



BEFORE THE AUTHORITY FOR ADVANCE RULINGS
for the State of Andhra Pradesh (Goods and Service Tax)
(5th Floor, O/o Chief Commissioner of Commercial Taxes, D.No:5-56, Block-B, R.K
Spring Valley Apartments, Edupugallu, Vijayawada-521151.)

Present:

Sri. J.V.M Sarma (Member)

Sri.Amaresh Kumar (Member)

The 4th day of September 2018

Ruling No. AAR/AP/11(GST)/2018

In

Application No.AAR/16 (GST)/2018

1	Applicant	M/s ANDHRA PRADESH TECHNOLOGY SERVICES LIMITED,R&B BUILDING, 3 RD FLOOR, MG ROAD, VIJAYAWADA- 520010.
2	Jurisdictional Officer	Assistant Commissioner(ST) Patamata, Vijayawada
3	Present for the Applicant	Sri G. Jacob Victor, Executive Director (FAC) (Authorized Representative)
4	Present for the Jurisdictional Officer	No remarks received.
5	Date of Personal hearing	19 th July 2018

Note: Under Section 100 of the APGST Act'2017, an appeal against this ruling lies before the appellate authority for advance ruling constituted under section 99 of APGST Act'2017, within a period of 30 days from the date of service of this order.

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M/s ANDHRA PRADESH TECHNOLOGY SERVICES LIMITED, R&A BUILDING, 3RD FLOOR, MG ROAD, VIJAYAWADA- 520010 (hereinafter also referred as applicant) having GSTIN: 37AABCA7630E3ZW, are engaged in supply of services.

2. The applicant has filed an application in Form ARA-01, dated 10.07.2018, and paid the requisite fee of Rs.10,000 (Ten thousand) Rs.5000 towards SGST, and Rs.5000 towards CGST vide CPIN No.18053700142424, dated 28.05.2018, through online and the acknowledgement number is AD3707180000864, dt. 10.07.2017.

3. **The applicant sought for clarification on the following issues :-**

1. **Whether the e-procurement Transaction Fee collected on behalf of IT E&C department results in supply of goods or services or both, within the meaning of Supply as defined law.**

2. **Whether the Tax liability arises on e-procurement Transaction Fee collected on behalf of ITE&C department.**

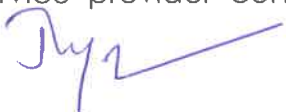
On 12.07.2018, a letter has been addressed to the jurisdictional officer, i.e., Assistant Commissioner(ST) Patamata, for remarks regarding any proceedings are pending disposal against any authority in respect of the issues raised by the applicant. But so far, no reply is received.

4. In response to a hearing notice issued to the applicant, Sri G. Jacob Victor, Executive Director (FAC), an Authorised Representative on behalf of applicant, has appeared on 19.07.2018 and submitted his arguments.

Facts of the case as submitted by the applicant:

5. The Government has taken up e-procurement as one of the major e-Governance initiatives. It automates the procurement and purchase procedures of A.P. Government starting from demand aggregation to procurement and fulfillment of contract. The basic objective of this project is to use the tools of IT to introduce best practices in electronics procurement across Government departments.

6. The Government issued G.O.Ms.No.4, dated 17.02.2005 on business Model and Collection of e-Procurement Transaction Fee Service Tax (para 9(c)). As the project is PPP model, the Services provider use to collect the Transaction Fee and Service Tax and the Service Tax is being paid by the Service Provider. Since, the Service provider contract was expired, vide G.O.Ms.No.11, dated 23.07.2010,



ITE&C Department directed the applicant to open separate account for the collection of e-procurement Transaction Fee through e-Procurement portal.

7. Accordingly, the applicant has opened separate accounts in ICICI, HDFC, AXIS Banks for collection of e-Procurement Transaction Fee including Service Tax. The accounts are exclusively opened for collection of e-procurement Transaction Fee. After completion of month, the amount is being transferred to State Bank of Hyderabad (merged with State Bank of India) from the above bank accounts. The Service Tax collected is being remitted to Service Tax authorities on the applicant Service Tax Registration Number. Now, the Government has implemented GST w.e.f. 01.07.2017 @ 18% in place of Service Tax.

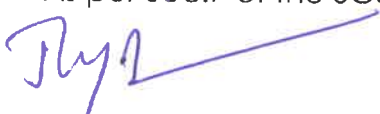
8. Since, 2011 the Service Tax is paid with the applicant Service Tax Registration Number. No objections were raised and the balance Transaction Fee was not shown in the applicant's Balance Sheet, since the amount is pertaining to ITE&C Department. The applicant has not used any amount from the amount accrued from collection of Transaction Fee.

9. The Government has issued G.O.Ms.No.17, dated 31.10.2017 stating the applicant will be paid service charge of 5% on e-procurement Transaction Fee for the services rendered i.e., maintenance of accounts, co-ordination with service provider etc. Further, in the G.O., it is specified that balance 95% of e-procurement Transaction Fee shall be managed by the applicant in a separate account. These funds will be used for innovate projects taken up through the applicant with prior approval of ITE&C Department, and the e-Procurement portal maintenance, support and up gradation etc., as defined in G.O.Ms.No.23, dated 03.08.2005.

10. The Transaction Fee amount belongs to ITE&C Department and the applicant was assigned the responsibility of management of account. The applicant is entitled for service charges @ 5% from the Transaction Fee collected through e-Procurement portal. The applicant is remitting the GST on this service charges collected @ 18% to GST authorities with the applicant's GST Number.

Legal Provisions:

As per Sec.7 of the SGST Act 2017, Supply includes –



- I. **"All forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;**
- II. **Import of services for a consideration whether or not in the course or furtherance of business;**
- III. **The activities specified in Schedule I, made or agreed to be made without a consideration; and**
- IV. **The activities to be treated as supply of goods or supply of services as referred to in Schedule II."**

As per entry no 6 of notification 12/2017-Central tax (Rate), dated : 28th June 2017, under chapter 99, the following services are taxable at 'nil' rate....

"Services by the Central Government, State Government, Union territory or local authority excluding the following services—

- (a) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;
- (b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (c) transport of goods or passengers; or
- (d) any service, other than services covered under entries (a) to (c) above, provided to business entities

Further, G.O.Ms.No.11, issued by Information Technology & Communications Dept., e-Procurement, dt. 23.07.2010, in para-6, ordered as under;

"6. The Government after careful examination hereby issued orders;

- i. **APTS shall open account for the collection of transaction fee through e-procurement platform.**
- ii. **M/s C1 India shall change the account of transaction fee collections to the account of APTS w.e.f. 00.00 hours of 01.08.2010 as C1 India contract is ending on 31.07.2010.**
- iii. **M/s C1 India shall make the necessary changes in this regard in the e-procurement portal as well as in the e-procurement application to enable APTS to collect the online transaction fee from the bidders/suppliers through the e-procurement platform henceforth.**
- iv. **All the bidders shall pay the transaction fee including service tax in favour of APTS w.e.f. 00.00 hours of 01.08.2010. "**

It is also further issued orders in G.O.Ms.No.17, Information Technology & Communications Dept., e-Procurement, dt. 23.07.2010, in para-5, ordered as under;

"5. Government after careful examination, hereby issued the following guidelines for utilization of e-procurement Corpus fund and Transaction fee by amendment/insertion to the orders issued vide G.O.3rd read above (i.e., G.O.No.23, IT E&C Dept., dt. 03.08.2005) based on recommendations of Steering Committee;

- a. **APTS will be paid service charges @ 5% of e-Procurement Corpus fund and e-Procurement Transaction Fee accrued as on 31.03.2017 towards services rendered by APTS. After 01.04.2017, the service charges @5% of e-Procurement Corpus fund and e-Procurement Transaction fee will be paid to APTS on monthly basis.**
- b. **Out of balance 95% of e-Procurement Corpus Fund, 47.50% shall be the share of respective user departments, which floated the tender and 47.50% shall be the share of IT.E&C Department.**
- c. **The IT.E&C Department's share of 47.50% of e-Procurement Corpus fund and balance 95% of e-Procurement Transaction fee shall be managed by APTS in a separate account. These funds will be used for the innovative Projects taken up through APTS with the prior approval of IT.E&C Department and e-Procurement portal maintenance, support, up gradation etc., as defined in G.O.3rd read above."**

Observations of the Authority:

The applicant has sought clarification where the tax liability arises on e-procurement transaction fee collected on behalf of ITE&C Department. As per the information filed by the applicant, it is observed that the applicant is acting as **fund-manager**. The applicant was directed by ITE&C Department, to open an account for collection of Transaction Fee relating to e-Procurement platform. Further, the applicant can not act independently for the utilization of funds without the approval of the ITE &C Department. Hence, the fund utilization, shall be in accordance & with the permission and approval of the ITE&C department only. As seen from the para-5 of G.O.Ms.No.17, dated 31.10.2017, it is clear that the applicant will be paid service charges @ 5% on e-procurement corpus fund and e-procurement Transaction Fee towards services rendered by the applicant, for which they are paying tax as an independent entity for the services rendered to ITE&C. Hence, the transaction fee collected on account of ITE&C Department, as custodian will not attract the liability under the provisions of law.

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It is further submitted by the applicant that they have collected GST @ 18% for certain transactions and requested to provide the procedure for remittance of the same. In this regard, this is to state that as applicant has made an undue enrichment by way of collection of tax which is not legally permitted, is a subject matter of forfeiture under sec. 174(2)(d) & (e). The issue does not fall under the ambit of Advance Ruling Authority. However, the applicant directed to obtain the procedure for remittance from the respective jurisdictional authorities.

In view of the above observations & facts of the case, the ruling is given as under:

RULING

Question No.1:


Whether the e-procurement Transaction Fee collected on behalf of IT E&C department results in supply of goods or services or both, within the meaning of Supply as defined law?

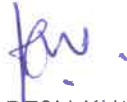
Reply : It is "Supply" as defined in SGST Act,2017 and CGST Act,2017.

Question No.2:

Whether the Tax liability arises on e-procurement Transaction Fee collected on behalf of ITE&C department?

The liability does not arise due to the amounts so collected is for services rendered by State Government i.e., ITE&C Department as per the entry no 6 of notification 12/2017 –Central tax (Rate), dated :28th June 2017


Sd/- (J.V.M SARMA)
Joint Commissioner (State Tax),
Authority for Advance Ruling,
Andhra Pradesh.


Sd/-(AMARESH KUMAR)
Joint Commissioner (Central Tax),
Authority for Advance Ruling,
Andhra Pradesh