

KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING
6TH FLOOR, VANIJYA THERIGE KARYALAYA, KALIDASA ROAD,
GANDHINAGAR, BANGALORE – 560009

(Constituted under section 99 of the Karnataka Goods and Services Tax Act, 2017 vide Government of Karnataka Order No FD 47 CSL 2017, Bangalore, Dated:25-04-2018)

BEFORE THE BENCH OF

SHRI. D.P.NAGENDRA KUMAR, MEMBER

SMT. SHIKHA C., MEMBER

ORDER NO.KAR/AAAR-08/2021

DATE:03.09.2021

1	Name and address of the appellant	Assistant Commissioner of Central Tax, South Division – 1, Bangalore South Commissionerate, , Bangalore
2	Name and address of the person who had sought advance ruling.	M/s. BEML Limited, 23/1, 4th Main, BEML Soudha, SR Nagar,Bengaluru 560027
3	GSTIN or User ID of the person who had sought advance ruling.	GSTIN: 29AAACB8433D1ZU
4	Advance Ruling Order against which appeal is filed	KAR/ADRG 20/2021dated 6 th April 2021
5	Date of filing appeal	17-06-2021
6	Represented by	Smt. Nivdange Shweta Shankarrao, Assistant Commissioner, Bangalore South Division-1, South Commissionerate.
7	Jurisdictional Authority- State	-
8	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Not applicable

PROCEEDINGS

(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST, Act 2017 and SGST, Act 2017 are in *parimateria* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act 2017 and Karnataka Goods and Service Tax Act 2017 (herein after referred to as



CGST Act, 2017 and SGST Act, 2017) by the Assistant Commissioner of Central Tax, Bangalore South Division-1, South Commissionerate, (herein after referred to as Appellant/Appellant Department) against the advance Ruling No. KAR/ADRG 20/2021 dated 6th April 2021.

Brief Facts of the case:

3. M/s. BEML Limited, 23/1, 4th Main, BEML Soudha, SR Nagar, Bengaluru 560027 having GSTIN number-29AAACB8433DIZU (hereinafter referred to as "Respondent Company") have entered into a contract with M/s BMRCL for the manufacture and supply of Standard Gauge Intermediate Cars. The activity of manufacture and supply of Standard Gauge Intermediate Cars involves the supply of both goods and services which is undertaken by Cost Centres A to H. The nature of supply undertaken by each of the Cost Centres of the Respondent Company is as under:

Cost Centres	Schedule of Activity
A.	Preliminaries & General Requirements for Rolling Stock including 'Design' which is incidental to supply of rolling Stock
B.	Delivery and receipt of offshore manufacturing
C	Delivery and receipt of indigenous manufacturing
D	Commissioning and Acceptance of trains/ cars in Depot
E	Taking over of unit/train for revenue services
F	Deleted
G	Supply of Unit Exchange spares, mandatory spares and consumable spares and special tools testing and diagnostic equipment
H	Training, Operation and Maintenance Manuals (Optional) which is incidental but integral art of the Supply Contract.

4. The Contract between the Respondent Company and BMRCL indicates the total contract price of the "Facilities" supplied by BEML along with break-up of the costs relatable to each of the Cost Centres. Broadly, table tabulating the contract price for different Cost Centres depending on the nature of the works is as under:



Cost Centre	Cost Centre Wise Schedule of Activity Description	Total Apportioned Amounts of Cost Centre Items / Schedule for release of part payment for the supply contract		
		*Foreign Currency		Indian Rs.
		Euro	Japanese Yen	INR
		Column A1	Column A2	Column B
A	Preliminaries & General Requirements for Rolling Stock including Design which is incidental to Supply of Rolling Stock	6,27,328	4,02,22,560	6,15,09,360
B	Delivery and Receipt of offshore manufactured Cars in depot	-	-	-
C	Delivery and Receipt of Indigenous manufactured Cars in depot	5,26,94,600	3,37,86,94,450	5,16,67,85,150
D	Commissioning & acceptance of Trains / Cars in Depot	75,27,800	48,56,70,650	73,81,12,200
E	Taking Over of Unit / Train for Revenue service	18,81,950	12,06,67,700	18,45,28,050
F	Deleted			
	Sub-Total (A to E)	6,27,31,678	4,02,22,55,360	6,15,09,34,760
	Cost Centres on Actual Amount Basis			
G	Supply of Unit exchange spares, mandatory spares and consumable spares for period up to expiry of defect liability period and special tools, testing and diagnostic equipment	25, 15,637	8,45,24,000	44,45,60,498
	Bid Total 'A' To 'G' (Excluding Cost Centre 'H')	6,52,47,315	4,10,67,79,360	6,59,54,95,258
H	Training, Operation and Maintenance Manuals (Optional) which is incidental but integral part of the Supply Contract	13,62,275	12,05,23,710	10,51,68,588

5. For Cost Centres A to E, Clause 4 of the contract states that contract price is inclusive of the Basic Customs Duty at the concessional rate available under the project import registration. Further, it is agreed that applicable excise duty, service tax, VAT as applicable



prior to 1.07.2017 and GST as applicable post 1.07.2017 shall be paid by BMRCL to the Respondent Company based on the invoice of the applicant. Similarly, for imported spares supplied by Cost Centre G, it is agreed that the contract price shall be inclusive of Basic Customs Duty, CVD and SAD on imported finished spares. The VAT and GST component as applicable shall be paid by BMRCL as charged by the Respondent Company. Whereas for indigenous spares, the contract price shall be inclusive of excise duty and CST on indigenous finished spares and VAT and GST as applicable is required to be separately paid by BMRCL to the Respondent Company.

6. The value/cost of the supplies specific to each Cost Centres are separately stipulated in the Contract and milestones have been identified for raising of invoices for individual supplies. The Respondent Company is raising separate invoices based on the nature of transactions mentioned in different Cost Centres and accordingly charging GST on separate supplies. The Respondent Company is at present levying tax @ 12% on the supply of Standard Gauge Intermediate Cars and 18% on other supply of services as supplied by the respective Cost Centre. The table below indicates the treatment of different supplies as goods or services and the details of tax charged by the Respondent Company for such supplies made through their different Cost Centres:

Cost Centre	Description of activity	Supply	GST rate levied by BEML
A	Preliminaries & General Requirements for Rolling Stock including Design which is incidental to Supply of Rolling Stock	Goods	5% & 12% w.e.f01.10.19
C	Delivery and Receipt of indigenous manufacturing	Goods	5% & 12% w.e.f01.10.19
D	Commissioning and acceptance of trains/ cars in depot	Service	18%
E	Taking over of unit/ train for revenue service	Service	18%
G	Supply of unit exchange spares, mandatory spares and consumable spares and special tools, testing and diagnostic equipment.	Goods	28% / 18%



7. While, BMRCL has paid GST charged relatable to the supplies made by cost centre A and C, they have disputed the payment of GST at the rates charged by the Respondent Company for supplies made vide Cost Centre D, E and G. It is the understanding of BMRCL that the supply for the disputed cost centres are essentially composite supplies taxable at the rate of 5%/ 12% i.e., the rate applicable to principal supply of Rolling stock and that other supplies in the cost centre D to G are incidental and naturally bundled to the principal supply of rolling stock and supplied in conjunction with each other. On account of the disagreement on the nature of supply and applicable tax to be charged, total differential GST of Rs. 19,90,84,844/- stands withheld by BMRCL relatable to cost centres D, E and G.

8. In view of the above, the Respondent company filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 in respect of the following questions:

i. Whether the supplies made by cost centres C, D, E and G to BMRCL are to be considered as independent supplies of goods and services depending upon the scope of the work and applicable GST at the rate of 18% for supply of services and at the rate of 5%/ 12% for supply of goods shall be levied and charged? Consequently, what will be the time of supply for each supplies made by the cost centres?

ii. Whether the supplies made by cost centres C, D, E and G to BMRCL are to be considered as 'composite supply' as defined under Section 2(30) of the CGST Act, 2017 read with Section 9(1) of the CGST Act, 2017, with the supply of intermediate cars undertaken by Cost Centre C as the principal supply on which GST at 12% shall be levied and charged? Consequently, what will be the classification and time of supply for the entire Contract considering supplies made by Cost Centre C as principal supply?

9. The respondent company submitted before the Authority for Advance Ruling that the supply of goods and services from each cost centre should be treated as independent supplies for the reason that the contract categorically stipulates that the scope of each of the cost centres are independent of each other and the obligations and responsibilities of each of the Cost Centres should be based on their independent scope of works. They submitted that the supplies relatable to Cost Centre A are incidental to supplies made by Cost Centre C; that the activities undertaken by Cost Centre C clearly falls in the ambit of supply of goods. They submitted that Cost Centre D is involved primarily in the activity of commissioning and



installation of the metro rails; that the supply made by Cost Centre D is a supply of service as covered under the definition of 'service' under section 2(102) of the CGST Act. The Cost Centre E undertakes the activity of rectifying the defects observed during trial runs and submission of related documentations in relations thereto; that the scope of supply by Cost Centre E is covered under the definition of service classifiable under SAC 998739 as 'installation services of other goods'. As regards Cost Centre G, they submitted that the supplies effected by Cost Centre G is on the basis of actual requirement and the quantity of spares shall be increased or decreased as per the Pricing Document of Cost Centre G; that the spares supplied by Cost Centre G are independent of the supplies made by other cost centres. The Respondent Company submitted that the transactions or supplies undertaken by each of the Cost Centres separately are independent supply of goods and services and do not form part of the same bundle.

10. The Authority for Advance ruling examined the case of the Respondent and vide ruling No. KAR/ADRG 20/2021 dated 6th April 2021, arrived at the conclusion that the supplies made by the Respondent Company under Cost Centers C, D, E and G form a composite supply and since the supply of goods i.e intermediate cars is the principal supply, the rate of tax as applicable to the supply of intermediate cars will be applicable to the composite supply in terms of Section 8 of the CGST Act, 2017. The Authority also held that Section 12 of the CGST Act, 2017 is applicable to the issues related to the time of supply.

11. The jurisdictional CGST officer reviewed the impugned order passed by the Authority and being aggrieved by the ruling passed, filed an appeal before us on the following grounds:

11.1. The Respondent Company has admitted that each Cost Centre will deliver the indented item on its own; that it was also agreed upon as per the terms of the Contract that agreed amounts would be paid on supply/delivery of intended items/services and against reaching of milestones; that it is clear from the agreement that even the costings in respect of each item of work was worked out by the Respondent Company and the same was accepted by M/s. BMRCL. They submitted that it was a clear and a legally accepted contract between two major businesses who are not new to complex nature of contract/agreement for turnkey projects; that at the time of entering into contract, both the vendor and the customer had mutually agreed to the terms of the contracts fully understanding that billing will be done in accordance with the delivery of goods/services by the respective Cost Centres; that it is



evident from the submissions made by M/s. BEML that they have gone by the terms of agreement and billed M/s. BMRCL precisely as per the terms of the agreement. It is only in June, 2019, M/s. BMRCL contested that supply as a whole was a Composite supply and lesser rate of GST are applicable.

11.2. The Appellant submitted that each and every transaction should be viewed as a separate transaction, though it may be part of larger contract; that each contract or agreement is unique and any analysis should be made within the framework of the agreement taking into account the facts and figures. They submitted that the AAR has not taken into account scope of the terms and conditions of the agreement for any analysis and has given findings which are contrary to the agreed terms and conditions; that the goods/services delivered need to be assessed on merits and appropriate classification needs to be done and merit rate of tax to be paid; that even in the absence of any written agreement or contract or MOU, the goods/services/goods and services should be assessed as they are presented at the time of supply/delivery.

11.3. The Appellant submitted that there was no way that M/s. BEML and M/s. BMRCL could have gone back on the mutually agreed and signed agreement wherein the terms of supplies, scope of supplies, terms of payment all are very clear; that not only the Cost Centers are recognized by M/s. BMRCL but M/s. BMRCL agreed to pay GST on each Cost Centre on merits of supply; that it is not the case of M/s. BEML and M/s. BMRCL that the then Central Excise/Service Tax/VAT or GST components were not factored while arriving at the Contract value. It was mutually agreed to pay applicable taxes, depending on the scope of supply which basically hinged as to which Cost Centre provided the supply; that in terms of the agreement, M/s. BEML is invoicing separately based on the nature of transaction mentioned in different Cost Centre and charging GST on separate supplies. Thus, it is a clear case where each Cost Centre knows in advance its scope of work, its costing, its milestone for billing and M/s. BMRCL also has approved such costing and billing and payments. Therefore, it is a case where various types of supplies both goods and services are made with clear understanding that the services or goods or both are to be assessed as they are presented at the time of delivery/supply in terms of the mutually agreed technical and costing details.

11.4. The Appellant submitted that the intention of the parties to the contract is of paramount importance to determine the scope of supplies and its taxability; that in the instant case, the scope of activities to be undertaken has been clearly demarcated in the contract



entered with BMRCL and accordingly each cost center of the Respondent Company is making separate supplies based on their scope. The contract categorically stipulates that the scope of each of the cost center is independent of each other and the obligations and responsibilities of each of the Cost Centers should be based on their independent scope of works. Therefore, for the purpose of invoicing, the scope of work involved and undertaken by the respective Cost Centre should be the criteria and hence, the invoicing done by M/s. BEML is correct.

11.5. The Appellant relied on CBIC Circular No 47/21/2018-GST dated 8-6-2018 relating to how servicing of cars involving both supply of goods (spare parts) and services (labour), where the value of goods and services are shown separately, is to be treated under GST. In the said Circular, it is clarified that, the taxability of supply would have to be determined on a case to case basis looking at the facts and circumstances of each case. Where a supply involves supply of both goods and services and the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately. Thus, it is clear that as long as value of goods and services are shown separately, the goods and services would be liable to tax at the rate as applicable to such goods and services separately. In the instant case, the agreement in question has clear and categorical bifurcation of supply of goods and supply of services, costings prepared based on Bill of Material/Man-hours and other accepted norms of costing, separate rates of taxes as applicable, separate obligations and responsibility, milestones to each Cost Centre mutually agreed by both the parties. Therefore, the supplies are to be classified, assessed and applicable taxes are to be paid on merits and not by treating the contract as merely composite supply, when facts and figures contrary to such a view are on record.

11.6. The Appellant also submitted that the CBIC vide Circular No. 34/8/2018-GST dated March 1, 2018 while clarifying the issue - 'Whether activity of bus body building, is a supply of goods or services?' has held that in the case of bus body building there is supply of goods and services; that thus, classification of this composite supply, as goods or service would depend on which supply is the principal supply which may be determined on the basis of facts and circumstances of each case. Therefore, each case should be decided based on its facts and circumstances; that findings are to be within the terms and conditions and facts and figures, intention of the parties connected with the case under examination. The Appellant



submitted that by not going by the above principle, the AAR has erred in summarizing a complex, elaborate agreement as 'composite supply with supply of intermediate cars as principal supply' and ignored the detailed terms, conditions, costings, independent nature of Cost Centers, borne out from the documents and submissions made by the Respondent Company. They submitted that mutually agreed terms and conditions are the basis for any contract. If it were to be a simple supply of intermediate cars, there was no need for such an elaborate contract; that the AAR findings render the terms of the contract irrelevant and artificial. But, in reality, the instant contract with all its terms and conditions, cannot be summarised as a Composite supply taking into account the finer aspects, submitted by the applicant as above.

11.7. The Appellant submitted that in para 31 of the Ruling, the AAR observes that multiple supplies can be made within the same contract, when the parties intend to treat them as different supplies and thus accepts that intention of the parties is a factor to be reckoned with to decide the nature of supply; that the AAR, ignored the fact that, apart from the taxability of the transaction within the defined contours of law, the intention of the parties to the contract is of paramount importance to determine the scope of supplies and its taxability. In the instant case, the scope of activities to be undertaken has been clearly demarcated in the contract entered with BMRCL and accordingly each cost center of the Respondent Company is making separate supplies based on their scope and being invoiced accordingly. This fact is ignored by the AAR and thus, the case is not decided based on the facts and circumstances unique to the case on hand.

11.8. The Appellant submitted that, the crucial fact that the contract categorically stipulates that the scope of each of the cost centers are independent of each other and the obligations and responsibilities of each of the Cost Centers should be based on their independent scope of works is not taken into account while giving Advance Ruling. The Appellant submitted that the AAR relied on para 6 of the Attachment B wherein it is mentioned that - "this contract is divided into various activities as detailed in Annexure FB-2 of the pricing document and the activities are conveniently named to enable cash flows to the contractor according to the several phases involved in the supply of the intermediate cars in terms of this contract", and accordingly held that since the agreement itself states that the milestones are only artificial creations to enable cash flows to the Respondent, this is treated as a naturally bundled supply with the supply of intermediate cars; that, the AAR failed to appreciate the factual position



that the Respondent Company being a PSU, would have not created Cost Centers A, B, C, ... to H artificially and brought out detailed scope of work, responsibilities, detailed costings of each Cost Centre in the contract document, signed by M/s. BMRCL, another body corporate with Govt. funding, merely for the sake of cash flow; that the Cost Centers are not artificial creations and neither are they created for the sake of fund flow nor just for the sake of contract with M/s. BMRCL.

11.9. They submitted that in para 28.3.1, the Ruling states that the Contract Price of Cost Centres A to E is on the basis of the Contract Price and the Contract Price of Cost Centre G which is related to Spares is on the basis of actual amount supplied and the Contract Price of Cost Centre H which is related to Training etc, is only when it is supplied, the supply of which is optional and hence, it is clear that the total contract price is not a rigid one, but a variable one, based on the supplies made at periodic intervals and hence the total contract price can be treated as the variable price. While ruling that total contract price is not rigid but variable on one hand, the AAR cannot conclude that the supply under contract is naturally bundled supply of intermediate cars. As the activities and costings are not naturally bundled, the connected supply cannot be held as a composite supply in terms of Clause (30) of section 2 of the CGST Act, 2017.

11.10. In para 28.5.2 of the AAR order, it is stated that the cost center relating to spares (Cost Centre G) would be a separate supply, which is supplied in conjunction with the principal supply. When supply of spare is a separate supply, there is no basis to hold that it forms part of naturally bundled supply to be qualified as Composite supply. Thus, the order is contrary to its own findings, as the supplies of Cost Centre G do not form part of Composite supply, as they are not naturally bundled. In para 29 of the AAR order, it is stated that the supplies made under Cost Centre C is of goods, Cost Centers D and E are related to services and supplies made under Cost Centre G is related to the spares. Further, in para 30.1 of the AAR order, it is stated that 'Cost Centre C to G would form a composite supply as the supply involves supply of intermediate cars and also integration, commissioning etc; that there would be supply of goods and supply of services involved in this activity and hence would form a naturally bundled supply. But, when Cost Centre G makes separate supply as per terms of contract, the finding that supply from Cost Centre C to G is naturally bundled supply appears to be not correct, as supplies may take place or may not take place. The disclosure of the Respondent Company that the bundling of supply is not relevant in the facts of the present



case as the interdependence of each transaction is absent is ignored by the AAR without examining facts and circumstances of the case, borne out from the documentary evidences.

11.11. The Appellant submitted that the AAR finds the Contract as a whole as a single contract for supply of 'Supply of 150 Nos. Standard Gauge Intermediate cars as per the requirements of BMRCL compatible with and suitable for integration with existing trains of Bangalore Metro rail Project Phase I; that in para 28.1 of the AAR order, the Authority has recorded that the contract is a single contract for both supply of goods and also for services related to those goods supplied, like installation, integration, commissioning, training and maintenance; that splitting of the entire contract is for the purposes of milestones in the completion of the contract and is a single continuous chain; that the Contract agreement also clearly states that the contract is a single contract involving supply of goods and services; that the contract cannot be separated and awarded to different persons and since the nature of the spares and services are exclusive to the main supply, it cannot but be awarded to the same person. On the other hand, the AAR goes on recording in para 28.5.2 that the cost center relating to spares would be a separate supply and in para 28.3, that the Total Contract Price is split up into separate Contract Prices cost center wise and one of the costcenter H is optional. Thus, it appears that elements of separate supply by Cost Centre C, optional supply by Cost Centre H would indicate that each Cost Centre is independent and hence ruling that the supplies covered under the contract are naturally bundled and supplied in conjunction appears to be not correct.

11.12. The Appellant submitted that in the case of Vista Marine And Hydraulics 2019 (30) G.S.T.L. 671 (A.A.R. Kerala), where the question before the Authority for Advance Ruling was whether supply of repair services for Naval Boats along with supply of spare parts is a composite supply or not. It was held that it was clear from contract between applicant and Naval Ship Yard that work order is for two distinct and separately identifiable supplies, one for goods, i.e., spare parts and other for services. Further, the applicant was issuing separate invoices for these two supplies. It was held that the supplies were independent taxable supplies and not composite supplies. They submitted that the above decision is squarely applicable in the instant case and accordingly the supplies made by separate Cost Centers should be treated distinctly as also understood from the intention of the parties to the

Contract.



11.13. In view of the above, the Appellant prayed that the order of the lower Authority be set aside.

PERSONAL HEARING:

12. The Appellant-Department and the Respondent Company were called for a virtual personal hearing on 6th August 2021.

13.1. The hearing on 6th August 2021 was conducted on the Webex platform following the guidelines issued by the CBIC vide Instruction F.No 390/Misc/3/2019-JC dated 21st August 2020. The Appellant-Department was represented by the Assistant Commissioner of Central Taxes, South Division-1 Ms Nivdange Shweta Shankarrao and the Respondent Company was represented by their Advocates Shri. Ravi Raghavan and Shri. Mohammed Ibrahim. The Assistant Commissioner of Central Taxes representing the Appellant stated that the Department is aggrieved by the ruling given by the lower Authority holding that the supplies made from Cost Centres C, D, E and G are in the nature of composite supply with the principal supply being the supply of goods and the rate of tax as applicable to the supply of goods will apply. The Appellant pointed out that as per the terms of the contract, the activity undertaken by each cost centre is independent of each other and the respondent and their client (Ms BMRCL) were operating under this understanding till June 2019. It was only post June 2019 that the Respondent has changed their stand and sought for an advance ruling on the nature of supply. The Appellant submitted that the Advance Ruling Authority failed to consider the terms of the contract and erred in holding that the supplies made by Cost Centres C, D, E and G is a composite supply with the principal supply being the supply of goods. The Appellant reiterated the grounds of appeals and requested that the same may be taken on record and appeal of the Department may be allowed.

13.2. In his rebuttal, Shri. Ravi Raghavan, Advocate for the Respondent supported the ruling passed by the lower Authority and submitted that the contract between the Respondent Company and M/s BMRCL is one single contract with different cost centres carrying out different activities. He submitted that there is no dispute regarding the nature of supply of Cost Centre A and the application for ruling was limited to the nature of



activity regarding Cost Centres C, D, E and G which are also the subject matter of this appeal by the Department. He submitted that the purpose of the contract is for the supply of the Intermediate cars and for commissioning and integration of the cars with the existing metro line of Phase I; that a major portion of the contract value of approx. 670 crores is attributable to the supply of intermediate cars from Cost Centre C and hence the supply of cars is to be regarded as the principal supply; that the supply from Cost Centre D is essentially a supply of service of installation and commissioning the cars supplied by Cost Centre C and hence is naturally bundled and in conjunction with the supply from Cost Centre C. So also Cost Centre E, which undertakes the activity of rectifying the defects in the cars during the trial runs is an activity which is naturally bundled with the supply of the intermediate cars from Cost Centre C. As regards Cost Centre G, he submitted that it relates to the supply of spares and consumables which is necessary for the scope of the supply under the contract and is made based on the actual requirement. He emphasised that there is no element of service in the supplies made by Cost Centre G and it only involves the supply of goods; that even though the spares are supplied after the supply of the intermediate cars whenever required depending on the wear and tear of the use of the cars, the fact remains that they are to be supplied as per the terms of the contract and hence are naturally bundled with the supply of the cars from Cost Centre C. In view of the above, he submitted that the lower Authority has rightly held that the supplies from Cost Centres C, D, E and G are a composite supply with the principal supply being the supply of goods from Cost Centre C. They relied on the ruling given by the Rajasthan Advance Ruling Authority on a similar turnkey contract in the case of TAG Solar Systems. The Respondent filed detailed written submissions and requested that the same be taken on record and pleaded that the appeal filed by the Department may not be allowed.

DISCUSSION & FINDINGS:

14. We have gone through the records of the case. This is an appeal filed by the Department against the ruling given by the Authority for Advance Ruling in the case of M/s BEML Ltd. We have considered the submissions made by the Appellant in their grounds of appeal and at the time of personal hearing. We have also heard the Respondent Company and gone through the written submissions filed by them.



15. The Respondent Company entered into a contract with M/s BMRCL for supply of 150 numbers of Standard Gauge Intermediate Cars which are to be integrated into the existing 3-car trains of Bangalore Metro Rail Project Phase I which have been procured under Contract No 2 RS-DM. We have perused the contract No 3 RS-DM dated 25-03-2017 entered into between M/s BMRCL and M/s BEML Ltd. The contract also places on M/s BEML Ltd the obligation and responsibility of commissioning and installation of the cars, attending to the defects/deficiencies observed during the integration test and joint inspection, providing training of Operation and Maintenance Personnel, Supervision of Maintenance, Supply of mandatory spares and consumable spares and Operation and Maintenance Manuals. The contract is divided into various activities and the Respondent has formed specialized functional divisions in its organization (called Cost Centres), each entrusted with the responsibility to execute a specified activity under the contract. The Respondent has named the functional divisions as Cost Centres A to H each of which undertakes an activity as indicated in the Table below, which is according to the phases involved in the supply of the intermediate cars.

Cost Centres	Schedule of Activity
A.	Preliminaries & General Requirements for Rolling Stock including 'Design' which is incidental to supply of rolling Stock
B.	Delivery and receipt of offshore manufacturing
C	Delivery and receipt of indigenous manufacturing
D	Commissioning and Acceptance of trains/ cars in Depot
E	Taking over of unit/train for revenue services
F	Deleted
G	Supply of Unit Exchange spares, mandatory spares and consumable spares and special tools testing and diagnostic equipment
H	Training, Operation and Maintenance Manuals (Optional) which is incidental but integral art of the Supply Contract.

16. The total contract price for the performance of all the above activities by all the Cost Centres of M/s BEML as part of their contractual obligations and responsibilities is around Rs. 670.05 crores. The total contract price is split into 3 parts viz:



a) Contract price for Cost Centres A to E – Rs 615.09 crores

The total contract price for Cost Centres A to E is further apportioned towards Cost Centre A, C, D and E in the following manner:

Cost Centre A – Rs 6,15,09,360

Cost Centre C – Rs 516,67,85,150

Cost Centre D – Rs 73,81,12,200

Cost Centre E – Rs 18,45,28,050

Total – Rs 615,09,34,760

b) Contract price for Cost Centre G – Rs 44.45 crores

c) Contract price for Cost Centre H – Rs 10.51 crores.

17. In respect of the activities undertaken by Cost Centres A to E, the contract price is inclusive of Basic Customs Duty but does not include Excise duty on the manufacture of the metro cars, VAT on the sale of the metro cars and Service tax on the service portion of the contract performed by Cost Centres D and E. The contract states that the Excise Duty, VAT and Service tax will be reimbursed by M/s BMRCL to M/s BHEL as invoiced by the latter. The contract which was executed in March 2017, also makes provision for the future implementation of GST and it provides for reimbursement of applicable GST as invoiced by Ms BEML. In the case of spares supplied by Cost Centre G, the contract price is inclusive of Basic Customs Duty and CVD and SAD (in the case of imported spares) and Excise duty and CST (in the case of indigenous spares) but does not include VAT which shall be reimbursed to M/s BEML as and when invoiced. Even for Cost Centre G, the contract has made a provision for the future implementation of GST and it states that applicable GST will be reimbursed as invoiced by M/s BEML. Payment for supplies made from Cost Centre G will be on the basis of actual supplies made. In the case of the contract price for Cost Centre H, the same is exclusive of service tax. This Cost Centre H is optional and shall be operated based on the requirement of M/s BMRCL.

18. In this proceeding before us we are concerned only with the activities undertaken by Cost Centres C, D, E and G and we will restrict our discussions to only these Cost Centres.

As admitted by the Respondent, from the commencement of GST law in July 2017, M/s BEML have treated the Cost Centres C, D, E and G, as independent Cost Centres and have



been paying GST for the supplies undertaken by each of the said Cost Centres in terms of the contract, at the rates applicable to the nature of supply. The position that was adopted by the Respondent for the purpose of discharging GST is as indicated below:

Cost Centres	Schedule of Activity	Treatment of supply by the Respondent
C	Delivery and receipt of indigenous manufacturing	Supply of goods
D	Commissioning and Acceptance of trains/ cars in Depot	Supply of service
E	Taking over of unit/train for revenue services	Supply of service
G	Supply of Unit Exchange spares, mandatory spares and consumable spares and special tools testing and diagnostic equipment	Supply of goods

19. However, M/s BMRCL disputed the Respondent's practice of considering the supply by cost centres C, D E and G, as independent supplies. Consequently, M/s BEML Ltd applied to the Authority for Advance Ruling seeking a ruling on whether the supplies made by Cost Centres C, D, E and G are independent supplies of goods and services or composite supply with the principle supply being the supply of goods. The lower Authority held that the contract entered into with M/s BMRCL is a single contract for supply of 150 nos of Standard Gauge Intermediate Cars and the supplies made by Cost Centres C, D, E and G form a composite supply with the principal supply being the supply of goods i.e Intermediate Cars. Aggrieved by this ruling, the Department is before us in appeal.

20. In the background of the above facts, let us examine whether the supplies made by Cost Centres C, D, E and G are independent supplies of goods and services as contended by the Appellant Department or a composite supply as held by the lower Authority. Section 2(30) of the CGST Act, 2017 defines "composite supply" as follows:

"composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;



Illustration. - Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

From the above definition, it is evident that the primary elements of the composite supply under Section 2(30) of the CGST Act, 2017 are:

- (a) There should be two or more taxable supplies,
- (b) The taxable supplies should be naturally bundled,
- (c) They should be supplied in conjunction with each other in ordinary course of business.
- (d) One of the supplies should be a principal supply.

21. In the instant case, there is no doubt that there are multiple supplies of both goods and services being undertaken as part of this contract. While the supply from Cost Centre C is a supply of goods i.e the Standard Gauge Intermediate Cars, the supply by Cost Centre D is primarily a service of commissioning and installation of the Cars supplied by Cost Centre C. Similarly, the supply from Cost Centre E is a service of joint inspection and completion of defects/deficiencies observed during integration test and joint inspection. The supply of spares from Cost Centre G is purely a supply of goods. We find that there is no dispute on the nature of supply by each of the above-mentioned Cost Centres. The bone of contention is whether the supplies by Cost Centres C, D, E and G are to be termed as a composite supply or not. For a supply to be consider as a composite supply, its constituent supplies should be so integrated with each other that one cannot be supplied in the ordinary course of business without or independent of the other. In other words, they are naturally bundled. The term 'naturally bundled' has not been defined in the GST Act. The concept of the "Naturally Bundled", as used in Section 2(30) of the CGST Act, 2017, lays emphasis on the fact that the different elements in a composite supply are integral to the overall supply and if one of the elements is removed the nature of supply will be affected. We fail to see this concept in this contract. In this case, although there is only one contract, the different activities done by the Cost Centers C, D, E and G as part of the contract, are clearly specified and identifiable. The scope of works undertaken by each Cost Centre C, D, E and G are entirely independent and specific to that cost center and is not associated with any other Cost Centre. The work undertaken by the Cost Centre D commences only on completion of all the milestone



activities of Cost Centre C. Similarly, the work undertaken by Cost Centre E and G commence only on completion of all the milestone activities of Cost Centers D and E respectively. Therefore, it is evident that each Cost Centre is independent and every milestone supply made from the Cost Centre is an independent transaction.,

22. Further, we also note that the contract has laid down the cost attributable to each milestone activity in each of the cost centers. The payment made by M/s BMRCL will be based on the invoices raised by M/s BEML on completion of each milestone in the Cost Centre. For example, as per the contract, the Cost Centre C will supply the 1st indigenously manufactured 3 car unit (-MC+MC-TC-) along with dispatch documents, transit insurance and No Objection certificate from the Engineer within 65 weeks from the commencement date and the amount apportioned towards this supply is Rs 10, 33, 35, 703/-. Similarly, Cost Centre D will within 76 weeks from the commencement date, integrated the 1st 3 car unit into the existing 3 car train (DMC-TC-DMC) to form the 6-car train. Cost Centre D will also complete the functional tests of 6 car train and running of 6 car train in the depot and test track along with integrated testing and commissioning at the depot. The amount apportioned towards this supply is Rs 1,47,62,244/-. If there are any defects/deficiencies observed during main line type test and integration test or joint inspection of the 1st 3-car unit forming 3-car to 6 car train, the same will be attended to by Cost Centre E along with any other minor outstanding works, within a period of 78 weeks from the commencement date. The amount apportioned for this supply from Cost Centre E is Rs 36,90,561/-. Therefore, each supply by the Cost Centers C, D, E and G is clearly identifiable at the time of raising the invoice as to whether it is a supply of goods or a supply of service and the cost attributable to each supply is predetermined and laid down in the Pricing document which is part of the Contract. As such we agree with the Appellant's contention that each transaction by the individual Cost Centers are to be assessed independently according to the nature of supply.

23. The lower Authority has erred in interpreting the creation of cost centres as per the contract as artificial creations to enable cash flow. When interpreting the nature of a contract, the form of the agreement is not important, it is rather the substance which has to be seen. The parties may use any words they like to suit their intention and it is therefore imperative that the agreement may not be taken as it is but its nature/substance has to be seen to arrive at the correct conclusions. In this case, although a single contract has been made for supply of goods and services, the clear-cut demarcation of activities of supply of goods and supply of services to each Cost Centre clearly demonstrates the intention of the contracting parties that



each of the cost centres C, D, E and G is an independent supply centre undertaking either a supply of goods or a supply of service. Hence, we are unable to subscribe to the views of the lower Authority and the Respondent that the supply of goods and services encompassed as per this contract are naturally bundled. The mere fact that a number of tasks have been entrusted to the Respondent through a single contract would not make it as 'composite supply' in terms of Section 2(30) of the CGST Act, 2017. We reiterate that the obligations of supplies envisaged in this contract are distinct and separable and hence the separate activities of supply of goods and supply of services have to be viewed independently on its own merits.

24. In view of the above, we pass the following order:

ORDER

We allow the appeal filed by the Assistant Commissioner of Central Tax, Bangalore South Division-1, South Commissionerate and set aside the ruling given by the Authority for Advance Ruling in KAR ADRG 20/2021 dated 6th April 2021 with regard to composite supply.

We hold that the supplies made by Cost Centres C, D, E and G to M/s BMRCL are to be considered as independent supplies of goods and services as indicated in the Table below and rate of GST as applicable to the supply of goods and supply of service will apply.

Cost Centres	Schedule of Activity	Treatment of supply	Applicable GST rate
C	Delivery and receipt of indigenous manufacturing	Supply of goods	5% upto 30-09-2019 12% w.e.f 1-10-2019
D	Commissioning and Acceptance of trains/ cars in Depot	Supply of service	18%
E	Taking over of unit/train for revenue services	Supply of service	18%
G	Supply of Unit Exchange spares, mandatory spares and consumable spares and special tools testing and diagnostic equipment	Supply of goods	18% / 28% as applicable



The appeal filed by the Department is disposed off on the above terms.


(D.P.NAGENDRAKUMAR)

Member

Karnataka Appellate Authority
For Advance Ruling

Member

To **Appellate Authority for Advance Ruling**


(SHIKHA C)

Member

Karnataka Appellate Authority
For Advance Ruling

Member

Appellate Authority for Advance Ruling

- 1) The Assistant Commissioner of Central Tax, South Division-1, Bangalore South Commissionerate, 2nd Floor, BMTC/TTMC Building, Banashankari, Bangalore 560070
- 2) M/s Bharat Earth Movers Ltd, 23/1, 4th Main, BEML Soudha, S.R. Nagar, Bengaluru 560027

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