M/s Indian Institute of Corporate Affairs

Authority for Advance Ruling — Delhi

08/DAAR/2018 Dated **28.06.2019**

Q Questions Before the Authority

- Whether Goods and Services Tax shall be leviable or chargeable on the transaction or agreement under the provisions of the Central Goods and Services Tax Act, 2017.
- If the answer to the first question is yes, whether the transaction can be exempted in whole or in part, by reference to specific provisions of the exemption notification.

F Facts

The applicant, a society registered under the Societies Registration Act, 1860 and registered under section 12AA of the Income Tax Act, 1961, signed a Memorandum of Understanding dated 16.01.2017 with Agriculture Insurance Company of India Limited (AICL) to implement an Integrated Village Development Programme in 50 villages in five States. AICL was to pay a project amount of Rs. 20,35,76,800 in instalments, covering the installation of solar water pumps (122), solar street lights (1230) and household toilets (3670). The applicant argued that the payment is a non-taxable grant-in-aid and that its services are delivered free to the ultimate beneficiaries.

H Ruling

Whether GST is leviable or chargeable on the MoU transaction with AICL under the CGST Act, 2017	**Yes. Liable to GST under section 9(1) of the CGST Act, 2017**	The amount received is consideration under section 2(31), not grant-in-aid (paras 82 and 66 of the order).
Whether the supply can be exempted in whole or in part under the exemption notification	**No. Not exempt under S. No. 1 or S. No. 76 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017**	Applies equally under the parallel SGST and IGST notifications. Toilet construction is not within heading 9994 of S. No. 76 (para 81). Public-convenience toilet services for a consideration may still fall under S. No. 76, as noted at para 80.

The authority held that the amount received from AICL is not grant-in-aid but consideration for a supply of goods or services under section 2(31) of the CGST Act, 2017, so the applicant is liable to pay GST under section 9(1). It further held that the supply is not exempt under S. No. 1 or S. No. 76 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, or under the parallel State and Integrated GST notifications. The authority found a direct link between the payment and the specific taxable activities, so the split into non-taxable parts was rejected.

R Reasoning

The authority held that under section 2(31)(a) consideration may be paid by any person, so AICL's payment is consideration even though the beneficiaries receive the services. It rejected the applicant's split into two non-taxable parts, relying on section 7(1) of the CGST Act. Following Circular No. 127/09/2010-ST, it treated the

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payment as consideration because a direct link existed between the amount and the specified taxable works under the MoU. On exemption, it held that the activities are not charitable activities under clauses (i)(B) or (iv) of para 2(r) of the notification, since their primary purpose is rural infrastructure rather than preservation of environment or public health awareness. Toilet construction was held not to fall under heading 9994 of S. No. 76.

P Provisions Relied On

CGST Act, 2017 section 2(31) (consideration)	CGST Act, 2017 section 2(52) (goods)
CGST Act, 2017 section 2(102) (services)	CGST Act, 2017 section 2(119) (works contract)
CGST Act, 2017 section 7(1) (supply)	
CGST Act, 2017 section 9(1) and 9(3)-(4) (levy and reverse charge)	
CGST Act, 2017 Schedule II clause 6(a), as argued by the applicant	
Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, S. No. 1 and S. No. 76, and para 2(r) (charitable activities)	
Circular No. 127/09/2010-ST dated 16.08.2010 (donation versus consideration)	
Income Tax Act, 1961 sections 12AA and 10(23C)(iv) and (v)	
CGST Act, 2017 section 97(2)	

! For the Practitioner

This order is useful for practitioners on CSR-funded rural infrastructure contracts, where the funder pays an implementing agency for specified works. It shows that a payment tied to identified taxable works is consideration even if the beneficiaries pay nothing, and that a charitable-entity registration does not by itself confer exemption. It does not decide whether the same activities would be exempt if the payment were an unlinked lump-sum donation, and it is a ruling binding only on the applicant.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> 08_daar_2018_indian_institute_of_corporate_affairs_1.pdf

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