cage as per drawing and size of manhole and rings is prepared.

b. Subsequently, the said cage is casted in the molds as per size of manholes and rings

c. Afterwards, concrete (combination of cement, coarse aggregate, fine aggregate and water) is prepared and filled in the molds.

d. Then after some time, molds are opened for finishing of the product i.e. precast manhole and after finishing the said item is moved for the curing stage.

e. After curing of the item, the finished goods are ready for the dispatch as per requirement.~

4) The applicant M/s Natani Precast LLP, has recently received request for quotation (hereinafter known as the RFQ.) for supply of precast Manholes for a specific project site by M/s Larsen & Toubro Ltd which is to be supplied as per with standard terms and conditions to their project site. The applicant submitted that two basic ingredients i.e Cement, & Steel (TMT & Bars), used for manufacturing of precast manholes will be supplied by M/s Larsen & Toubro Ltd.

5) Now we would like to discuss on questions raised before AAR one by one.

5.1) We observe that the main issue is to determine whether the supply of precast manholes by the applicant wherein main ingredients supplied by recipient, is supply of goods or services.

5.2) So, we would like to discuss the matter in light of definition under GST Act.

As per Sec. 7(1) of CGST Act, 2017, "supply" includes- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made, for a consideration by a person in the course or furtherance of business. Hence we observe that the activity of manufacturing of precast manholes by applicant for recipient is in the nature supply and falls under the Sec. 7(1) of CGST Act, 2017.

5.3) We would like to refer the definition of Goods in CGST Act, Section 2 (52) CGST Act, defines Goods as follows: "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. Furthermore, on going through the definition of Service, Section 2(102) CGST Act, which defines Service as follows: "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged. [Explanation. - For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities;]

5.4) In light of above definitions we observe that it is imperative for any act to be service that should not be goods. It would be worthwhile to mention that applicant himself stated that he has intention to manufacture and supply Precast Manholes and Rises. Even the manufacturing process submitted by the applicant itself shows that the applicant is engaged in manufacturing of goods i.e Precast Manholes and Rises. The Precast Manholes and Rises are movable property; hence we conclude that supply of Precast Manholes and Rises is supply of goods and not a supply of services on the basis of aforesaid findings.

5.5) now, we would like to discuss that whether the stated supply to be made by applicant constitutes any form of job work. As per Section 2(68) of the Act which is read as under:-

(68) "job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly,

We have gone through the BOQ. dated 22.02.2022 with L&T, submitted by applicant wherein it is mentioned that "Please quote your best rates for supply of precast manholes for our kirari project, delhi FOR site basis and considering steel & cement in L&T

Scope", thus we understood that here in this case Precast Manholes and Rises are to be manufactured by applicant on order from recipient wherein main ingredients are supplied by recipient, and applicant will manufacture a fresh Precast Manholes and Rises, so the ownership of goods remains with applicant hence subject supply is supply of goods under GST Act 2017. We find that the manufacturing activities carried out by applicant do not fall under the ambit of job work as it involved whole manufacturing process for manufacturing of Precast Manholes and Rises and it cannot be termed as "any treatment or process undertaken by a person on goods belonging to another registered person". Even concept of job work in GST is governed by different set of Rules and procedures and these are not in question. Hence we find that in this case Precast Manholes and Rises are to be manufactured by applicant on order from recipient wherein main ingredients are supplied by recipient, and applicant will manufacture a fresh Precast Manholes and Rises, so the ownership of goods remains with applicant hence Subject supply is supply of goods under GST Act 2017.

5.6 Further we find that the applicant quoted the provisions under Schedule-II as mentioned under Section 7(1A) of the Act, in which certain transactions are classified by the law either as supply of goods or as supply of service, ie Treatment or process- Any treatment or process which is applied to another person's goods is a supply of services. In the case of applicant case we find that the applicant is involved in the manufacturing of Manholes and Rises and it cannot be termed as any treatment or process on the goods belonging to the recipient. In the case inputs are being supplied free of cost and these inputs wholly used in manufacturing of resultant goods and termed as supply of goods not services.

5.7) We also hold that the applicant reference in respect of clarification in Circular No. 52/26/2018, dated 9-8-2018 for arriving at the understanding about classification of given activity as supply of goods or supply of service, wherein applicable GST, is not applicable in this case. The referred circular denoting the bus body building on chassis fitted with engines and chassis fitted with engines is supplied by recipient. That act is modification and treatment on a good wherein in the instant case of applicant new goods are manufactured from raw materials and not the work done on the goods belongs to recipient. We also observe that reference of SI.no. 26 of Notification No 11/2017-CT (Rate) dated 28.06.2017 is relevant here. As BOQ. dated 22.02.2022 and SCOPE MATRIX FOR SUPPLY OF PRECAST MANHOLE & RISERS, Applicant will not be providing any manufacturing service to recipient. Applicant intended to manufacture and supply goods as per specification of applicant and to maintain that specific standards of goods cement and iron are to be supplied by recipient.

6) Now we would like to examine next both questions which are mingled to each other

(i) Whether the price to be charged from the recipient i.e. M/s Larsen & Toubro Ltd by the applicant for supply of precast manhole shall be transaction value in terms of Section 15(1) of the CGST/SGST Act 2017.

(ii) Whether the material which are to be made available free of cost by the recipient and are not within the scope of applicant for supply of precast manhole shall form part of the transaction value for the purpose of levy of tax.

6.1) To derive the answers of above questions, we have to read and analysis the Section 15(1) & 15(2)(b) of the CGST / SGST Act 2017 collectively along with definition of consideration.

As per section 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.

And as per section 15(2)(b) The value of supply shall include----

(a) any taxes, duties..... 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;

Further, consideration is defined under Sec. 2(31) 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;

Thus from the above definitions and foregoing discussions, it's crystal clear to us that Applicant is to manufacture and supply Precast Manholes and Rises as per specific order from recipient but cement and iron is to be supplied by recipient on free of cost whereas if recipient will not supply these main ingredients then it will be bear by applicant itself. We observe that Free of cost supply of main ingredients from recipient is nothing but mutual understanding between both parties which do not debar them from the essence of supply of goods and consideration received under GST.

6.2 The contention of applicant that consideration flows from a contract and when such consideration is in money terms then same is treated as "price"; The said rate which shall be quoted and agreed between the parties shall tantamount to "price" as mentioned in Section 15(1) of the CGST Act 2017; That in fact, the price as mentioned above, is the sole consideration for the applicant to execute the supply of precast manhole, is not correct as details below-

As per Section 15(1) the price is not the sole consideration for the supply of goods as main inputs cement and steel supplied free of cost by the recipient of services, hence condition laid down under Section 15(1) is not fulfilled.

Section 15(2)(b) clearly stipulated that the value of supply shall include 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.

Consideration has been defined under Sec. 2(31) as under:

"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;

Thus, combine readings of aforesaid provisions, we hold from such type of adjustments applicant will receive the consideration in barter. I.e. one consideration in the shape of price as per agreement and second in the shape of free issue of essential inputs like cement and steels. Hence the price to be charged from the recipient i.e. M/s Larsen & Toubro Ltd by the applicant for supply of precast manhole shall not be transaction value in terms of Section 15(1) & 15(2) of the CGST / RGST Act 2017 & material which are to be made available free of cost by the recipient and are not within the scope of applicant for supply of precast manhole shall form part of the transaction value for the purpose of levy of tax

6.3) We have also examined the reference of Circular No. 47/21/2018-GST, dated 8-6-2018 [2018 (13) G.S.T.L. C55] made by applicant. We find that it is issued in respect of question "Whether moulds and dies owned by Original Equipment Manufacturers (OEM) that are sent Free Of Cost (FOC) to a component manufacturer is leviable to tax and whether OEMs are required to reverse input tax credit in this case free supplies need not be added to the value of supply". The matter put forth before us is entirely different. Moulds and dies are not consumed in manufacturing and used many a times unless lost their identity due to wear and tear and returnable to supplier whereas cement and iron being main component will be consumed in manufacturing precast manhole and will lose their identity. However further we find that in this quoted case circular also held that, if the contract between OEM and component manufacturer was for supply of components made by using the moulds/dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on FOC basis, the amortised cost of such moulds/dies shall be added to the value of the components. In the case of applicant the goods supplied by the supplier wholly used for manufacturing of resultant goods i.e. Manholes and Risers. Hence, we found the aforesaid circular is not giving any force in favour of applicant.

6.4) The applicant quoted the many judgements that the agreement and the conduct of the parties demonstrate the real state of affairs. However we observe that when elaborated GST Act is available and we have to keep us under the boundaries of this Act, we should not go with other Acts to evolve new interpretation when subject matter is well defined in GST Act. Section 15 is well defined the situation in case of valuation of goods.

7) We have gone through the judicial pronouncements of various judicial authority referred by applicant. We have also gone through the decisions of various courts submitted by applicant. Most of them are pre GST era and applicant use particular portion of said pronouncements as per his suit will. We found that none of pronouncement submitted by applicant in his favor squarely covers the present question of law in respect of applicability of GST.

In view of the foregoing, we rule as follows: -

RULING

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Rajasthan Goods and Services Tax Act, 2017)

Q.1 whether the supply of precast manhole using the steel and cement within the scope of recipient is a supply of service or supply of goods? What should be appropriate classification of the same?

Ans-1. Supply of precast manhole using the steel and cement within the scope of recipient is a supply of goods. HSN Code for supply of precast manhole is 68109990 and 18% respectively.

Q.2 Whether the price to be charged from the recipient i.e. M/s Larsen & Toubro Ltd by the applicant for supply of precast manhole shall be transaction value in terms of Section 15(1) of the CGST / RGST Act 2017?

Ans-2. No

Q.3 Whether the material which are to be made available free of cost by the recipient and are not within the scope of applicant for supply of precast manhole shall form part of the transaction value for the purpose of levy of tax?

Ans-3. Yes

22/03/2023

(Umesh Kumar Garg)
Member
(Central Tax)

(Mahesh Kumar Gowla)
Member
(State Tax)