


GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
---	---

ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2018/1
(IN APPEAL NO. Advance ruling appeal/GGST & CGST/AO/2018/1)

Date :16/5/2018

Name and address of the applicant	:	M/s. R.B. Construction Company, 225, Someshwar Complex – 2, Jodhpur Cross Road, Satellite, Ahmedabad – 380015.
GSTIN of the applicant	:	24AADFR42887MZS
Advance Ruling No. and Date	:	GUJ/GAAR/R/2017-18/3 dated 17.01.2018
Date of filing appeal	:	17.02.2018
Date of Personal Hearing	:	11.4.2018
Present for the applicant	:	Shri Soham Mashruwala, CA Shri Rohit Bodiwala, Partner

The appellant M/s. R.B. Construction Company is engaged in execution of works contract. The appellant was registered under the erstwhile Gujarat Value Added Tax Act and was holding a permission to pay tax on a lump-sum basis. The appellant was exempt from holding registration under Service Tax regime.

2. The appellant had bid in a tender issued by the Rajkot Municipal Corporation (RMC) before the advent of the Goods and Services Tax Act, to supply pipes, lay the pipes in desired formation as planned by the Government and to test the pipes against the leakages and then commission the project. Based on the schedule of payments, the appellant had to raise an invoice, out of which the Government would retain some part as retention and release the balance amount and upon final completion and testing of the network of the pipeline, the balance dues of the appellant are released marking the completion of the project. The nature of the work of the tender being a works contract, the appellant used to discharge its liability as per the rates specified in the Gujarat Value Added Tax Act, without claiming any benefit of the input tax credit on any items purchased (big or small) and used in the work as specified in the tender.

3. The release of the payment of the supply of pipes is tied up to different stages and laying of pipe lines fixed by the RMC as follows

Sr. No.	Event / Milestone	% of payment released
A	Supply of pipe line (material supply covered in item 2 of BOQ)	90
B	Excavation of trench (only labour item covered item no. 1 of BOQ)	
C	Laying and jointing of the pipe line only labour item covered in item 3 of BOQ	
D	Testing (against leakages) and commissioning of the project only labour item covered in item 3 of BOQ	10

4. The appellant submitted that while the project of RMC was semi-finished, the Goods and Services Tax Act (GST) got implemented, posing a challenge to the appellant to enjoy the credit of material bought in pre-GST era as per the transition provisions. It is submitted that the milestones which are pending / complete are as below.

Event / Milestone	Status
Supply of pipes at location specified by RMC	Completed in pre-GST era
Excavation of trenches and Laying of pipes	Completed in pre-GST era
Testing and commissioning of network of pipeline	Pending and will now be completed in Goods and Services Tax regime

5. In view of the foregoing facts, the appellant raised the following queries before the Advance Ruling Authority :-

- (A) Does the work executed and invoice to be raised for the pending event of testing and commissioning by the applicant after the implementation of the Goods and Services Tax Act amount to supply, and specifically supply of works contract ?
- (B) Is the applicant entitled to enjoy proportionate credit worth 10% duty of excise and VAT paid on materials bought vide invoices showing Excise and VAT separately, under the transition provisions so that there is no double taxation i.e. levy of tax on tax is avoided ?

6. The Advance Ruling Authority, vide Advance Ruling No. GUJ/GAAR/R/2017-18/3 dated 17.01.2018 ruled as follows :-

- (A) The work of laying of underground pipeline network falls under the definition of “works contract” provided under Section 2(119) under the CGST Act, 2017 and the GGST Act, 2017. In respect of that part of supply wherein time of supply is on or after the appointed date, Goods and Services Tax is required to be paid.
- (B) The applicant is not entitled under Section 140(6) of the CGST Act, 2017 and the GGST Act, 2017 to avail input tax credit.

7. Aggrieved by the aforesaid advance ruling, the appellant has filed the present appeal.

8.1 The appellant has submitted that their claim of transition credit must be allowed. It is submitted that only part ownership of the structure is transferred to the customer of the appellant and that the project is still in semi-finished stage. It is submitted that the entire quantity of pipe was supplied to RMC in pre-GST era. The running bills which the appellant had issued would be attuned in a way that 90% of the amount is realized, on laying the pipe and then the further balance 10% would be realized after testing and commissioning. It is submitted that the running bills to be issued post GST would cover two elements i.e. one towards the transfer of balance 10% ownership of pipes and another towards the labor charges. It is submitted that there is no iota of doubt about the fact that only part ownership in works was transferred before 1st July 2017. The appellant submitted that in its case, as the balance 10% ownership was nowhere transferred before the advent of Goods and Services Tax Act, it is entitled to claim part of the transition credit represented by duties and taxes of excise and VAT paid by it on the pipes. It is submitted that this has been absolutely missed out by the Ld. Advance Ruling Authority

and hence, the order of advance ruling authority is bad in law. It is submitted that the project i.e. contract of the appellant is still in work-in-process stage and that only a part ownership of the pipes is transferred as per theory of accretion. When after the applicability of Goods and Services Tax Act, the balance ownership of 10% is passed, in view of the provisions ingrained in Section 140(6), the claim of input credit under transition provisions must be declared as held admissible. The appellant submitted that it is in possession of duty paid documents and for the purchases made within 12 months immediately preceding 1st July, 2017. Thus, the appellant is entitled to claim of proportionate tax credit to the extent ownership of the asset created under the contract was not transferred before 1st July, 2017.

8.2 The appellant submitted that the pronouncement of the advance ruling authority is passed after the expiry of time-limit to file transition form, the appellant must be now allowed to file transition form in view of the result of the appeal. It is also submitted that the order of advance ruling authority was pronounced after expiry of 90 days is time-barred, therefore the order is passed beyond jurisdiction and that query of the appellant must be declared in favour of the appellant and that transition credit must be declared to be allowed. It is also submitted that a delayed order doesn't bind the appellant.

8.3 The appellant submitted that the transition provisions ingrained in the Goods and Services Tax Act have the sole reason that there is no case of double taxation and that the registered person nowhere loses any credit of the duties paid under the erstwhile enactments which are now repealed. It follows from the facts of the case that the work of the appellant is in semi-finished stage and that under a works-contract, it is never possible to identify items in a semi-finished stage. In the event that the claim of transition credit is not allowed, it would tantamount to twice taxation on the same amount which never is envisaged in the Goods and Services Tax Act. The appellant submitted that the denial of input tax credit under transition provisions is denial of constitutional right of equality as tax is already paid once and the benefit of the same must be allowed, hence the claim of transition credit must be allowed.

8.4 The appellant further submitted that in the event that the claim of transition credit is being denied on the ground that there is no supply, it must be ordered that the work which the appellant is now doing after the implementation of Goods and Services Tax Act and the payments which are now realized towards the cost of pipes must be declared as other-wise than supply and no liability to pay tax (GST) arises.

FINDINGS :

9. We have considered the submissions made by the appellant in the appeal as well as at the time of personal hearing.

10.1 As regards the admissibility of transitional credit on pipes used in pipeline network, the applicant has referred to sub-section (6) of Section 140 of the Central Goods and Services Tax Act, 2017 (herein after referred to as the 'CGST Act, 2017' and the Gujarat Goods and Services Tax Act, 2017 (herein after referred to as the 'GGST Act, 2017'), which reads as follows :-

“(6) A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely :—

- (i) *such inputs or goods are used or intended to be used for making taxable supplies under this Act;*
- (ii) *the said registered person is not paying tax under section 10;*
- (iii) *the said registered person is eligible for input tax credit on such inputs under this Act;*
- (iv) *the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of inputs; and*
- (v) *such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.”*

10.2 Thus, as per sub-section (6) of Section 140 *ibid*, a registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law, is entitled to take credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, subject to fulfillment of conditions prescribed therein. In respect of a registered person, who was not liable to be registered under then existing law; or who was engaged in the manufacture of exempted goods or provision of exempted services, similar provisions are contained in sub-section (3) of Section 140 *ibid*.

10.3 The entire quantity of pipe was supplied by the appellant to RMC before the appointed date. The work of supply of pipes at location specified by RMC and work of excavation of trenches and laying of pipes had already been completed before the appointed date and only the work of testing and commissioning of network of pipeline was pending on the appointed date and will now be completed in the Goods and Services Tax regime. In view of this factual position, the appellant cannot be said to be holding pipes in stock as inputs or inputs contained in semi-finished or finished goods, on the appointed day.

10.4 The contention of the appellant in support of their claim of transitional credit that only a part ownership of the pipes is transferred as per theory of accretion as the project (contract) of the appellant is still in work-in-process stage is also found misplaced inasmuch as the work of supply of pipes at location specified by RMC and work of excavation of trenches and laying of pipes had already been completed before the appointed date and only the work of testing and commissioning of network of pipeline was pending on the appointed date.

10.5 The appellant has submitted that they are entitled to claim proportionate tax credit to the extent ownership of the asset created under the contract was not transferred before 1st July, 2017. It is also submitted that the work of the appellant is in semi-finished stage and under a works-contract, it is never possible to identify items in a semi-finished stage. However, as already noted above, sub-sections (3) and (6) of Section 140 of the CGST Act, 2017 and GGST Act, 2017 enables the registered person to take credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, subject to fulfillment of conditions prescribed therein. These provisions do not envisages entitlement of transitional input tax credit on proportionate basis.

10.6 Section 2(52) of the CGST Act, 2017 and the GGST Act, 2017 defines the term ‘goods’ as every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. The work of

the appellant falls within the definition of 'works contract' as given under Section 2(119) of the CGST Act, 2017 and the GGST Act, 2017 as the construction of pipeline network becomes immovable property. Therefore, even if the contract of the appellant was on work-in-process stage on the appointed day, the same would not be covered within the terms 'semi-finished or finished goods' as the term 'goods' covers movable property and not immovable property.

10.7 In view thereof, the appellant is not entitled to avail input tax credit of Central Excise Duty and VAT paid on pipes, under sub-section (3) and (6) of Section 140 of the CGST Act, 2017 and the GGST Act, 2017.

11. As the appellant is not found entitled to avail input tax credit under Section 140 of the CGST Act, 2017 and the GGST Act, 2017, the question of filing of form for transitional credit (Form TRAN – 1) by the appellant beyond stipulated time limit does not arise. Even otherwise, the appellant was required to file form for claiming of transitional credit (Form TRAN -1) on self assessment basis and it was not dependent upon the outcome of the proceedings pending before the advance ruling authority.

12.1 In respect of alternate plea raised by the appellant that in the event of denial of claim of transitional credit on the ground that there is no supply, there should not be liability to pay Goods and Services Tax on work carried out and payment received after implementation of the Goods and Services Tax Act, it is observed that the appellant is found ineligible to avail transitional credits, not on the ground that there is no supply, but on the grounds discussed above that the same is not found covered under the provisions of Section 140 of the CGST Act, 2017 and the GGST Act, 2017.

12.2 The advance ruling authority has held, in the impugned order, that the appellant is engaged in the activity of construction of pipeline network which becomes immovable property wherein transfer of property in goods is involved, hence the said activity falls within the definition of "works contract" under Section 2(119) of the CGST Act, 2017 and the GGST Act, 2017, which aspect has not been disputed by the appellant.

12.3 As per clause 6(a) of the Schedule II read with Section 7 of the CGST Act, 2017 and the GGST Act, 2017, the composite supply, namely works contract as defined in clause (119) of section 2 shall be treated as a supply of services. The provisions related to determination of time of supply of services are contained in Section 13 of the CGST Act, 2017 and the GGST Act, 2017.

12.4 Therefore, the part of the supply made by the appellant wherein time of supply of service is on and after the appointed date (01.07.2017) i.e. after implementation of the CGST Act, 2017 and the GGST Act, 2017, the appellant is required to discharge Goods and Services Tax liability.

13. In view thereof, we confirm the ruling given by the advance ruling authority to the extent it is appealed before us, and rule as follows :-

RULING

(A) M/s. R.B. Construction Co. (GSTIN 24AADFR42887MZS) is not entitled, under sub-sections (3) and (6) of Section 140 of the CGST Act, 2017 and the GGST Act, 2017 to avail input tax credit.

(B) In respect of that part of supply made by M/s. R.B. Construction Co., wherein time of supply is on or after the appointed date, Goods and Services Tax is required to be paid.

(Ajay Jain)
Member

(Dr. P.D. Vaghela)
Member

Place : Ahmedabad
Date : 16/5/2018