Technip UK Limited

Authority for Advance Ruling — Maharashtra

NO.GST-ARA-77/2018-19/B-17, Mumbai, dated 29.01.2019 (as listed). The… Dated **29.01.2019**

Q Questions Before the Authority

- (a) Whether the terms of the NIT, in particular its self-styled description as 'lump sum turnkey' contract, render it a 'works contract' as understood under the GST law?
- (b) If the answer to (a) is affirmative, does each and every supply made to ONGC under the contract attract the rate of tax applicable to a 'works contract'?
- (c) If the answer to (a) is affirmative: (A) will the position change if the consortium members raise distinct invoices and ONGC pays them directly; and (B) can it be said that the individual invoices will not be affected by the overall 'works contract' description?
- (d) If the answer to (a) is affirmative and only one rate applies to the entire contract, can the consortium members claim the rate under Notification No. 39/2017-Integrated Tax (Rate) dated 13.10.2017?
- (e) Can the consortium member supplying goods alone claim the concessional 5% rate under Notification No. 3/2017-Integrated Tax (Rate) dated 28.06.2017?

F Facts

Technip UK Limited, an unregistered applicant, proposed to bid for ONGC tenders for erection, commissioning and installation of plant and machinery on a turnkey basis for petroleum operations, seeking a single overall lump-sum price. It proposed to bid through a consortium with another member, with each member supplying goods or services separately and raising its own invoices on ONGC, which would pay them directly. The authority recorded that the bid was submitted on 19.02.2018 and that ONGC awarded the contract on 01.10.2018 to a different consortium (BHGE/McDermott and L&T Hydrocarbon), after the application was filed on 18.09.2018.

H Ruling

The authority did not answer any of the five questions. It held that the application was infructuous because the tender was awarded to a consortium other than the applicant's, so the applicant could no longer supply goods or services under that contract. It reasoned that answering the questions would not serve the purpose of advance ruling, which is to give certainty on a proposed activity. The order is therefore a disposal on procedure, not a ruling on rate or classification.

R Reasoning

The authority reviewed Chapter XVI of the CGST Act and the definition of 'advance ruling' in section 95(a), which tie a ruling to a supply undertaken or proposed to be undertaken by the applicant. It noted that the contract had been awarded to a consortium other than the applicant's and that the applicant was not a member of the successful consortium. Because the possibility of the applicant supplying under the tender no longer existed, the authority concluded that the purpose of advance ruling would not be served. It therefore declined to answer the

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

questions raised under section 97(2). The applicant had relied on the Delhi High Court decision in Netapp B.V. v. Authority for Advance Ruling (2013) 357 ITR 102 for the principle that admissibility is judged on facts as of the filing date, but the authority's decision rests on the post-filing award and the resulting lack of any live transaction.

P Provisions Relied On

Section 95(a) of the CGST Act, 2017 (definition of 'advance ruling')

Section 97(2) of the CGST/MGST Act, 2017 (matters on which advance ruling may be sought)

Section 98 of the CGST/MGST Act, 2017 (procedure for advance ruling)

Chapter XVI and Chapter XVII of the CGST Act, 2017 (as referred to in the order)

! For the Practitioner

The order is useful mainly as an example of the authority declining to rule where the bid was lost before the order was passed, so no proposed supply by the applicant remained. It does not decide whether a lump-sum turnkey ONGC contract is a works contract, whether consortium members can use Notification 39/2017 or 3/2017, or how distinct invoices affect the rate. Practitioners facing similar questions will need a ruling or order that engages the merits, and should check whether the appellate authority has since addressed these points.

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 -> ara_order_77_2018_maharashtra_technip_uk_ltd.pdf

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