RAJASTHAN APPELLATE AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX

NCR BUILDING, STATUE CIRCLE, C-SCHEME
JAIPUR – 302005 (RAJASTHAN)

Proceedings under Section 101 of the Central GST Act,2017 read with Rajasthan GST Act, 2017

Before the Bench of

1. Sh. Rakesh Kumar Sharma, Member(Central Tax)
2. Dr. Preetam B. Yashvant, Member(State Tax)

ORDER NO.RAJ/AAAR/07/2018-19 DATED 18.03.2019

Name and address of the Appellant	:	M/s Sandvik Asia Pvt. Ltd. , F-85, Panchsheel Marg, C-Scheme, Jaipur-302001 (Rajasthan)
GSTIN of the Appellant	:	08AACCS6638K1ZX
Clause(s) of Section 97(2) of CGST / SGST Act, 2017, under which the question(s) raised	:	Classification of any goods or services or both
Date of Personal Hearing	:	12.03.2019
Present for the Appellant	:	1. Shri Rajaram Shetty, AVP, Ind. Taxation 2. Shri Nitin Vijaivergia, Partner, PricewaterhouseCoopers Pvt. Ltd.
Details of Appeal	:	Appeal No. RAJ/AAAR/APP/07/2018-19 dated 20.12.2018 against Advance Ruling No. RAJ/AAR/2018-19/21 dated 12.10.2018

(Proceedings under Section 101 of the Central GST Act, 2017 read with Section 101 of the Rajasthan GST Act, 2017)

At the outset, we would like to make it clear that provisions of both the Central GST Act, 2017 and Rajasthan GST Act, 2017 are same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central GST Act would also mean a reference to the same provisions under Rajasthan GST Act.

2. The present appeal has been filed under Section 100 of the Central GST Act, 2017 (hereinafter also referred to as 'CGST Act') read with Section 100 of the Rajasthan GST Act, 2017 (hereinafter also referred to as 'RGST Act') by M/s Sandvik Asia Pvt. Ltd., Jaipur against the Advance Ruling No. RAJ/AAR/2018-19/21 dated 12.10.2018.

Brief Facts of the Case

3 Sandvik Asia Private Limited (**'hereinafter also referred to as 'the Appellant'**) is a Private Limited Company holding GSTIN **08AACCS6638K1ZX** .

4. The Appellant, inter alia, is engaged into the business of after sales support for the mining equipment manufactured by its overseas group entities which are imported by the customers into India.

5. With respect to after sales support, the Appellant provides maintenance services for the imported equipment(s) which includes repair and replacement of parts and tools. The maintenance services are rendered on the equipment(s) for a specific period as agreed with the customers from the commencement of mining operations depending upon the number of hours the equipments are operational or the quantum of output ton produced by the equipment(s) during the equipment life cycle.

6. In respect of the supply of parts under the proposed Agreements, the Appellant would supply parts falling under multiple GST rates such as 18%, 28%, etc.

7. The Appellant provides the maintenance services through two separate Agreements (referred to as **Agreement-1** i.e. *'Comprehensive Maintenance Agreement'* and **Agreement-2** i.e. *'Equipment Parts Supply and Services Agreement'*).

8. Under the said Advance Ruling Order, the Rajasthan Authority for Advance Ruling , GST, Jaipur (**hereinafter referred to as "AAR")** has held that the activities performed under Agreement-1 shall be classified as "Composite Supply", where principal supply would be the supply of maintenance services. In respect of Agreement-2, the AAR has held that the services provided under the said Agreement are classifiable as "Mixed Supply" under Section 2(74) of CGST/RGST Act, 2017.

9. The Appellant is not satisfied with the classification of the activities performed under **Agreement-2** as "Mixed Supply" and therefore has preferred the subject appeal under Section 100 of the CGST Act/RGST Act, 2017 .

Grounds of Appeal

10. It is submitted by the Appellant that the allegations mentioned in the order reflects that the relevant clauses of Agreement-2 and the intention of the parties to the Agreement has not been correctly evaluated by the AAR . Further, the contentions

provided by the Appellant in relation to classification of supply of goods and services under Agreement-2 as Composite Supply has not been considered in the facts.

11. The impugned order has erred in concluding that the supply of parts under Agreement-2 is separately identifiable to the Appellant and the customer before provision of maintenance services.

Held in Para 5.3 of the Advance Ruling Order:

"The Appellant's contention is that in both the situations the service is classifiable under Composite Service which is not tenable. Regarding the Agreement made for maintenance services in respect of machinery supplied in 2017, the Appellant is well aware about the parts which would suffer wear and tear and need to be replaced by the Appellant. Further, the Appellant in their Agreement named 'Equipment parts supply and Service Agreement' in Schedule-D, also shows that in their daily/monthly log-sheet the Appellant has to mention the parts being replaced by them. It is evident that the Appellant can supply these parts individually and along with the package of the services....."

12. The Appellant submits that the AAR has misinterpreted the said Schedule D information to contend that the Appellant is well aware about the parts that need replacement. It is important to note that the monthly log sheet would be filled by the Appellant and the customer at the end of the month after the goods and services have already been supplied. Therefore, supply of parts would already have taken place by the time the monthly log sheet is filled by the parties to the Agreement. Hence, it cannot be

said that the Appellant would be well aware about the parts that need replacement before provision of maintenance services as the log sheet is filled only at the end of month after all the supplies during the month have already been supplied.

13. However, irrespective of the parts replaced for providing maintenance services, the consideration to be billed to the customer would still be on the basis of quantum of output produced by the equipment multiplied by the per ton rate. The record for the parts being replaced has been maintained by the Appellant for documentation purposes of the Appellant.

14. Main intention of the Agreement is to ensure that the equipment is available for operation to the customer on a continuous basis. The Appellant is required to provide supervision and maintenance services on a continuous basis to ensure that the equipment is available to the customer at all times. While providing such maintenance services, the Appellant may require to replace certain parts or consumables that may have worn out due to continuous operation of the equipment.

15. However, the Appellant or the customer would not be aware of the parts that are required to be replaced until the maintenance services are provided to the customer. Therefore, it is clear that the supply of parts are incidental till the main supply of maintenance services are not provided by the Appellant.

16. The impugned Order has erred in concluding that the Appellant can supply the parts or services individually to the customer thereby classifying it as Mixed Supply.

Held in Para 5.4 and 5.5 of the Advance Ruling Order:

5.4. As per Section 2(74) of GST Act, "Mixed Supply" means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a Composite Supply.

5.5. In the present case the Appellant supply the parts or services individually or any combination thereof on a single price which is appropriately covered under Mixed Supply.

17. The Appellant submits that the AAR has erred in interpreting the Agreement clauses and the intention of the parties to the Agreement. The intention of the parties to the Agreement is to ensure the uninterrupted operation of the equipment. This intention has been explained through relevant clauses of the Agreement in the succeeding paras.

18. As per Clause-D of the Agreement, the Appellant is required to a) supply spare parts required for the operation of the Equipment details of which are set out in Schedule-B *("Parts")*, and b) Provide maintenance services as mentioned under Schedule-B *("Services")*

Further, as per Clause 6.1 of the Agreement,

*"The Service Provider shall provide the guaranteed availability of the Equipment as specified in Schedule-D ("**Guaranteed Availability**")."*

19. Therefore, the main intention of the Agreement is to ensure continuous operation of the equipment and whether such operation requires usage of goods is irrelevant till guaranteed availability of the equipment is ensured by the Appellant.

20. The guaranteed availability clause in the *'Equipment Parts Supply and Service Agreement'* is with regard to technical expertise of skilled engineers and not in relation to supply of spare parts.

21. The Appellant would be required to supply maintenance services which would be rendered through skilled engineering, labourers etc. stationed at the site. Hence, the use or consumption of goods/parts would be incidental to the primary supply of maintenance services.

22. It is also important to refer to Schedule-C of the Agreement which mentions about the consideration to be received by the Appellant as quoted below –

"SERVICE PROVIDER CHARGES

Rs.50 per metric ton for the feed material to each plant towards spares, wear, consumables, lubricants, grease, hydraulic oil and manpower after deduction of 10% feed towards natural fines.

Note:-

The quoted rates are exclusive to GST. GST to be borne by customer. Since the supply of spare parts and services are naturally bundled and remain composite, the GST rate of 18% will be applicable, which is explicitly defined in Clause 3.2"

23. Hence, it is clear that the Appellant would be charging to the customer on per ton basis irrespective of the quantum of goods used in the process of maintenance services.

24. The consideration to be charged by the Appellant would be on the basis of quantum of output produced by the equipment. In such a case, there could be scenarios where the goods supplied by the Appellant substantially exceed the services supplied by the Appellant due to considerable wear and tear of the equipment or a scenario where the goods supplied are negligible but substantial quantum of maintenance services are provided by the Appellant.

25. In both the scenarios, the intent of the Appellant is to ensure continuous operation of the equipment and even the customer's expectation is for maintenance services and not supply of goods.

26. The impugned order has incorrectly interpreted the definition of 'Composite Supply' and 'Mixed Supply' in relation to the services provided under the 'Equipment Parts Supply and Services Agreement'.

The key differentiating factor between the definition of Composite Supply and Mixed Supply is that under Composite Supply, **there has to be two or more taxable services which are naturally bundled in the ordinary course of business**, whereas under Mixed Supply there could be individual supplies and these supplies should not be naturally bundled in ordinary course of business.

27. In order to understand whether any service is naturally bundled or not, we may refer to the Education Guide issued by the Central Board of Excise and Customs

('CBEC') now renamed as Central Board of Indirect Tax and Customs ('CBIC'). Para 9.2.4 of the Education Guide mentioned the following:

> *"Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below–*
>
> - *Perception of the consumer or the service receiver*
> - *Majority of service providers in the in a particular area of business provide similar bundle of services*
> - *The nature of various services*
> - *Perception of the Service recipient*
> - *Advertised as a single package*
> - *Single Price*
> - *Nature of various services*

28. The Appellant reiterates that all the essential ingredients of the definition of 'Composite Supply' are satisfied under Agreement-2.

29. In order to classify any activity as a Composite Supply, it could be said that the following conditions are required to be fulfilled referring to the definition of 'Composite Supply' under Section 2(30) of CGST Act:

(i) There should be two or more taxable supplies of goods or services or both;

(ii) The taxable supplies should be naturally bundled in the ordinary course of business;

(iii) The taxable supplies should be supplied in conjunction with each other in the ordinary course of business; and

(iv) One taxable supply should be a principal supply.

30. In a recent Advance Ruling, in the matter of M/s GE Diesel Locomotive Private Limited, Shahjanpur (U.P.), it has been held by the Authority for Advance Ruling , U.P. that comprehensive maintenance services in relation to railway locomotives is a Composite Supply of maintenance services .

31. There are also few judicial pronouncements, wherein, maintenance services has been held as the dominant intention in a comprehensive annual maintenance. Reliance is placed on following case laws :

a) *Revathi Equipment Limited Vs Commissioner of Central Excise and Service Tax, Coimbatore [2018-TIOL-2613-CESTAT-MAD]*

b) *Hindustan Aeronautics Ltd vs State of Karnataka [(1984) 1 SCC 706],*

c) *HCL Info Systems Ltd and Anr vs Commissioner of Taxes and Ors [(2005) 1 Gauhati Law Reports 586],*

32. Further, there are judicial precedents even under *erstwhile* indirect tax laws (namely Service tax, VAT and Sales tax laws), wherein, the Courts have held that dominant supply in a Composite Agreement should be determined based on the intention of the parties. The same has been explained as under:

- The Hon'ble Jharkhand High Court has examined in *Tata Main Hospital vs The State of Jharkhand & Ors. [2007 (9) TMI 599]*, whether supply of medicines, surgical items, X-ray plates, etc. during rendition of healthcare services in hospitals should be classifiable as sale of goods leviable to sales tax or provision of healthcare services. In this case, the Hon'ble High Court has held that dominant intention of Agreement is to render medical services and supply of medicines, surgical items, etc. is incidental to such supply.

- The Hon'ble Apex Court in the case of *M/s Northern India Caterers (India) Ltd vs Lt. Governor of Delhi [(1980) 2 SCC 167]* has held that supply of food to customers should be construed as supply of service and not goods since the intention of the parties is to serve the food to the customers to their satisfaction.

33. Even in terms of Entry No. 25 of the Notification No. 11/ 2017- Central Tax (Rate), dated 28th June 2017, issued under the existing GST laws, Maintenance, Repair and Installation Services have been expressly covered under the schedule providing rate of GST applicable on different types of services with the SAC Code 9987.

34. The Appellant has requested that the above mentioned Advance Ruling Order be modified to the extent that the activities performed under the *'Equipment Parts Supply and Services Agreement'* should be categorised as Composite Supply where the principal supply would be maintenance services. Further, as maintenance services would be the principal supply, such supply should fall under SAC 998717 – 'Maintenance and Repair Services of Commercial and Industrial Machinery' chargeable to GST at 18%.

Personal Hearing

35. A personal hearing in the matter was held on 12.03.2019 . Shri Rajaram Shetty, AVP, Indirect Taxation and Shri Nitin Vijaivergia, Partner, PricewaterhouseCoopers Pvt. Ltd. & Authorised Representative appeared on behalf of the Appellant. They reiterated the submissions made in their appeal memorandum.

Discussion and Findings

36. We have carefully gone through the Appeal papers filed by the Appellant, the Ruling of the AAR , as well as oral submissions made at the time of Personal Hearing held on 12.03.2019. We find that the Appellant had requested for Ruling on the activities performed under two Agreements viz. (1) Comprehensive Maintenance Agreement and (2) Equipment Parts Supply and Service Agreement .

37. The Rajasthan Authority for Advance Ruling (AAR) in its Ruling No. RAJ/AAR/2018-19/21, dated 12.10.2018, pronounced the activities performed under the 'Comprehensive Maintenance Agreement' (**Agreement-1**) as the Composite Supply , while the activities performed under other Agreement viz. 'Equipment Parts Supply and Service Agreement' (**Agreement-2**), were held as Mixed Supply .

38. The Appellant is satisfied with the Ruling related to 'Comprehensive Maintenance Agreement' as Composite Supply. However, they are not satisfied with the Ruling related to 'Equipment Parts Supply and Service Agreement' as Mixed Supply for the reasons stated in the Grounds of Appeal . They have requested that the activities performed under this Agreement should also be held as the Composite Supply .

39. On perusal of the Ruling of the AAR, we find that the AAR have based their ruling on the ground that in respect of the machinery supplied in 2017, the Applicant (Now 'Appellant') is well aware about the parts which would suffer wear and tear and need to be replaced by the Applicant . Further, as per Schedule-D of the Agreement , the Applicant has to mention the parts being replaced in their daily log sheet . Hence, they can supply these parts individually and along with the package of the services. Since supply of the parts and services are known beforehand and can be supplied individually to the customers, these supplies fall under the category of 'Mixed Supply', as defined under Section 2(74) of the CGST Act.

40. We find that the Appellant are providing services to their clients, under two Agreements namely (i) "Comprehensive Maintenance Agreement" (Agreement-1) and (ii) "Equipment Parts Supply and Services Agreement"(Agreement-2) . The subject appeal has been filed in respect of activities performed under Agreement-2, which have been held as 'Mixed Supply', as per Ruling given by the AAR . It is relevant to mention here that entering into two separate Agreements with their client(s) itself is an indication that the nature and quantum of supply of service(s) and/or spares/parts under these Agreements is not similar . This position is also clear on perusal of both the Agreements. The activities performed under first Agreement has been held by AAR as "Composite Supply", whereas the activities performed under the second Agreement has been held as "Mixed Supply". The Appellant contends that the activities performed under the second Agreement should also be pronounced/held as the Composite Supply. We find that the language of both Agreements is self explanatory. In first Agreement, emphasis is on comprehensive maintenance of equipments while in second Agreement,

supply of parts as well as their maintenance is explicitly and separately mentioned. Even Title of the Agreements, as mentioned above, also indicate this . Though supply of parts/spares is involved in both the Agreements , the phrase 'Equipments Parts Supply' has been separately and specifically indicated in the title of the Agreement-2 .

41. **Clause-D** of the introductory para on page-2 of the Agreement-2 is reproduced as under for ease of reference :-

> *"The Customer wishes to appoint the Service Provider for a) supply of spare parts required for the operation of the Equipment details of which are set out in Schedule-B ("Parts") , b) the provision of maintenance services as specifically set out in schedule-B (Services)."*

On perusal of the aforesaid clause, it is very much clear that the said Agreement is not a composite maintenance Agreement but an Agreement for supply of goods and supply of services separately.

42. Further, on perusal of Schedule-B of the Agreement-2 , we find that supply of following equipments will not be covered under this Agreement :-

"1. Cone Crusher : Mains shaft assy, Top shell assy, Bottom shell assy and Gear assy , Dust cullar , Hub, Hydraulic cylinder cover, Hydroset cylinder , Piston .

2. Jaw Crusher : Frame assy, Swing jaw and flywheels , Eccentric shaft, Bearing housing ."

We find that by the language of Agreement itself, it is clear that the Appellant is to supply all parts other than those mentioned above, whenever required.

43. From above, it is evident that under the second Agreement i.e. 'Equipment Parts Supply and Service Agreement' , both the supplies i.e. supply of service and supply of parts are not integral to each other unlike supplies involved in Agreement-1 . Hence, it is not a case of two or more taxable supplies which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

44. Now we come to the definition of 'Mixed Supply' given under Section 2(74) of the Central GST Act, 2017, as reproduced below :-

> *(74) "Mixed Supply" means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a Composite Supply.*

We have already held in foregoing paras that the activities performed under the impugned Agreement, though comprises of two or more individual supplies of goods or services , can not be held as "Composite Supply" . Consequently, such activities will fall under the category of 'Mixed Supply' as per definition of Mixed Supply, under Section 2(74) of CGST Act, 2017.

45. The Appellant has relied upon the Ruling dated 16.05.2018 of AAR, UP in the matter of M/s GE Diesel Locomotive (P) Ltd., Shahjanpur and Ruling dated 19.12.2018 in the matter of Cummins India Ltd., Pune . We find that though these Rulings are in the favour of the Applicants but since the exact nature of the activities under the respective Agreement(s) in these two cases are not before us, it is not possible to compare whether the Agreements involved in these two cases are identical to the impugned Agreement-2 or not . Further, a higher forum is not bound by the decisions

rendered by a lower forum . Moreover, no precedentiary value can be assigned to the Rulings given by an AAR .

46. The Appellant has also relied upon the following case laws in their favour .

(1) Revathi Equipment Limited Vs Commissioner of Central Excise and Service Tax, Coimbatore [2018-TIOL-2613-CESTAT-MAD]

(2) Hindustan Aeronautics Ltd vs State of Karnataka [(1984) 1 SCC 706].

(3) HCL Info Systems Ltd and Anr vs Commissioner of Taxes and Ors [(2005) 1 Gauhati Law Reports 586],

(4) Tata Main Hospital vs The State of Jharkhand & Ors. [2007 (9) TMI 599],

(5) M/s Northern India Caterers (India) Ltd vs Lt. Governor of Delhi [(1980) 2 SCC 167]

47. On perusal of these case laws, we find that these case-laws relate to erstwhile Indirect Tax laws i.e. Service Tax or Value Added Tax or Sales Tax and not to the provisions of CGST Act, 2017. Further, Agreements under these case laws are also not available with us . Hence we are not able to compare whether the Agreements involved in these cases are identical to the impugned Agreement-2 or not.

48. In view of above, we hold that the activities performed by the Appellant under Agreement-2 will fall under the category of "Mixed Supply", and therefore we do not find any reasons to interfere with the Ruling dated 12.10.2018, passed by the Rajasthan Authority for Advance Ruling , Goods and Services Tax, Jaipur . Accordingly, we pass the following order :

ORDER

49. We uphold the Advance Ruling rendered by the Rajasthan Authority for Advance Ruling, Goods and Services Tax, Jaipur vide their Ruling No. RAJ/AAR/2018-19/21 dated 12.10.2018, in respect of activities performed by the Appellant under 'Equipment Parts Supply and Services Agreement' (Agreement-2), which has been held as "Mixed Supply" as defined under Section 2(74) of the Central GST Act, 2017 . Consequently , the Appeal filed by the Applicant/Appellant i.e. M/s Sandvik Asia Pvt. Ltd., Jaipur, is not legally sustainable and hence is liable to be dismissed and we hold accordingly.

18/03/2019

(RAKESH KUMAR SHARMA)
MEMBER (CENTRAL TAX)

(DR. PREETAM B. YASHVANT)
MEMBER (STATE TAX)

To,

M/s Sandvik Asia Pvt. Ltd. ,

F-85, Panchsheel Marg, C-Scheme,

Jaipur-302001 (Rajasthan)