



TELANGANA STATE AUTHORITY FOR ADVANCE RULING
CT Complex, M.J Road, Nampally, Hyderabad-500001.
(Constituted under Section 96(1) of TGST Act, 2017)

Present:

Sri B. Raghu Kiran, IRS, Additional Commissioner (Central Tax)
Sri S.V. Kasi Visweswara Rao, Additional Commissioner (State Tax)

A.R.Com/16/2020

Date:16.02.2022

TSAAR Order No.07/2022

[ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SECTION 98(4) OF THE TEALANGANA GOODS AND SERVICES TAX ACT, 2017.]

1. M/s. Achampet Solar Private Limited, 8-2-610/68/1,2,3, 5th Floor, Accord Blu, Road NO 10, Banjara Hills, Hyderabad, Telangana, 500034 (36AANCA8941N1ZX) has filed an application in FORM GST ARA-01 under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules.
2. At the outset, it is made clear that the provisions of both the CGST Act and the TGST 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 TGST Act. Further, for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.
3. It is observed that the queries raised by the applicant fall within the ambit of Section 97 of the GST ACT. The Applicant enclosed copies of challans as proof of payment of Rs. 5,000/- for SGST and Rs. 5,000/- for CGST towards the fee for Advance Ruling. The concerned jurisdictional officer also raised no objection to the admission of the application. The application is therefore, admitted
4. **Brief facts of the case:**

M/s. Achampet Solar Private Limited is engaged in production and distribution of electricity obtained from solar energy. They have engaged M/s. Belectric India (P) Ltd for construction of solar power project. The agreement has clauses for recovery of liquidated damages on (2) counts, one delay in delivering of the contract and the other regarding non-performance of the plant. The applicant is desirous of ascertaining exigibility of liquidated damages to GST on account of delay in commissioning and its time of supply. Hence this application.
5. **Questions raised:**
 1. Whether liquidated damages recoverable by the applicant from Belectric India on account of delay in commissioning, qualify as a 'supply' under the GST law, thereby attracting the levy of GST?
 2. If the answer to Question No. 1 is in the affirmative, what should be the time of supply when liability to pay GST is triggered?
6. **Personal Hearing:**

The Authorized representatives of the unit namely Rahul Binani, CA and Sourabh Mundada, CA attended the personal hearing held on 05-01-2022. The authorized representatives reiterated their averments in the application submitted and requested the AAR to dispose the case on merits based on their detailed submissions.

7. Discussion & Findings:

Liquidated damages are demanded by the applicant from the contractor due to the delay in commissioning of the project and postponement in the taking over date beyond the milestones fixed for completion of project.

When the parties to a contract specify the time for its performance, it is expected that either party will perform his obligation at the stipulated time. But if one of them fails to do so, the question arises what is the effect upon the contract. This scenario is answered by Section 55 of the Indian Contract Act, 1872, which is extracted below:

“Effect of failure to perform at fixed time, in contract in which time is essential-When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee if the intention of the parties was that time should be of the essence of the contract.

Effect of such failure when time is not essential.-If it was not the intension of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of acceptance of performance at time other than that agreed upon-If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so”.

A combined reading of the provisions (1) & (3) of Section 55 of the Indian Contract Act, 1872 reveals that a failure to perform the contract at the agreed time renders it voidable at the option of the opposite party and alternatively such party can recover compensation for such loss occasioned by non-performance.

In the case of the applicant, liquidated damages are imposed for covering the loss of revenue and costs borne by a project SPED due to delay according to a formula. Thus liquidated damages are claimed by the applicant from the contractor due to the delay in commissioning of the project and the taking over date by the contractor beyond the milestones fixed for completion of project. These damages are consideration for tolerating an act or a situation arising out of the contractual obligation. The entry in 5(e) of Schedule II to the CGST Act classifies this act of forbearance as follows:

5(e): Agreeing to the obligation to refrain from an act, or tolerate an act, or a situation, or to do an act.

Further Section 2(31)(b) of the CGST Act mentions that consideration in relation to the supply of goods or services or both includes the monetary value of an act of forbearance. Therefore such a toleration of an act or a situation under an agreement constitutes supply of service and the consideration or monetary value of such toleration is exigible to tax.

The clause (6) of the co-ordination agreement filed by the applicant specifies different liquidated damages to be paid for different periods of delay on the commissioning. This clause also specifies that the amount shall be paid within (3) days after the actual commissioning date as per the prescribed formula. The formula consists of various periods of delay i.e., delay upto (1) month, delay between (1) month to (3) months and such periods. Therefore the contract itself prescribes the date on which the damage has to be determined and paid. The date on which the liquidated damage is determined as per the formula prescribed in the clause 6 of the contract is the time of supply of service entry in 5(e) of Schedule II by the applicant.

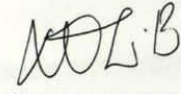
The Consideration received for such forbearance is taxable under CGST and SGST @9% each under the chapter head 9997 at serial no. 35 of Notification No.11/2017- Central/State tax rate.

8. The ruling is given as below:

In view of the above discussion, the questions raised by the applicant are clarified as below:

Questions	Ruling
1. Whether liquidated damages recoverable by the applicant from Belectric India on account of delay in commissioning, qualify as a 'supply' under the GST law, thereby attracting the levy of GST?	Yes.
2. If the answer to Question No. 1 is in the affirmative, what should be the time of supply when liability to pay GST is triggered?	The date on which the liquidated damage is determined as per the formula prescribed in the clause 6 of the contract is the time of supply of service entry in 5(e) of Schedule II by the applicant.


(S.V. KASI VISWESWARA RAO)
ADDL. COMMISSIONER(STATE TAX)


(B. RAGHU KIRAN)
ADDL. COMMISSIONER(CENTRAL TAX)

[Under Section 100(1) of the CGST/TGST Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this Order]

To
M/s. Achampet Solar Private Limited,
8-2-610/68/1,2,3, 5th Floor, Accord Blu,
Road No 10, Banjara Hills, Hyderabad,
Telangana – 500034.

Copy submitted to :

1. The Commissioner (State Tax) for information.
2. The Commissioner (Central Tax), Hyderabad Commissionerate, Room No. 813, GST Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad 500 004.

Copy to:

1. The Assistant Commissioner (ST) Jubilee Hills-II Circle.
//t.c.f.b.o//

Superintendent (Grade-I)