

TAX FLASH NEWS

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ITC will not be available for supplies made between distinct persons, when consideration as mentioned in the invoice has not been paid - AAR, Tamil Nadu

Authority for Advance Ruling, Tamil Nadu¹ has recently, held that for supplies between distinct persons, the proviso exempting payment within 180 days, for the claim of ITC shall only apply in cases where the supplies are being made without consideration.

Where on the basis of a MOU, consideration is required to be paid and the consideration is specified in the invoices raised, the said supply cannot be treated as 'supplies made without consideration'.

Accordingly, the benefit of non-payment of value of supply for the purpose of claiming the ITC shall not be available.

Brief facts

Applicant has business operations in the state of Maharashtra and Tamil Nadu, upon receiving work orders from customers, the applicant², placed an internal work order with its head office located in Maharashtra (HO) for the supply of cranes on hire charges along with appropriate support and assistance. On receipt of the internal work order, HO supplies the crane on hire charges to the applicant, who in turn sub-hires them to the ultimate customers.

By virtue of the provisions contained under the GST law³, transaction (supply) between distinct persons⁴ is subject to levy of GST. Accordingly, in order to carry out the work order received from the customer, the applicant had entered into a memorandum of understanding (MOU) with its HO.

Based on the above facts, the applicant had filed an application to seek ruling on

Whether the applicant would be eligible to claim credit (ITC) of the IGST payable on supplies made by HO for further supply on hire charges to customer?

Contention by the applicant

The applicant had contended that, the transaction between distinct persons is treated as supply by virtue of the provisions contained in Schedule I of the CGST Act, and accordingly, as per the proviso to Rule 37 of the CGST Rules⁵, the provision requiring an actual payment to the supplier within 180 days will not be applicable.

Thus the applicant shall be eligible to claim credit by making deemed payment by netting off receivable and payable in books of accounts.

AAR Ruling

As per the ruling, proviso in Rule 37, is applicable only in cases where the value of supplies is "made without consideration" as specified in schedule I of the CGST Act. In the instant case, basis para 10 of the MOU, the applicant is required to pay consideration to its HO and the consideration is specified on the invoices raised by the HO on the applicant. Hence, exemption from making full payment, will not be applicable to the applicant.

Accordingly, the applicant would be eligible to claim ITC only if they make payment to their Maharashtra unit for supply of crane.

Our comments

This is another ruling which will create panic in entire Industry as there is never a payment among own branches. The AAR seems to have not considered the intention behind the exception provided in Rule 37, which allows credit, even when payment of consideration is not made for supplies covered in Schedule I of the CGST Act.

The ruling will practically have large ramification in all cases of supplies between distinct persons. Hope some clarification is issued on this, or in appeal the same is modified.

¹ 2019-VIL-234-AAR

² Sanghvi Motors Limited, Tamil Nadu Branch

³ Central Goods and Services Tax Act, 2017 (CGST Act)

⁴ Section 25(4) of the Central Goods and Services Tax Act, 2017

⁵ Central Goods and Services Tax Rules, 2017 (CGST Rules)

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