

WEST BENGAL AUTHORITY FOR ADVANCE RULING  
GOODS AND SERVICE TAX  
14 Beliaghata Road, Kolkata – 700015

Name of the applicant	IAC Electricals Pvt Ltd
Address	701 Central Plaza, 2/6 Sarat Bose Road, Kolkata-20
GSTIN	19AAACI6040B1Z1
Case Number	08 of 2018
Date of application	February 27, 2018
Order No. & date	05/WBAAR/2018-19 dated 28/05/2018
Applicant's representative	Sri Biplab Paul, Accountant

1. The Applicant is stated to be a manufacturer of Overhead Power Transmission Line Hardware and Accessories. His question is related to contracts obtained from M/s Power Grid Corporation of India (hereinafter referred to as "the Contractee") who has entered into two separate contracts – one for supply of materials at ex-factory price (hereinafter referred to as "the First Contract"), and the other for supply of allied services like transportation, insurance, loading/unloading etc for delivery of materials at the contractee's site (hereinafter referred to as "the Second Contract"). The Applicant states that as per the Second Contract, since they are not a Goods Transport Agency they arrange for the supply and delivery of materials through various other suppliers of these services. The Contractee is charged for these services at a pre-fixed rate, irrespective of the actual cost incurred. However, the Contractee is unwilling to bear the cost of GST on such services provided to them by the Applicant through various Service Suppliers. The Applicant, hence, wants a Ruling regarding the taxability of these services supplied by them.

Advance Ruling is admissible on this question under section 97 (2)(a)&(e) of the CGST/ WBGST Act, 2017 (hereinafter referred to as "the GST Act").

The officer concerned, in his written response, raises no objection to admission of the application.

The Application is, therefore, admitted.

2. As per point no. 14 in Form GST ARA 01 submitted by the Applicant, the question on which Advance Ruling is required is the taxability of services supplied by them. The Applicant has drawn attention and referred to Facts as stated in Point No. 15 and Interpretation as stated in Point No. 16, of the Form.
3. According to the above submissions the Applicant is not a goods transport agency (hereinafter referred to as "GTA") or engaged in the business of in-transit insurance and loading, which are naturally bundled with and dependent of the transportation services. He, according to the Application, *arranges* such services and pays the GST, as applicable, on the consideration paid to the suppliers of such services. The

Applicant is of the opinion that this service to the Contractee is exempt under the GST Act. According to the Applicant, it is a composite supply with road transportation as the principal supply, and loading/unloading, in-transit insurance etc as ancillary supplies to the transportation service. As the Applicant is not a GTA, his supply of transportation service is exempt. [Reference may be made to Serial no. 18 of Notification No. 12/2017-Central Tax (Rate) dated 28/06/2017 (1136-FT dated 28/06/2017 under State Tax), hereinafter collectively referred to as the “Exemption Notification”]. The Principal Supply being thus exempted, the Applicant should not, according to his interpretation of GST law, be liable to pay tax on the ancillary or incidental services.

4. Serial no. 18 of the Exemption Notification exempts services by way of transportation of goods by road except the services of a GTA. In his written submission the Applicant admits that he is not transporting the goods, but hiring the service of a transport agency. Similarly, he is not providing the insurance service, but buying such services from an insurance service provider. The Applicant is, therefore, the recipient of such services and not a supplier thereof. The question of the Applicant *providing* transportation service etc, therefore, does not arise. Hence the Exemption Notification is not applicable to the Applicant.
5. Before deciding the issue of taxability of the consideration payable under the Second Contract for inland/local transportation and ancillary services like in-transit insurance, the two contracts referred to above need to be examined.
6. The Applicant has been awarded a package for supply of hardware fittings and accessories at different projects under two separate Notifications of Award (hereinafter referred to as “NOA”).
7. NOA No.CC-CS/651-SR1/HWF-3670/3/G2/NOA-I/7540 dated 12/12/ 2017 is the First Contract, involving ex-works supply of all equipment and materials. The scope of the work includes design, manufacture, testing and supply of hardware fittings and accessories. The consideration payable includes only the ex-work price component of the materials.
8. NOA No.CC-CS/651-SR1/HWF-3670/3/G2/NOA-II/7541 dated 12/12/2017 is the Second Contract, which involves all other activities required to be performed for delivery of the goods to the Contractee’s site. The consideration is a lump sum amount payable for inland/local transportation, in-transit insurance and loading/unloading charges.

9. It is immediately apparent that the First Contract cannot be executed independent of the Second Contract. There cannot be any 'supply of goods' without a place of supply. As the goods to be supplied under the First Contract involve movement and/or installation at the site, the place of supply shall be the location of the goods at the time when movement of the goods terminates for delivery to the recipient, or moved to the site for assembly or installation [refer to Section 10(1)(a) & (d) of the IGST Act, 2017]. The First Contract, however, does not include the provision and cost of such transportation and delivery. It, therefore, does not amount to a contract for 'supply of goods' unless tied up with the Second Contract. In other words, the First Contract has "no leg to stand on" unless supported by the Second Contract. It is no contract at all unless tied up with the Second Contract.
10. The Contractee is aware of such interdependence of the two contracts. Although he awards the contract under two separate NOAs, Clause 3.2 of both of the NOAs makes it abundantly clear that "Notwithstanding the break-up of the Contract Price, the Contract shall, at all times, be construed as a single source responsibility Contract and any breach in any part of the Contract shall be treated as a breach of the entire Contract."

It is further elaborated under Clause 2.2 of both the Contracts. Second paragraph of Clause 2.2 of the First Contract says, "Notwithstanding the award of work under two separate Contracts in the aforesaid manner, you shall be overall responsible to ensure the execution of both the Contracts to achieve successful completion and taking over of the Goods under the package by the Purchaser as per the requirements stipulated in the Bidding Documents. It is expressly understood and agreed by you that any default or breach under the 'Second Contract' shall automatically be deemed as a default or breach of this 'First Contract' also and vice-versa, and any such default or breach or occurrence giving us a right to terminate the 'Second Contract', either in full or in part, and/or recover damages there under, shall give us an absolute right to terminate this Contract, at your risk, cost and responsibility, either in full or in part and/or recover damages under this 'First Contract' as well. However, such default or breach or occurrence in the 'Second Contract', shall not automatically relieve you of any of your obligations under this 'First Contract'. It is also expressly understood and agreed by you that the equipment/materials supplied by you under this 'First Contract', when **inter alia transported to site** by you under the 'Second Contract' shall give satisfactory performance in accordance with the provisions of the Contract."

Second paragraph of Clause 2.2 of the Second Contract says, "Notwithstanding the award of work under two separate Contracts in the aforesaid manner, you shall be overall responsible to ensure the execution of both the Contracts to achieve successful completion and taking over of the Goods under the package by the Purchaser as per the requirements stipulated in the Bidding Documents. It is

expressly understood and agreed by you that any default or breach under the 'First Contract' shall automatically be deemed as a default or breach of this 'Second Contract' also and vice-versa, and any such default or breach or occurrence giving us a right to terminate the 'First Contract', either in full or in part, and/or recover damages there under, shall give us an absolute right to terminate this Contract, at your risk, cost and responsibility, either in full or in part and/or recover damages under this 'Second Contract' as well. However, such default or breach or occurrence in the 'First Contract', shall not automatically relieve you of any of your obligations under this 'Second Contract'. It is also expressly understood and agreed by you that the equipment/materials supplied by you under the 'First Contract', when **inter alia transported** by you under the 'Second Contract' shall give satisfactory performance in accordance with the provisions of the Contract.”

11. The two contracts are, therefore, linked by a **cross fall breach clause** that specifies that breach of one contract will be deemed to be a breach of the other contract, and thereby turn them into a single source responsibility contract. Black's Law Dictionary defines that “a severable contract, also termed as divisible contract, is a contract that includes two or more promises each of which can be enforced separately, so that failure to perform one of the promises does not necessarily put the promises in breach of the entire contract”. In terms of this definition, the 'cross fall breach clause', in the present context, settles unambiguously that supply of goods and their transportation to the Contractee's site are not two separate contracts but forms only parts of an indivisible composite contract with 'single source responsibility'. Composite nature of the contract is clear from the clause that defines satisfactory performance of the First Contract (supply of goods) as the time when the goods have been transported to the Contractee's site under the Second Contract. In other words, the First Contract cannot be performed satisfactorily unless the goods have been delivered to the Contractee's site in terms of the Second Contract. Moreover, the discussion in paragraph no. 8 above settles that the First Contract is no contract at all unless tied up with the Second Contract. The two promises – supply of the goods and their transportation to the Contractee's site – are, therefore, not separately enforceable in the present context. The supplies of goods and services of transportation etc are, therefore, naturally bundled. The recipient has not contracted for ex-factory supply of materials, but for the composite supply involving delivery of the goods at the contractee's site, which includes transportation, in-transit insurance etc. Terms of the contracts are such that all these supplies are inseparable and, therefore, naturally bundled.

12. While defining Composite Supply under Section 2(30) of the GST Act, the legislature provides an illustration. It is specified therein that supply of goods, packed and transported with insurance, is a composite supply and supply of goods is the principal supply. The illustration being part of the Section, supplies as that of the applicant's

should be construed as specifically mentioned under the GST Act as Composite Supply with supply of goods as the principal supply and services like transportation, in-transit insurance etc ancillary or incidental to the principal supply.

In view of the foregoing we rule as under:

### **RULING**

Services of transportation, in-transit insurance and loading/unloading, being ancillary to the principal supply of goods, shall be treated to taxation under Section 8 (a) of the GST Act, and the consideration receivable on that account be taxed accordingly.

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

(VISHWANATH)

Member

West Bengal Authority for Advance Ruling

(PARTHASARATHI DEY)

Member

West Bengal Authority for Advance Ruling