

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



ADVANCE RULING (APPEAL) NO. GUJ/GAAR/APPEAL/2024/07
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2022/AR/04)

Date : 30.12.2024

Name and address of the appellant	: M/s. S P Singla Constructions P Ltd., Opp. Raj Bhawan, Rukmani nagar, Devbhoomi, Dwarka, Gujarat- 361 335
GSTIN of the appellant	: 24AAGCS5773B1ZG
Advance Ruling No. and Date	: GUJ/GAAR/R/2022/06 dated 07.03.2022.
Jurisdiction Office	: Center Commissionerate – Rajkot Division - Jamnagar-II Range -Dwarka
Date of appeal	: 30.04.2022
Date of Personal Hearing	: 15.10.2024
Present for the appellant	: Shri Rajat Mittal, Advocate, Shri Sanjay Shah, Advocate Shri Mohinder Kumar, Head Taxation, M/s. S P Singla Constructions P Ltd..

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act, 2017' and the 'GGST Act, 2017') are *pari materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean reference to the corresponding similar provisions in the GGST Act, 2017.

2. The present appeal has been filed under Section 100 of the CGST Act, 2017 and the GGST Act, 2017 by M/s. S P Singla Constructions P Ltd., (hereinafter referred to as Appellant) against the Advance Ruling No. GUJ/GAAR/R/2022/06 dated 07.03.2022.

3. Briefly, the facts are enumerated below for ease of reference:

- the appellant undertakes **EPC** [Engineering, Procurement, Construction] contract for construction of bridges & other projects for Government of India/State Government;



- as a sample, EPC contract dated 15.1.2018, relating to construction of *4 lane Signature bridge between Okha and Beyt Dwarka on NH-51* is submitted, which has been entrusted by Ministry of Road Transport and Highways, New Delhi [**'authority'**/MORT&H] to the appellant.
- in terms of the EPC contract, the authority gives an interest bearing advance equal to 10% of contract price for mobilization expenses, to extend financial assistance to mobilize resources for timely & smooth take off of the project;
- this mobilization advance, is in lieu of counter bank guarantee [BG] of 110% of the advance which would remain effective till completion and full repayment of the advance;
- the payment for construction work is done by the authority on completion of payment stage, as defined in the EPC contract & post this the appellant raises the invoice; a part of the mobilization advance is reduced in proportion to the value of the work completed, as shown in the invoice; BG is also reduced in proportion to the mobilization advance adjusted in the invoices;
- the appellant, in his books, shows mobilization advance as a non-current liability, which is thereafter provisionally transferred to sale/consideration for service as and when proportionate amount is deducted from the invoices raised on the customers.

4. In view of the foregoing facts, the appellant had sought Advance Ruling on the question as to what is the time of supply for the purpose of discharge of GST in respect of mobilization advance received by it for construction services.

5. Consequent to hearing M/s. S P Singla Constructions P Ltd., the Gujarat Authority for Advance Ruling [GAAR], recorded the following findings *viz*

- that M/s. S P Singla does not contest the taxability on said Advance, but seeks a ruling for deferment of GST on such advance from date of its receipt to date of issue of invoice;
- that in terms of sections 2(31),13(1), 13(2), notification No. 66/2017-CT dtd 15.11.2017, circular No. 26/26/2017-GST dtd 29.12.2017, the time of supply of services on advance received, is date of its receipt;
- that case laws pertaining to service tax, is not applicable to GST;
- the argument, that full advance is re-paid is misleading as advance is adjusted into payments;
- that neither section 13(2) nor proviso to section 2(31) differentiates between an advance & an interest bearing advance;
- that contractual BG shall not obscure the provision of time of supply for services on advance received;

- that advance received is adjusted towards the bill raised to its service recipient; the argument that advance is not towards discharge of recipients obligation is without merit;
- that the appellant has misplaced its reliance that the said advance is a deposit;
- that even as per the GST flyer no. 6 dated 1.1.2018, the time of supply to the extent advance received shall be the time of receipt of advance.

6. The GAAR, vide the impugned ruling dated 22.3.2022, held as follows:

Ruling

We note that SPSC does not contest the taxability on said Advance, but is before us for its deferment from date of its receipt to date of issue of invoice. We pass the Ruling based on Section 13(2) CGST Act read with its explanation (i).
Time of Supply, on said Advances received by SPSC for Supply of its Service, is the date of receipt of said advance.

7. Aggrieved by the aforesaid advance ruling, the appellant is before us, raising the following contentions, *viz*

- mobilization advance is not in the nature of *payment* & is not taxable at the time of receipt; that it is merely a transaction in money as at the time of receipt of advance, it is not in the nature of supply of goods/service but merely a transaction in money; that it will not be susceptible to GST -as there is no supply & since it is not in the nature of *consideration*;
- that consideration excludes deposit unless the supplier applies such deposit as consideration/payment towards a supply at which point it ceases to be a deposit & becomes a payment/consideration;
- that when a BG is given to secure mobilization advance it cannot be said to be towards discharge of an obligation; that where money is paid in discharge of an obligation, there is no question of repayment of the said sum;
- that if the mobilization advance was in the nature of a payment, there would be no requirement for the appellant to give a BG;
- that since mobilization advance is received towards procurement of machinery, ie goods, in terms of notification No. 66/2017 dated 15.11.2017, CBIC has exempted payment of GST on advance paid on goods;
- that the time of supply in respect of mobilization advance would be when it is set off or appropriated against the consideration.

8. Personal hearing in the matter was held on 15.10.2024, wherein Shri Rajat Mittal, Advocate, Shri Sanjay Shah, Advocate, Shri Mohinder Kumar, Head Taxation of the appellant, appeared and reiterated the submissions made in the appeal. During the course of personal hearing the authorized representative submitted a compilation consisting of the below mentioned case laws *viz*

- Five Star Construction P Ltd¹
- Punjab Tractors Cooperative Multi purpose Society Ltd²
- Thermax Instrumentation Ltd³
- SMS Infrastructure Ltd⁴
- Gammon India Ltd⁵
- Reliance Infratel Ltd⁶
- Ario Infrastructure P Ltd⁷
- Thermax Instrumentation Ltd⁸
- Ahlcon India P Ltd⁹

FINDINGS

9. We have carefully gone through and considered the appeal papers, written submissions filed by the appellant, submissions made at the time of personal hearing, the Advance Ruling given by the GAAR and other materials available on record.

10. The primary issue to be decided is as to what is the time of supply for the purpose of discharge of GST in respect of the mobilization advance received by the appellant. The GAAR, as is already mentioned *supra*, has held that the time of supply in respect of the mobilization advance received by the appellant, is the date of receipt of the said advance.

11. The appellant, as a part of the appeal papers, has enclosed certain extracts of the EPC [Engineering, Procurement and construction] agreement for construction of new 4-lane signature bridge connecting missing link between Okha and Beyt Dwarka on EPC mode including construction of approaches on new national highway No. NH-51. The relevant clauses, as culled out from the extracts provided, is as under:

19.2 Advance Payment

19.2.1 The Authority shall make an interest bearing (@ Bank Rate^s) advance payment (the "Advance payment"), equal in amount to 10 (ten) percent of the contract price, exclusive for mobilization expenses. The advance payment for mobilization expenses shall be made in two instalments each equal to 5% (five

¹ Order dated 2.11.2012 in ITA no. 1861/Del/2011

² Manu/PII/0141/1997

³ 2016 (42) STR 19 (Tri-Bom)

⁴ 2017 (47) STR 17 (Tri-Bom)

⁵ 2021 (44) GSTL 573 (Tri-Bom)

⁶ 2015 (39) STR 824 (Tri-Bom)

⁷ 2016 SCC Online Del 5371

⁸ 2019 (22) GSTL 89 (Tri-Bom)

⁹ Order dated 19.10.2012 in ITA no. 1924/Del/2011

percent) of the contract price. The second 5% (five percent) mobilization advance would be released after submission of utilization certificate by the contractor for the first 5% advance already released earlier.

In addition to the above, the Authority shall make an additional interest-bearing advance payment against newly purchased key construction equipment required for the works as per agreed construction programme and brought to the sites, if so requested by the Contractor subject to the same terms and conditions specified for Advance payment mobilization expenses in this Agreement. The maximum of such advances shall be 5% (five percent) of the Contract price against Bank Guarantee. This advance shall be further subject to the condition that (i) such new equipment are considered by the Authority's Engineer to be necessary for the works and (ii) these new equipment should be procured in the name of Contractor and is verified by Authority's Engineer to have been brought to site.

The Advance payment for mobilization expenses and for acquisition of key new construction equipment would be deemed as interest bearing advance at Bank rate, to be compounded annually. The interest would be recovered along with the recovery of mobilization advance payment in equal installments as per provision laid down for the mobilization advance recovery.

19.2.2 The contractor may apply to the Authority for the first instalment of the Advance payment at any time after the appointed date, along with an irrevocable and unconditional guarantee from a Bank for an amount equivalent to 110% (one hundred and ten percent) of such instalment, substantially in the form provided at Annex-III of Schedule-G, to remain effective till the complete and full repayment thereof.

19.2.4 At any time after 60 (sixty) days from the Appointed date, the contractor may apply to the Authority for the second instalment of the advance payment along with an irrevocable and unconditional guarantee from a Bank for an amount equivalent to 110% (one hundred and ten percent) of such instalment, substantially in the form provided at Annex-III of Schedule-G, to remain effective till the complete and full repayment thereof.

19.2.7 The advance payment shall be repaid through percentage deductions from the stage payments determined by the Authority's Engineer in accordance with Sub-Clauses 19.5, as follows:

- (a) deductions shall commence in the next stage payment statement following that in which the total of all certified stage payments (excluding the advance payment and deductions and repayments of retention) exceeds 20% (twenty percent) of the contract price; and
- (b) deductions shall be made at the rate of 15% (fifteen percent) of each Stage payment statement until such time as the advance payment has been repaid; provided that the advance payment shall be completely repaid prior to the time when 80% (80 percent) of the contract price has been certified for payment.

19.2.8 If the advance payment has not been fully repaid prior to Termination under clause 21.7 or Article 23, as the case may be, the whole of the balance then outstanding shall immediately become due and payable by the contractor to the Authority. Without prejudice to the provisions of clause 19.2.7, in the event of termination for contractor default, the Advance payment shall be deemed to carry interest at the rate of 10% (ten percent) per annum from the date of advance payment to the date of recovery by encashment of the Bank Guarantee for the Advance payment. For the avoidance of doubt the aforesaid interest shall be payable on each instalment of the advance payment regardless of whether the instalment or any part thereof has been repaid to the authority prior to the termination.

19.3 Procedure for estimating the payment of Works

19.3.1 The Authority shall make interim payments to the Contractor as certified by the Authority's Engineer on completion of a stage, in a length, number or area as specified, and valued in accordance with the proportion of the Contract price assigned to each item and its stage in Schedule-II.

12. In terms of section 2(119), works contract *inter alia* means a contract for construction, completion, erection, or commissioning, etc of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract. Further, in terms of Sr. No. 6(a) of schedule-II to CGST Act, 2017, provision of works contract will be treated as supply of services. Thus, EPC agreement between the appellant and MORT&H for construction of new 4-lane signature bridge connecting missing link between Okha and Beyt Dwarka, is a supply of service.

13. Section 2(31) defines the term 'consideration' as under viz

(31) "consideration" in relation to the supply of goods or services or both includes-
(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

Likewise, time of supply of services, in terms of section 13, states as follows viz [relevant extracts]

Section 13. Time of Supply of Services

(1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of services shall be the earliest of the following dates, namely:-

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under ¹[****] section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under ¹[****] section 31 or the date of receipt of payment, whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply.

Provided that

*Explanation -For the purposes of clauses (a) and (b)-**(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;**(ii) "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.*

14. A conjoint reading of both the sections 2(31) and 13, leads to a conclusion that the liability to pay tax on services shall arise at the time of supply, which will be the earliest of the date of issue of invoice by the supplier, if it is issued within the prescribed period or the date of receipt of payment, whichever is earlier. The explanation to section 13(2) through a deeming provision states that the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment & that "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier. Further, the proviso to section 2(31) goes on to add that a deposit in respect of the supply of services shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply.

15. A perusal of clause 19.2.7, reproduced *supra*, spells the mode of repayment of mobilization advance/advance payment. What it contemplates is that the advance payment shall be repaid through percentage deductions from the stage payments determined by the Authority's Engineer in accordance with sub-clause 19.5. As the mobilization advance/advance payment, is adjusted as a consideration towards the said supply, the proviso to section 2(31), reproduced *supra*, stands satisfied & hence, the mobilization advance/advance payment is a consideration as defined under section 2(31) of the CGST Act, 2017, in respect of the said supply of services.

16. In view of the foregoing, the averment of the appellant that the mobilization advance is not in the nature of payment; that it is merely a transaction in money; that consideration excludes deposit, is not a legally tenable argument. Further, we concur with the findings of the GAAR, that the time of supply in respect of the mobilization advance/advance payment

received by the appellant in respect of supply of service, is the date of receipt of such advance

17. We find that the applicant has raised an averment that when a bank guarantee is given to secure mobilization advance, it cannot be said to be towards discharge of an obligation; that where money is paid in discharge of an obligation, there is no question of repayment of the said sum and that if the mobilization advance was in the nature of a payment, there would be no requirement for the appellant to give a BG. The averment stands addressed in para 48(iii) of the impugned ruling of GAAR. We concur with the same. Even otherwise, we find that nothing is produced by the appellant to repudiate the said findings.

18. The next averment raised by the appellant is that since mobilization advance is received towards procurement of machinery, i.e. goods, in terms of notification No. 66/2017 dated 15.11.2017, CBIC has exempted payment of GST on advance paid on goods. We do not find much merit to the averment. The question of applicability of notification No. 66/2017-CT (Rate) dated 15.11.2017, does not arise, owing to the fact that in paragraph 12, we have already held that in terms of the agreement between the appellant and MORT&H, the supply is in respect of services. The said notification is applicable only in respect of supply of goods.

19. The next averment raised is that the mobilization advance is a short term advance & recorded as such in books of accounts; that it is not a revenue; that it being a deposit, is not a consideration. This averment belies the fact and our findings as recorded in para 15, *supra*.

20. Lastly, we find that the appellant has relied upon several citations, a compilation of which is submitted during the course of personal hearing. On going through the same, it is observed as under:

- Five Star Construction P Ltd, Punjab Tractors Cooperative Multipurpose Society Ltd, and M/s. Ahlcon India P Ltd., *ibid*, pertain to Income Tax Act and is therefore, not relevant.
- Thermax Instrumentation Ltd., SMS Infrastructure Ltd. and Gammon India Ltd. *ibid*. The case law is not applicable to the present dispute,

owing to the fact that the definition of 'consideration' as per Section 67 under the Finance Act, 1994 and under the CGST Act, 2017 are different.

- Reliance Infratel Ltd, *ibid*. On going through the case law, it is observed that the facts are different. The Hon'ble Tribunal in the case concluded that a combined reading of clauses 4.1 & 4.2 and 11 of Master Service Agreement, does not lead to a conclusion that the amount which was received by the appellant was in the nature of advances for the services to be rendered. This not being the factual position in respect of the mobilization advance received by the appellant in the present dispute, this judgement would not be of any help to the appellant.
- Ario Infrastructure P Ltd, *ibid*. The facts in the dispute, the law involving the dispute not being the same, the reliance on this case law is legally not tenable.

21. In view of the above findings, we reject the appeal filed by appellant M/s S P Singla Constructions P Ltd., against Advance Ruling No. GUJ/GAAR/R/2022/06 dated 07.03.2022 of the Gujarat Authority for Advance Ruling.


(Rajeev Topno)
Member (SGST)




(B V Siva Naga Kumari)
Member (CGST)

Place: Ahmedabad

Date: 30.12.2024