

## **AAR: Amounts received pertaining to works contract executed in pre-GST era not liable to GST**

**Oct 18, 2021**

In the matter of Continental Engineering Corporation [TS-532-AAR(TEL)-2021-GST]

### **Conclusion**

Telangana AAR holds that the unpaid amounts including escalation of price pertaining to works contract executed in the pre-GST era is not taxable under GST; Reiterates that time of supply of service according to Section 13(2) is the earliest of the date on which the invoice was issued or date of provision of service or date of receipt of payment or date on which the recipient shows receipt of service in its books; Further, rules that refund of excess deductions both statutory and non-statutory made against the bills raised for the works completed in pre-GST period and interest on delayed payments of interim payment certificates are not liable to tax under CGST/SGST Acts; However, holds that arbitration service supplied by the Tribunal after introduction of GST, is taxable at the rate of 18% on 'reverse charge basis' under GST; Infers that "Arbitration as service was supplied independently after the introduction of GST i.e., the tribunal was constituted conclusively on 20.11.2017 and rendered its orders on 09.05.2019 and therefore this supply is liable to tax on reverse charge basis under GST"; In respect of liquidation damages claimed by the Applicant from the contractee due to delays in making available possession of site, drawings and other schedules, appraises that damages are consideration for tolerating an act arising out of contractual obligation and the cost of delay was only determined by the arbitration award which was passed after GST implementation; Therefore, explains that the time of supply of this service was in GST regime, hence, consideration for such forbearance is classifiable under Head 9997 taxable at 18% GST rate; Moreover, as regards Applicant's claim of interest on the amounts determined by the Arbitral Tribunal under various heads, observes that u/s 15(2)(d) of the CGST Act, interest for delayed payment against a supply is consideration which is taxable, therefore, the interest on amounts exigible to tax under the GST act forms part of value of taxable supply:AAR TEL

### **Decision Summary**

The order was passed by Shri. B. Raghu Kiran (Member-Central Tax) and Shri. S.V. Kasi Visweshwar Rao (Member-State Tax).

CA. Rajat Mohan and CA. Priyanka Sachdeva appeared on behalf of the Applicant.

### **Case Law Information**

#### **Appellant/Applicant/Complainant Name**

- Continental Engineering Corporation

#### **Counsel of Appellant/Applicant/Petitioner**

- Rajat Mohan
- Priyanka Sachdeva

#### **Authority Level & Location**

- Authority for Advance Ruling Telangana

#### **Appeal Number**

- TSAAR Order No.13/2021

**Date of Pronouncement**

- 2021-10-08

**Ruling in favour of**

- Not Applicable

**Judges**

- B Raghu Kiran
- Kasi Visweshwar Rao, Judicial Member



**TELANGANA STATE AUTHORITY FOR ADVANCE RULING  
CT Complex, M.J Road, Nampally, Hyderabad-500001.  
(Constituted under Section 96(1) of TGST Act, 2017)**

**Present:**

**Sri B. Raghu Kiran, IRS, Additional Commissioner (Central Tax)**

**Sri S.V. Kasi Visweshwar Rao, Additional Commissioner (State Tax)**

**A.R.Com/18/2020**

**Date.08-10-2021**

**TSAAR Order No.13/2021**

**[ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SECTION 98(4) OF THE TEALANGANA GOODS AND SERVICES TAX ACT,2017]**

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**1.** M/s. Continental Engineering Corporation, F.No. 102, 1<sup>st</sup> Floor, Boston Towers, Uppar pally, Rajendernagar, Rangareddy, Telangana, 500 048. (GSTIN No. 36AACCC6948C1ZQ) have filed an application in **FORM GST ARA-01** under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules,

**2.** At the outset, it is made clear that the provisions of both the CGST Act and the TGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the TGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.

**3.** It is observed that the query raised by the applicant falls within the ambit of Section 97(2)(e) of the GST ACT read with 20(xviii) of the IGST Act, 2017. The Applicant enclosed copies of challans as proof of payment of Rs. 5,000/- for SGST and Rs. 5,000/- for CGST towards the fee for Advance Ruling. The Applicant has declared that the questions raised in the application have neither been decided by nor are pending before any authority under any provisions of the GST Act. The application is therefore, admitted.

**4. Facts of the Case:**

The applicant M/s. Continental Engineering Corporation has executed works contract for M/s. Hyderabad Growth Corridor Ltd (HGCL). The work was completed in pre-GST era and the applicant raised certain claims regarding compensation for delay in execution, payment of difference in rates and other contractual breaches which was referred to a dispute resolution board on 16-06-2017. The applicant after notifying to contractee on 25.09.2017, approached an arbitration tribunal which initiated proceedings on 20.11.2017 and passed an order on 09.05.2019 for Rs.169,58,22,197/- to be paid to the applicant under following heads.

NATURE OF CLAIM	CLAIM NO.	CLAIM	AMOUNT
WORK RELATED	1	Compensation for delay in execution of the Works and Prolongation Costs	1,15,80,62,000
	2	Claim for release of wrongful deduction of Liquidated Damages	16,60,40,728
	3	Payment difference in rates for varied work of "Hard Rock Excavation with Controlled Blasting" plus applicable Price Adjustment 3 (Variation Order 9)	9,95,65,351
	4	Non-certification / non-payment of the work of providing and laying selected granular soil behind reinforced earth structures including compacting completed as per Additional Technical specification A-16 of Vol.2	34,34,507
	5	Non-payment for construction of Stone Pitching and Filter Media Works along the Chute Drains	77,63,276
	6	Non payment of the work of Backfilling of GSB Boulder and RCC M30 to improve soil stability 6 of RE Wall foundation	64,01,809
	10	Refund of Seigniorage recovered on use of earth	1,68,74,440
	11	Claim for payment of 18% Overhead and 10% profit on the additional works of Utility shifting	59,56,735
	12	Claim for payment of amount due towards Price Adjustment amounts based on WPI Series with Basic year 2004-2005	4,57,25,482
EXPENSE REMIBURSMET	8	Refund of amounts wrongfully deducted from various IPCs towards Labour Cess @ 1%.	5,88,56,076
	9	Refund of amount deducted against increase in VAT from 4% to 5% (under Subsequent Legislation, Clause 70.6 of COPA)	95,76,882
	13	Cost of Arbitration	60,000,000
INTEREST ON DELAYED PAYMENT	10	Interest on delayed payments against interim payment certificates (IPCs) by Employer	9,55,64,910
	14	Interest @ 10% on the sums To be becoming due from 01.02.2018 calculated at till the date of publishing the Award Interest on the total amount payable @ 2% higher than the Bank rate of interest prevalent on the date of the Award: from the date of publishing the award till the actual date of release of payment by the Respondent to the Claimant	1,60,00,000
TOTAL			1,69,58,22,197

## 5. Clarification Sought:

Based on the facts mentioned hereinafter, the applicant sought Advance Ruling on the following issues:

- a. Whether GST is applicable on the proposed receipt of money in case of Arbitration claims awarded for works contract completed in the Pre-GST regime?
- b. If the answer to the above question is Yes then under what HSN Code and GST rate the liability is to be discharged by the applicant?

## 6. Grounds submitted & Personal Hearing:

The applicant M/s. Continental Engineering Corporation has filed an application for clarification before Authority for Advance Ruling on 24-08-2020 manually. After receipt of the application, the concerned Jurisdictional Authority i.e. Assistant Commissioner (ST), Rajendranagar-I Circle was asked to inform if any similar issue is pending before him that were raised by the applicant M/s. Continental Engineering Corporation. In the meanwhile due to

the COVID-19 pandemic, personal hearings could not be issued. However, Government of India, CBIC have issued certain instructions on 21-08-2020 to takeup Personal Hearings through virtual method.

Hence, the Authority for Advance Ruling has decided to takeup personal hearings through virtual method. In the mean time, the Jurisdictional Authority was once again reminded on 25-11-2020 to submit the information whether any issued raises by applicant are pending before him.

However, the Jurisdictional Authority has submitted his reply on 03-02-2021 (through mail) duly informing that there were no such issues are pending that were raised by the applicant. Therefore, the application filed by M/s. Continental Engineering Corporation is **admitted**.

In the meanwhile the State member was retired on 31-01-2021 on superannuation. Government vide G.O.Rt No. 216, Revenue (CT-II) Department, dt. 16-06-2021 have nominated State member. Hence a personal Hearing notice was issued to the applicant on 01-07-2021 to appear for hearing before the Authority for Advance Ruling on 09-07-2021.

The authorized representatives Sri. Rajat Mohan, CA & Smt. Priyanka Sachdeva, CA reiterated their averments in the application submitted and contended as follows:

1. That they are suppliers of works contract services and have executed the work prior to July, 2017. That in the course of execution of works certain claims related to work was denied by the employer. That against this they had arbitration with the employer and the arbitration was awarded to them in the GST regime.
2. That they seek clarification on the exigibility of the consideration receivable due to the arbitration award. That the receivables are for various services including amounts wrongfully deducted, seigniorage recovered, interest on delayed payment, non-certification and non-payment of work done etc., enumerated in page no.14 of Annexure-2. They also seek the HSN code and rate applicable to the said service.

In the grounds submitted by the applicant they have contended that the works were completed in the Pre-GST regime and that only money was receivable after introduction of GST due to arbitration award. They have asserted that the receipt of money is not taxable under the provisions of CGST/SGST as it doesn't amount to supply of goods as money is excluded from the definition goods.

The applicant contended that where the contract for supply is made prior to introduction of GST but the goods/services are supplied on the appointed day or after the introduction of GST then CGST / SGST is payable under Section 142(10). And if a price revision is made after introduction of GST then tax is payable under CGST / SGST under Section 142(2)(a). However as the works were executed by the applicant are prior to the appointed day these provisions are not applicable to them. The applicant further contended that if tax was leviable under VAT or service tax on goods or services then CGST/SGST cannot be levied as enumerated under Section 142(11). The applicant therefore concluded his arguments by asserting that the amount received on arbitration for execution of work in pre-GST period cannot be taxed under CGST / SGST Act.

The applicant relied on catena of case law to assert that receipt of money cannot be considered as taxable event as the entire work was completed in the Pre-GST regime and only money is receivable in the GST regime. These case laws include:

- i. Commissioner of C.Ex & Cus, Vadodara Vs. Schott Glass India Pvt. Ltd., 2009 (14) STR 146 (Guj).
- ii. Sudesh Sharma Vs. Commissioner of Central Excise 2010 (19) STR 512 (Tri- DI).
- iii. Commissioner of Service Tax Vs. Consulting Engineering Services (I) P. Ltd., 2013 (30) STR 586.
- iv. Vistar Construction (P) Ltd., Vs. Union of India (2013) 30 Taxman.Com 269 Delhi.

The applicant further stated that there is no man power and operation after the GST as seen from the financial statements.

## 7. Discussion & Findings:

We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made during the personal hearing by Sri. Rajat Mohan, CA & AR and Smt. Priyanka Sachdeva, CA & AR during the personal hearing. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts. At the outset, we would like to state that the provisions of both the CGST Act and the TGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the TGST Act.

The applicant sought clarification regarding exigibility of the money received in an arbitration regarding a contract executed by them prior to introduction of GST. The claims in arbitration when abstracted pertain to the following (6) categories.

Sl. No.	Category	Description	Amount
1	Unpaid Amounts for the work executed including escalation	Difference in rate for excavation	99565351
		Unpaid amount for work - Laying of granule soil	3434507
		Unpaid amount for work - Laying of stone pitching	7763276
		Unpaid amount for work - back filling	6401809
		Payment of overhead on work	5956735
		Price adjustment/escalation	45725482
			168847160
2	Refund of excess deductions	Wrongful deduction of liquidated damages	166040728
		Wrongful deduction of labour cess	58856076
		Wrongful deducted of VAT for increase in rate of tax from 4% to 5%	9576882
		Wrongful deduction of seigniorage	16874440
			251348126
3	Interest on bills	Interest on delayed payment on interim payment certificates	95564910
4	Arbitration Cost	Cost of arbitration	600000000
5	Damages claimed	Compensation for delay in execution	1158062000
6	Interest on arbitration amount	Interest on arbitration amount	16000000

**1. Unpaid amounts including escalation of price for works executed in pre-GST period:**

The liability to tax under CGST/SGST Acts for works contracts is determined by the time of supply of services in Section 13 read with Section 31 i.e., the provisions pertaining to tax invoice. The time of supply of service according to Section 13(2) is the earliest of the date on which invoice is issued or date of provision of service or date of receipt of payment or date on which recipient shows the receipt of services in his books. As seen from the averments of the applicant the supply was made prior to introduction of GST. Therefore it is not covered by Section 13(2) of the CGST/SGST Acts. Hence the amounts claimed pertaining to the works executed earlier to introduction of GST are not taxable under CGST/SGST Acts.

**2. Refund of excess deductions made:**

The refund of excess deductions both statutory and non-statutory made against the bills raised for the works completed in pre-GST period do not constitute consideration for supplies made under GST period. Therefore these amounts are not taxable under CGST/SGST Acts.

**3. Interest on delayed payments of interim payment certificates:**

As seen from the averments of the applicant the interest is claimed on delayed payments on the works executed and payment certificates received in pre-GST period. In light of Section 13(2) of the CSGT Act the time of supply is not in GST period, hence these amounts are not liable to tax under CGST/SGST Acts.

**4. Cost of Arbitration:**

The consideration received by arbitral tribunal is taxable on reverse charge basis under CGST & SGST Act @9% each. The service tariff code is 998215.

In the present case, Arbitration as service was supplied independently after the introduction of GST i.e., the tribunal was constituted conclusively on 20.11.2017 and rendered its orders on 09.05.2019 and therefore this supply is liable to tax on reverse charge basis under GST.

**5. Liquidated damages:**

These damages are claimed by the applicant from the contractee due to the delays in making available possession of site, drawings & other schedules by the contractee beyond the milestones fixed for completion of project. These damages are consideration for tolerating an act or a situation arising out of the contractual obligation. The entry in 5(e) of Schedule II to the CGST Act classifies this act of forbearance as follows:

5(e): Agreeing to the obligation to refrain from an act, or tolerate an act, or a situation, or to do an act.

Further Section 2(31)(b) of the CGST Act mentions that consideration in relation to the supply of goods or services or both includes the monetary value of an act of forbearance. Therefore such a toleration of an act or a situation under an agreement constitutes

supply of service and the consideration or monetary value is exigible to tax.

The arbitration award speaks of many clauses in the agreement regarding certain milestones to be met and the cost to be paid to the applicant wherever such cost need to be paid according to the estimation made by the contractee.

As per the issues mentioned in the arbitration award, clauses 6.4 and 42.2 of the General Conditions of Contract (GCC) specifically state that in case of any delay in issuance of drawings or failure to give possession of site the engineer shall determine the extension of time and amount of cost that the contractor may suffer due to such delays in consultation with the employer and the contractor.

Therefore the time of supply of the service of tolerance is the time when such determination takes place. However, the contractee/employer has not determined the cost of delay prior to arbitration award. It was determined only by arbitration award on 09.05.2019. Therefore the time of supply of this service as per Section 13 of the CGST Act is 09.05.2019. The Consideration received for such forbearance is taxable under CGST and SGSt @9% Each under the chapter head 9997 at serial no. 35 of Notification No.11/2017- Central/State tax rate

#### 6. Interest on Arbitration Amount:

The applicant is claiming interest on the amounts determined by the arbitrary tribunal under various heads. Under Section 15(2)(d) of the CGST/SGST Acts interest for delayed payment against a supply is consideration which is taxable under CGST/SGST Acts. Therefore the interest on amounts exigible to tax under CGST/SGST forms part of value of taxable supply.

#### Advance Ruling

8. In view of the observations stated above, the following ruling is issued :

Question Raised	Advance Ruling Issued
a. Whether GST is applicable on the proposed receipt of money in case of Arbitration claims awarded for works contract completed in the Pre-GST regime?	1. GST is applicable as enumerated above under each head
b. If the answer to the above question is Yes then under what HSN Code and GST rate the liability is to be discharged by the applicant?	2. HSN codes as enumerated above where GST is leviable.

  
(S.V. KASI VISWESHWAR RAO)  
ADDL. COMMISSIONER (State Tax)

  
(B. RAGHU KIRAN)  
ADDL. COMMISSIONER (Central Tax)

[Under Section 100(1) of the CGST/TGST Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this Order]

To  
M/s. Continental Engineering Corporation,  
F.No. 102, 1<sup>st</sup> Floor, Boston Towers,  
Uppar pally, Rajendernagar, Rangareddy,  
Telangana - 500 048.  
Copy submitted to:



1. The Commissioner (State Tax) for information

Copy to:

1. The Commissioner (Central Tax), Hyderabad Commissionerate, Room No. 813, GST Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad 500 004
2. The Joint Commissioner (State Tax), Saroornagar Division.