

## **Tax Alert: No GST on mobilisation advance for construction service received prior to GST implementation, says Tamil Nadu AAR**

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## Summary

The Tamil Nadu Authority for Advance Ruling (AAR) in a recent case held that the Goods and Services Tax (GST) is not payable on mobilisation advance that was received prior to implementation of GST. The AAR further said the GST transitional provisions shall also not apply to remaining unadjusted instalments. The AAR refused to comment on the eligibility of input tax credit (ITC), saying it is not within its ambit.

## Facts of the case

- The applicants<sup>1</sup> are engaged in the business of construction dealing with various clients under composite works contracts, involving supply of both goods and services.
- The applicant had entered into an agreement with Christian Medical College (CMC) for construction of service and teaching facility for CMC.
- As per the agreement, CMC was required to pay mobilisation advance (equivalent to 5% of contract price) to the applicant.
- The applicant submitted that the mobilisation advances was received during pre-GST regime and applicant has paid applicable service tax in relation thereto. However, no value added tax (VAT) was paid on the mobilisation advance as VAT would be payable subsequently at the time of charging running bill on the gross amount,
  - Applicability of the GST on such instalments of transitioned mobilisation advance
  - ITC eligibility on service tax paid on such advance which was transferred from pre-GST period through TRAN-1<sup>4</sup> return filed as per transitional provisions.

## Tamil Nadu AAR observations and order

- **Transitional provisions not applicable:** The AAR observed that the transitional provision<sup>5</sup> is applicable with respect to transactions in which both VAT and service tax were payable and on which GST would be leviable to the extent supply is made after the appointed date for the recipient who has actually paid the tax. In the case at hand, the applicant has paid service tax on the advance received but no VAT has been paid/received on that part of the mobilisation advance and therefore, the transitional provisions is not applicable to the applicant.

<sup>1</sup> M/s Shapoorji Pallonji and Company Private Limited

<sup>3</sup> Section 142(11)(c) of the CGST Act, 2017

<sup>4</sup> Section 142(11)(c) of the CGST Act, 2017

- including the portion of mobilisation advance being adjusted thereon.
- The applicant sought advance ruling on the following questions:
    - Applicability of transitional provisions<sup>2</sup> on remaining instalments of the advance, which transitioned into the GST regime and to be adjusted / deducted by the applicant after the implementation of the GST
  - **Admissibility of transitional ITC credit:** As regards the eligibility of transitional ITC credit, the AAR held that the admissibility of transitional credit is not in the ambit of advance ruling<sup>3</sup> and hence cannot be answered.

- **GST not payable:** The GST law provides that<sup>4</sup> no tax is payable on such services to the extent the tax was leviable on the said services under pre-GST regime. Therefore, the AAR concluded that the GST is not payable on the mobilisation advance, which was received prior to GST implementation.

#### Our comments

In another ruling<sup>7</sup>, the West Bengal Appellate AAR had held that in respect of goods and services provided to the recipient after introduction of the GST, the mobilisation advance can only be considered as advance paid as on 1 July 2017. And in the absence of any exemption of mobilisation advance from tax under GST regime, the entire amount becomes taxable on the said date.

Even though the AAR's decision is applicable only to the applicant, it acts as a guiding tool for other taxpayers. At this juncture, it is imperative that the National Appellate Authority for Advance Ruling is formed so that taxpayers can get a consistent view on such contentious issues.

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<sup>2</sup> Under section 2(17)(c) of the CGST Act, 2017

<sup>3</sup> Section 142(11)(b) of the CGST Act, 2017

<sup>7</sup> As per Section 97(2) of the CGST Act, 2017

<sup>11</sup> M/s Siemens Ltd

<sup>5</sup> Section 142(11)(b) of the CGST Act, 2017

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