Shapoorji Pallonji and Company Private Limited.

Authority for Advance Ruling — Tamil Nadu

ORDER No. 03/ARA/2020 Dated **31.01.2020**

Q Questions Before the Authority

- Whether the transitional provisions under Section 142(11)(c) of the TNGST Act, 2017 / CGST Act, 2017 are correctly applicable to the remaining instalments of the 'Mobilization Advance' that transitioned into the GST regime and were adjusted or deducted by the applicant after 1 July 2017.
- Whether the applicant is liable to pay GST under the TNGST Act, 2017 / CGST Act, 2017 on the instalments of the 'Mobilization Advance' that transitioned into the GST regime and were adjusted or deducted after 1 July 2017.
- Whether the applicant is eligible to avail Input Tax Credit on Service Tax paid in the pre-GST period and transferred through TRAN-1 under Section 142(11)(c) of both the TNGST Act and the CGST Act.

F Facts

The applicant, a construction contractor, entered into a works contract dated 21 November 2016 with Christian Medical College, Tamil Nadu (CMC) for construction of a service and teaching facility. CMC agreed to pay a mobilisation advance of 5 percent of the contract price in two tranches of 2.5 percent each, to be recovered in fifteen monthly instalments against running bills. The applicant paid Service Tax on the advance during the pre-GST period but paid no VAT on it, since VAT was to be discharged on the running bills in which the advance was adjusted.

H Ruling

Q1: Whether Section 142(11)(c) applies to the remaining mobilisation advance instalments adjusted after 1 July 2017	**Not applicable**	Section 142(11)(c) requires tax to have been paid under both VAT and Chapter V of the Finance Act, 1994 on the supply. Here no VAT was paid on the advance.
Q2: Whether GST is payable on the mobilisation advance instalments adjusted after 1 July 2017	**No GST payable on the advance received before GST, to the extent it relates to works contract service**	Relief rests on Section 142(11)(b), because service tax was leviable on that advance. The ruling is limited to the portion received before GST implementation.
Q3: Eligibility for ITC on pre-GST Service Tax transferred through TRAN-1 under Section 142(11)(c)	**Not answered**	The authority held that admissibility of transitional credit is not a question that may be decided under Section 97(2).

The authority ruled that Section 142(11)(c) is not applicable to the case at hand. It held that the mobilisation advance received before GST, to the extent it relates to works contract service, is **not subject to GST** under Section 142(11)(b). It declined to answer the question on eligibility for transitional credit, as that is outside the scope of Section 97(2).

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

R Reasoning

The authority held that Section 142(11)(c) applies only where tax was paid on the same supply under both the VAT law and Chapter V of the Finance Act, 1994. Because only Service Tax was paid on the advance and no VAT was paid on it, the authority found that provision inapplicable. It then applied Section 142(11)(b), which overrides Section 13 and bars GST on services to the extent service tax was leviable on them, and it treated the advance as a supply made before the appointed day under Section 13(2) to the extent covered by the invoice. On the credit question, it held that transitional credit falls outside the matters listed in Section 97(2) and so declined to answer it.

P Provisions Relied On

- Section 142(11)(a), (b) and (c) of the CGST Act, 2017 and the corresponding TNGST Act, 2017 provisions
- Section 97(2) of the CGST Act, 2017
- Section 12 of the CGST Act, 2017
- Section 13(2) of the CGST Act, 2017
- Section 2(31) of the CGST Act, 2017 (definition of consideration)
- Serial No. 6 of Schedule II to the CGST Act, 2017
- Chapter V of the Finance Act, 1994, including Sections 66B and 67

! For the Practitioner

This ruling helps contractors who received mobilisation advances before 1 July 2017 on which only Service Tax was paid and no VAT was paid, because it holds that such advances are not taxable under GST to the extent they relate to works contract services. It does not decide whether transitional credit under Section 142(11)(c) is admissible, which the authority expressly declined to answer. The order binds only the applicant, and any appeal lies to the Tamil Nadu State Appellate Authority for Advance Ruling within 30 days.

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 -> tn_aar_03_2020_31.01.2020_spcpl.pdf

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