


<b>GUJARAT AUTHORITY FOR ADVANCE RULING,</b> GOODS AND SERVICES TAX, A/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380009.	
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**ADVANCE RULING NO. GUJ/GAAR/R/2022/06**

(In Application No. Advance Ruling/SGST&CGST/2021/AR/38)

**Dated: 07.03.2022**

Name and address of SPSC	:	M/s. SP Singla Construction Pvt. Ltd., Opp. Raj Bhawan, Rukmani Nagar, Devbhoomi Dwarka, Dwarka, Gujarat-361335
GSTIN of SPSC	:	24AAGCS5773B1ZG
Date of application	:	13/10/2021
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(c)
Date of Personal Hearing	:	18/02/2022
Present for SPSC	:	Shri Rajat Mittal, Advocate

**Brief Facts**

M/s SP Singla Constructions Pvt. Ltd., hereinafter referred to as SPSC for the sake of brevity, submits that it is engaged in the business for construction SPSC of bridges and other projects for Government of India as well as State Governments and the undertaking of these Governments.

2. SPSC has submitted that as all the Engineering, Procurement and Construction Contract (EPC contracts) are generally similarly worded, for the purpose of the present applicant, they have referred to the EPC Contract dated 15-1-18 entered into between Government of India, through Ministry of Road Transport & Highways, New Delhi (the Authority) for construction of New 4 -lane Signature Bridge.

3. Vide the EPC Agreement dated 15.01.2018, the Authority has entrusted SPSC with the responsibility of Construction of New 4-Lane Signature Bridge (900M Long Central Cable-Stayed Module) Connecting Missing Link between Okha and Beyt Dwarka on EPC Mode including Construction of Approached road on New National Highway No. NH-51 in the State of Gujarat (Works) on the terms and conditions laid down therein.

4. For carrying out the Works as specified under the said EPC Agreement, the Authority shall make payment of Contract Price to SPSC and relevant clause 19.1 of EPC contract is read as follows:

**“19.1 Contract Price**

*19.1.1 The Authority shall make payments to the Contractor for the Works on the basis of the lump sum price accepted by the Authority in consideration of the obligations specified in this Agreement for an amount of Rs. 689,47,00,000/- (Rs. Six hundred eighty nine crore forty seven lac only) (the “Contract Price”), which shall be subject to adjustments in accordance with the provisions of this Agreement. For the avoidance of doubt, the Parties expressly agree that the Contract Price shall not include the cost of Maintenance which shall be paid separately in accordance with the provisions of clause 19.7. The Parties further agree that save and*

*except as provided in this Agreement, the Contract Price shall be valid and effective until issue of Completion Certificate.*

*19.1.2 The Contract Price includes all duties, taxes, royalty and fees that may be levied in accordance with the laws and regulations in force as on the Base Date on the Contractor's equipment, Plant, Materials and supplies acquired for the purpose of this Agreement and on the services performed under this Agreement. Nothing in this Agreement shall relieve the Contractor from its responsibility to pay any tax including any tax that may be levied in India on profits made by it in respect of this Agreement.*

*...”*

5. SPSC has submitted that the Contract Price is released periodically based on stages agreed in the EPC Agreement dated 15.01.2018. For every completed stage an invoice is raised by SPSC which is paid by the Authority and clause 19.3 of EPC contract is as under:

*19.3 Procedure for estimating the payment for the Works*

*19.3.1 The Authority shall make interim payments to the Contractor as certified by the Authority's Engineer on completion of a stage, in a length, number or area as specified, and valued in accordance with the proportion of the Contract Price assigned to each item and its stage in Schedule H.*

*19.3.2 The Contractor shall base its claim for interim payments for the stages completed till the end of the month for which the payment is claimed, valued in accordance with Clause 19.3.1, supported with necessary particulars and documents in accordance with this Agreement.*

*..”*

6. SPSC has submitted that the Authority also makes an interest-bearing advance payment - generally equal to 10 (ten) percent of the contract price, exclusive for mobilization expenses (“Mobilization Advance”) to them (Article 19.1 and 19.2 of the EPC Agreement dated January 2018). The Mobilization Advance (for the sake of brevity referred to as said Advance) is generally paid by the authority to SPSC to extend financial assistance to a contractor to mobilize resources for timely and smooth take off of the project.

7. In lieu of the Mobilization Advance, SPSC is required to give a counter Bank Guarantee in a prescribed form to the concerned authority of generally an amount of 110% of such Mobilization Advance extended to SPSC which would remain effective till complete and full repayment of the Mobilization Advance (Refer clause 19.2.2 of the EPC Agreement dated January, 2018).

8. SPSC has submitted that payment for the construction work done by them is given by the concerned authority on completion of a payment stage (say a month) as defined in an EPC Contract, post which SPSC raises an invoice on the concerned authority. A part of the Mobilization Advance is reduced in proportion to the value of the work completed as shown in the invoice raised by SPSC up to that stage. The amount of Bank Guarantee provided by SPSC is also correspondingly reduced in proportion to the Mobilization Advance adjusted in the invoices (Article 19.2.7 to Article 19.5 of the EPC Agreement dated January, 2018). In this regard, invoice is annexed herewith as Annexure – 2.

9. The EPC Contract also provides that if the Mobilization Advance has not been fully repaid by SPSC prior to the Termination of the contract as envisaged in the contract, the whole of the balance outstanding shall be immediately become due and payable by SPSC to the concerned authority and in such a case the concerned authority would en-cash the Bank Guarantee given by SPSC (Refer Article 19.2.8 of the EPC Agreement dated January, 2018).

10. The concerned Authority who is making the payment of Mobilization Advance to SPSC may or may not deduct TDS on such payment. There are cases where the TDS is not deducted by the concerned authorities. However, it is made clear that in view of the numerous decisions of the Income Tax Appellate Tribunal, there is no requirement on the part of the customers to deduct TDS on the Mobilization Advance paid to a contractor. However, there is no uniformity of practice in this regard.

10. SPSC submits that the Mobilization Advance is shown as other non-current liability advance against bank guarantees in the books of accounts and not shown as income. The advance is provisionally transferred to sale/ consideration for service as and when the proportionate amount is deducted from the invoices raised on the customers. In this regard, reference is placed on the relevant pages from the books of accounts of SPSC which are annexed.

11. SPSC submits that in terms of Section 7(1) of the CGST Act, 2017, GST is leviable on 'supply' of 'goods' or 'services' from one person to another for a 'consideration.' The definition of supply is reproduced:

7. (1) For the purposes of this Act, the expression "supply" includes— (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business; (b) import of services for a consideration whether or not in the course or furtherance of business; (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

11.1 Thus, 'consideration' is a necessary concomitant of taxable event of 'supply' of goods or services.

12. SPSC has submitted that in order to calculate and discharge liability under the CGST Act 2017 and SGST Act 2017, it is important to know the date when the GST liability arises i.e., the date on which the charging event has occurred. In GST law, it is known as 'Time of Supply' and the relevant provisions of the CGST Act, 2017 are referred herein as they are pari-materia with the provisions under the SGST Act, 2017.

13. SPSC submits that CGST Act, 2017 has provided separate provisions to determine the 'time of supply of goods' and 'time of supply of services.' While Section 12 of the CGST Act, 2017 provides for 'time of supply of goods', Section 13 of the CGST Act, 2017 contains provisions for 'time of supply of services.' Thus, in order to determine the 'time of supply' in the present case, it is important to know as to whether the activity of SPSC is a supply of goods or supply of service.

14. SPSC activity qualifies as 'works contract' in terms of Section 2(119) of the CGST Act, 2017 as it relates to construction of an 'immovable property'. In terms of Para 6(a) of the Schedule II of the CGST Act, 'works contract' is specifically deemed as supply of service.

14.1 SPSC submits that in view of the above their activity qualifies as service accordingly, the provisions pertaining to 'time of supply of service' under the CGST Act, 2017 are required to be referred.

14.2 Section 13 of the CGST Act, 2017 provides for the 'time of supply of services', relevant extract of which is reproduced below:

13. *Time of supply of services.*

(1) *The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.*

(2) *The time of supply of services shall be the earliest of the following dates, namely: -*

*(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or*

*(b) the date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or*

*(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:*

...

*Explanation. - For the purposes of clauses (a) and (b)-*

*(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;*

*(ii) "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.*

14.3 Therefore, as per the Default Rule, the 'time of supply' of 'services' is the earliest of the following dates:

- *If the invoice is issued within the legally prescribed period (thirty days from the date of supply of service), then the date of issue of invoice by the supplier or date of receipt of payment, whichever is earlier.*
- *If the invoice is not issued within the prescribed period of thirty days, then the date of provision of service or date of receipt of payment, whichever is earlier.*
- *Date on which recipient shows the receipt of service in his books of account, in a case aforesaid two provisions do not apply.*

15. SPSC has submitted that in accordance with the above provision, where the payment for the 'supply of service' is made in advance i.e. before completion of service or before raising of invoice, the date of receipt of such advance payment is the 'time of supply' and accordingly the GST liability accrues on the said date. However, not all monetary receipts can be said to be a payment. For a receipt to be categorized as an advance payment, it should partake the character of payment towards a supply i.e., such receipt should be in the nature of consideration for the supply. If the Mobilization Advance is in the nature of payment towards the supply of services by SPSC, the liability of GST arises at the time of receipt of such Mobilization Advance. However, if the Mobilization Advance is not in the nature of payment towards the services provided by SPSC, liability to pay GST does not arise at the time of receipt of Mobilization Advance. In this regard, it is important to refer to the definition of consideration under Section 2(31) of the CGST Act, 2017, the relevant extract of which is reproduced:

2(31). *"consideration"*

*In this Act, unless the context otherwise requires, -*

(31). *"consideration" in relation to the supply of goods or services or both includes, -*

*(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;*

*(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:*

*Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;*

15.1 A perusal of the definition of consideration reveals that consideration is a payment towards a supply of goods or services. Further, the definition of consideration categorically excludes any deposit given in respect of the supply of goods or services unless the supplier applies such deposit as a consideration or payment for the said supply. Thus, for any receipt of money to be treated as consideration – the following two conditions are to be cumulatively satisfied:

1. The said receipt of money should be in the nature of payment towards a supply of goods/ services; and
2. The said receipt of money should not be in the nature of an unapplied deposit.

16. SPSC submits that the Mobilization Advance received by it from the Customers is not in the nature of payment towards the supply of works contract service. Mobilization Advance is in the nature of a deposit. It ceases to be a deposit and assumes the character of a payment when it is applied as a consideration. In this regard, the submissions of SPSC are as follows:

17. The term payment defined in the Black's Law Dictionary (10<sup>th</sup> Edition):

*Payment. (14c) 1. Performance of an obligation by the delivery of money or some other valuable thing accepted in partial or full discharge of the obligation. 2. The money or other valuable thing so delivered in satisfaction of an obligation.*

17.1 A perusal of the meaning of the term payment reveals that it is a delivery of money in full or partial discharge of an obligation or satisfaction of an obligation. Thus, a person who makes a payment is in a sense obligated to part with the money to the recipient.

18. Moreover, the definition of consideration includes only those payments within its ambit that are made towards a supply of goods/ services. Thus, where money is given to a recipient without an obligation to be discharged, it cannot be called as a payment. In the present case, the Mobilization Advance is given by the Customers to SPSC to extend financial assistance to SPSC to mobilize resources for timely and smooth take off of the project i.e., such an Advance is not towards discharge of an obligation.

19. The fact that Mobilization Advance extended by the Customers to SPSC is not a payment towards discharge of an obligation or towards a supply of goods/services, is also evidenced from the fact that SPSC is required to give a counter Bank Guarantee to the customers in lieu of such Mobilization Advance. In this regard, reference can be made to the following provisions in the EPC Agreement dated January, 2018:

*19.2.2 The Contractor may apply to the Authority for the first installment of the Advance Payment at any time after the Appointed Date, along-with an irrevocable and an unconditional guarantee from a Bank for an amount equivalent to 110% (one hundred and ten percent) of such installment, substantially in the form provided at Annex -III of the Schedule – G, to remain effective till the complete and full repayment thereof.*

19.1 Thus, when a Bank Guarantee is given to secure the Mobilization Advance extended by the customers to SPSC, it cannot be said that such Mobilization Advance is towards discharge of an obligation.

20. It is also pertinent to note that where money is paid in discharge of an obligation, there is no question of repayment of the said sum. However, in the present case, the Mobilization Advance is extended to SPSC with an obligation to repay the same as per the terms of the contract.

21. In this regard, SPSC has referred the following provisions in the EPC Agreement dated January, 2018:

*19.2 Advance Payment*

*19.2.1 ...The Advance Payment for mobilization expenses and for acquisition of key construction equipment would be deemed as interest bearing advance at Bank Rate, to be compounded annually. The interest would be recovered along-with the recovery of Mobilization Advance payment in equal installments as per provisions laid down for the mobilization advance recovery.*

*...19.2.7 The Advance shall be repaid through percentage deductions from the stage payments determined by the Authority's Engineer in accordance with sub-clause 19.5, as follows:*

*(a)...*

*(b)...*

*19.2.8 If the Advance Payment has not been fully repaid prior to Termination under Clause 21.7 or Article 23, as the case may be, the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Authority.*

21.1 SPSC submits that the above clause makes it abundantly clear that Mobilization Advance is extended by the Customers to SPSC within an obligation to repay. Thus, it is not a payment towards a supply or in discharge of an obligation. Further, since the Mobilization Advance cannot be called a payment, it cannot be treated as an Advance Payment or Part Payment.

22. SPSC submitted that in the case of Secretary, West Bengal of Higher Education Vs. Soumyadeep Banerjee and Ors., in regards to an order of deposit – a counsel contended that once an order of deposit is made, it obviously gives rise to entitlement of successful litigant to appropriate the same, as it becomes a vested right and cannot be taken away subsequently. The High Court of Calcutta did not agree with the submissions of the counsel and observed there is a difference between deposit and payment. The Court further observed that the submissions of the counsel would have been meritorious if it has been an order of payment as opposed to order of deposit. Meaning thereby a payment gives a recipient a right to appropriate the same the way it deems fit as the same is in the nature of a vested right which cannot be taken away. In the present case, the Mobilization Advance is extended to SPSC only for mobilization of resources. Further, such Mobilization advance cannot be said to be a vested right which cannot be taken away in as much as there is an obligation on SPSC to repay the same subsequently.

23. In this regard, SPSC placed reliance on the cases under the Income Tax law wherein it has been held receipt of Mobilization Advance is not in the nature of income. The ITAT in the case of Deputy Director of Income Tax Vs. SEPCO Electric Power Construction Corporation (18.09.2009 - ITAT Bilaspur) held that mere receipt of cash in the form of Mobilization Advance does not make it to be of the nature of income even in case where the assessee is following cash system of accounting because it retains the character of a liability only and it attains the character of income only when the service connected therewith are rendered. The Tribunal further held that even though the payer deducted TDS on the Mobilization Advance, the Mobilization Advance is not in the nature of income. Reference is also placed on the decision of the ITAT in the case of DCIT Vs. Five Star Construction P Ltd. [ITA No. 1861/Del/2011 (Assessment Year: 2007-08)] wherein it was held that only that part of the Mobilization advance which has adjusted would be an income of the assessee for the year under consideration. Merely because tax at

source had been deducted by builder, receipt of mobilization money could not be deemed as income of assessee.

24. Similarly, the High Court of Punjab & Haryana in the case of Commissioner of Income Tax Vs. Punjab Tractor Co-operative Multi-Purpose Society Ltd. [1998]234ITR105(P&H) held that deposits or advances received by the assessee became trading receipts when the assessee became entitled to appropriate the same to its income at the time of rendering service. Reference may also be placed on the decision of ITAT wherein it has been held that the Mobilization Advance is in the nature of capital receipt and not a revenue receipt [ACIT Vs. Peddu Srinavasa Rao (ITA No. 324/ Vizag and CO No. 68/Vizag of 2009)].

25. SPSC submits that perusal of the above judgments reveal that receipt of Mobilization Advance cannot be equated to a payment for the supply of goods or services under the GST law.

26. SPSC submits that in accordance with the above proviso to the definition of consideration, it does not discharge GST at the time of receipt of Mobilization Advance as the same is in the nature of deposit. It discharges GST when the Mobilization Advance are subsequently adjusted in the invoices raised on the service recipients i.e., the GST is discharged at the time when the Mobilization Advance (deposit) is applied as a consideration for the supply. This is consistent with the proviso to the definition of consideration which provides that a deposit given in respect of the supply of services shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the supply.

27. The term deposit defined in the Black's Law Dictionary (10<sup>th</sup> Edition), in the following manner: *Deposit, n. (17c) 1.* The act of giving money or other property to another who promises to preserve it or to use it and return it in kind; esp., the act of placing money in a bank for safety and convenience. – Also termed (when made at a bank) bank deposit. 2. The money or property so given.

27.1 A perusal of the meaning assigned to the term deposit in the Black's Law Dictionary reveals that a typical deposit has the following three characteristics viz. (i) it is an act of giving money to another, (ii) the recipient promises to preserve it or use it, and (iii) the said money is required to be returned.

27.2 SPSC has submitted that in the present case, when Mobilization Advance is extended by the customers, it fulfils all the three characteristics of a deposit mentioned above i.e. (i) it is given in the form of money to SPSC, (ii) SPSC uses it for mobilization of resources, and (iii) there is an obligation on the part of SPSC to repay the Mobilization Advance.

28. SPSC has placed reliance on the High Court of Madhya Pradesh in the case of Parasram Pal and Ors. vs. Union of India and Ors [W.P. No. 5022/ 2015] dealt with the meaning of the term deposit:

*"17. The word Deposit as per Corpus Juris Secundum Volume Twenty-Six A. a deposit has been described as a mere incident of custody, and, in its ordinary signification, implies something more than mere possession. In a particular connection and context, it has been said that the word means more than a delivery for mere inspection; it means the delivery of a book or paper to one entitled to have the official custody thereof, either to be kept or to be redelivered, after it has served its purpose, to one having a right to receive it. As per the Major Law Lexicon 4th*

*Edition 2010 of P. Ramanatha Aiyar's. the word deposit includes and shall be deemed always to have included any receipt of money by way of deposit or loan or in any other form. As per Judicial Dictionary Second Edition of Orient Publishing Company, the word deposit means the money belonging to one can be said to be in deposit only with another person or authority. It can never be a deposit in the hands of the very person to whom the money belongs."*

29. SPSC submitted that deposit entailed two things (a) it is a delivery of money which would be redelivered back after it serves its purpose and (b) a deposit can only be made to another person; a receipt of money can never be a deposit in the hands of the very person to whom the money belongs. In the present case, the Mobilization Advance is required to be repaid as per the terms of the EPC contract. Further, if the nature of Mobilization Advance was in the nature of payment, SPSC would not require giving a counter Bank Guarantee in lieu of the same or repaying the same. The Mobilization Advance is money belonging to the customers and it ceases to be a deposit only once it is applied against the remaining consideration payable to SPSC.

30. The fact that the Mobilization Advance is in the nature of a deposit and not a payment towards a service can also be ascertained by reference to the decision of the CESTAT Mumbai in the case of *Thermax Instrumentation Ltd. Vs. CCE* [2016 (42) STR 19 (Tri. – Mumbai)] wherein the issue arose as to whether the mobilization advance received by the assessee from their customers is leviable to service tax. It is important to note that the terms of contract in the said case were largely similar to the facts in the present case. The assessee therein contended that the Mobilization Advance is only in the nature of deposit to ensure contractual commitments. Further, the said advance is shown as current liability in the books of accounts and not shown as income. The advance is provisionally transferred to sale/ consideration for service as and when the proportionate amount is deduced from the invoices raised on the customers. On the other hand, the revenue contended that the fact that the amount of advance is being adjusted in the bills establishes the linkage between the advance and the service provided, therefore, the said amount is part of the gross amount received towards taxable service and thus exigible to service tax. The Tribunal held that service tax is not payable on the Mobilization Advance as the account books of the assessee indicate that the advance received is shown as current liability and not as income towards sale/provision of service. Therefore, it is not towards value of services provided. The advance is only an amount given as kind of earnest money and for which the appellant gives a bank guarantee to the customer of equal amount. It is more in the nature of a deposit. Further, as per law, the gross amount charged shall include any amount received towards taxable service. In our considered view, the advance is not received towards taxable service. The advance is the customer's obligation as his part of the mutual commitment between the two parties to honor the terms of the contract. The above view was also followed later and reiterated by the Tribunal in the case of *SMS Infrastructure Ltd. Vs. CCE* [2017 (47) STR 17 (Tri. - Mumbai)].

31. Further, SPSC submits that CESTAT in the case of *Reliance Infratel Ltd. Vs. Commissioner of Service Tax* [2015 (39) STR 829 (Tri. - Mumbai)] the assessee provided Business Support Service to its holding company. The assessee and the holding company entered into a Master Service Agreement as per which the holding company extended the financial



support to the assessee which was to be set off against the bills that would have been raised by the assessee on the holding company. The DGCEI issued a show cause notice demanding service tax liability with interest and also imposition of penalty on the amount of financial support. The Bench framed following question of law - the short point involved in this case is whether the sum of 1,493/- crores received by the assessee from its holding company is an advance for the taxable services rendered or to be rendered by the assessee to its holding company or is it a loan by way of Inter Corporate Deposits given to the assessee. In this background, the CESTAT held that only payment made towards services provided can be brought under the ambit of consideration received and not any other amount and that the financial support provided by the holding company to its subsidiary does not qualify as an advance towards the services to be rendered.

32. In the case of Ario Infrastructure Pvt. Ltd. Vs. Gail Gas Limited [2016 SCC Online Del 5371], the High Court of Delhi dealt with the question as to whether the invocation of Bank Guarantee given in lieu of Mobilization Advance could be stayed till the adjudication of dispute between the parties. The High Court held that the Mobilization Advance is in the nature of a loan and the party is entitled to recover the same. The Court also observed that the purpose of Bank Guarantee given in lieu of the Mobilization Advance is to secure the Mobilization Advance. The entire purpose of securing the Mobilization Advance by way of bank guarantee would be frustrated if its invocation is interdicted till adjudication of dispute.

33. SPSC has submitted that above judgment clearly proves that Mobilization Advance when extended to SPSC is not in the nature of consideration. Only when the Mobilization Advance is applied against the consideration payable to SPSC, it assumes the character of consideration. Before the event of setting off, the Mobilization Advance is merely a deposit in the custody of SPSC which is secured by way of Bank Guarantee and required to be repaid.

34. SPSC submitted that Mobilization Advance is received towards procurement of machinery, etc. which are goods. In respect of goods, there is no requirement under GST law to deposit GST at the time of receipt of Advance. Therefore, on this count also, they are of the opinion that no GST is payable on the Mobilization Advance received by them.

35. SPSC has submitted that in view of the foregoing, it is of the view that time of supply in respect of receipt of Mobilization Advance would be at the time when such Mobilization Advance is set off or appropriated against the consideration that is payable by the customers to SPSC.

### **Question on which Advance Ruling sought**

36. SPSC desires to obtain Advance Ruling on the question as to what is the time of supply for the purpose of discharge of GST under the CGST Act, 2017 and SGST Act, 2017 in respect of Mobilization Advance ( hereinafter referred to as 'said advance' for the sake of brevity) received by it for construction services provided by it?

### **Personal Hearing**

37. Personal hearing granted on 18-2-22 was attended by Shri Rajat Mittal, Advocate and he reiterated the submission.

### **Revenue's submission**

38. Revenue has neither submitted its comments nor appeared for hearing.

### **FINDINGS**

39. At the outset we would like to make it clear that the provisions of CGST Act and GGST Act are in pari materia 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 GGST Act.

40. We note that SPSC does not contest the taxability on said Advance, but is before us for its deferment from date of its receipt to date of issue of invoice. The prime issue before us hinges on the determination of Time of Supply on said Advance.

41. We note the following facts emerging from the submissions:

- i. SPSC supplies Works Contract Service.
- ii. SPSC received said Advance from its Service Recipients and records the said Advance as Current liabilities in Balance Sheet.
- iii. As per clause 19.2.7, **the advance shall be repaid through percentage deductions from the stage payments**, as determined by recipient's engineer and these deductions shall commence in the next stage payment statement following that in which the total of all certified stage payments (excluding the advance payment and deductions and repayment of retention) exceeds 20% (twenty percent) of the contract price; and deduction shall be made at the rate of 15% (fifteen percent) of each stage Payment Statement until such time as the advance payment has been re-paid; provided that the advance payment shall be completely repaid prior to the time when 80% of the Contract Price has been certified for payment. At every stage payments when Invoices are issued, advances are deducted and adjusted and service recipient has to pay only the balance amount of invoice minus advance applied.
- iv. SPSC, as and when it raises invoices on its service recipient, correspondingly reduces the 'Advances from recipient' in its Current liabilities on the portion adjusted for payments by recipient and reflects the corresponding amount in its Revenue Income.

42. We have considered the relevant Statutory provisions of the GST law and place relevant excerpts on record:

- i. As per proviso to Section 2(31) CGST Act, deposit shall be considered as payment made for supply of goods or services or both if the supplier applies such deposit as consideration for said supply.
- ii. SPSC is a service provider and its contracts are for supply of Services. Thereby, we refer to Time of Supply of services.
- iii. **As per Section 13(1) CGST Act, the liability to pay tax on service shall arise at the time of supply.**
- iv. **As per Section 13(2)(a) CGST Act, the time of supply of service shall be the earliest of the following dates, namely:** date of issue of invoice or date of receipt of payment, **whichever is earlier.**

**We note a deeming provision laid down in the statute vide Explanation(i) to Section 13(2) CGST Act, which stipulates that supply of service shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.** Thereby in pursuance to Section 13(2) CGST Act, read with Explanation(i) to Section 13(2) CGST Act Time of Supply of Service for advances received is date of receipt of advances by SPSC.

- v. Further, vide Notification No 66/2017- Central Tax dated 15-11-2017, The Central Government granted Exemption from payment of tax, at the time of receipt on advances received for supply of goods with effect from 15-11-2017. **However such deferment from payment of GST on advances received for supply of services has not been granted.**
- vi. The GST law stipulates that in case of Advance received for supply of service, Time of supply shall be date of receipt of advance, irrespective of the fact whether supply is made at that time or not. The deeming provision at Explanation(i) to Section 13(2) CGST comes into picture.
- vii. With the said deeming provision enacted, GST law has also made provisions for any tax paid on receipt of advances for supply of service, in case supply cancelled later vide provisions, as further clarified vide Government Circular 26/26/2017-GST dated 29-12-2017 at para 4 that such output tax liability may be adjusted in the return(s) in form GSTR3B of subsequent month(s) as per law and in cases where such adjustment is not feasible, refund may be claimed.

viii. We note that in **GSTR-1 Form** [ Details of outward supplies] to be filed by SPSC at its Table 11 captures the following data, inter alia-

**11. Consolidated Statement of Advances Received/Advance adjusted in the current tax period/Amendments of information furnished in earlier tax period.**

Rate	Gross Advance Received/adjusted	Place of supply	Amount					
			Integrated	Central	State/UT	Cess		
1	2	3	4	5	6	7		
<b>I Information for the current tax period</b>								
<b>11A. Advance amount received in the tax period for which invoice has not been issued (tax amount to be added to output tax liability)</b>								
11A (1). Intra-State supplies (Rate-wise)								
11A (2). Inter-State Supplies (Rate-wise)								
<b>11B. Advance amount received in earlier tax period and adjusted against the supplies being shown in this tax period in Table Nos. 4, 5, 6 and 7</b>								
11B (1). Intra-State Supplies (Rate-wise)								
11B (2). Inter-State Supplies (Rate-wise)								
<b>II Amendment of information furnished in Table No. 11[1] in GSTR-1 statement for earlier tax periods [Furnish revised information]</b>								
Month			Amendment relating to information furnished in S. No. (select)		11A(1)	11A(2)	11B(1)	11B(2)

ix Further, We note that in GSTR-1 Form, at its Table 13 records the details of the following vouchers, issued in relation to Advances received, such as-

**13. Documents issued during the tax period**

Sr. No.	Nature of document	Sr. No.		Total number	Cancelled	Net issued
		From	To			
1	2	3	4	5	6	7
1.	Invoices for outward supply					
2.	Invoices for inward supply from unregistered person					
3.	Revised Invoice					
4.	Debit Note					
5.	Credit Note					
<b>6.</b>	<b>Receipt voucher **</b>					
7.	Payment Voucher					
<b>8.</b>	<b>Refund voucher</b>					

( **\*\*On receipt of said Advances**, receipt vouchers as stipulated in CGST Act are to be issued. Section 31(3)(d) CGST Act reads, a registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a receipt voucher or any other document, containing such particulars as may be prescribed, evidencing receipt of such payment).

43. **The format of GSTR-1 is to capture advances received for Supply for determining its taxability on its date of receipt for supply of services.**

44. Considering the facts and GST Scheme of law, we find no ambiguity that Time of Supply of Service on advances received is date of its receipt.

45. We find no merit in SPSC submission to defer the payment of Tax on Advances till the stage of issue of invoice. This leads to delayed payment of Tax on advance received. Time of Supply envisaged in the Section 13(2) CGST Act has addressed this issue.

46. We note SPSC cited following case laws pertaining to Service Tax era. Decisions rendered during Service Tax era cannot be applied to cases covered under GST law. Time of Supply of services shall be as per Section 13 CGST Act.

- i. Thermax Instrumentation case law pertains to Service Tax era with period under consideration April 2006- March 2011. It is important to note that The Point of Taxation Rules, 2011 for Service tax was notified with effect from 1-4-2011. Thus, this case law has not taken into consideration the Point of taxation rules, 2011. In our case, we are bound by the GST Time of Supply statutory provisions. There is no concept of double taxation in present case, as once tax is levied on said advance as on date of receipt, no further tax would be levied again on such said advance amount, as reflected in GSTR-1 form. SPSC submission that no service is provided against the said advance tantamount to making null and void the statutory provisions of explanation (i) to Section 13(2) CGST Act. Such submission of SPSC is unacceptable. The Case laws cited by SPSC cannot be applied to present GST matter.

47. We note that SPSC cited Reliance Infratel case law of service Tax era pertaining to taxability on Inter Corporate deposits in nature of loan to subsidiary of Reliance Communications limited. The present GST matter pertains to Time of Supply in GST law on Advances received for supply of services and not Corporate loan service tax liability. We note SPSC ,also,cited a civil dispute case law between Ario and GAIL Gas.

48. We find that the character of said Advance cannot be corrupted with terminologies such as following:

- i. Full Repayment of Mobilization Advance (clause 19.2.2. of EPC Agreement dated January 2018).

We refer to Clause 19.2.7 of Contract, reproduced at para 41 (iii).

This phrase used by SPSC that full said advance is repaid is misleading, as advance is adjusted into payments.

There is no full repayment of said Advance but only for the unapplied left out portion of said Advance, if not adjusted in the invoice amount, then contract has provision to return the remaining portion.

ii. Interest Bearing Advance

We note that neither section 13(2) nor proviso to Section 2(31) CGST Act differentiates between advance and interest bearing advance.

We note that the Interest borne on the said Advance is also used by the recipient as adjustment in paying its dues by recipient, as reflected in the RA bill 25 dated July 21 at sr no 2(vii) under deductions and Receipt Dwarka voucher RTGS-50355 dated 11-3-21 raised by SPSC. We find that vide this variant of advance, which bears interest, wherein advance and its interest is applied into the invoice amount raised by SPSC and balance due is paid by recipient. We hold that GST levy on advances for supply of services is leviable, irrespective of the form/ terminology of advances.

iii. Counter Bank Guarantee in lieu of said Advance.

We find that as per the contract with its recipient, wherein for the amount debited in Advances under Current liabilities of Balance Sheet of SPSC and that amount reflected in Revenue income of SPSC, a corresponding reduction is made in the value of the Bank guarantee. Thereby, the Bank guarantee amount is regularly reduced at each stage payments by recipient, as advances are applied into invoices. This is the agreement of the contracting parties and this contractual Bank guarantee shall not obscure the provision of Time of Supply for services on advances received.

iv. Advance is for procurement of Goods.

SPSC is Service provider, supplying Works Contract Service. We refer to Schedule II (6)(a) CGST Act, wherein works contract shall be treated as supply of service. The Contract submitted before us is also for the same. The Payment terms and conditions are part and parcel of the contract. We find it neither tenable to colour a Service Contract as Goods supply contract nor rational to misrepresent a Service contract as Goods supply contract to hoodwink Section 13(2) CGST Act and defer payment of Tax.

We note that SPSC is aware that said Advance received by it, is for services provided by it, as is reflected in the Question raised by SPSC, read at para 36.

v. SPSC submitted that the said advance is for mobilizing resources for smooth take off of the project and not towards discharge of an obligation. We find the said advance received by SPSC is adjusted towards the bill raised by it to its service recipient.

During Personal Hearing, Shri Rajat Mittal was required to submit following copies i. copy of SPSC's accounting entry when SPSC raises Invoice on service recipient to read the treatment of said advance (ii) copy of accounting entry when SPSC receives Payment from Service recipient for the said invoice to read the treatment of said advance in accounting entry (iii) Letter issued by the Service Recipient( Ministry of Road in the select case of EPC submitted

before us) when the recipient provides said advance to SPSC. The said 3 documents were not produced. However SPSC vide [email dated 21-2-22](#) submitted Receipt Voucher No. RTGS 50355 dated 11-3-21 on account of RA bill no 17TH, wherein the value of work executed was reflected and we note that the service recipient adjusted Advance and 'Interest on Advance' from the amount payable to SPSC. Also, we refer to the RA bill 25 Submitted along with the subject Application, wherein advance adjustment was made in payments.

With the facts on record, we hold that said Advance is adjusted and applied to the payments to be made by service recipient and to say that said advance is not towards discharge of its service recipient's obligation is without merit.

vi. Deposit

The said Advance is applied toward payment. This fact is known both to the SPSC and recipient as reflected in said EPC contract that said advance will be adjusted for payments to be made by recipient. SPSC applies said Advance as consideration for its supply. We find that as per the proviso to Section 2(31) CGST Act, the said advance is consideration. We find that SPSC has misplaced its reliance that said advance is a deposit and has cited case laws pertaining to the word 'deposit'. We find these case laws inapplicable in subject matter.

vii. TDS provisions under Section 194C Income Tax Act, 1961

- a. The issue before us is Time of Supply for GST levy on Advances received by SPSC. We are not ruling on the provisions of IT Act. We note that CGST Act 2017 and SGST Act 2017 are Indirect taxation laws and not in para materia with Direct Taxation Income Tax Act 1961. We hold that Competent Legislature has enacted the CGST Act, 2017 and the GST Scheme of law has to be canvassed within the confines of statutory provisions of CGST ACT and Rules. We find that SPSC has cited Income Tax case laws which shall have no bearing on GST taxation/ time of supply. We find that the case law of West Bengal Higher Education is not applicable to the present facts.
- b. We do note that Section 194C, IT Act pertains to contractual payments and on reading Receipt voucher no RTGS 223033 dated 8-2-21 we find that TDS has been deducted under section 194C, Income Tax Act which denotes that the said advance is for contractual payment not in the nature of deposit as submitted by SPSC. Even if SPSC had not deducted TDS under Section 194C, it is a direct taxation matter. The case laws pertaining to Direct tax have no bearing on issue at hand to determine Time of Supply of services under GST Law.

49. Further, on reading the Receipt voucher no RTGS 223033 dated 8-2-21, the recipient deducted TDS under Section 51 CGST Act on the said advance which denotes that

advance is not in the nature of deposit as submitted by SPSC, but rather is against the value of supply agreed to be made. The relevant excerpt of Section 51 CGST Act is as follows:

*“Section 51. Tax deduction at source.— (1) Notwithstanding anything to the contrary contained in this Act, the Government may mandate,—*

- (a) a department or establishment of the Central Government or State Government;*
- or*
- (b) local authority; or*
- (c) Governmental agencies; or*
- (d) such persons or category of persons as may be notified by the Government on the recommendations of the Council, (hereafter in this section referred to as —the deductor), to deduct tax at the rate of one per cent. from the payment made or credited to the supplier (hereafter in this section referred to as —the deductee//) of taxable goods or services or both, **where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees**’.*

50. Further, We note that there are different advances received by SPSC from its service recipient, as per the EPC Contract submitted before us. They are:

1. Said First advance equal to 5% Contract price.
2. Said Second advance equal to 5% Contract price, **on submission of utilization certificate of said First advance.**
3. Additional third Advance of maximum 5% contract price, for acquisition of key construction equipment required for works.

The scope of work as per contract is works contract service, and we hold that all three advances are advances received by SPSC under the Service Supply Contract.

51. Ere passing our Ruling, we find it relevant to quote CBIC flyer no. 6 dated 1-1-2018 on “GST on Advances received for future supply”. Para 2 of the said flyer reads as follows:

*“As per the explanation 1 to [Section 12](#) of the CGST Act, 2017 a "supply" shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment. For instance, an advance of Rs. 10 lacs is received for a supply worth Rs. 1 crore to be made in future. The time of supply to the extent of advance received i.e. Rs. 10 lacs shall be at the time of receipt of advance and for the balance amount of Rs. 90 lacs, it shall be determined with reference to date of issue of invoice and other parameters.”*

We hold that similar analogy is applicable to Section 13 CGST Act. Further, our discussion at para 42(v) may be taken into account.

52. In conspectus of aforementioned Discussion and Findings, we pass the Ruling.

#### **Ruling**

We note that SPSC does not contest the taxability on said Advance, but is before us for its deferment from date of its receipt to date of issue of invoice. We pass the Ruling based on Section 13(2) CGST Act read with its explanation (i).

Time of Supply, on said Advances received by SPSC for Supply of its Service, is the date of receipt of said advance.

**(ATUL MEHTA)**  
**MEMBER (S)**

**(ARUN RICHARD)**  
**MEMBER (C)**

Place: Ahmedabad  
Date: 07.03.2022