

TAX INFO

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Latest update on GST Law: Information regarding Works contract service of laying pipelines in Bangladesh is not export based on the Ruling issued by West Bengal Authority for Advance Ruling

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Works contract service of laying pipelines in Bangladesh is not export

Name of Applicant	In re Maninder Singh
Name of Court	GST AAR West Bengal
Order Number	10/WBAAR/2020-21
Date of Ruling	12.10.2020

Facts of the Case:

The Government of India and The Government of Bangladesh have signed a MoU for construction of an oil pipeline from Siliguri in India to the depot of the Bangladesh Petroleum Corporation (BPC) at Parbatipur in Bangladesh. The work will be monitored by Ministry of External Affairs (MEA), Government of India, which has engaged M/s Numaligarh Refinery Ltd (NRL) as the implementation agency. NRL has awarded the applicant the contract for the installation of the pipeline by HDD method

Questions on which Ruling is sought:

- (i) whether its supply is works contract service;
- (ii) whether the supply of service to NRL for the above construction in Bangladesh is an export and exempt under the GST Act;
- (iii) if the answer to the above query is negative, then what should be the appropriate tax rate;
- (iv) whether the applicant is entitled to input tax credit on its inward supplies for the service rendered in the construction of Bangladesh portion of the pipeline on behalf of NRL;
- (v) whether the applicant is liable to pay tax on goods or services procured locally within Bangladesh for the purpose of construction of Bangladesh portion of the pipeline on behalf of NRL;
- (vi) whether the applicant is entitled to input tax credit on procurement of such goods or services in Bangladesh used in the construction of Bangladesh portion of the pipeline on behalf of NRL;

Contention of Applicant:

The applicant submits that the ultimate recipient of its service is BPC located in Bangladesh. NRL is merely an intermediary working on behalf of MEA. The recipient being located in

Bangladesh and the place of supply being outside India, the applicant's service is export.

Applicant further submits that NRL receives the land from BPC for construction of the pipeline. The entire strip of land from India border to the Parbatipur Depot should, therefore, be considered the 'location for the receipt of services' as defined under section 2(14)(c) of the IGST Act, and location of the establishment most directly concerned with the receipt of the supply (in this case Bangladesh) should be the place of supply.

Submission of Revenue:

NRL issued the Work Order to the applicant for installation of the hydrocarbon pipeline in Bangladesh. The applicant is making a composite supply involving the transfer of property in goods in the course of the construction of immovable property, namely pipeline for transportation of hydrocarbon. As both the supplier and the recipient are located in India, the place of supply shall be India in terms of the proviso to section 12(3) of the IGST Act. The applicant is eligible to claim the input tax credit on the goods or services procured in Bangladesh if it pays GST on such inward supplies. As the service of the applicant is admittedly a composite supply of works contract (SAC 9954), it is taxable @ 18%.

Observations and Ruling:

A strip of land extending over more than a hundred kilometre is not a fixed establishment in terms of section 2(7) of the IGST Act. Location of the recipient in the present context cannot, therefore, be determined by applying the provisions under section 2(14) (b) or (c) of the IGST Act. NRL being registered and resident of India, the location of the recipient of the service shall be in India in terms of section 2(14)(d) of the IGST Act. The place of supply of the service shall be in India, being the location of the recipient. The provisions for deemed export under section 147 of the GST Act is available for supply of goods only. The applicant's supply of service cannot, therefore, be considered „deemed export“ under the GST Act.

Although a public sector undertaking NRL is not a Govt Entity as defined in clause 4(x) of the Rate Notification (direct Govt participation in equity is less than 90% in NRL). The concessional rate in terms of Entry No. 3(iii)(c) of the Rate Notification is, therefore, unavailable. It will, therefore, be taxable @ 18%.

The applicant is entitled to input tax credit on the GST paid on procurement. As the applicant has not paid GST on purchasing goods or services in Bangladesh used in the construction of the pipeline, the question of the input tax credit does not arise.

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