

F.No.A-46020/12/2017-EA
Government of India
Ministry of Housing and Urban Affairs
Economic Division

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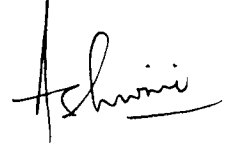
Nirman Bhawan, New Delhi
Dated: 16th August, 2017

Office Memorandum

Sub: Queries regarding Goods & Services Tax (GST) – reg.

Queries related to implementation of Goods & Services Tax (GST) were received from the affiliated organizations of this Ministry. These were taken up with Department of Revenue, which has provided replies to the queries raised. The replies received from Department of Revenue is enclosed for appropriate action

Encl: As above



(Ashwini Kumar)
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- 1.DG, CPWD, MoUD, Nirman Bhawan, New Delhi.**
- 2.Managing Director, Delhi Metro Rail Corporation, New Delhi**
- 3.Vice Chairman, DDA, Vikas Sadan, INA, New Delhi**
- 4.Chairman & Managing Director, NBCC, Lodhi Road, New Delhi**

Copy to: NIC to upload it on the Ministry's website under GST tab.

F.No. 349/20/2016-GST(Policy Wing)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
GST Policy Wing

Room 220-A,
North Block, New Delhi
Dated 07 August 2017

To,

Sh. Ashwini Kumar
Additional Economic Adviser
Economic Division
Ministry of Housing and Urban Affairs
Nirman Bhawan, New Delhi

Respected Sir,

Subject: Re: Queries regarding GST – reg.

The undersigned is directed to refer to OM dated 14.07.2017 addressed to the Shri Upender Gupta, Commissioner (GST) on the above mentioned subject. The replies/comments with respect to the queries raised in the said OM are as under:

A. DMRC

1) DMRC receiving Bills for the period up to 30.06.2017 on or after 01.07.2017. In many of the cases Liability of RCM is upon DMRC as recipient of services. As per previous law of Service Tax RCM liability of service tax arises at the time of payment of Consideration. In view of the above you are requested to please clarify following:

- a) Up to what date we can Deposit RCM under the old regime for the services provided before 30.06.2017?
- b) Where to report the RCM deposited in point a) above? Presently RCM deposited in respective month was shown in Respective month column in Service tax return. In the said case RCM deposited in the month of July' or Aug'17 pertains to Services up to 30.06.2017 cannot be shown in Service Tax Return up to 30.06.2017 (as not deposited up to 30.06.2017).

Reply: In terms of GST provisions, a service provider has the option to issue invoice within 30 days from the date of completion of service. So, if invoice is issued and payment is received on or after 1st July, 2017 then it is liable for payment under GST. To the extent, payment on provision of service had been made under the existing laws, it is not taxable under GST.

2) Further presently DMRC were taking Credit on Common Input Services used for Taxable and Non-Taxable/Exempted Services as per rule 6(3) of CENVAT Credit rules in old Regime Proportionately in the following manner:

a) At the year-end ratio for taxable turnover w.r.t total turnover was calculated.

b) Manual records were maintained for whole financial year for Common Credit amount.

c) At the year-end amount of Eligible CENVAT calculated multiplying with Ratio, as calculated in point a) above.

Note: - All above calculations are done at year end only currently, hence the said amount of CENVAT were shown through revised return of half year ended Mar' 17.

In view of the above you are requested to please provide the opinion how the credit will be taken in the current GST regime.

Reply: Provisions for taking input tax credit have been provided in section 17 of the CGST Act, 2017 and in rules 42 and 43 of the CGST Rules, 2017 which may be referred to by DMRC.

3) Presently we were deducting 4% TDS under DVAT/UPVAT and 5% under HVAT from the bills of works contract. Bills up to 30.06.2017 are under process and will be paid after June' 17. Few bills will also be received after 30.06.2017. In view of the above you are requested to please provide the opinion whether TDS under Vat laws will continue to be deduct for bills up to 30.06.2017 or to be taken separately under GST regime.

Reply: It would be as per the provisions of State VAT Acts. TDS provision under GST Law is contained in section 51 of CGST Act, 2017.

4) Currently we are charging DVAT on Sale of Tender Document. Please suggest the Tax Treatment of the same in GST Regime.

Reply: Yes, it would be taxable. A person is allowed to participate in the process by tender; and so, it is a service and GST would be payable thereon.

5) DMRC Property Business wing is working across 3 State (Delhi, Uttar Pradesh And Haryana) for different type of revenue activities such as Advertisement , shops ,Tower , ATM and SNR in different contract . What will be the tax treatment in GST regime since we have contracts which pertains to Delhi only, some pertains to 2 states and some pertains to all the 3 state including Delhi.

Reply: Section 25 of CGST Act, 2017 provides that a person supplying goods or services to get registered in every State from where it is supplying, given that it crosses the threshold exemption limit. If taxable services are being provided, DMRC should get registered. They should refer to the definition of 'location of supplier of services' as contained in section 2(71) of CGST Act, 2017 to ascertain liability of registration in a particular State.

6) In PB, we provide LOA (Letter of acceptance) to party and charge advance Service tax from licensee. It is a manual exercise. Please suggest as to can we treat LOA as billing in GST? If yes than, what will be the format of invoicing in case of GST for LOA payment?

Reply: In GST also, liability arises on advance receipts. Please see Rule 46 and 50 of CGST Rules, 2017 for information to be contained in Tax Invoice and Receipt voucher respectively.

7) What will be the treatment of Cenvat credit which remains unutilized on 30.06.2017?

Reply: The unutilized credit can be transferred in terms of the transitional provisions contained in section 140 of CGST Act, 2017.

8) What will be the treatment of in case of revision or cancellation of invoice on which service tax has been paid by DMRC?

Reply: Refund of service tax, if applicable, would be dealt under the service tax provisions only.

9) Contractors, mainly Non Company/Body corporate, has provided services (on which RCM is applicable to DMRC) on or before 30.06.2017 to DMRC. These Contractors has not paid service tax or paid their portion only under partial reverse charge to the Govt. as they are not liable to pay the Service tax or liable to pay only their portion under partial reverse charge as per old regime.

Query - The bills for above services are to be received in DMRC after 30.06.2017. Whether DMRC has to pay RCM on these services under old regime or not to pay RCM under GST?

Scenario-1)- If DMRC has not paid RCM under GST considering these services are not covered under RCM in GST regime, then is there any tax implication on DMRC as Govt. has not received tax on these services Not by DMRC nor by Contractor?

Scenario-2)-IF DMRC is required to paid RCM on these services as mentioned above then the process may please be explained such as follows:

- a) Rate at which RCM is to be paid,
- b) Whether it is to be paid under old regime of Service Tax or under New Regime of GST,
- c) IF paid where it is to be shown, in which month Return,
- d) Any other Tax Compliance and its Implication on DMRC, if any.

Note- Many Services which were earlier covered under RCM has not covered under RCM under GST e.g. hiring of Manpower Services, works contract services etc.

Reply: It may so happen that a particular service was under reverse charge under service tax but not so under GST. If time of supply is determinable under GST, the provisions of GST would be applicable to the extent service tax was not paid under service tax regime. Please see section 142(11) of CGST Act, 2017. RCM, in GST regime, is contained in Notification No. 13/2017- Central Tax (Rate) dated 28.06.2017.

10) An agreement was signed between DMRC and Noida-Greater Noida Industrial Development Authority (NMRC Ltd.) on 18.10.2014 for providing consultancy and execution of metro corridor for length of about 29.707 km on turnkey basis (Agreement enclosed for ready reference). The estimated time for completion of the project is 3 years and 6 months.

Para 10 and 11: For the purpose of calculating DMRC fees of 6%, the estimated project completion cost was fixed at Rs. 4814 crore, if state taxes are exempted, if not and in lieu reimbursed, the completion cost will be taken as Rs. 5135 crore. NMRC is obligated to release this fee in advance quarterly installment.

Para 9 and 2.3: The funds for execution of project will be released separately in advance for the immediate next 3 months on the basis of the requirement furnished by PD/N-GN/DMRC for the ensuing year in advance. However, if there is any saving in the project, for what so reason, such saving would be fully advantage of NMRC.

Since the agreement was signed before 1st March 2016, the fee was not subject to Service Tax.

Queries:

The fee is being paid to DMRC @ 6% of Rs. 5135 crores, i.e., Rs. 308 crores and till 30th June 2017, DMRC has already received Rs. 225 crores. The quarterly advance fee for April-June 2017, amounting to Rs. 20.91 crores was invoiced to NMRC on 30th June, but the payment is received by this office on 06.07.2017.

Clarification is sought on whether the Apr-June 2017 quarter fees received after the appointed date is subject to GST? If yes, kindly suggest the action to be taken by this office in this regard.

Reply: If the bills were issued on or before 30th June, 2017, liability arises under service tax. If bill was issued on or after 1st July, 2017, it is taxable under GST.

11) As per the contracts awarded on this corridor, it is forecasted that the completion cost of the project could be somewhere around Rs. 4,000 crores. However, DMRC's fees of Rs. 308 crores will be unaltered as a result of any saving (Para 2.2). This office is treating the fees received as advance revenue and it is subsequently booking as revenue periodically (say, yearly) as per the actual financial progress achieved. Till date, roughly Rs. 2,000 crores of financial progress has been achieved and Rs. 120 crores has been shown as revenue in the book of accounts while the balance of Rs. 104 crores is still lying as advance revenue.

Clarification is sought on how the invoicing is to be made by DMRC to its Client in respect of the (i) works already completed, i.e., till 30th June 2017, (ii) the work to be done from July onwards till the completion of the project and (iii) invoicing of the balance fees of Rs. 63 crores. Presently, only Proforma Invoice is being raised for fees and cash flow statement is submitted to show the utilization of funds on quarterly basis to the Client. This office has obtained exemption orders from the Commercial Taxes, UP of UPVAT on the turnover of DMRC, which purely comprises of only engineering consultancy.

Reply: Invoicing is an internal matter. However, it has to be ensured that tax invoices are issued in terms of the provisions of service tax and GST. GST is payable in terms of Section 13 of CGST Act, 2017.

12) The scope of system contract awarded by DMRC includes, 'Design, Manufacturing, Supply, Installation, Testing & Commissioning of Escalators for Noida – Greater Noida MRTS Project'. The contract was awarded to a Consortium of Schindler (China) Elevator Company Limited and Schindler India Private Limited, with the Indian member as the lead partner. *The contract price is inclusive of all central/local taxes, duties, levies, cess and all other incidental charged required to fulfill the tender conditions.* The foreign partner is responsible for the design, manufacturing, supply of Escalators and the Indian partner is responsible for clearance of material after reaching at port and transportation to site as per contract conditions, installation, testing commissioning and maintenance of escalators. Though the Consortium members are jointly executing the assignment, there would be separate invoices from each party on the DMRC for work performed by them under the contract. The consideration shall be paid by the DMRC as per the terms of the contract and quoted price in respective currency to the concerned Consortium member raising such an invoice. The parties shall be jointly and serially liable to the DMRC for the obligations under the contract.

The foreign member is importing directly in the name of DMRC to the work site with the Bill of Entry reflecting DMRC IEC. The Indian partner is clearing the materials from the port by discharging the duties, taxes and other charges and then transporting the same to the site and performing installation, commissioning and maintenance job.

Query: Kindly clarify the rate of GST applicable for the above type Contracts. Also, please clarify since the materials are imported separately in the name of DMRC, whether it will be construed as a supply contract and custom duty plus IGST is leviable at 28% slab rate? Further, since the duties and taxes are paid by the Consortium member on the import consignment in the name of DMRC, will the credit of IGST be reflected in DMRC's GSTN account? If yes, how the billing will be done by the Consortium to DMRC.

Reply: From this description, tax rate cannot be suggested. Depending upon the nature of contract, it can be decided if it is taxable as a composite supply or separate supplies. If DMRC is the importer, credit of IGST on imports can be taken given other conditions related to ITC as contained in Chapter-V of CGST Act, 2017 are satisfied.

13) DMRC is having contract with fuel service provider agency for diesel and petrol requirement for DMRC vehicles. The bills are raised by contractor includes cost of diesel and service charge of 1.25% of diesel cost. As per current practice, only TDS-income tax is being deducted on service charges of 1.25% only. The agency have taken GST registration no. DMRC is in receipt of bills for the month of June, 2017 dated 30 June, 2017. What would be the treatment in such cases? As per our view, petroleum products are out of GST applicability, the bills should be processed continuously as earlier after deducting TDS-income tax only on service charge.

Reply: Service charge is taxable under GST as only specified petroleum products are out of GST net and liability to deduct TDS may arise in terms of section 51 of CGST Act, 2017.

14) Processing of bills in July, 2017 where Reverse charge and DVAT is applicable: Bills (such as advocates and works contract service, for which the vender has raised bills up to 30 June, 2017). Under reverse charge, liability arises at the time of payment only. In such case, what treatment needed in respect of: 1. For Service tax-RCM: whether it will be applicable. 2. For RCM-GST: Whether RCM under GST will be applicable if other conditions satisfy such as advocate services, services/goods from unregistered dealers.

Reply: As payment are made after 30th June, 2017, it would be covered under GST provisions.

15) DMRC is availing services of doctors in metro Bhawan and other staff quarters. For, which DMRC is paying fixed monthly amount as honorarium. Whether: 1. it will be covered under list of exempted services (point no. 82(i), Health care services by an authorized medical practitioner. 2. If No, GST is applicable for these payment under reverse charge?

Reply: It is exempt. Please see S. No. 74 of Table to Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017.

16) Whether payment of sitting fees to directors covered in the provisions of reverse charge under director services.

Reply: Yes, it is covered. Please see S. No. 6 of Table to Notification No. 13/2017- Central Tax (Rate) dated 28.06.2017.

17) DMRC nominate its officers and staff for various knowledge workshops timely. For these seminars, nomination fee per candidate nominated is paid by DMRC. After. DMRC regime what will be tax implication in these cases.

Reply: Question is not clear whether it is paid to the nominated candidate or to the person who conducts the workshop.

B. CPWD

1) currently DDOs are thinking what to deduct from Running Bills as many taxes are subsumed from 1st July.

Reply: DDOs are required to deduct tax at the rate of 1 % for CGST and 1 % for SGST (2% in case of IGST) at the time of payment to the supplier where the contract value exceeds 2.5 lakh. The amount deducted should be paid by 10th of the month succeeding in which deduction was made. DDO should also issue the certificate within five days from the date of deposit into government exchequer. However, the provision of tax deducted at source (section 51 of CGST Act, 2017) has not been made effective as of now.

2) CPWD DDOs are not registered as it is to open from 25th July and DDOs are thinking that after any deduction of GST how to deposit the same and issue the deduction certificate to contractor.

Reply: The deducted amount should be deposited in the challan prescribed for the purpose (FORM GST PMT – 06). A certificate, called FORM GSTR – 7A, has also been prescribed for the purpose. However, the provision of tax deducted at source (section 51 of CGST Act, 2017) has not been made effective as of now.

3) There are confusion that if a division (i.e. DDO is operating from one place and working in more than one state then how many registration DDO need.

Reply: DDO should get registered in the State where his office is located.

4) CPWD has GCC clause 37 for reimbursement of Service tax on works contract paid by the contractor to CBEC whether that needs amendment? If yes then whether all contracts need to be amended? It seems ministry of Law has to be consulted on this.

Reply: Issue is not clear.

5) A detailed notification for DDOs has not been issued till date.

Reply: DDOs are liable to deduct tax on supplies received by the office. The method for deduction of tax has been provided in law. However, the specific section for deduction of tax at source (section 51 of CGST Act, 2017) has not been notified, and so it would be applicable once the same is notified.

6) Whether CPWD should keep provision of GST reimbursement as per GCC clause 37 or not in their estimates for justification.

Reply: This appears to be an internal matter of CPWD.

7) Whether from 1st July to 30th August DDOs should not deduct any tax other than TDS for income tax is not clear.

Reply: As the section relating to tax deduction at source (section 51 of CGST Act, 2017) has not been notified, no deduction should be made as of now under GST regime. Once the section is notified, DDOs should start deducting tax at source.

C. DDA

1) DDA shall be responsible for deduction of TDS under GST on payments to be made to contractors and shall also collection of GST on certain activities. All the DDOs of DDA have separate TAN number and were individually registered under VAT and Service Tax regime. Point for clarification is that since DDA has one vertical business and is only in Delhi, has taken single registration number under PAN. This single GST registration shall suffice or all DDOs will have to get registered separately? Once separate registration is taken by DDOs, will they not be separate identity and cannot trade freely among themselves.

Reply: Registration under GST is state-wise. So, all the DDOs located in one State can have one registration for the particular State.

2) DDA issues hundreds of imprests to its various officials for petty purchases and petty emergent works. Nature of expenditure is such that majority of the transactions could be with unregistered entities. Shall all such expenditures incurred on daily basis by hundreds of officials in different units attract reverse charges? Separate accounting of such expenditure may be very cumbersome.

Reply: Liability under reverse charge for supplies from an unregistered person can be discharged on consolidated basis. It is very likely that all such expenditures would be done with proper receipt. So, accounting of small purchases is feasible.

3) In the ongoing contracts there is a provision that service charges paid by the contractors shall be reimbursed by DDA at the prevailing rate on production of proof of payment. VAT liability is borne by contractors and not reimbursable. GST is a combined Goods & Service Tax so point of clarification is w.e.f. 1.7.2017 at what rate service tax component shall be payable to the contractors?

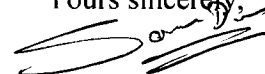
Reply: On ongoing contracts, to the extent service tax was payable on GST supplies, no tax is payable under GST. If not covered under this, GST rate would be applicable notwithstanding that the contract was entered before 1st July, 2017. There is no separate service tax rate.

4) In respect of ongoing contracts if a contractor is yet to register under GST, can their payment for work done be released or withhold till they got registered.

Reply: If the contractor is liable under GST, he has to take registration. Without registration, he cannot collect GST.

The above issues with the approval of the Member (GST).

Yours sincerely,



(Satvik Dev)

Assistant Commissioner (GST)