Situs of Goods or accretion of goods in works contract whether relevant to determine the nature of Supply in case of Works Contract

CA Vinamar Gupta

Introduction

Though GST is destination based tax but In works contract, it is important to determine the point of origin from where supply is made. The point of origin shall not only decide the nature of supply viz. inter state and intra state supply but also whether registration is required to be obtained in the state where the works contract is executed. GST law does not lay any guidelines to determine the point of origin. In this write up, a few judicial pronouncements have been analysed to examine the issue with reference to works contract.

Metso Minerals P Ltd (Kerala High Court)

Kerala High Court in Metso Minerals P Ltd. On 19-06-2020 has considered the above issue where entire materials for the plant were sourced from Singapore and Calcutta, which were brought into the Kerala in a knocked-down condition and erected at the site of contractee.

It was held by the intelligence officer and first appellate authority that the transfer having occurred within the State on accretion of the goods in the works it was taxable only in the State of Kerala. STC

Kerala High Court considered its own decision in Siemens Ltd where court had considered the Supreme Court Judgment in Ganon Dunkerely 88 STC 204. **Supreme Court at page 230 of its judgment in Ganon Dunkerley vs, State of Rajasthan (1993) 88 STC 204 held that**:

"………., we are not in a position to say that in no case, can there be a sale in the course of inter-State trade or commerce or an outside sale or a sale in the course of import in respect of a deemed sale resulting from transfer of property in goods involved in the execution of a works contract falling within the ambit of Sub-clause (b) of Clause (29-A) of Article 366 of the Constitution…………. Hence while enacting law under entry 54 of the state list read with Sub-clause (b) of Clause (29-A) of Article 366 of the Constitution, it is not permissible for the State Legislature to make a law imposing tax on such a deemed sale which constitutes a sale in the course of inter-State trade or commerce or outside the state or in the course of import or export."

On the basis of above decision the ***Kerala High Court*** read down the item (c) of Explanation 4 of Clause (xxi) of Section 2 of the Kerala General Sales Tax Act, 1963 **in *Siemens Ltd. (2001) 122 STC 1*** which provided that:

"………the transfer of property in goods whether as goods or in some other form involved in the execution of a works contract shall be deemed to have taken place in the State, if the goods are within the State at the time of such transfer, irrespective of the place where the agreement of works contract is made, whether the assent of the other party to the contract is prior or subsequent to such transfer.

Importance in this explanation is given to the situs of the goods in the State at the time of transfer.

Kerala High Court in Siemens Ltd. also quashed the *single bench decision of the Kerala High Court in Hydrotec Engineers India Private Limited*, where in it was held that in case of works contract situs of the sale for the purpose of sales tax is the State.

Now ***Kerala High Court in Metso Minerals*** relying upon its earlier decision in Siemens Ltd (supra) held that merely for the reason that the plant was erected within the State, the state cannot levy tax on the transfer of goods in the form of goods or in any other form by accretion of such goods in the works; when the goods were sourced from abroad and another state, the latter of which was taxed in the State from which the purchase was made.

This decision may help determining the nature of supply under GST law also. Hence in works contract merely on the basis of situs of goods or accretion in the works one can not say that supply has been made from the state where contract has been executed. Hence contractor need not obtain registration in the state where contract is executed, where the entire material is sourced from outside the state.

AAR Rulings on the issue

T&D Electricals AAR Karnataka 31-03-2020:

The applicant is having registration in Rajasthan and has to execute works contract at Karnataka. Scope of works includes electrical and instrumentation Jobs, installation, testing and commissioning at township. Held by AAR that no separate registration is required at Rajasthan. AAR further held that if goods are purchased from supplier in Rajasthan and sent to Karnataka, the supplier shall bill to applicant in Rajasthan charging CGST and SGST and ship to Karnataka. If purchases are made from Karnataka and supplied to project in Karnataka, then dealer in Karnataka shall bill to applicant in Rajasthan charging IGST and ship to project at Karnataka. Applicant in both cases need to bill to project in Karnataka charging IGST.

Jaimin Engineering AAR Rajasthan on 01-07-2018:

Applicant registered in Gujrat is required to execute construction of cold storage in Rajasthan. Held by AAR that a supplier of service will have to register at the location from where he makes Taxable supplies or is supplying Taxable services if his aggregate turnover in a financial year exceeds twenty lakh rupees (ten lakh rupees in any of special category States). While supplying services if the supplier of services (i.e. applicant who in the given case is a Works Contractor and is registered in State of Gujarat) has any place of business/office in the State of Rajasthan i.e. has a fixed establishment for operation in the State of Rajasthan (place where the services are to be provided) then he is required to get himself registered in the State of Rajasthan.

Conclusion:

The principal laid down by Kerala High Court can help in determining the state from which the taxable supply is made.