

# TAX INFO

*Dated: 28.10.2020*

Latest update on GST Law: Information regarding **Supply of service by a foreign company to local branch is not import of service** based on the **Ruling** given by **West Bengal Authority for Advance Ruling**.

We expressly disclaim liability to any person in respect of anything done in reliance of the contents of this publication

## **Supply of service by a foreign company to local branch is not import of service**

<b>Name of Applicant</b>	IZ-Kartex named after P G Korobkov Ltd
<b>Name of Court</b>	AAR West Bengal
<b>Appeal Number</b>	04/WBAAR/2020-21
<b>Date of Judgement</b>	29.06.2020

### **Facts of the Case:**

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.

### **Questions on which Advance Ruling is sought:**

1. Whether the MARC makes the supplier liable to pay GST.
2. 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

### **Contention of Applicant:**

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 IGST Act, 2017. 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.

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.

### **Reply of Respondent:**

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.

### **Observations:**

The MARC is between the MARC Holder and BCCL. 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.

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 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 and be liable to pay tax accordingly.

### **Judgement:**

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 of the MARC.

**Suresh Aggarwal, Advocate**

**Compliance & Litigation under GST**

**Address:**House No. 54, Pocket A-3, Sector-5, Rohini- 110085

**Phone:**91-9810032846; 011 - 45131427

**Email:**sureshagg@gmail.com

**Website:**<http://www.sureshtaxation.com>