

Body

AUTHORITY FOR ADVANCE RULING No. GST-ARA-44/2020-21/B-41, Dated 31st March, 2022

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

**GST Bhavan, Room No.107, 1st floor, B-Wing, Old Building, Mazgaon, Mumbai - 400010,
(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)**

BEFORE THE BENCH OF

(1) Shri. Rajiv Magoo, Additional Commissioner of Central Tax, (Member)

(2) Shri. T. R. Ramnani, Joint Commissioner of State Tax, (Member)

ARN No.		AD270319002242H
GSTIN Number, if any/ User-id		27AADCB1402H1Z8
Legal Name of Applicant		M/s. B P Sangle Constructions Pvt. Ltd.
Registered Address/Address provided while obtaining user id		Flat No. 102, Hill View Apartment, 1st Floor, Tidke Colony Mico Circle, Nashik, Maharashtra 422002
Details of application		GST-ARA, Application No. 44 Dated 13.10.2020
Concerned officer		NAS-VAT-D-003, NASHIK
Nature of activity(s) (proposed/present) in respect of which advance ruling sought		
A	Category	Service Provision ; Works Contract
B	Description (in brief)(As per applicant)	The applicant is engaged in the business of construction of public road for Govt entities which includes National Highway Authority of India. In addition to this applicant is also engaged in construction of road for private parties and construction of buildings etc, for govt, entities.
issue/s on which advance ruling required		> Determination of time and value of supply of goods or services or both
Question on which advance ruling required		As reproduced in para 01 of the Proceedings below

PROCEEDINGS

**(under section 98 of the Central Goods and Services Tax Act, 2017 and
the Maharashtra Goods and Services Tax Act, 2017)**

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by M/s. B P Sangle Constructions Pvt. Ltd. the applicant, seeking an advance ruling in respect of the following question.

NHAI has awarded a contract for construction of road to the applicant vide letter dt 01.05.2017 for agreed price of Rs. 65,90,98,099/- which included VAT Tax as tender was awarded before the appointed date. However, during the course of completion of service, i.e. construction of road as per contract, there happens escalation in value. Such escalation in value is added to the contract value as per the terms of the tender notice which read as under: 19.10.04:-

The contract price shall be adjusted for increase or decrease in rates and price of labour, cement, steel, plant, machinery and spares, bitumen, fuel and lubricants and other material inputs in accordance with the principles, procedures and formulae specified therein. Question based on these facts is as to whether such escalated value shall be added to the taxable value u/s 15 of the act or otherwise?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST 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 MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would mean CGST Act and MGST Act.

2. FACTS AND CONTENTION - AS PER THE APPLICANT

2.1 M/s. B P Sangle Constructions Pvt. Ltd., the Applicant has been awarded tender from NHAI for construction of road for certain amount. There is a clause in the tender according to which, in case there is change in the rates of labour, steel, cement, plant, machinery, spares, bitumen, spares, lubricants etc. the contract price shall increase or decrease as per the formula provided in the tender notice. In the event of such escalation of value, the same shall be recovered in addition to tender value from NHAI. Applicant would like to know whether such escalated value shall be added to taxable value u/s 15 of the Act.

B. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LA W AND/OR FACTS

2.2 As per Section 15(1) of the Act, 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 recipient of the supply are not related and the price is the sole consideration for the supply.

2.3 The value under Section 15 also includes escalated value which is being recovered from NHAI. When applicant is incurring extra amount for provision of service, the same being allowed to be added to contract price, and applicant is also recovering the same from NHAI. Hence, such escalated price which is added to contract price shall be liable for payment of GST as per the said provision.

Applicant Submission dated 08.02.2022

2.4 The applicant is engaged in construction of Public Road for Govt. Authorities like Zilha Parishad, Municipal Corporation, etc., and also provides construction service for private parties.

2.5 Prior to 01.07.2017 i.e. before GST regime, National Highways Authority of India (in short "NHAI"), invited proposals for the work of development, maintenance and management of National Highway No 3 including section from km 380.000 km to 440 km on various locations on the section of National Highway No 03 and the tender was awarded to the Applicant vide Letter of Acceptance (LOA) under F.No.NHAI/MUM/NSK/PNG/EPC-I/2017-18/202 dated 01.05.2017.

2.6 Activity to construct road for public was exempted from payment of service tax vide Sr No. 13((a) of Notification No. 25/2012-ST dated 20.06.2012 under the Erstwhile Service Tax laws. Therefore, when said contract was awarded, only Maharashtra VAT was applicable & hence taken into consideration and the said contract price was including of VAT @ 5% only. Thus, contract price of Rs.65, 90, 98,099.67, included Maharashtra VAT @ 5% of Rs. 3, 13, 85,623.79 & taxable value of Rs.62, 77, 12,475.88. However, the impugned activity under said contract was only initiated with effect from 01.07.2017 i.e. after introduction of GST regime.

2.7 However, during the course of completion of service i.e. construction of Road as per contract, there happens escalation in value. Such escalation in value is added to the contracted value as per the relevant terms of the tender notice. The said clause further gives the formula to calculate the increase or decrease in price.

2.8 Thus, if there is the escalation in value of service, whether such escalated value shall be added to taxable value under Section 15 of CGST Act, 2017 or otherwise?

Interpretation of Law:-

2.9 In the instant case, the contract was awarded prior to appointed date but was executed after the appointed date, hence the relevant provisions of CGST Act, 2017 shall be applicable. So far as GST liability is concerned, the liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of Section 13(1) of the CGST Act, 2017.

2.10 In the instant case, earliest thing that has happened is "provision of service", therefore, time of supply service shall be the time when service has been provided. As made clear earlier service of construction of public road has been provided after 01 July, 2017 i.e. entirely in the GST regime.

2.11 As per the provisions of Section 15(1) of CGST Act, 2017, the entire value which also includes escalated value should be considered for GST or in other words, escalated cost, if being recovered from the service receiver, should be added to taxable value to arrive at transaction value as required under Section 15 of the CGST Act, 2017.

03.CONTENTION - AS PER THE CONCERNED OFFICER:

The jurisdictional officer has not made any submissions in the matter.

04. HEARING

4.1 Preliminary e-hearing in the matter was held on 27.08.2021. Authorized representatives of the Applicant, Shri. Shrikant Kale, STP, was present. The Jurisdictional Officer Shri. Machhindra Donde Assistant Commissioner of State Tax, VAT D-003, Nashik Division, Nashik was also present.

The Authorized representative made oral submission with respect to admission of their application.

4.2 The application was admitted and called for final e-hearing on 25.01.2022. Applicant's authorized representative, Shri. Shrikant Kale was present. Jurisdictional officer Shri. Macchindra Donde, ACST, NAS- VAT-D-003, Nashik was also present.

05. OBSERVATIONS AND FINDINGS:

5.1 We have gone through the documents on record and have considered the submissions, both oral and written, made by the applicant. The jurisdictional officer, inspite of having attended the preliminary hearing as well as the final hearing, has not made any written submissions in the

matter.

5.2 Briefly stated, M/s. B P Sangle Constructions Pvt. Ltd., the Applicant was awarded a contract by NHAI for construction of roads during the pre-GST period but the contract was executed only after the GST Laws introduced in the country. Further, as per the submissions there was an escalation in the contract value and accordingly, the applicant has raised the question whether GST has to be paid on the enhanced value also. Since the impugned supply was started and undertaken by the applicant only during the GST period, we are of the opinion that the GST Laws will be applicable in the instant case and therefore the relevant provisions of CGST Act, 2017 shall be applicable which are discussed hereinafter.

5.3 During the course of the final hearing the applicant informed that, the impugned work was completed on 17.12.2019. We observe that the subject application was uploaded on 19.03.2019 i.e when the supply under the impugned contract was being undertaken. We also observe that the required fees, was short paid by Rs. 175 at the time of filing the application, however the same was paid later i.e. on 14.10.2020, much after the impugned supply was completed. However, the late payment of part of the required fees is being considered as a technical/procedural lapse, we take up the impugned matter on merits.

5.4 In order to calculate and discharge tax liability it is important to know the date when the tax liability arises i.e. the date on which the charging event has occurred. In GST law, it is known as Time of Supply.

5.4.1 GST law has provided separate provisions to determine the time of supply of goods and time of supply of services. Sections 12, 13 & 14 of the CGST Act, 2017, deal with the provisions related to time of supply. In the subject case we are dealing with supply of service and therefore reproduce the relevant Section 13 of the CGST Act as under:-

Section 13:- Time of supply of services.

(1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of services shall be the earliest of the following dates, namely:-

a. the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or

b. the date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or

c.

Provided that

Explanation.- For the purposes of clauses (a) and (b),-(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;

(ii) "The date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

(3)

Provided

Provided

(4)

(5)

(6)

5.4.2 As per the applicant's submissions, there was no supply during the pre-GST period and no invoice was also raised during the said period. The impugned service was provided entirely during the GST period and therefore in view of Section 13, the time of supply is during the GST era and therefore for ascertaining the value of service, the relevant provisions of CGST Act, 2017 shall apply.

5.5.1 Section 15 of the CGST Act, 2017 deals with Value of taxable Supply. As per Section 15(1) of the Act, 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 recipient of the supply are not related and the price is the sole consideration for the supply.

5.5.2 Thus section 15 (1) says that the value of a supply of goods or services or both shall be the Transaction value and the transaction value in the subject case will also include the escalated value (as per the impugned contract), which is being recovered from NHAI by the applicant, both being unrelated parties. Therefore, such escalated price/value which is added to contract price shall be liable for payment of GST as per the said provision of Section 15 of the Act.

5.5.3 As per the provisions of Section 15(1) of CGST Act, 2017, the actual transaction value which includes the escalated value should be considered for payment of tax under GST Laws. We find that the applicant is also in agreement with the same.

In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

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

For reasons as discussed in the body of the order, the questions are answered thus -

Question: - NHAI has awarded a contract for construction of road to the applicant vide letter dt 01.05.2017 for agreed price of Rs. 65,90,98,099/- which included VAT Tax as tender was awarded before the appointed date. However, during the course of completion of service, i.e. construction

of road as per contract, there happens escalation in value. Such escalation in value is added to the contract value as per the terms of the tender notice which read as under: 19.10.04:- The contract price shall be adjusted for increase or decrease in rates and price of labour, cement, steel, plant, machinery and spares, bitumen, fuel and lubricants and other material inputs in accordance with the principles, procedures and formulae specified therein. Question based on these facts is as to whether such escalated value shall be added to the taxable value u/s 15 of the Act or otherwise?

Answer: - The escalated value shall be added to the original value of the contract and the total of the escalated value plus the original value of the contract will be the transaction/taxable value u/s 15 of the Act. on which GST must be discharged by the applicant.

PLACE:- Mumbai

DATE:- 31/03/2022

RAJIV MAGOO
(MEMBER)

T. R. RAMNANI
(MEMBER)

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