

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
14 Beliaghata Road, Kolkata – 700015
(Constituted under section 96 of the West Bengal Goods and Services Act, 2017)

BENCH

Ms Susmita Bhattacharya, Joint Commissioner, CGST & CX
Mr Parthasarathi Dey, Additional Commissioner, SGST

Preamble

A person within the ambit of Section 100 (1) of the Central Goods and Services Act, 2017 or West Bengal Goods and Services Act, 2017 (hereinafter collectively called 'the GST Act'), if aggrieved by this Ruling, may appeal against it before the West Bengal Appellate Authority for Advance Ruling, constituted under Section 99 of the West Bengal Goods and Services Act, 2017, within a period of thirty days from the date of communication of this Ruling, or within such further time as mentioned in the proviso to Section 100 (2) of the GST Act. Every such Appeal shall be filed in accordance with Section 100 (3) of the GST Act and the Rules prescribed thereunder, and the Regulations prescribed by the West Bengal Authority for Advance Ruling Regulations, 2018.

Name of the applicant	M/s IZ-Kartex named after P G Korobkov Ltd
Address	Plot K1, RDB Boulevard, 8 th floor Sector V, Block EP GP, Salt Lake City - 700091
GSTIN	19AAFC10569J1Z9
Case Number	03 of 2020
ARN	AD 190220005252t
Date of application	19/02/2020
Order number and date	04/WBAAR/2020-21 dated 29/06/2020
Applicant's representative heard	Sharad Mohata, FCA

1. Admissibility of the Application

1.1 The applicant is the local branch of a Russian business entity by the same name (hereinafter 'Foreign Company'), which entered into a Maintenance and Repair Contract (hereinafter called "MARC") with Bharat Coking Coal Ltd (hereinafter "BCCL") with respect to the machinery and equipment it had supplied.

1.2 The applicant wants to know whether the MARC makes the supplier liable to pay GST (which, for the purpose of this order, includes IGST). More specifically, the applicant wants to know whether the recipient is not liable to pay tax on reverse charge basis in terms of Notification No. 10/2017 – Integrated Tax (Rate) dated 28/06/2017. The question is admissible under section 97(2) (b) & (e) of the GST Act. The concerned officer from revenue submits that question raised in the application is not pending or decided in any proceedings of the GST Act. As such, he does not object to the admissibility of the application. The application is, therefore, admitted.

2. Submissions of the Applicant

2.1 The applicant submits that the supply of service by the Foreign Company in terms of the MARC is import of service within the meaning of section 2 (11) of the Integrated Goods and Services Tax Act, 2017 (hereinafter the IGST Act). The supplier is located outside India and

the recipient BCCL is located in Dhanbad, India. According to section 13 (3) (a) of the IGST Act, the place of supply of the service provided in terms of the MARC is the location where the machinery and equipment are used in India. All the conditions of import of service within the meaning of section 2 (11) of the IGST Act are, therefore, satisfied.

2.2 Being import of service, the tax is payable by the recipient on reverse charge basis in terms of Notification No. 10/2017 – Integrated Tax (Rate) dated 28/06/2017. The Foreign Company is, therefore, not liable to pay tax on the supply of service in terms of the MARC.

3. Submission of the Revenue

3.1 The concerned officer submits the return status of the applicant. In both GSTR 3B and GSTR 1 the applicant has no liability. The applicant has accumulated huge ITC in GSTR 2A from November 2018 to March 2020. Though it was not claimed by the applicant in GSTR 3B. Moreover, in December 2019 an import of goods was shown in return.

4. Observations and findings of the Bench

4.1 It is evident from the returns and from the applicant's submission that it does not claim that the question is in relation to any supply being undertaken or proposed to be undertaken by the applicant itself. It tries to establish that the supply is made by the Foreign Company, who is located in Russia and the applicant, although a branch responsible for receiving and making payments on behalf of the Foreign Company, is not the supplier in the context of the MARC.

4.2 This Authority would have rejected the application on the ground that no advance ruling within the meaning of section 95 (a) of the GST Act could be pronounced, the applicant being not the supplier. Instead, we have admitted the application and is going to pronounce a ruling as we are convinced that the applicant is indeed the supplier of services in terms of the MARC. The grounds and reasoning for such a conclusion will reveal themselves from the discussion below.

4.3 The MARC is between the MARC Holder and BCCL. Although clause 9 of the MARC, dealing with 'Taxes & Duties', distinguishes between a foreign MARC Holder and a domestic MARC Holder, nowhere else in the MARC two such entities exist separately. The contract speaks of the rights, duties, and obligations of the MARC Holder only without any distinction between a foreign MARC Holder and a domestic MARC Holder. The distinction, therefore, is relevant only in the context of any statutory provision requiring the MARC Holder to be located in India.

4.4 It is a long-term contract spanning over seventeen years from the date of commissioning of the equipment. The MARC Holder is responsible for supply of the spares, components, and consumables over the entire period. It will depute the officers, support staff and system expert at the site for maintenance and repair of equipment and train the BCCL personnel. BCCL shall provide the MARC Holder access to the machines and repair facilities at all reasonable time. BCCL and the MARC Holder shall jointly sign the Equipment Logbook on daily basis recording the actual working hours per shift, breakdown hours and other details. The MARC Holder is to be paid at an agreed rate for supervision, supply of spares and consumables, and for overheads per working hour of the equipment for 5000 expected annual working hours.

4.4 It is evident from the above discussion that the MARC Holder maintains suitable structures in terms of human and technical resources at the sites of BCCL. It ensures supervision of the equipment, supply of spares and consumable and overheads for 5000 annual working hours for seventeen years, indicating sufficient degree of permanence to the human and technical resources employed at the sites. The MARC Holder, therefore, supplies the service at the sites from fixed establishments as defined under section 2 (7) of the IGST Act. The location of the supplier should, therefore, be in India in terms of section 2 (15) of the IGST Act.

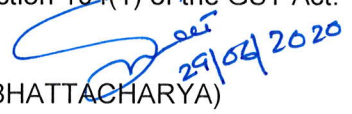
4.5 Supply of the MARC Holder to BCCL is not, therefore import of service within the meaning of section 2 (11) of the IGST Act. The MARC Holder should be treated as a supplier located in India triggering clause 9.2.2 of the MARC, and made liable to pay GST, the place of supply being determined in terms of section 12 (2) (a) of the IGST Act. The applicant, being the registered branch of the Foreign Company, should be treated as the domestic MARC Holder in terms of clause 9.2.2 of the MARC and be liable to pay tax accordingly.

Based on the above discussion, we rule as under,

RULING

Supply of service to BCCL in terms of the MARC is not import of service. The recipient is not, therefore, liable to pay GST on reverse charge basis in terms of Notification No. 10/2017 – Integrated Tax (Rate) dated 28/06/2017. The applicant, being the domestic MARC Holder, is liable to pay tax as applicable in terms of clause 9.2.2 of the MARC.

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


(SUSMITA BHATTACHARYA)

Member

West Bengal Authority for Advance Ruling


(PARTHASARATHI DEY)

Member

West Bengal Authority for Advance Ruling