



**BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH
Goods and Service Tax**

D. No. 5-56, Block-B, R.K. Spring Valley Apartments, Edupugallu, Vijayawada-521151

Present

1. Sri. D. Ramesh, Additional Commissioner of State Tax (Member)
2. Sri. M. Sreekanth, Joint Commissioner of Central Tax (Member)

AAR No.16/AP/GST/2020 dated:13.05.2020

1	Name and address of the applicant	Halliburton Offshore Services Inc. (LIH) Plot no. 5A3, Unit – 2, ADB Road, Vakalpudi, East Godavari, Andhra Pradesh – 533004
2	GSTIN	37AAACH5154M1ZC
3	Date of filing of Form GST ARA-01	19.11.2019
4	Date of Personal Hearing	19.12.2019
5	Represented by	Sri Shyam Sundar Bangaru
6	Jurisdictional Authority –Centre	Superintendent, Ramanayyapeta Range, Kakinada CGST Division.
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	(a) Classification of any goods or services or both (e) Determination of the liability to pay tax on any goods or services or both;

ORDER

(Under sub-section (4) of Section 98 of Central Goods and Services Tax Act, 2017 and sub- section (4) of Section 98 of Andhra Pradesh Goods and Services Tax Act, 2017)

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to CGST Act and APGST Act respectively) by Halliburton Offshore Services Inc. (LIH) (hereinafter referred to as applicant), registered under the Goods & Service Tax.



2. The provisions of the CGST Act and APGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the APGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or AP GST Act would be mentioned as being under the GST Act.

3. Brief Facts of the case:

3.1 Halliburton Offshore Services Inc. is a global service provider, engaged in providing various oilfield services to Exploration and Production companies across the globe. Presently, the Applicant has contracted for supply of bundled oilfield services to support the various oil and gas related operations in KG Offshore, East Coast of Indian Offshore waters.

3.2 The Applicant is a Company incorporated under the laws of Cayman Islands and has its Project office located in India at International Business Park, 17th Floor, Oberoi Garden City, Mohan Gokhale Road, Yashodham, Goregaon, Mumbai, Maharashtra 400063. Apart from this, the Applicant has a unit set up in the state of Andhra Pradesh at Plot No. 5A3, Unit – 2, ADB Road, Vakalpudi, East Godavari, Andhra Pradesh – 533004 which unit is registered under the GST Laws and from where the Applicant is providing taxable output supplies.

3.3 The Applicant is engaged in providing comprehensive range of oil field related services such as drilling services, exploration and mining related services, etc. to exploration and production companies across the Globe. In the course of supplying such services, the Applicant utilizes its equipment and tools for performing the oilfield services.

3.4 In 2016, the Applicant was awarded a Contract bearing Letter of Award no. 9010024545 dated 5 October 2016 by M/s Oil and Natural Gas Company Limited (hereinafter referred to as 'ONGC') having its registered office at Vasant Kunj, New Delhi. The Contract was awarded for supply of bundled services pertaining to oilfield services to support the operations of DP rigs of 1500m water depth capability and anchor-moored rigs of 600m water depth capability for drilling exploratory / development / water injection wells and work-over / completion operations including re-entry primarily in KG Offshore, East Coast of Indian Offshore waters.



3.5 As per Clause 2 of Annexure II of the Contract, the Appellant is required to undertake the bundled services. The aforesaid Clause 2 reproduced below for easy reference:

"2. Bundled Services Contract shall provide following services subject to detailed Scope of Work of each service:

- i) Mud Logging Services along with crew and Mud Logging Unit (MLU). Mud Logging data to be integrated with Rig's communication system for Real Time Data transmission from Rig to OPERATOR's onshore base offices. CONTRACTOR shall provide all hardware and software necessary to hook-up with rig's power supply and communication system.*
- ii) Mud Services including mud chemicals along with crew. CONTRACTOR should also provide & run mud plant of 15000 bbl. capacity and supply SOBM and Brine to rigs as per scope of work.*
- iii) LWD, MWD, RSS & Mud Motor services along with crew. LWD & MWD data to be integrated with Rig's communication system for Real Time Data transmission from Rig to OPERATOR's onshore base offices. CONTRACTOR shall provide all hardware and software necessary to hook-up with rig's power supply and communication system.*
- iv) Cementing Services including slurry design, additives and casing hardware etc. along with crew.*
- v) Sea Logistics support for the day to day supply to the above rigs and anchor handling & Rig moves.*
- vi) Shore Based facilities including jetties, warehousing and handling of equipment and materials including bulk. CONTRACTOR also to provide Drill water, Pot-water etc. for rigs, AHTSVs, PT/ and other OPERATOR's vessels as per Scope of Work. Vessels also have to carry HFHSD (free issue item by OPERATOR) for rigs from shore base.*
- vii) Subsea Well Heads, Running Tools including drill ahead tool and services including Service Engineer.*
- viii) Liner Hanger Service along with crew.*



- ix) *Miscellaneous Services like Coring (with Core Barrel & Core head), Casing & tubular running, Torque Turn (for premium casings & tubing up to 14" including tubing & landing string during completion), Hole openers, Under-reamers, Multiple Activation Circulating Bypass Tool (MACB), casing cutting & Fishing Tools, H2S equipment, 7" casing clean-out string and other tubular strings, odd size special drill bits, scrappers etc.*
- x) *Capable and experienced services crew at Rig/Base personnel as per List of (Crew) Personnel and scope.*
- xi) *It shall be responsibility of CONTRACTOR to provide any cross-overs between its tools and drill stems of various rigs for which CONTRACTOR shall coordinate with Rig Contractors.*
- xii) *It shall be responsibility of CONTRACTOR to provide any items / equipment for making its units of various services / equipment compatible with the rig power supply for which CONTRACTOR shall interact with the Rig Contractor for timely mobilization and commencement of services.*
- xiii) *It shall be responsibility of the CONTRACTOR to provide compatible units as per zonal requirements of Rig Safety like Zone 0, Zone 1 etc. and rig electrical supply.*
- xiv) *To take-up the job in accordance with the various articles and Schedule of Responsibilities."*

3.6 While performing the aforesaid services, at certain instances the equipment / tools used by the Applicant for supplying oilfield services get stuck / lost / damaged due to uncontrollable or unforeseen down hole environmental situations in the oil and gas well and might not be retrievable. In such cases, the Querist receives reimbursement from the Customer towards such LIH equipment in terms of Clause 31 of the Contract entered by the Applicant with ONGC which reads as under:

"31.0 Loss or damage to CONTRACTOR's down hole equipment

OPERATOR shall reimburse CONTRACTOR for loss of or damage to CONTRACTORs down hole equipment, as under, provided that such loss or damage is not occasioned by normal wear and tear or negligence on the part of the CONTRACTOR or due to defective material.



- a. *In the case of CONTRACTORs down hole equipment being damaged, Operator shall reimburse CONTRACTOR such repair cost, provided however, that OPERATOR shall not be required to reimburse CONTRACTOR any amount greater than that which would have been due had such equipment been lost and, therefore, calculated under sub-section (b) herein below: -*
- b. *In the case of CONTRACTOR's down hole equipment being lost, OPERATOR will reimburse CONTRACTOR an amount limited to the original cost (F.O.B. nearest port) reduced by depreciation at the rate of 10% per year to be proportioned for each completed month or part thereof from the date of purchase of the lost equipment I tool subject to maximum depreciation of 50%. The CONTRACTOR should provide the cost along-with the date, of purchase of each equipment Unit with documentary evidence along with the invoice for Lost in Hole items. The above cost and date of purchase shall be taken for working out their claim for Lost in hole items.*
- c. *Service tax on LIH (Lost in Hole), if applicable, shall be to CONTRACTOR'S account."*

The applicant had filed an application in form GST ARA-01, Dt:19.11.2019, by paying required amount of fee for seeking Advance Ruling on the following issues, as mentioned below.

4. Question raised before the Authority:

The applicant filed the present application seeking a ruling from this Authority on the following issues:

Determination of liability and consequent classification to pay Goods and Services Tax ('GST') on reimbursement received towards Lost in Hole / Damages beyond Repair equipment (collectively referred as 'LIH equipment') by the Applicant under the Contract with the Customer i.e., whether reimbursement received towards LIH equipment can be considered as a supply as per Section 7 of the CGST Act, 2017 and hence, liable to GST?

If reimbursement received towards LIH equipment can be considered as supply and liable to GST, what would be the classification and the rate of GST applicable on such supply? Whether the same would be treated as "agreeing to tolerate an act" as per clause 5(e) of Schedule II of the CGST Act, 2017 and subject to GST at the rate of 18% or the same would be treated as a composite supply of works contract service (as a part of main service under the Contract) and thus, GST can be charged at the rate of 12% equivalent to the GST rate applicable for supply of composite works contract services?



On Verification of basic information of the applicant, it is observed that the applicant falls under Central jurisdiction, i.e. Superintendent, Ramanayyapeta Range, Kakinada CGST Division. Accordingly, the application has been forwarded to the jurisdictional officer and a copy marked to the State Tax authorities to offer their remarks as per the Sec. 98(1) of CGST /APGST Act 2017.

In response, remarks are received from the jurisdictional officer concerned stating that there are no proceedings lying pending or passed relating to the applicant on the issue, for which the Advance Ruling sought by the applicant.

5. Record of Personal Hearing:

The Authorised Representative, Sri Shyam Sundar Bangaru appeared for Personal Hearing on 19.12.2019 and they reiterated the submission already made in the application.

6. Applicant's Interpretation of Law and Facts:

6.1 The Applicant made the following submissions on the following grounds, amongst others, with a request to consider each of which as an alternative and without prejudice to each other:

A. LIH can be considered as a supply as per Section 7 of the CGST Act, 2017:

6.2 The applicant submits that as mentioned in the background, for supplying bundled services in relation to oilfield drilling service, they utilize certain specialized equipment / tools for drilling oil and gas wells in offshore and onshore environment to pre-defined bottom hole targets which are carried out beneath the surface of the earth. There is a probability that the equipment / tools used for drilling services might get stuck or lost due to uncontrollable or unforeseen down hole environmental situations in the oil and gas well and might not be retrievable. When such equipment / tools are lost in hole or damaged beyond repair, drilling services cannot be performed until new equipment / tools are made available by the Applicant. This leads to disruption of services due to such LIH equipment. The LIH equipment is then required to be replaced in order to continue the provision of drilling services.



6.3 Further, when the accident of the equipment occurs, the Applicant has to immediately inform ONGC for verification of the LIH equipment. After confirmation of such LIH equipment by ONGC, as per terms and conditions of the agreement signed between the Applicant and ONGC, the Applicant raises an invoice on ONGC for reimbursement of amount towards LIH equipment as per the calculation provided in the contract. ONGC approves the calculation and makes payment for LIH equipment / tools only if the LIH did not occur due to gross negligence / mistake of the Applicant.

6.4 The Contract executed by the Applicant with ONGC contain clauses for compensation of such LIH equipment. (clause 31(b) of the Contract). In other words, in the event of any loss of equipment/tools in hole other than as a result of gross negligence on part of the Applicant, ONGC reimburse the Applicant for such lost equipment / tools as per the Agreement.

6.5 To determine the applicability of GST on reimbursement received towards LIH equipment, we refer to the charging provision contained under Section 9 of the CGST Act which provides that GST is levied on a 'supply' of goods and/or services.

"9. Levy and collection. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person." (emphasis supplied)

6.6 The term 'supply' is defined under Section 7 of the CGST Act, as follows:

"7. Scope of supply. (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, license, 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." (emphasis supplied)



6.7 Further, the term “goods” and “service” are defined under Section 2 of the CGST Act as follows:

“(52) “goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply”

“(102) “services” means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged” (emphasis supplied)

6.8 In light of the above background and definitions, it is submitted that LIH event is entirely contingent and outside the normal stream of supplies under the Agreement, arising when capital goods in the form of equipment/ tools deployed for the drilling services are irretrievably lost. In such a case, reimbursement towards LIH equipment is paid by ONGC to the Applicant, as part of a compensatory mechanism. Further, there is no contemplation of transference of title to the LIH equipment, and in fact, the reimbursement for LIH equipment is only made after an irretrievable loss of the said goods and consequently, there is no supply of ‘goods’ in relation to the reimbursement received towards LIH equipment.

6.9 However, as the definition of services is wide enough to cover to anything other than goods, the reimbursement received towards LIH equipment would get covered under the broad definition of a supply of ‘services’ under Section 7 of the CGST Act.

B. classification and the rate of GST applicable on supply of goods and services

6.10 Having stated that the reimbursement received towards LIH equipment would qualify as supply of service, it is pertinent to determine the classification of service for discharging GST.

6.11 In this case, it is submitted that there are two possible classifications viz.

- a) “agreeing to tolerate an act” as per clause 5(e) of Schedule II of the CGST Act; **or**
- b) “composite supply of works contract service” (as a part of main service under the Contract)” as per clause 6(a) of of Schedule II of the CGST Act.



6.12 As per clause 5(e) of the Schedule II of the CGST Act, agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act is considered as supply of service.

The relevant provision in this regard is extracted below:

"5. Supply of services

The following shall be treated as supply of services, namely:—

...

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act"

6.13 Further, in case of supplies comprising one or more elements, the taxability thereof is to be determined in terms of the principles governing 'composite supplies' and 'mixed supplies', the relevant provisions in relation to which are set out below.

"2. Definitions

(30) "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

(90) "principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary

(74) "mixed supply" means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

Illustration.— A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.



8. Tax liability on composite and mixed supplies

The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—

- (a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and*
- (b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.”*

6.14 In terms of the foregoing, a composite supply is to be taxed per the principal supply, while a mixed supply is to be taxed per that constitutive element which attracts the highest rate of tax.

6.15 As regards a supply of ‘works contract’, the same is treated as a composite supply of service, per Entry 6 of Schedule II, which is reproduced below.

“6. Composite supply

The following composite supplies shall be treated as a supply of services, namely:—

- (a) works contract as defined in clause (119) of section 2”*

The term ‘works contract’ is defined at Section 2(119) as under:

“(119) “works contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract”

6.16 In terms of the notifications prescribing the applicable rates of GST, there is a singular rate of GST prescribed for a supply in the nature of a ‘works contract’.

6.17 In terms of the foregoing factual matrix and position in law, we have analyzed on the ensuing paragraphs that whether the LIH charges are to be treated as part of the overall bundle of services under the Contract, and accordingly charged to GST at the rate of 12% as a ‘works contract’, or, are to be treated as a service of ‘agreeing to the obligation of tolerating a situation’ and to be taxable at the standard GST rate of 18%.

6.18 It is submitted that the classification of a transaction can be determined on the basis of the true nature and character of the transaction in question. In the present case, based on the background hereinabove, the following position emerges as to the true nature of the transaction in relation to LIH equipment:



i) There is an agreed upon scope of work under the Contract, which comprises a certain bundle of goods and services set out at Annexure-II to the General Conditions of Contract.

ii) For the above scope of work, there is an agreed upon monthly charge.

iii) In case of any breach of the Contract on the part of the Applicant, including by way of delay, there are liquidated damages/ compensation agreed upon between the parties in terms of certain clauses of the Contract.

iv) Separately, given the nature of the scope of work to be carried out, there is a possibility of accidents occurring, whereby certain the equipment/ tools owned by the Applicant may be irretrievably lost during operations. In such a case there is a pre-agreement between the parties, that LIH equipment will be compensated by ONGC, in terms of a formula based on the depreciated value of the equipment/ tools which have been lost.

v) The aforesaid LIH equipment scenario is a distinct transaction under the Contract, whereby it is contemplated that certain capital goods in the form of equipment/ tools, which are deployed for the drilling operations, may be irretrievably lost during such operations, and would consequently trigger a contractual payment by the ONGC to the Applicant. This is not agreed upon as a routine or even inevitable part of the scope of supply to be made by the Applicant under the Contract, and in fact, it is entirely possible that no such accident may take place at all in the course of executing the scope of work under the Contract. Furthermore, the LIH equipment, being in the nature of capital goods deployed/ used at site, are also not in the nature of consumables. This is all the more so, given that the Contract separately identifies and charged for certain goods as consumables (e.g. mud/ brine chemicals). Even in terms of the clauses under the Contract, reimbursement towards LIH equipment does not find mention under the scope of work at Annexure II to the General Conditions of the Contract, but is a separate clause under the Special Conditions of the Contract contemplating a potential event that may or may not occur during the tenure of the Contract. There is also a separate event of invoicing for the reimbursement for LIH equipment, which is contingent on both the accident resulting in irretrievable loss of the goods, as well as the acceptance by ONGC that the same was not on account of the gross negligence/ mistake of the Applicant. Accordingly, the LIH equipment clause contemplates a contingency which may occur outside the normal stream of supply under the Contract, in which case a compensatory payment is to be made by the Customer to the Applicant.



vi)As regards the LIH equipment, there is also no contemplation of a transference in property therein. As stated hereinabove, the contract only contemplates that certain capital goods in the form of equipment will be provided/ deployed for the operations, which may or may not be irretrievably lost during operations, and, in such a case, payment is required to be made by ONGC to the Applicant. Moreover, the LIH equipment are also distinct from consumables under the Contract. It is also pertinent to note that, had the Contract been for a supply of the LIH equipment, such a supply would have been completed when the goods in question were supplied/ applied at ONGC's site. On the contrary, under the Contract, it is only after an irretrievable loss of the goods that the LIH charges are paid by ONGC to the Applicant. The said payment is therefore in the nature of compensation which is payable in the event that the contingent event takes place, i.e. irretrievable loss of goods. Accordingly, the transaction does not qualify as a supply of 'goods' under GST.

6.19 In terms of the foregoing, while the LIH equipment form part of the framework of the contractual arrangement between the parties, an LIH event is entirely contingent, and the reimbursement received towards LIH equipment are in the nature of compensation paid by ONGC to the Applicant in the event that such contingency transpires.

6.20 In view of the aforesaid, it becomes relevant to analyse whether LIH can be said to be part and parcel of a 'composite supply' or a 'mixed supply'. In this regard, as both the aforesaid definitions provide that the various supplies must be made 'in conjunction with each other', it is pertinent to determine the meaning of the term 'conjunction'.

As the term 'conjunction' is undefined under the statute, we refer to the dictionary meanings, which are set out below.

Oxford English Dictionary (Online Version)

The action or an instance of two or more events or things occurring at the same point in time or space

Merriam Webster Dictionary (Online Version)

The state of being conjoined (Conjoined - being, coming, or brought together so as to meet, touch, overlap, or unite)

Occurrence together in time or space



Chambers Dictionary (Online Version)

A joining together; combination

The coinciding of two or more events

Cambridge Dictionary (Online Version)

The situation in which events or conditions combine or happen together

6.21 As per the aforesaid definitions, supplies in conjunction with each other would imply supplies that are made together or in combination. Accordingly, where the LIH equipment is a scenario which is entirely contingent and accidental in nature, it cannot be stated that ONGC has contracted for a reimbursement towards LIH equipment in conjunction with the drilling services. For the same reason, it cannot be said that LIH equipment would form part of the services for 'building, construction... of any immovable property' so as to qualify as a composite supply of 'works contract', i.e. as the true nature of LIH is an accidental occurrence which may not even occur during the execution of the 'works contract'.

6.22 The aforesaid position also finds support in the FAQs on 'Government Services' issued by the Directorate General of Taxpayer Services (DGTS), which in the context of the exemption for liquidated damages and contractual penalties under Government contracts for supplies of goods/ and or services, has clarified as follows:

"Question 18 : What is the significance of services provided by Government or a local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority?"

Answer : Non-performance of a contract or breach of contract is one of the conditions normally stipulated in the Government contracts for supply of goods or services. The agreement entered into between the parties stipulates that both the service provider and service recipient abide by the terms and conditions of the contract. In case any of the parties breach the contract for any reason including non-performance of the contract, then such person is liable to pay damages in the form of fines or penalty to the other party. Non-performance of a contract is an activity or transaction which is treated as a supply of service and the person is deemed to have received the consideration in the form of fines or penalty and is, accordingly, required to pay tax on such amount.

However non performance of contract by the supplier of service in case of supplies to Government is covered under the exemption from payment of tax. Thus any consideration received by the Government from any person or supplier for non performance of contract is exempted from tax.



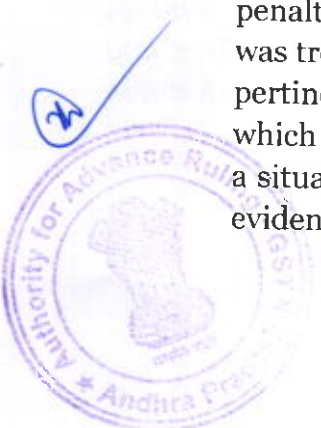
Illustration : Public Works Department of Karnataka entered into an agreement with M/s. ABC, a construction company for construction of office complex for certain amount of consideration. In the agreement dated 10-7-2017, it was agreed by both the parties that M/s. ABC shall complete the construction work and handover the project on or before 31-12-2017. It was further agreed that any breach of the terms of contract by either party would give right to the other party to claim for damages or penalty. Assuming that M/s. ABC does not complete the construction and handover the project by the specified date i.e., on or before 31-12-2017. As per the contract, the department asks for damages/penalty from M/s. ABC and threatened to go to the court if not paid. Assuming that M/s. ABC has paid an amount of Rs. 10,00,000/- to the department for non performance of contract. Such amount paid to department is exempted from payment of tax."

6.23 To similar effect is the view taken by the Maharashtra Authority for Advance Rulings (AAR) under GST in **In Re : Maharashtra State Power Generation Company Limited [2018 (13) GSTL 177 (AAR-GST)]**, which was also upheld by the Appellate Authority for Advance Rulings (AAAR) in **In Re : Maharashtra State Power Generation Company Limited [2018 (17) GSTL 451 (App. A.A.R.-GST)]**. In this regard, the relevant findings of the AAAR are set out below:

"49. ... We agree with the AAR when they say that value of the work done and which is to be paid is not affected by the amount deducted therefrom towards liquidated damages. The consideration remains unchanged and how the amount is recovered would not change the nature of the supply. Also, neither the definition of 'contract price' nor 'contract value' as given in the Agreement refers to the contingency of liquidated damages. Contract price is defined in clause 3.13 (A) as the total lump sum price plus the price variations. This is an independent clause having no relation to the eventuality of liquidated damages, for which as we have said above, a separate clause has been given. The fact that the liquidated damages are recovered from the bill is only a method of payment - the fact that there are two agreements remains unaltered.

It is contended by the appellant that the liquidated damages cannot be treated as an independent supply. However we do not agree with same. When the contract specifically provides for the payment of the damages, it itself manifests that there is a separate contractual agreement between the two parties." (emphasis supplied)

6.24 In terms of the aforesaid, a clause in relation to liquidated damages or contractual penalties, which are outside the stream of the routine supplies under the contract, was treated as a distinct supply of services under GST. In this regard, it would also be pertinent to analyse the applicability of Entry 5(e) of Schedule II to the CGST Act, which treats "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" as a service. In this regard, in the present facts, there is evidently no act that the Applicant is refraining from in a case of LIH equipment, nor



is the Applicant required to do any act. Furthermore, the LIH equipment not being the fault of either party, but the result of an accidental occurrence, the Applicant cannot be said to be tolerating any act of ONGC. At best, it may be contended that the Applicant is tolerating a situation, i.e. the irretrievable loss of its goods. In such a case, GST of 18% will be payable on the reimbursement towards LIH equipment received by the Applicant from ONGC, under HSN Code 999794.

6.25 In the case of the Appellant, as mentioned in the background, LIH does not form part of the scope of work as provided under the Contract for works contract of bundled services, but is a separate clause, contemplating a potential event that may or may not occur during the tenure of the Contract. Thus, LIH is not agreed upon as a routine or even inevitable part of the scope of supply to be made by HOSI under the Agreement, and in fact, it is entirely possible that no such accident may take place at all in the course of executing the scope of work under the Agreement. Accordingly, in our view, LIH qualifies as 'agreeing to tolerate ... a situation' as per Entry 5(e) of Schedule II to the CGST Act, and taxed to GST at 18% under HSN Code 999794. In view of above factual and legal analysis, the Applicant submits the following:

- a. Reimbursement received towards LIH equipment can be considered as a supply as per Section 7 of the CGST Act, 2017.
- b. Reimbursement received towards LIH equipment can be treated as "agreeing to tolerate an act" as per clause 5(e) of Schedule II of the CGST Act, 2017 and subject to GST at the rate of 18%.

7. Discussion and Findings:

7.1 We have examined the issues raised in the application. The taxability and the applicable rate of tax for the goods and services supplied or to be supplied, as governed under the provisions of respective GST Acts are examined.

7.2 The Applicant sought Advance Ruling on the following Question/aspect

"Determination of liability and consequent classification to pay Goods and Services Tax ('GST') applicable on the reimbursement received by the Applicant under the Contract from the Customer towards Lost in Hole/Damage Beyond Repair of equipment/tool (in short 'LIH' equipment) during execution of the services mentioned in the Contract."



7.3 The undersigned has examined the Applicant's question for advance Ruling in the light of the Statement of facts furnished in Exhibit-II to the Application along with the Documents/material provided by the Applicant vis-à-vis the legal provisions of the Central Goods and Service Tax Act, 2017 , the Goods and Service Tax Rules, 2017. We place the findings as under:

7.4 The Applicant was awarded a Contract bearing letter of Award No. 9010024545 dated 05.10.2016 by M/s Oil and Natural Gas Company Limited {for brevity referred as 'ONGC or the Customer or the Recipient'}. The said contract was for Hiring of Bundled Services for 05 Rigs and in accordance with terms and conditions as envisaged in the Scope of the Work read with Payment Schedule and other clauses of the Contract. It is seen from clause 2.3 (*and wordings thereof*) of the Letter of Award dated 05.10.2016 that the said bundled services comprise of individual services to be provided individually at different locations i.e. Shore base, Drilling Unit.

7.5 As per clause 2.2(ii) of the Letter of Award, it is seen that some services (of the bundled services under contract) may be required even after de-hiring of the last rig and as such the individual service (s) shall be successfully de-hired as per the requirement of the last well of the last rig to be de-hired. It is clear from the very distinctive nature of each individual service (as given under scope of work as 'bundled services'), each of individual services can be performed independently and they did not alter or affect performance of other service(s) or services as a whole. It thus indicates that the individual services/activities to be provided by the Applicant to the Customer can said to be naturally bundled in the course of furtherance of business. By virtue of definition to 'Composite supply' given under Section 2(30) of the CGST Act, 2017, it therefore clear that 'bundled services hired by ONGC and provided by the Applicant' cannot be considered as a 'Composite supply' within the meaning of definition under the Section 2(30) *ibid*.

7.5(i). Reference is invited to para-9(b) (under Exhibit-II) and to the submissions of the Applicant placed under Exhibit-III attached to the Application. In their submissions, the Applicant tried to analyse the classification of the subject question:

a) *as to whether it falls under scope of 'Works Contract Services' as per Entry-6 of Schedule-II of the CGST Act, 2017*

(or)

b) *as to whether it falls under scope of 'service viz agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act' under Entry 5(e) of Schedule-II to the CGST Act, 2017.*



7.5(ii) It has been stated and committed by the Applicant at Para-21 (under Exhibit-III) that *'there is not contemplation of transference of title to the LIH equipment'*. For merit classification of an activity under a 'Works Contract Service under Entry-6 of Schedule-II', there must be transfer of goods involved in the activity. By their own submission and admission, the activity under question cannot be a 'works contract service' as there is no transfer of goods involved.

7.5(iii) The Applicant had given detailed submissions with analysis and inter-alia drew attention to specific references to FAQs on 'Government Services' issued by the Directorate General of Taxpayer Services (DGTS) {Question: 18 of FAQ} and to an Advance Ruling given by the Maharashtra Authority in Re: Maharashtra State Power General Company Ltd [2018 (13) GSTL 177 (AAR-GST)] and Appellate authority's ruling on the said Advance Ruling under RE: {2018(17)GSTL 451(Ap. AAR-GST)}. And whereby the Applicant has given his conclusion that 'reimbursement of LIH equipment/tools' may be classifiable as service under Entry-5(e) of Schedule-II of the CGST Act, 2017 i.e. as *'service viz agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act'*.

7.5(iv) It is a settled law that any Advance Ruling given by an authority is applicable and has an effect in the matters relating to the individual applicant only. As a matter of principle, the Ruling in a particular issue and an applicant cannot be made applicable to issue of a different person, as a right. It is also settled principle that the ratio of the judgments of the Hon'ble Courts/the Tribunals/the Appellate Authorities or for that matter clarification by the authorities – may be made applicable subject to facts and circumstances of each case. The undersigned examined the facts and circumstances discussed in the cited references as well the facts and circumstances of the present case.

7.5(v) It has been submitted by the Applicant {at Para-21 of Exhibit-III} that *'..event of LIH is entirely contingent and outside the normal stream of supplies under the Agreement..'*. Reference is drawn to submissions of the Applicant made under Para 31 of Exhibit-III specifically to Paras-31.1 to 31.4. The Applicant by their own submissions admitted that *"..In case of any breach of the Contract on the part of the Applicant, including by way of delay, there are liquidated damages/compensation agreed upon between the parties in terms of clauses of the contract.."*. It was also a self-confessed submission made by the Applicant at Para 31.4 of the Exhibit-III as under:

"Separately, given the nature of the scope of work to be carried out, there is a possibility of accidents occurring, whereby certain the equipment/tools owned by the Applicant may be irretrievably lost during operations. In such a case there is a pre-agreement between the parties, that LIH equipment will be compensated by ONGC, in terms of a formula based on the depreciated value of the equipment/tools which have been lost"

7.5(vi) From their own self-proclaimed submissions (as detailed herein at paras 5(iv) and 5(v)), contingency of 'reimbursement of LIH Equipment/Tools' is entirely different from liquidated damages/compensation for any breach of contract (including delay) as agreed upon between the parties. Therefore, under the facts and circumstances of the present case (under mutually agreed terms and conditions of the Contract) it is ample clear that 'reimbursement of LIH Equipment/tools' cannot be collate with the activity of 'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act'. And accordingly, the said activity of 'reimbursement of LIH Equipment/tools' did not merit classifiable as Service under Entry 5(e) of Schedule-II to the CGST Act, 2017.

7.6. Having negated possible or probable classification of the event of 'reimbursement of LIH equipment/tools by the Customer' under category supply of services {as raised/contemplated by the Applicant}, the undersigned proceed to examine as to whether the said incidence or activity be classified as 'Supply of Goods or not'- including the main aspect whether it falls within the meaning of supply or not. Accordingly, reference is drawn to the legal frame work for the concept of supply and the meaning of goods/Service under the CGST Act, 2017 and the Rules made there under:

Section-2(52) and Section-2(102) of the CGST Act, 2017 defines 'Goods' and 'Services' respectively as under:

'Goods' means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply – Section -2(52)

'Services' means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged -Section-2(102)

7.7. Sub-Section-(1) of Section-7 of the CGST Act, 2017 gives an inclusive definition to expression 'Supply', which reads as under:

"(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"

7.8 By virtue of powers vested under Sub-Section (3) of Section-7 of the CGST Act, 2017, the Government, on recommendations of the Council, specify by a notification, the transactions that are to be treated as 'supply of goods and not as a supply of services' or 'a supply of service and not as a supply of goods'. Further, under sub-section (2) of the Section-7 ibid {notwithstanding anything contained in sub-section (1)}, the activities or transactions specified in Schedule –III shall be treated neither as supply of services nor a



supply of services. It is observed that the activities of the applicant (on which they sought advance ruling) under the subject contract did not figure in the list of activities or transactions as notified in Schedule-III. Therefore, the subject activity or transaction shall constitute a supply under sub-section (1) of Section-7 of the Act ibid in as much as the said activity or transactions is for a consideration and in the course of or furtherance of business.

7.9 It is observed that under Clause-31 of the Contract, the Contractor (herein the Applicant) receives reimbursement from the Operator (herein the OIL) for loss of or damage to the down hole equipment and tolls. Sub-clauses (a) and (b) of the said Clause - 31 specifies the amount of reimbursement to be made to the Applicant. In case of damage of the equipment or tools, such reimbursement shall be repair cost (subject to maximum of the cost of equipment/tools to be reimbursed in case of the same were lost) and whereas in case of loss of equipment or tools, the amount to be reimbursed shall be the amount limited to original cost (F.O.B nearest port) reduced by depreciation at the rate of 10% per year to be proportioned for each completed month or part thereof subject to maximum depreciation of 50%.

7.10 From the facts discussed herein at Para-8(i), it is found that the equipment/tools are tangible and movable. The amount of reimbursement of equipment/tools which are damaged beyond repair or loss is at an agreed depreciated value of the Original FoB Price of such equipment/tools. Going by the methodology and by nature of the equipment/tools, the activity of reimbursement towards Lost in hole/Damage Beyond repair of equipment /tools is rightly classifiable as 'Supply of Goods' in terms of Section-7 of the CGST Act, 2017. Depending upon the nature of actual goods involved in the subject activity, their classification is as per HSN notified for the goods and the Classification Rules made in this regard. Accordingly, the provisions relating to chargeability and levy of GST under the CGST Act and the Rules made there under as applicable to the supply of goods will apply.

RULING

(Under section 98 of Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017)

Question: Whether reimbursement received towards LIH equipment can be considered as a supply as per Section 7 of the CGST Act, 2017 and hence, liable to GST?

Answer: Affirmative

Question: If reimbursement received towards LIH equipment can be considered as supply and liable to GST, what would be the classification and the rate of GST applicable on such supply?




Answer: The reimbursement received towards LIH equipment is classifiable as 'Supply of Goods' in terms of Section-7 of the CGST Act, 2017. Depending upon the nature of actual goods involved in the subject activity, their classification is as per HSN notified for the goods and the Classification Rules made in this regard. Accordingly, the provisions relating to chargeability and levy of GST under the CGST Act and the Rules made there under as applicable to the supply of goods will apply.

**Sd/- D. RAMESH
(MEMBER)**

**Sd/- M.SREEKANTH
(MEMBER)**

//t.c.f.b.o//


Assistant Commissioner (ST)
Assistant Commissioner (State Tax)
O/o. Chief Commissioner of State Tax,
Andhra Pradesh, Vijayawada.

TO

- 1) M/s. Halliburton Offshore Services Inc.(LIH),
Plot No.5A3, Unit-2, ADB Road, Vakalpudi, East Godavari District,
Pin.No.533004 (Andhra Pradesh) **(By Registered Post)**
- 2) M/s. Halliburton Offshore Services Inc.(LIH),
International Business Park, 17th Floor,
Oberoi Garden City, Mohan Gokhale Road, Yashodham, Goregaon,
Mumbai-400063 Maharashtra State **(By Registered Post)**

Copy to

1. The Assistant Commissioner of State Tax, Kakinada Circle, Kakinada Division.
(By Registered Post)
2. The Superintendent of Central Tax, Ramanayyapeta Range, Kakinada CGST
Division**(By Registered Post)**

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax,
Eedupugallu, Vijayawada.



2. The Chief Commissioner (Central Tax), O/o Chief Commissioner of Central tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam 530035.
(By Registered Post)

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act, 2017, with in a period of 30 days from the date of service of this order.

