



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 Visweshwar Rao, Additional Commissioner (State Tax)

A.R.Com/27/2018

Date.06-08-2021

TSAAR Order No.06/2021

[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. SHV Energy Private Limited, Super Gas House, IV Floor, SDE Serene Chamber, 8-2-334, Road No.7, Banjara Hills, Hyderabad – 500 034,Telangana, (GSTIN No. 36AACCS8676D1Z3) have 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 to the earlier, henceforth 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 query raised by the applicant falls within the ambit of Section 97(2)(e) of the GST ACT read with 20(xviii) of the IGST Act, 2017. The Applicant enclosed copies of challans as proof of payment of Rs. 5,000/- for SGST and Rs. 5000/- for CGST towards the fee for Advance Ruling. The Applicant has declared that the questions raised in the application have neither been decided by nor are pending before any authority under any provisions of the GST Act. The application is therefore, admitted.

4. Facts of the Case:

M/s. SHV Energy Private Limited are suppliers of LPG to domestic and industrial users. In the application they have submitted that they enter into LPG supply agreement with industrial users for longer period ranging from 5 to 10 years. They setup a structure called manifold at the premises of the recipient for supply of LPG. This manifold consists of LPG cylinders, regulators, primary piping, pressure regulator systems, -- etc., the ownership of the structure lies with the applicant. The purchaser pays rental charges at the rate of Rs.5,000/- per month for this structure.

Since setting up of this system involves substantial investment the customer is obliged to purchase LPG exclusively from the applicant and the conditions of the agreement specify the minimum quantity lifted from SHV. In the event of the purchaser not lifting the minimum quantity such purchaser has to pay commitment charges at the rate of Rs.2,900/- per metric ton of such shortfall in quantity.

5. Clarification Sought:

Based on the facts mentioned hereinafter, the applicant sought Advance Ruling on the following issues:

- a. Whether the impugned supply can be regarded as 'composite supply' and whether the rate of tax of the principal supply could be adopted for the whole of supplies?
- b. The applicant hereby seeks determination in respect of the following specific questions:
 - i. Whether sale of LPG, Collection of Take or Pay Charges for not lifting minimum assured quantity and rental charges for supplier gas system installed at the customer premises to store the LPG which is a condition precedent for supply of LPG be treated as composite supply under section 2(30) of GST Act, 2017?
 - ii. Whether supply/sale of LPG be treated as principal supply for above mentioned transaction?

On Verification of basic information of the applicant, it is observed that the applicant, it is observed that the applicant falls under State Jurisdiction, i.e. Assistant Commissioner(State Tax), Khairatabad Circle,. Accordingly, the application has been forwarded to the jurisdictional officer. and a copy marked to the central tax authorities to offer their remarks as per the Section 98(1) of TSGST Act, 2017.

6. Personal Hearing:

Mr. Rahul Bhavani, CA & B. Rajitha Boorgu, CA, authorized representative of M/s. SHV Energy Private Limited, appeared and Partially heard the case on 20.01.2020 and reiterated the facts mentioned above and sought for ruling in respect of the query raised in their application.

However, The State member was retired from Government Service on Superannuation on 31.01.2021 and hence order were not passed. Government vide GO. Rt. No. 216, Rev(CT-II) Dept, Dt.16.06.2021 have nominated Sri S.V. Kasi Visweshwar Rao as member to The Authority for Advance Ruling and hence the case was posted a fresh on 09.07.2021. Heard the case

The authorized representative Smt. Rajitha Boorugu, CA & AR reiterated their averments in the application submitted and contended as follows:

1. That they are making supply of LPG to their industrial customers and for this purpose they have erected a supplier gas system which is a movable property. That they can supply of LPG only through this structure. That they would like to ascertain if the 'lease rentals' form a component of composite supply, wherein the principal supply is supply of LPG.
2. That they are entering into an agreement with their customers for lifting a specific quantity of LPG. Whenever the customer defaults to lift the minimum quantity they are levying 'Take or Pay charges' on such defaulters. That they would like to ascertain if the 'Take or Pay charges'

form a component of composite supply, wherein the principal supply is supply of LPG.

In the additional grounds submitted at the time of hearing the authorized representative made additional submissions in order to buttress their contentions as follows:

- a. That they primarily supply LPG to industrial consumers and in order to facilitate them SGS supply system is installed in the premises of their consumers.
- b. That LPG is sent to the consumers premises in form of liquid and the apparatus installed by them vaporises it into gaseous form.
- c. That the SGS cannot be installed to any customer standalone. And that the ownership of SGS remains with the applicant and the recipient of supply pays lease rental on the same.
- d. That to ensure minimum quantity of purchase by their customers there is a clause in the agreement which obliges the purchaser to pay 'take or pay' charges at specified rates. Where the recipient is unable to purchase the agreed quantity then he has to pay the said 'take or pay' charges for the deficit quantity not purchased.
- e. For the reason that all the above 3 supplies are made in conjunction with each other i.e., LPG, SGS & 'Take or Pay' Charges, these are naturally bundled supplies amounting to composite supply of which LPG is the principal supply and the rate of tax applicable to LPG apply to other 2 components of bundled supply.
- f. The applicant relied on the following to buttress his arguments
 - i. Diebold Systems (P) Ltd V. CST (2008 (12) STT 346)
 - ii. Kone Elevators India (P) Ltd v. CST, [2009 (20) STT 447]
 - iii. M/s. Kingfisher Training & Aviation Service Ltd Vs CST Mumbai [2016 (46) S.T.R. 254 (Tri. – Mumbai)]
 - iv. NIKHIL COMFORTS 2020(41) G.S.T.L. 417 (App. A.A.R. – GST Mah.)
 - v. Mfar Hotels & Resorts Pvt. Ltd., 2020 (42) G.S.T.L. 470 (A.A.R. – GST-T.N.)
 - vi. Marco Media Digital Imaging Pvt. Ltd., 2020 (42) G.S.T.L. 401 (A.A.R. – GST – T.N.)
 - vii. Ambara 2020 (42) G.S.T.L. 314 (A.A.R. – GST – Kar.)
 - viii. NEC Technologies India Pvt. Ltd., 2020 (38) G.S.T.L. 222 (A.A.R. – GST – Guj.)
 - ix. Doctors Academy of Educational Society 2020 (38) G.S.T.L. 186 (Appellate Authority – A.P)
 - x. Aquaa Care (Surat) RO Technologies Pvt. Ltd., 2020 (36) G.S.T.L. 115 (A.A.R. – GST – Guj.)
 - xi. Torrent Power Ltd.2020 (34) G.S.T.L. 385 (Guj.)
 - xii. In Re : Nr Energy Solutions India Pvt. Ltd., 2019 (26) G.S.T.L. 280 (A.A.R. – GST)
 - xiii. In re : Khedut Hat 2018 (18) G.S.T.L. 75 (A.A.R. – GST)
 - xiv. M/s Radhey Krishna Technobuild (P) Ltd 2019-VIL-760-CHESAT-ALH-ST.

7. Discussion & Findings:

We have considered the submissions made by the applicant in their application for advance ruling as well as the additional submissions made

by Smt. Rajitha Boorugu, CA & AR during the personal hearing. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts. At the outset, we would like to state 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 such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the TGST Act.

1. The applicant is in the business of sale of LPG to industrial customers.
2. They have installed Supplier Gas System (SGS) consisting of 30 Nos of LPG cylinders, Regulators, Primary pressure regulating systems, Vaporizers etc.
3. As seen from the agreement a minimum quantity of LPG has to be necessarily purchased by the buyer. And if such minimum amount is not purchased they shall pay by way of commitment charges i.e., 'Take or Pay' Charges at the rate of Rs.2900/MT of such shortfall in quantity. This amount shall be paid once in a quarter.
4. As seen from the Section 2(31) of the CGST Act, monetary value of any act or forbearance constitutes consideration of supply. Therefore the above commitment charges are taxable under GST Act.
5. Now the applicant wants a clarification as to whether the sale of LPG, lease of SGS manifold and 'Take or Pay' Charges together form a composite supply and if they form a composite supply whether LPG is the principal supply.
6. Composite supply is defined in the GST Act in Section 2(30) as follows "Composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are **naturally bundled** and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.
Illustration: Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply.
7. As seen from the definition a composite supply is essentially a naturally bundled supply where two or more different supplies invariably exist along with each other.

The Hon'ble High Court of Kerala in the case of Abott Health Care Pvt. Ltd., (2020) 74 GSTR 37 (Kerala) held that a composite supply must take into account supplies as affected at a given point in time on "as is where is" basis.

Therefore a naturally bundled supply should possess the following attributes (as mentioned in Education Guide on Taxation of Services published by CBE & C on 20.06.2012 at Para 9.2.4):

- a. There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.
- b. The elements are normally advertised as a package.
- c. The different elements are not available separately
- d. The different elements are integral to one overall supply - if one or more is removed, the nature of supply would be affected.

Further the illustration in the definition clarifies the context of composite supply. As seen from the illustration the supply of service i.e., insurance and goods go alongside each other. The Hon'ble Supreme court of India in a catena of case law has ruled that

illustrations in a statute are part of the statute and help to elucidate the principle of the Section (Dr. Mahesh Chandra Sharma Vs Smt. Raj Kumari Sharma – AIR 1996 SC 869). Therefore a composite supply should be similar to a supply mentioned in the illustration to the definition in Section 2(30), where two or more taxable goods or services are supplied along with each other to constitute a composite supply.

‘Take or Pay’ contract is a contract which requires the buyer to either purchase and receive a minimum amount of product at a set price(“take”) or pay for this minimum without taking immediate delivery(“pay”). ‘Take or Pay’ clauses in a contract ensure compensation for the seller in the event buyer does not purchase a specified quantity of goods or services in the course of a continuous supply. The Hon’ble Courts of India in a catena of cases held that ‘Take or Pay’ charges are meant to compensate for breach of a contract.

8.In the case of applicant ‘Take or Pay’ Charges are evidently compensation for breach of contract and a penalty stipulated to be paid to the applicant by his buyer for not purchasing the minimum quantity specified in the agreement. Thus these charges come into existence only when there is no supply of LPG. That means supply of LPG and ‘Take or Pay’ Charges are mutually exclusive and can never exist together. The forbearance comes into existence only upon breach and hence the requirements of a composite contract mentioned above are not fulfilled. Further the cases relied by the applicant do not contain a supply in which breach of contract is adjudged.

Hence ‘Take or Pay’ Charges cannot form a part of composite supply along with other components of composite supply.

Advance Ruling

8. In view of the observations stated above, the following ruling is issued :

Question Raised	Advance Ruling Issued
1. Whether sale of LPG, Collection of Take or Pay Charges for not lifting minimum assured quantity and rental charges for Supplier Gas System installed at the customer premises to store the LPG which is a condition precedent for supply of LPG be treated as composite supply under section 2(30) of GST Act,2017?	Sale of LPG, Collection of Take or Pay Charges for not lifting minimum assured quantity and rental charges for supplier gas system installed at the customer premises do not form a composite supply.
2. Whether supply/sale of LPG be treated as Principal Supply for above mentioned transaction?	Do not arise in view of the above.

Sd/- S.V. Kasi Visweshwar rao
ADDL. COMMISSIONER (State Tax)

Sd/- B. Raghu Kiran
JOINT 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. SHV Energy Private Limited,
Super Gas House, IV Floor,
SDE Serene Chamber, 8-2-334,
Road No.7, Banjara Hills,
Hyderabad – 500 034.

Copy submitted to:

1. The Commissioner (State Tax) for information

Copy to:

1. The Commissioner (Central Tax), Medchal Commissionerate, 11-4-649/B, 1st, 2nd, 3rd and 4th Floors, Opp. Mehedi Function Palace, Lakdikapool, Hyderabad - 500 004.
2. The Joint Commissioner (State Tax), Punjagutta
3. The Assistant Commissioner (ST), Khairatabad Circle.

//t.c.f.b.o//

Superintendent (Grade-I)