

**GUJARAT AUTHORITY FOR ADVANCE RULING  
GOODS AND SERVICES TAX  
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,  
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/2025/01  
(IN APPLICATION NO. Advance Ruling/SGST& CGST/2023/AR/ 29)

Date: 29.01.2025

Name and address of the applicant	:	Thyssenkrupp Industrial Solutions (India) Private Limited, [now known as Thyssenkrupp Uhde India Private Limited] A-401, 4 <sup>th</sup> floor, Star Residency, Vasna Bhayli Road, Bhayli, Vadodara, Gujarat – 391410
GSTIN of the applicant	:	24AAACU1416H1ZS
Date of application	:	26.07.2023
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a),(c),(e),(g)
Jurisdiction	:	Centre Commissionerate –Vadodra Division - Vadodra-II Range -I
Date of Personal Hearing	:	28.10.2024
Present for the applicant	:	Shri S.L.Kapadia, Chartered Accountant, Shri Rajesh & Ms. Lalitha Vishwanath

**Brief facts:**

Thyssenkrupp Industrial Solutions (India) Private Limited, 4<sup>th</sup> floor A-401, 4<sup>th</sup> floor, Star Residency, Vasna Bhayli Road, Bhayli, Vadodara, Gujarat – 391410 [ now known as Thyssenkrupp Uhde India Private Limited] is engaged in Engineering, Procurement and Construction ('EPC') jobs, as well as Engineering, Procurement and Construction Management services in the areas of Ammonia Storages, Nitric Acid, Urea, DMT etc. and is also involved in the setting up of Chlor Alkali plants, Hydrogen plants, Nitric Acid plants etc.. Their GST registration number is 24AAACU1416H1ZS.

2. The applicant is before the authority stating the following *viz*:

2.1 M/s. Indian Oil Corporation Limited (Refinery Division), P. O. Jawahar Nagar, Vadodara, Jawahar Nagar PIN 391320 [ for short – 'IOCL'] invited bids for execution of EPC package (EPCC-09) for Catalytic De-Waxing Unit ('CDWU') for its Petrochemical and Lube Integration Project ('LuPech')



on open tender basis. The successful bidder is contractually obligated to execute the work on lump sum turnkey basis with single point responsibility.

2.2 The applicant submitted bid for the project, which after evaluation was accepted by IOCL and they were issued a letter of acceptance. The contract dated 6.9.2022 entered thereafter with IOCL comprises of the following documents viz

- Fax of acceptance No. RHQ/ PJ/ LUPECH (J18)/ 2020-21/ EPCC-09/ FOA- 13 dated 30.06.2022 ('FOA');
- Work order No. 27984081 dated 15,07.2022;
- Tender documents as defined in the General Instructions to the tenderers along with Addendums/Corrigendums;
- The draft contract for sale of imported goods on a high seas sale basis.

2.3 The applicant's scope of work in terms of the tender states as follows viz

- **Supply of imported components on a high seas sale basis;**
- Project management, consistency checks
- Residual process engineering;
- Detailed design engineering including HAZOP/ HAZID/ SIL study and other safety studies as mentioned in bidding documents;
- Site enabling jobs including grade filing and roads, topography survey, soil investigation and underground scanning mentioned in the Bidding Documents and co-ordination for the same with IOCL/PMC;
- **Clearance of imported goods for and on behalf of IOCL;**
- Complete procurement (including chemicals, catalysts, first fill of chemicals and lubricants consumables, special tools and tackles, pre-commissioning spares, commissioning spares, start-up spares and mandatory spares), fabrication, manufacturing, auality assurance, inspection and expediting, third party inspection, supplies, transportation, insurance, receipt, handling & storage of all equipment, materials, items and other construction materials at yard/site, fabrication, assembly, construction, erection, installation of all plant machinery including civil, structural, mechanical, piping, plant safety, electrical and instrumentation including tie-ins, testing, calibration, insulation and refractory works, painting, fireproofing, first fill of chemicals and lubricants, obtaining all statutory approvals (except for environment clearance);
- Pre-commissioning and mechanical completion of plant;
- Preparation of plant specific operating manuals, start-up, commissioning, and performance guarantee test runs (PGTFt);
- Training of owner's operation and maintenance (O&M) personnel, consumables (chemicals and lubricants) for 6 (six) months operation;
- Contract closure activities of Catalytic De-Waxing Unit ('CDWU'), control room, substation, laboratory and interconnected systems for the units as detailed in the bidding documents and interconnecting systems as per bidding documents;
- Final invoice/billing and handing over of the facilities with final and "as built" drawing/documentation, supply of spares with necessary support and services **during defect liability period and supply of Chemicals, desiccant/ adsorbent, catalysts, etc.** for initial charge & replenishment of any loss of these during commissioning upto handing over safter sucessful PGTR of the facilities.



2.4 Further, in the fax of acceptance, which forms part of the contract, it is stated as follows:

*YOUR BID AGAINST THE TENDER FOR THE SUBJECT WORK EPCC-09 (ENGINEERING, PROCUREMENT CONSTRUCTION, AND COMMISSIONING) PACKAGE FOR CATALYTIC DEWAXING UNIT FOR PETROCHEMICAL AND LUBE INTEGRATION PROJECT "LUPECH" (J-18) PROJECT AT IOCL GUJARAT REFINERY, INDIA [TENDER REFERENCE NUMBER- 077154C/T/Lupech(J18)/LSTK-9 AND TENDER ID. 2021\_REFHQ-145728-1] HAS BEEN ACCEPTED*

1. THE TOTAL LUMP-SUM CONTRACT VALUE [SP-0] SHALL BE INR 587,55,48,702 [RUPEES FIVE HUNDRED EIGHTY-SEVEN CRORES FIFTY FIVE LAKHS FORTY EIGHT THOUSAND SEVEN HUNDRED AND TWO ONLY] & USD 734,934 [SEVEN HUNDRED AND THIRTY FOUR THOUSAND NINE HUNDRED AND THIRTY FOUR ONLY] THE TOTAL LUMP SUM CONTRACT VALUE SHALL BE INCLUSIVE OF ALL TAXES AND DUTIES EXCEPT QUOTED IN FORM SP-3 OF THE TENDER. TAXES AND DUTIES QUOTED IN SP-3 SHALL BE PAID AS PER THE TERMS AND CONDITIONS OF THE TENDER.

5. THE IMPORTED GOODS SHALL BE SOLD TO IOCL ON PRINCIPAL-TO-PRINCIPAL BASIS OUTSIDE INDIA AND BILL OF ENTRY SHALL BE FILED IN THE NAME OF IOCL UNDER MANUFACTURE AND OTHER OPERATION IN WAREHOUSE REGULATIONS, 2019. THE PAYMENT OF CUSTOMS DUTY, CESS AND IGST SHALL BE REGULATED AS PER PROVISIONS OF THE CUSTOMS ACT 1962 AND CUSTOMS TARIFF ACT 1975. THE OWNERS RESPONSIBILITY FOR PAYMENT OF CUSTOMS DUTY AND RELATED TAXES AND DUTIES [SWS ON CUSTOMS DUTY, IGST] FOR IMPORTS FOR THE PURPOSE OF PERMANENT INCORPORATION IN THE WORKS SHALL BE LIMITED TO THE APPLICABLE MERIT RATE OF CUSTOMS DUTY AND IGST CALCULATED ON THE AMOUNT OF FOREIGN CURRENCY QUOTED IN FORM SP-1. THE AMOUNT PAYABLE BY OWNER IN EXCESS OF AMOUNT QUOTED IN FORM SP- 3 SHALL BE RECOVERED FROM THE CONTRACTOR AS PER CLAUSE 3.4 OF SCC IRRESPECTIVE OF THE LIABILITY OF THE OWNER TO PAY CUSTOMS DUTY AND IGST. ANY INCREASE IN THE RATE OF CUSTOMS DUTY AND RELATED TAXES AND DUTIES [SWS ON CUSTOMS DUTY, IGST] PAYABLE ON THE DATE OF DEFERRED PAYMENT OF DUTY BY OWNER SHALL NOT BE TO THE ACCOUNT OF THE CONTRACTOR.

3. It is the applicant's claim that the contract entered into with IOCL is a **split contract**. They have also provided a table detailing the scope of work for both the contracts & their consideration, viz

A) Main Contract	
Description of work	Amount (Rs.)
Supply of indigenous items including	3,68,12,01,264.00
Engineering Services	41,51,46,813.00
Construction Services	1,77,92,00,625.00
<b>Total</b>	<b>5,87,55,48,702.00</b>

B) Second Work Order

Description of work	Amount (Rs.)
Supply of imported items	5,65,23,773.94



Further, to substantiate the claim that it is a split contract, the applicant has explained the history of 'works contract' in India, by relying on the judgement of the Hon'ble Supreme Court in the case of <sup>1</sup>Gannon Dunkerley, taxation of works contract post 46<sup>th</sup> amendment to the Constitution of India & pre-GST regime. The applicant has further also relied on various judgements viz <sup>2</sup>Builders Association of India, <sup>3</sup>Associated Cement, BSNL, <sup>4</sup>L&T Ltd., <sup>5</sup>M/s. Kone Elevator India P Ltd.. The applicant has further summarized the crux of the aforementioned judgements, as under:

- that there must be a works contract;
- that the goods should have been involved in the execution of the works contract;
- that the property in those goods must be transferred to a third party either as goods or in some other form;

for sustaining the levy of tax on goods, deemed to have been sold in the execution of works contract.

4. It is the applicant's case that in the GST regime, the two major deviations in the works contract is

- [a] that the works contract should result in an immovable property; that it is a sine qua non for supply to qualify as a works contract; &
- [b] that under the GST regime, the entire works contract, is treated as a supply of service in terms of para 6(a) of Schedule II of the CGST Act, 2017.

The guiding principles however, for what will be considered as a part of supply under the works contract, remains the same.

5. The next argument is that a single document/instrument can contain multiple contracts and identical contracts; that it is a settled law that a single document/instrument may contain within it several contracts; that whether a single document/instrument contains one or more contracts or vice versa should be determined having regard to the terms and conditions stated therein & not by the fact that there is one document/instrument etc..

<sup>1</sup> 1958 (4) TMI 42-SC

<sup>2</sup> 1989 2 SCC 645

<sup>3</sup> 2001 4 SCC 593

<sup>4</sup> 2013 (9) TMI 853

<sup>5</sup> 2014 (5) TMI 265 SC



6. The next averment is that in terms of section 19 of the Sale of Goods Act, 1930, when parties to a contract agree that the property in goods is transferred while the goods are in transit or on a high seas sale [HSS] basis then such contract can be construed as a contract of sale simpliciter; that such goods will not form part of the works contract; that the essential pre-condition of the works contract, that property should get transferred in execution of the works contract, is not being met as far as supply of imported goods is concerned.

7. The applicant has further stated that in terms of proviso to section 5(1) of the IGST Act, 2017, integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act '75 on the value determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962; that in the present case the value of imported goods is already decided & will be declared at the time of importation & the IGST will be discharged by IOCL while filing the bill of entry.

8. On the divisibility of the lumpsum turnkey contract, the applicant further submitted as follows *viz*:

- IOCL had invited single bid for the entire expansion project quoting a lumpsum price;
- the same tender reiterated that there will be 2 contracts, one for supply of imported components which will be on HSS basis & the second component for erection, commissioning of the CDWU unit;
- that IOCL after accepting the bid awarded the contract for the supply of CDWU unit on a turnkey basis for lumpsum price;
- that they wish to rely on the case of <sup>6</sup>Kalpatru Power Transmission Ltd, and <sup>7</sup>PES Engineers P Ltd;
- that it is for the parties to agree on terms and conditions of supply; that they can decide when the property in the goods will get transferred; that levy of GST will be attracted at the point when transfer of property/sale takes place; that once GST is paid on the said goods, it cannot again be included in the value of the goods.

9. In view of the aforesaid, the applicant has sought advance ruling on the below mentioned questions *viz*

1. Whether the contract between the Applicant and IOCL is a divisible contract or a single and composite contract?
2. If the contract between the Applicant and IOCL is treated as an indivisible and a single composite contact whether the component imported goods will be taxable as a supply of goods at the time of importation or as a service at the time of incorporation

<sup>6</sup> 2021(48) GSTL 354 (Tri-Ahmd)

<sup>7</sup> TS-202-AAR



in the works contract i.e. when the erection, commission and installation of goods takes place

3. When imported goods are sold by the supplier to a recipient on a high seas sale basis and such goods are cleared from customs by the recipient (as the importer on record) on payment of duty & Integrated Goods and Service Tax (under Section 5(1) of the Integrated Goods and Services Tax Act, 2017 read with Section 12 of the Customs Act and Section 3 of the Customs Tariff Act, and later such imported & duty paid goods are erected, commissioned and installed by the same supplier in such circumstances

[a] Whether a supply of goods can be subjected to GST twice, first as supply of goods at the time of importation in the hands of the recipient / importer and a second time as a component of supply of service in the hands of the supplier of EPC contract service at the time of incorporation of the imported goods in a works contract by way of erection, commission and installation?

[b] Whether the value of goods sold on a high seas can be added to the value of a works contract merely because such duty and IGST paid goods are incorporated in the works contract by way of erection, commission and installation

10. Personal hearing in the matter was held on 24.4.2024 wherein the applicant was represented by Shri S.L.Kapadia, Chartered Accountant, Shri Rajesh & Ms. Lalitha Vishwanath. They reiterated their submission made in the application and further sought time to put in an additional submission and copy of invoices.

11. The applicant thereafter vide an email dated 24.4.2024 informed the registry as follows:

1. The HSN for the activity is SAC No.995445 (please refer page No.1 of both the documents)
2. The activity is briefly described on page No.1 as "General Construction services of mines and Inds" (Please refer to page 1 of Invoice No.24-2324-SR-0089 dated 08-02-2024) - 5% (Five percent) of total supply value as per SP-1 (excluding cost of Mandatory Spares and cost of construction materials) on pro-rata basis against identification of raw materials of major tagged equipment at Supplier's works. Invoicing of INR Portion as per Clause No. 6.2.1 i) of the SCC Part-B. Refer Annexure 1 for details. Work Order no: 27984081 dated 15.07.2022 for EPCC-09 Package for CDW unit at IOCL Gujarat Refinery)
3. The basis of computation of value for the invoice is given on page 3 onwards of both the documents.

Further, they also provided copies of two invoices (February and March 2024) on a sample basis, in respect of the indigenous supplies made in respect of works contract activity carried out for IOCL, Vadodara.

12. The applicant thereafter vide his email dated 21.6.2024 to the Registry provided a chronology of events viz



## CHRONOLOGY OF EVENTS

SR no	Particulars	Date
<b><u>Tender Stage (Pre-award stage)</u></b>		
1	Tender for supply of Catalytic Dewaxing Unit (CDWU) for "Petrochemical And Lube Integration Project "LuPech" (J18)" at IOCL Gujarat Refinery, Vadodara, Gujarat, India BIDDING DOCUMENT NO: 077154C/ T/ LuPech (J18)/ LSTK-9)	31-12-2021
2	Addendum to bidding document specifying that imported goods are to be sold on a High Seas Sale basis and contains draft High Seas sale agreement.  With this addendum, during tender stage itself, IOCL has divided the complete scope into two supply contracts. 1) items to be sources from outside India and sold to IOCL on High Seas Sale basis before entering Indian tax territory, and 2) turnkey component within India.	12-02-2022
3	Tender filed by thyssenkrupp Uhde India Private Limited (then thyssenkrupp Industrial Solutions India Private Limited)	28-02-2022
<b><u>Project Execution Stage</u></b>		
4	Tender awarded to thyssenkrupp Uhde India Private Limited vide Fax of Acceptance RHQ/ PJ/ LUPECH (J18)/ 2020-21/ EPCC-09/ FOA-13	30-06-2022
5	Work Order No. 27984081 (refers to tender conditions related to supply of imported material and the customers intention to avail benefit of MOOWR)	15-07-2022



6	IOCL entered into a contract with thyssenkrupp Uhde India Private Limited	06-09-2022
7	Work Order No. 27984081 (refers to tender conditions related to supply of imported material and the customers intention to avail benefit of MOOWR)	15-07-2022
8	Work Order no 18033064 (refers to tender conditions related to supply of imported material and the customers intention to avail benefit of MOOWR)	17-02-2023
9.1	Order placed for imported material no. 1	25-01-2023
9.2	Imported material sold on High Seas Sale basis-vide High Seas Sale Agreement dt 09-01-2024	09-01-2024
9.3	Goods cleared from Customs by IOCL	14-02-2024
9.4	Goods taken to MOOWR location	14-02-2024
10.1	Order placed for imported material no. 2	14-02-2023
10.2	Imported material sold on High Seas Sale basis-vide High Seas Sale Agreement dt 17-04-2024	17-04-2024
10.3	Goods cleared from Customs by IOCL	10-06-2024
10.4	Goods taken to MOOWR location	10-06-2024

Sr no 1 to 8 are briefly discussed in para 3.2 of our statement of facts. Other events have taken place after the Application for Advance Ruling was filed.

13. Due to the change in the members in the GAAR, a fresh personal hearing was granted on 28.10.2024 wherein the applicant was represented by Shri S.L.Kapadia, Chartered Accountant, Shri Rajesh & Ms. Lalitha Vishwanath. They reiterated their submission made in the application. Thereafter, in a rejoinder dated 30.10.2024 to the oral and written submission, the appellant stated as follows:

- that at the tender stage itself, the imported component was identified as is evident from the list of components and the eligible vendor list annexed to the tender documents;
- that the tender documents contains the details/specification of various components including the imported components along with the list of vendors from whom the said components may be purchased;
- that the judgement in the case of 20th Century Finance is not relevant to the facts of the present case owing to the following, viz
  - that the said judgement was delivered under the erstwhile sales tax regime wherein the tax was to be paid in the state of origin versus in GST wherein the tax is destination based;
  - that the said ruling was delivered in the context of deemed sales transaction while in the present dispute the transaction envisages an outright/ physical sale by delivery/transfer of document;
  - that the ruling was in the context of a domestic transaction while in the present case the transaction is in the course of import and on a high seas sale basis;
  - that such transactions are governed by The Indian Bill of Lading Act, 1856;



- that the considerations under the said Act is different to the one under the Sales Tax Act;
- that for determining the taxability, the relevant point of time is when the goods are removed/made available to the recipient; that as per the terms of the contract this event occurs when the goods are placed on board a vessel (FOB) or by endorsing the bill of lading in favour of IOCL while the goods are on high seas;
- that the imported component was purchased by the applicant and subsequently supplied to IOCL; that the cost of the same was paid by the applicant & not by IOCL; that the question of invoking clause (b) of section 15(2), *ibid*, does not arise;
- that section 15(2)(b), can be invoked only if the supplier was liable to pay the amount but the same was paid for by the recipient; that in this case the applicant was never 'liable' to pay the amount; that per the terms of the contract, the applicant had agreed to supply the imported component, the payment of which was made by the applicant to the foreign vendor; that IOCL has not paid directly to the vendor any money whatsoever;
- that the two conditions i.e. supplier's liability to pay and recipient incurring the same, is not fulfilled for section 15(2)(b) to apply in this present dispute;
- that in respect of the imported component sold to IOCL on HSS basis, the duty of customs & IGST was assessed in accordance with the sections 5 & 7 of the IGST Act, 2017 read with sections 7 & 12 of the CGST Act, 2017; that the fact that the supply has already been subjected to tax is indisputable;
- that in these circumstances, the levy of GST would be attracted only if there is a further supply by the recipient for consideration;
- that, the imported component is not 'consumed' by the appellant in the course of EPC contract; that in-fact the same is installed in the plant erected and commissioned; that the ruling of the Chhattisgarh High Court in *Shree Jeet Transport (2023) 79 GSTL 172* is therefore, easily distinguishable.
- that they would like to rely on the judgement in the case of *Girish Pravinbhai Rathod (Jay Ambey)*<sup>8</sup> wherein under para 11, it is stated that rulings passed on the specific issues should not be distinguished and are binding.

### **Discussion and findings**

14. At the outset, we would like to state that the provisions of both the CGST Act and the GGST 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 GGST Act.

15. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made during the course of personal hearing. We have also considered the issue involved, the relevant facts & the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

16. The contract in question is a turnkey EPC contract, is an undisputed fact. The terms 'turnkey' and 'EPC contract' are not defined under

<sup>8</sup> R/SCA No. 17980 of 2021



the CGST Act. Now, what constitutes an EPC contract? We find that Engineering, Procurement and Construction ('EPC') contract is a particular form of contracting arrangement wherein the EPC contractor is made responsible for all the activities right from design, procurement, construction, commissioning, and consequently handover of the project to the end-user or owner. As per dictionary.com 'turnkey' means relating to or resulting from an arrangement under which a private contractor designs and constructs a project, building, etc., for sale when completely ready for occupancy or operation. Likewise, Turnkey contracts, places the responsibility for designing, engineering, procurement, and construction of the entire project on a single contractor. Such contracts further ensure that following completion, the client receives a ready-to-use facility. Further these contracts are usually 'fixed price' contracts.

17. To put things in perspective, we observe that IOCL had floated a tender for supply of catalytic dewaxing unit [CDWU] for petrochemical & Lube Integration Project 'LuPech' (J18) at IOCL Gujarat Refinery; that IOCL thereafter made an addendum to bidding document specifying that the imported goods are to be sold on HSS [high sea sale basis]; Work Order No. 27984081 is relating to work order amount of Rs. 5,87,55,48,702; Work order No. 18033064 dated 17.2.2023 is relating to work order amount of Rs. 565,23,773.94; that the total LSTK (lump sum turn key) value shall be Rs. 5,87,55,48,702 **and** USD 7,34,934, which when converted into INR (Indian Rupees) is Rs. 56523773.94 [ in terms of clause 2.2(i) of work order No. 18033064 dated 17.2.2023 is 01 USD = INR 76.91 only].

18. The applicant's contention primarily is that the contract with IOCL, identifies two separate set of supplies under the turnkey EPC contract, and hence according to them is a divisible contract *viz*

- [i] that IOCL had invited a single bid for the entire expansion project quoting a lumpsum price;
- [ii] that in the same tender it is reiterated that there will be two contracts
  - [a] for supply of imported components which shall be on HSS basis (high sea sale basis);
  - [b] second component shall be erection, commissioning of the CDWU unit.



19. Works contract service, is defined under section 2(119) of the CGST Act, 2017, 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;*

For a *supply* to fall within the ambit of works contract service, [in terms of the flyer no. 28 dated 1.1.2018], the

- works contract must be in relation to any immovable property;
- composite supply undertaken on goods say fabrication or paint job would per se not fall within the ambit of works contract under GST; such contract would continue to remain composite supplies;
- in terms of Schedule-II, para 6(a), works contract shall be treated as supply of services;
- GST aims to put at rest the controversy by defining what will constitute a works contract (applicable for immovable property only) by stating that a works contract will constitute a supply of service and specifying a uniform rate of tax applicable on same value across India.

20. Here, we find it apt to rely on the judgement of the Hon'ble Supreme Court in the case of Kone Elevator India Private Limited<sup>9</sup> viz

*27. The aforesaid authorities clearly show that a works contract could not have been liable to be taxed under the State sales tax laws and whether the contract was a works contract or a contract for sale of goods was dependent on the dominant intention as reflected from the terms and conditions of the contract and many other aspects. In certain cases, the court has not treated the contract to be a works contract by repelling the plea of the assessee after taking into consideration certain special circumstances. No straitjacket formula could have been stated to be made applicable for the determination of the nature of the contract, for it depended on the facts and circumstances of each case. As the works contract could not be made amenable to sales tax as the State Legislatures did not have the legislative competence to charge sales tax under Entry 48 List II of the Seventh Schedule of the Constitution on an indivisible contract of sale of goods which had component of labour and service and it was not within the domain of the assessing officer to dissect an indivisible contract to distinguish the sale of goods constituent and the labour and service component. The aforesaid being the legal position, the Parliament brought in the Forty-sixth Amendment by incorporating Clause (29A) in Article 366 of the Constitution to undo the base of the Constitution Bench decision in Gannon Dunkerley's-I case.*

*42. At this juncture, it is condign to state that four concepts have clearly emerged. They are (i) the works contract is an indivisible contract but, by legal fiction, is divided into two parts, one for sale of goods, and the other for supply of labour and services; (ii) the concept of "dominant nature test" or, for that matter, the "degree of intention test" or "overwhelming component test" for treating a contract as a works contract is not applicable; (iii) the term "works contract" as used in Clause (29A) of Article 366 of the Constitution takes in its sweep all genre of works contract*



and is not to be narrowly construed to cover one species of contract to provide for labour and service alone; and (iv) once the characteristics of works contract are met within a contract entered into between the parties, any additional obligation incorporated in the contract would not change the nature of the contract.

63. Considered on the touchstone of the aforesaid two Constitution Bench decisions, we are of the convinced opinion that the principles stated in *Larsen and Toubro (supra)* as reproduced by us hereinabove, do correctly enunciate the legal position. Therefore, “the dominant nature test” or “overwhelming component test” or “the degree of labour and service test” are really not applicable. If the contract is a composite one which falls under the definition of works contracts as engrafted under clause (29A)(b) of Article 366 of the Constitution, the incidental part as regards labour and service pales into total insignificance for the purpose of determining the nature of the contract.

64. Coming back to *Kone Elevators (supra)*, it is perceivable that the three-Judge Bench has referred to the statutory provisions of the 1957 Act and thereafter referred to the decision in *Hindustan Shipyard Ltd. (supra)*, and has further taken note of the customers' obligation to do the civil construction and the time schedule for delivery and thereafter proceeded to state about the major component facet and how the skill and labour employed for converting the main components into the end-product was only incidental and arrived at the conclusion that it was a contract for sale. The principal logic applied, i.e., the incidental facet of labour and service, according to us, is not correct. It may be noted here that in all the cases that have been brought before us, there is a composite contract for the purchase and installation of the lift. The price quoted is a composite one for both. As has been held by the High Court of Bombay in *Otis Elevator (supra)*, various technical aspects go into the installation of the lift. There has to be a safety device. In certain States, it is controlled by the legislative enactment and the rules. In certain States, it is not, but the fact remains that a lift is installed on certain norms and parameters keeping in view numerous factors. The installation requires considerable skill and experience. The labour and service element is obvious. What has been taken note of in *Kone Elevators (supra)* is that the company had brochures for various types of lifts and one is required to place order, regard being had to the building, and also make certain preparatory work. But it is not in dispute that the preparatory work has to be done taking into consideration as to how the lift is going to be attached to the building. The nature of the contracts clearly exposit that they are contracts for supply and installation of the lift where labour and service element is involved. Individually manufactured goods such as lift car, motors, ropes, rails, etc. are the components of the lift which are eventually installed at the site for the lift to operate in the building. In constitutional terms, it is transfer either in goods or some other form. In fact, after the goods are assembled and installed with skill and labour at the site, it becomes a permanent fixture of the building. Involvement of the skill has been elaborately dealt with by the High Court of Bombay in *Otis Elevator (supra)* and the factual position is undisputable and irrespective of whether installation is regulated by statutory law or not, the result would be the same. We may hasten to add that this position is stated in respect of a composite contract which requires the contractor to install a lift in a building. It is necessary to state here that if there are two contracts, namely, purchase of the components of the lift from a dealer, it would be a contract for sale and similarly, if separate contract is entered into for installation, that would be a contract for labour and service. But, a pregnant one, once there is a composite contract for supply and installation, it has to be treated as a works contract, for it is not a sale of goods/chattel simpliciter. It is not chattel sold as chattel or, for that matter, a chattel being attached to another chattel. Therefore, it would not be appropriate to term it as a contract for sale on the bedrock that the components are brought to the site, i.e., building, and prepared for delivery. The conclusion, as has been reached in *Kone Elevators (supra)*, is based on the bedrock of incidental service for delivery. It would not be legally correct to make such a distinction in respect of lift, for the contract itself profoundly speaks of obligation to supply goods and materials as well as installation



*of the lift which obviously conveys performance of labour and service. Hence, the fundamental characteristics of works contract are satisfied. Thus analysed, we conclude and hold that the decision rendered in Kone Elevators (supra) does not correctly lay down the law and it is, accordingly, overruled.*

[emphasis supplied]

Thus, we find that the turnkey EPC contract is a 'works contract'.

21. Contract No. 077154C/T/LuPech(J18)/LSTK-9 dated 6.9.2022, the fax of acceptance dated 30.6.2022, work order no. 27984081 dated 15.7.2022 and work order no. 18033064 dated 17.2.2023, entered by the applicant with IOCL, is for execution of the work of EPCC-09 [Engineering, Procurement, Construction and Commissioning) package for Catalytic De-waxing unit for Petrochemical and Lube Integration Project "LuPech (J18)" at IOCL Gujarat Refinery, Vadodara Gujarat India. While arguing that the contract entered into identifies two separate set of supplies [i] works contract for EPC work pertaining to EPCC-1 project; & [ii] supply of imported materials for the said project, the applicant ignores a major factor viz that it is a lumpsum turnkey EPC contract. Therefore, to divide a turnkey EPC contract into two parts, is legally not tenable. Though they have entered into two different work orders, as listed above, ongoing through the workorders provided along with the application, we find that the work orders are similarly worded except for the amounts. It is an undisputed fact that IOCL, post issue of tender documents, had a re-think and issued an addendum by carving out the foreign supply of goods [HSS] as a separate work, primarily to avail the benefit of Manufacture and other Operations in Warehouse Regulation, 2019 [MOOWR] by fictionally dividing an otherwise single turnkey contract into [a] supply of goods and [b] supply of services.

22. Now, moving on to the first question on which the applicant has sought ruling as to whether the contract is a divisible contract or single and a composite contract.

22. At the cost of repetition, it is an undisputed fact that the applicant has entered into a turnkey contract for EPCC-09 [Engineering, Procurement, Construction and Commissioning) package for Catalytic De-waxing unit for "Petrochemical and Lube Integration Project "LuPech (J18)" at IOCL Gujarat Refinery, Vadodara Gujarat India. Under this single turnkey contract



consequent to an addendum, the applicant has entered into two work orders with IOCL. It is also stated in the FOA that the total lump sum value shall be Rs. 5875548702 and USD 734934 [ie Rs. 56523773.94].

23. Now, work order No. 27984081 dated 15.7.2022, describes the scope of work as follows viz

*Bidder shall execute the work on Lump Sum Turn Key Basis (LSTK) with single point responsibility. The scope of work includes Project Management, Consistency Checks., Residual Process Engineering, Detailed Design Engineering including HAZOP/HAZID/SIL Study & Other Safety Studied as mentioned in Bidding Documents, Site enabling Jobs including grade filling and roads. Topography survey and Soil Investigation, underground scanning, Demolition/Dismantling of existing structures/Re-routing works as mentioned in the bid and co-ordination for the same with Owner/PMC, Complete procurement (including Chemicals, catalysts, first fill of chemicals and lubricants consumables, special tools and tackles, Pre-Commissioning Spares, Commissioning Spares, Start-up spares & Mandatory Spares), Fabrication, Manufacturing, quality Assurance, Inspection & Expediting, Third Party Inspection, Supplies, Transportation, Insurance, Receipt, Handling & Storage of all Equipment, Materials, Items and other Construction Materials at yard/site, Fabrication, assembly, Construction, Erection, Installation of all plant machinery including civil, Structural, Mechanical, Piping, Plant Safety, Electrical and Instrumentation including tie-ins, Testing, calibration, Insulation and refractory, works, Painting, Fireproofing, First fill of chemicals and lubricants, Obtaining all Statutory Approvals (except for Environment Clearance), Precommissioning & Mechanical Completion of Plan, Preparation of plant specific operating manuals, Start-up, Commissioning and Performance Guarantee Test Runs (PGTR), Training of Owner's O&M Personal, consumables (Chemicals & Lubricants) for 6 (Six) months of operation, contract closure activities of the Catalytic de-waxing Unit (CDWU), Control room, Substation, Laboratory and interconnecting system as per Bidding documents, and Final invoice/billing and handing over of the facilities with Final and "As Built" drawing /documentation, supply of spars with necessary support and services during defect liability period and supply of Chemicals, desiccant/adsorbent, Catalysts (Other than free issue), Tool & Tackles, Consumables, Lubricants, Refrigerants, for initial charge and replenishment of any loss of these during Commissioning up to handing over after successful PGTR of the facilities.*

On going through the scope of work in respect of work order no. 18033064 dated 17.2.2023, we find it to be verbatim the afore-mentioned scope of work.

24. Further, under work order no. 27984081 dated 15.7.2022 for Rs. 5875548702/-, under the '**Header text**' it is mentioned that single order 27984081 is placed to the applicant [including imported material]; that 10% milestone payment pertaining to foreign supply has already been released to party along with GST; that as per tender condition with reference to MOOWR, separate purchase order shall be placed for imported material indicated in clause no. 2.1.1 of LSTK SCC; that a separate PO 18033064 has been generated for foreign supply component as per tender condition & no separate GST would be payable on such items.



25. Thus, it is clear that both the work orders which form part of the contract *i.e.* supply of EPCC-09 [Engineering, Procurement, Construction and Commissioning) package for Catalytic De-waxing unit for “Petrochemical and Lube Integration Project “LuPech (J18)” at IOCL Gujarat Refinery, Vadodara Gujarat India, cannot be executed independently. There cannot be supply of goods without a place of supply. As the goods to be supplied involves movement and/or installation at the site, the place of supply shall be the location of the goods at the time when movement of the goods terminates for delivery to the recipient, or moved to the site for assembly or installation, in terms of section 10(1)(a) & (d) of the IGST Act, 2017. Thus, work order 18033064 is not a complete contract, unless tied up with work order no. 27984081.

26. Black’s Law Dictionary defines that “*a severable contract, also termed as divisible contract, as a contract that includes two or more promises each of which can be enforced separately, so that failure to perform one of the promises does not necessarily put the promises in breach of the entire contract*”. In the present context, supply of goods, their transportation to IOCL’s site, supply, installation, testing and commissioning and related services are not separate contracts, but parts of an indivisible composite works contract, as defined under section 2(119) of the GST Act, with ‘single source responsibility’.

27. Further, the addendum-02 (Commercial), in respect of bidding document no. 077154C/T/LuPech(J18)/LSTK-9, issued on 12.2.2022, states as follows [relevant extracts]:



	<b>EPCC-9 PACKAGE -CATALYTIC DEWAXING UNIT (CDWU) FOR "PETROCHEMICAL AND LUBE INTEGRATION PROJECT "LuPech" (J18)" AT IOCL GUJARAT REFINERY, VADODARA, GUJARAT, INDIA</b>	 IndianOil
	BIDDING DOCUMENT NO: 077154C/T/LuPech(J18)/LSTK-9	
ISSUE DATE 12-Feb-22	ADDENDUM - 02 (COMMERCIAL)	

GCC CI 3.0.2.0	MATERIALS	MATERIALS
GCC CI 3.0.2.1	<p>These General Conditions of Contract shall, on issue of the Letter of Acceptance to the CONTRACTOR, constitute a firm and indivisible contract for the sale and supply, to the OWNER, of all materials required for incorporation in the permanent works as determined by the CONTRACTOR, within the scope of work, to be necessary to establish, commission and operate (so far as concerns mandatory spares) the Plant/ Unit delivered on CIF basis at Indian port of CONTRACTOR's choice in respect of imported materials and delivered ex-factory in respect of other materials, at the price of materials specified in the Price Schedule. It is hereby clarified that the said contract shall include a contract for the sale and supply within the price of materials (and any recoveries in respect thereof under any policy of insurance) of all materials required for the replacement of any defective materials and any materials lost, damaged or destroyed during transit, storage, fabrication, erection or otherwise prior to the issue of the Completion Certificate.</p>	<p>(a) These General Conditions of Contract shall, on issue of the Letter of Acceptance to the CONTRACTOR, constitute a firm contract for the sale and supply to the OWNER of all materials as determined by the CONTRACTOR within the scope of services to be necessary to establish, commission and operate (so far as concerns mandatory spares) the Plant/Unit at the price of materials specified in the Price Schedule/Form SP-1A and SP-1B. It is hereby clarified that the said contract shall include a contract for the sale and supply within the price of materials (and any recoveries in respect thereof under any policy of insurance) of all materials required for the replacement of any defective materials and any materials lost, damaged or destroyed during transit, storage, fabrication, erection or otherwise prior to the issue of the Completion Certificate.</p> <p>(b) All materials imported into India shall be consigned either to the OWNER or to the CONTRACTOR as the consignee of the materials.</p> <p>(c) If the material is consigned to the OWNER, the title to the materials shall vest in the OWNER as soon as the materials are placed free on board (FOB) for consignment or ultimate consignment to India for delivery to the OWNER.</p> <p>(d) If the material is consigned to the CONTRACTOR, the material shall be transferred by the CONTRACTOR to the OWNER by way of High Seas Sale, by endorsement of the Bill of Lading/Airway Bill/Consignment Note by the CONTRACTOR in favour of and in the name of the OWNER. Title of the material in such case shall pass to the OWNER on endorsement of the Bill of Lading /Airway Bill in favour of the OWNER. In the absence of any separate or specific High Seas Sales Contract covering such material these General Conditions of Contract shall operate as a contract for the High Seas Sale of such material.</p>



Composite nature of the contract is clear from the aforementioned addendum. The two promises – supply of the goods and the supply of services – are not separately enforceable in the present context. The recipient has not contracted for ex-factory supply of materials, but for the composite supply, namely works contract service for EPCC-09 [Engineering, Procurement, Construction and Commissioning) package for Catalytic De-waxing unit for “Petrochemical and Lube Integration Project “LuPech (J18)” at IOCL Gujarat Refinery, Vadodara Gujarat India. A bifurcation of the turnkey contract into two further work orders, would not change its classification. The contract no., 077154C/T/Lupech(J18)/LSTK-9, encompassing the fax of acceptance, work order nos. 27984081 & 18033064, being a turnkey contract, leads us to the conclusion that the turnkey contract entered by the applicant with the IOCL, is a **works contract** as defined u/s 2(119) *supra*. Further, there is nothing on record either in the application or in the additional submission averring that the EPCC-09 [Engineering, Procurement, Construction and Commissioning)



package for Catalytic De-waxing unit for “Petrochemical and Lube Integration Project “LuPech (J18)” at IOCL Gujarat Refinery, Vadodara Gujarat India, is not an immovable property.

28. The aforementioned view is also substantiated in the Constitution Bench judgement in the case of M/s. Kone Elevator India Pvt. Ltd., supra, wherein it was held as follows:

*38. Reference to the aforesaid authorities is for the purpose that post the constitutional amendment, the Court has been interpreting a contract of work, i.e., works contract in the constitutional backdrop. In certain cases, which involve transfer of property and also an element of service in the context of work rendered, it has been treated as works contract.*

*39. The essential characteristics have been elucidated by a three-Judge Bench in Larsen and Toubro (supra) thus :-*

*“As the very title of Article 366 shows, it is the definition clause. It starts by saying that in the Constitution unless the context otherwise requires the expressions defined in that article shall have the meanings respectively assigned to them in the article. The definition of expression “tax on sale or purchase of the goods” is contained in clause (29A). If the first part of clause (29A) is read with sub-clause (b) along with latter part of this clause, it reads like this: “tax on the sale or purchase of the goods” includes a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made. The definition of “goods” in clause (12) is inclusive. It includes all materials, commodities and articles. The expression “goods” has a broader meaning than merchandise. Chattels or movables are goods within the meaning of clause (12). Sub-clause (b) refers to transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract. The expression “in some other form” in the bracket is of utmost significance as by this expression the ordinary understanding of the term “goods” has been enlarged by bringing within its fold goods in a form other than goods. Goods in some other form would thus mean goods which have ceased to be chattels or movables or merchandise and become attached or embedded to earth. In other words, goods which have by incorporation become part of immovable property are deemed as goods. The definition of “tax on the sale or purchase of goods” includes a tax on the transfer of property in the goods as goods or which have lost its form as goods and have acquired some other form involved in the execution of a works contract.”*

*40. On the basis of the aforesaid elucidation, it has been deduced that a transfer of property in goods under Clause (29A)(b) of Article 366 is deemed to be a sale of goods involved in the execution of a works contract by the person making the transfer and the purchase of those goods by the person to whom such transfer is made. One thing is significant to note that in Larsen and Toubro (supra), it has been stated that after the constitutional amendment, the narrow meaning given to the term “works contract” in Gannon Dunkerley-I (supra) no longer survives at present. It has been observed in the said case that even if in a contract, besides the obligations of supply of goods and materials and performance of labour and services, some additional obligations are imposed, such contract does not cease to be works contract, for the additional obligations in the contract would not alter the nature of the contract so*



*long as the contract provides for a contract for works and satisfies the primary description of works contract. It has been further held that once the characteristics or elements of works contract are satisfied in a contract, then irrespective of additional obligations, such contract would be covered by the term "works contract" because nothing in Article 366(29A)(b) limits the term "works contract" to contract for labour and service only.*

*42. At this juncture, it is condign to state that four concepts have clearly emerged. They are (i) the works contract is an indivisible contract but, by legal fiction, is divided into two parts, one for sale of goods, and the other for supply of labour and services; (ii) the concept of "dominant nature test" or, for that matter, the "degree of intention test" or "overwhelming component test" for treating a contract as a works contract is not applicable; (iii) the term "works contract" as used in Clause (29A) of Article 366 of the Constitution takes in its sweep all genre of works contract and is not to be narrowly construed to cover one species of contract to provide for labour and service alone; and (iv) once the characteristics of works contract are met with in a contract entered into between the parties, any additional obligation incorporated in the contract would not change the nature of the contract.*

29. In view of the foregoing, we find that the contract entered into by the applicant with IOCL is not a divisible contract, notwithstanding the fact that the turnkey contract, as mentioned above constitutes two different work orders, the performance of which is interconnected and interdependent.

30. The applicant has thereafter sought a ruling on whether the component of imported goods will be taxable at the time of supply at the time of importation or as a service at the time of incorporation in the works contract *ie* when the erection, commission and installation of goods takes place.

31. Further, the next question on which ruling is sought is that once the imported goods are sold on HSS to IOCL & cleared from Customs on payment of IGST & later when such goods are erected commissioned and installed by the applicant [a] whether the goods can be subject to GST twice first as sale of goods and then as sale of service; and [b] whether the value of goods sold on HSS can be added to value of works contract merely because such duty & IGST paid goods are incorporated in the works contract by way of erection, commission and installation.

32. Before answering these questions, it would be prudent to first deal with the facts. In terms of the contract/work orders, the applicant would supply the imported goods to IOCL on HSS basis; that the bill of entry shall be filed in the name of IOCL under MOOWR, 2019; that the applicant would clear the imported goods for and on behalf of IOCL; that the payment of custom duties,



cess and IGST shall be regulated as per the provisions of Customs Act, 1962 & Customs Tariff Act, 1975.

33.1. Before moving further, we would like to reproduce the relevant extract of sub section (2) of section 7 and Schedule-III of the CGST Act, 2017:

**Sub section (2) of section 7** [relevant extract]

- (2) Notwithstanding anything contained in sub-section (1),-
- (a) activities or transactions specified in Schedule III; or
  - (b) ..... shall be treated neither as a supply of goods nor a supply of services.

**SCHEDULE III**

Activities or transactions which shall be treated neither as a supply of goods nor a supply of services: [relevant extract]

- 1.....
- 2.....
- 8(a).....;
- 8(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

33.2. We find that in terms of Schedule III, read with section 7(2) of the CGST Act, 2017, supply on HSS basis, is treated as neither a supply of goods nor a supply of services. Thus, the question of levy of GST on such supply, does not arise.

34. Now the taxation of goods post HSS sale to IOCL, at the time of importation, is not within the jurisdiction of this Authority as it is a matter to be decided by the jurisdictional Customs Authority in terms of Customs Act, 1962 and Customs Tariff Act, 1975. We therefore do not wish to entertain the question it being beyond the jurisdiction of this Authority.

35. However, we would like to address the next portion of the question *ie* whether it would be taxable as a service at the time of incorporation in the works contract *ie* when the erection, commission and installation of goods. Now, additions and inclusion, as far as valuation under CGST Act, 2017, is concerned, is governed by section 15 of the CGST Act, 2017, which states as follows: [relevant extract]



**Section 15. Value of Taxable Supply.-**

(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include-

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

**Explanation.**-For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

What will be included and excluded in the value of supply, is governed by sub-sections 15(2) & (3) of the CGST Act, 2017. In terms of sub-section 15(2), *ibid*, the value of supply **shall include** any amount that the supplier is liable to pay in relation to such supply which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both. The EPC contract, we find, encompasses both the supply of goods and services. At the cost of repetition, the contract is for executing EPCC-09 [Engineering, Procurement, Construction and Commissioning) package for Catalytic De-waxing unit for “Petrochemical and Lube Integration Project “LuPech (J18)” at IOCL Gujarat Refinery, Vadodara Gujarat India. Further, a-reading of the contract with the two work orders and amendment to the contract, depicts that the applicant, during the course of importation and before the goods reach the Customs frontier in India, enters into a HSS agreement with IOCL, transferring the ownership of the goods to IOCL at the agreed price in the contract. The applicant clears the imported goods for an on behalf of IOCL. This is primarily to avail the benefit of Manufacture and other Operations in Warehouse Regulation, 2019 [MOOWR]. The applicant, in terms



of the contract, is liable to provide the goods [supplied on HSS basis to IOCL] and thereafter in terms of the work order these goods are supplied back by to the applicant as <sup>10</sup>“Free Issue Materials”. Hence the submission that this value is not to be included in the transaction value in respect of works contract service is legally not tenable more so since the applicant is contractually bound/liable to supply both the goods and the services. Therefore, in terms of section 15, *ibid*, the value of such imported goods would form a part of the transaction value for payment of GST.

36. The applicant during the course of personal hearing on 28.10.2024 & consequently in their rejoinder dated 30.10.2024 has raised an averment that the imported component was purchased by them; that subsequently it was supplied to IOCL; that the cost of the same was paid by them & not by IOCL & hence the question of invoking 15(2)(b), *ibid*, does not arise. While making this averment, the applicant has ignored the fact that though the imported goods were purchased & the cost of the same was paid by them, these goods were subsequently sold to IOCL on HSS basis. Further, if the averment is that they have borne the cost of the said imported goods, then the question of not including it in the transaction value for the works contract, is not tenable in terms of section 15 of the CGST Act, 2017.

37. In-fact the issue of whether free supply would form a part of transaction value, is no longer *res integra* having been decided by the Hon'ble Chhattisgarh High Court in the case of M/s. Shree Jeet Transport<sup>11</sup>, the relevant extracts of which are reproduced below *viz*

*1. (a) This instant petition is filed to challenge the order dated 28-2-2022 (Annexure - P/5) passed by the Appellate Authority for Advance Ruling, Chhattisgarh (for brevity 'the AAAR') as no decision was rendered in terms of Section 101 (3) of the Central Goods and Service Tax Act, 2017 (for brevity 'the CGST') and the Chhattisgarh Goods and Service Tax Act, 2017 (for brevity 'the CHGST') and the order dated 4-1-2021 (Annexure - P/6) passed by the Authority for Advance Ruling, Chhattisgarh (for brevity 'the AAR') to be illegal wherein it was held that Goods and Services Tax (for brevity 'the GST') would be leviable on the value of diesel provided by the service recipient Free of Cost (for brevity 'FOC').*

*(c) The petitioner is a Goods Transport Agency (for brevity 'the GTA') service provider. .... As per the proposed terms of agreement, it was agreed that the petitioner would provide trucks/trailers along with driver for transportation of goods belonging to the service recipient on a day-to-day and non-exclusive basis and further as per Clause 2 of the draft*

<sup>10</sup> Clause 13 of work order No. 27984081 dtd 15.7.2022 & work order no. 18033064 dated 17.2.2023.  
Writ Petition (T) No. 117/2022 decided on 17.10.2023



agreement, the service recipient will be responsible for providing fuel in the trucks/trailers supplied by the petitioner on free of cost basis (FOC) thereby it was agreed that component of fuel would not be the responsibility of the petitioner, who is a GTA, in the scope of service recipient. ....

2.2 ..... It is expressly clarified that the value of fuel which is in the scope of the Company shall by no means be interpreted as additional consideration payable for the transportation service provided by the Transporter or having been provided to the vehicle in lieu of freight. The said fuel would be issued by the Company for exclusive usage, as a consumable, in the underlying transportation only and the ownership of the fuel would at no point be transferred to the Transporter or to the vehicle engaged.....

7. The question falls for consideration is that  
 "whether diesel filled by the service recipient FoC in the truck of the GTA can be added to value of supply being rendered by the GTA for the purpose of levy of GST under the CGST Act, 2017?"

13. The AAR by its order dated 4-1-2021 held that the cost of fuel though is not included in the scope of work of the petitioner and the diesel is provided FOC by the service recipient would nevertheless would be added to the value of taxable service for the purpose of GST on application of Section 15 (1) read with Section 2 (31) of the CGST. It was further held that since fuel was an essential ingredient without which the transport service cannot be rendered, the cost of fuel cannot be ignored.

14. The petitioner having not satisfied with such ruling, filed an appeal before the Appellate Authority i.e. AAAR wherein the AAAR passed an order dated 28-2-2022. The Member of the CGST (Central) upheld the view of the AAR and held that diesel, which is filled FoC by the service recipient in the engaged chartered (dedicated) vehicles as per the proposed draft agreement would form part of value of supply of service charged by the appellant and applicable rate of GST was to be leviable whereas the SGST Member held that considering the provisions of Section 15(2)(b) which provides that any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply does not include FoC diesel for the simple reason that the liability to pay for the diesel as per draft contract is of service recipient.

20(c) In the case in hand, as per the proposed agreement/contract, the fuel (diesel) is not in the scope of the service of the petitioner. The agreement purports that the fuel would be free of cost basis for transportation of the goods and fuel would be filled by the service recipient for transportation.

21. The very definition and existence of the petitioner who is to provide transportation service, by plain and simple interpretation would point out the entire business and survival is premised and interdependent on the vehicles for transportation of goods. The obvious factor would be the vehicle cannot run without fuel. Therefore, the design of the entire activity of GTA is based on supply of fuel to the respective vehicles. In absence of fuel, the the entire business activity would stand arrested to provide service. Therefore, the need of fuel is glued for survival of a GTA. If the GTA has stitched up to provide service by obtaining fuel on FOC basis by contract with recipient Company, this phenomenon would transcend the activity which reflects a broader shift in name of contract, therefore, the revenue has power to remove the lid to find out the object and purpose.

22. In the instant case, the scope of supply as defined in section 7 of the GST Act purports "all forms of supply of services" made or agreed to be made for consideration "in the course" or "furtherance of business". The words used in Section 7(1)(a), "in course" or "furtherance of business" would point out about service to be provided by the transporter as a GTA. The contention of petitioner that the "consideration" is required to be confined as per the terms of agreement cannot be given a literal interpretation. Section 2(31) of the CGST 2017 mandates that "consideration" in relation to supply of goods or services includes - (a) any payment whether in money or otherwise made or to be made; (b) monetary value of any act or forbearance for the inducement of supply of goods or services. Reading of section 2(31) along with scope of supply as defined u/s 7(1)(a) makes it clear that the petitioner who is a GTA wanted to transport the goods for recipient. The recipient is not a GTA or engaged in business of transport. Consequently it is the petitioner GTA "in course" or "furtherance of business" has agreed to supply the goods or service for consideration. When it is the primary business of the GTA, in order to allow running the vehicles by fuel, it is a potential



combination. If that part of responsibility is delegated by way of an agreement to the recipient, in such a case, the recipient would step into the shoes of GTA as its component and would be playing central role in setting narratives.

23. .... Section 7 of the Act explains that expression "supply" would include all forms of supply made or agreed to be made for consideration in furtherance of business by the supplier. So the nature of business would be the decisive factor and if such consideration is shifted by entering into agreement, it would be encroaching upon turf of G.T.A., and would only be a collective enthusiasm and that statutory liability cannot be evaded. As has been laid down by the Supreme Court in *CLP India Pvt. Ltd. Versus Gujarat Urja Vikas Nigam (2020) 5 SCC 185*, the parties by agreement cannot over-ride the statutory provisions in relation to matter of tariff.

25. Section 15(2)(b) says that the value of supply shall include any amount that the supplier is liable to pay in relation to such supply but it has been incurred by recipient of supply and not included in the prices actually paid. This section imposes statutory obligation. The very existence of petitioner as GTA is for goods transport. Naturally, it would be the obligation for the GTA to run the vehicles and this factor needs a merited attention. The provision of Section 15(2)(b) has been tried to be by-passed by the agreement wherein the diesel was agreed to be supplied FOC by service recipient to the GTA. If we look into the facts by other angle, the expenses to fill the diesel in vehicle in furtherance of supply of service in normal condition was to be incurred by the GTA and it was his liability to fulfill such supply. However, in this issue, the expense of fuel has been agreed to be incurred by the recipient by agreement and value of diesel is excluded to evaluate the value of supply. The statutory provision of Section 15(2)(b) takes within its sweep to value, which is incurred by recipient. Therefore even by agreement in between the GTA and service recipient, this statutory liability cannot be sidelined and the merited attention of the statute sets a red line. Therefore, in the instant case, the value of service agreed to be provided necessarily will depend on the nature of service and the nature of business. The petitioner who can survive to run the business of goods transport on fuel therefore cannot claim that the diesel is supplied by the service recipient free of cost, as such, it cannot be included as the fuel is an integral part used in providing the Transportation Service and is essential for GTA provider. Without fuel the entire business of GTA cannot survive. Therefore, fuel being an integral part cannot be bifurcated to over come a tax liability.

26. Another submission is made that the model GST law proposed to include in Section 15(2)(b) of CGST Act "the value, apportioned as appropriate, of such goods and/or services as are supplied directly or indirectly by the recipient of the supply free of charge or at reduced cost for use in connection with the supply of goods and/or services being valued". Therefore by such provision, free supply was included to be valued. However, in the final GST law, the provision of free supply by the service recipient was excluded. It is contended that the transaction value was an inclusive part in the proposed Model GST law under clause (b) Section 15(2) of the CGST Act. The provision to be added as per model GST Law in clause (b) of Section 15 (2) reads as under : "(b) the value, apportioned as appropriate, of such goods and/or services as are supplied directly or indirectly by the recipient of the supply free of charge or at reduced cost for use in connection with the supply of goods and/or being valued...."

The submission that free supply by the service recipient has been excluded as per final GST Law. Therefore, the legislative history in the draft GST Law is required to be seen. It is contended that there is a conscious omission by the Legislature to include value of free supply by recipient to evaluate the entire supply. The reference is made to case law reported in (2022) 10 SCC 700 – *Mohit Minerals Pvt. Ltd (supra)*.

27. However, when we examine the final GST Law, Section 15(2)(b) includes that any amount that the supplier is liable to pay in relation to such supply but has been incurred by the service recipient and not included in the prices paid or to be payable is to be taken into account to value the service answers this query. The Legislature has categorically enveloped such kind of supply within the ambit unless exempted by any provision. Therefore, the emphasis cannot be made at this stage while interpreting the provisions of Section 15(2)(b) of the GST Act, 2017 with the proposed GST Law specially taking into consideration the nature of business by GTA, the service provider.

30. Again when we examine the nature of business of the petitioner, who is a GTA, the nucleus of survival of business shows that the business of petitioner entirely survives on transportation. Since the transportation inter-alia is an inter-dependent on supply of fuel, it



*would be a crucial component to run the business of GTA. If such integral part of survival of reins are held by service recipient, in such a case, it would be actually doing the substance addition of GTA survival. Therefore, the Circular dated 8th June 2018 on which the petitioner tried to rely upon would not be of any help especially considering the nature of business and the provisions of Section 7(1) (a) and 15(2)(b) of CGST Act.*

*31..... In view of the observations made in foregoing paragraphs the initial order passed by the AAR on 04.01.2021 shall revive and it is observed that though the diesel was provided free of cost by the service recipient, it would nevertheless be added to the value for the purpose of GST.*

In the aforementioned judgement, though the recipient of the supply was legally bound via the agreement to provide for free diesel, yet the Hon'ble High Court, held that the free supply would form part of the transaction value, for the purpose of GST. The judgement further holds that if consideration is shifted by entering into an agreement, it would be akin to encroaching the turf of the supplier and would be a collective enthusiasm & that statutory liability cannot be evaded. The averment made during the course of personal hearing held on 28.10.2024 and in the rejoinder to the oral and written submission dated 30.10.2024, that the above judgement is distinguishable since the imported component is not consumed, is not a legally tenable argument. The imported components, as per the appellant are installed in the plant erected & commissioned for IOCL. Distinguishing the judgement on the sole ground that for 15(2)(b) to apply, the component needs to be consumed, is not a plausible argument. We therefore, reject the same.

38. Our finding, also stands substantiated, while going through the scope of work, mentioned in detail in paragraph 2.3 *supra*. The argument therefore, that it is a divisible contract entailing [a] supply of imported goods and [b] supply of services is not borne out from the reading of the contract and the relevant documents thereof.

39. On going through the scope of work, it is further observed that the applicant has to undertake and perform all services and formalities necessary for clearance of the imported goods/materials for and on behalf of IOCL. Needless to add, that it is the applicant who is contractually obliged to procure the imported goods in terms of the contract for the said turnkey EPC project.

40. The submission of the applicant to substantiate that the contract is divisible is listed in paragraph 8 above and is not being repeated. On going



through section 15 of the CGST Act, 2017, *supra*, and judgement of the Hon'ble High Court of Chhattisgarh, we do not find any merit in the submission of the applicant. We hold that the value of the imported goods would form a part of the Transaction value under section 15, *ibid*, for computing the value of work contract service for charging GST and that it cannot be excluded under the guise of free supply, as is being canvassed by the applicant. Thus, the imported goods will be taxable as service in view of the foregoing.

41. Though the third question is similar to the second question in so far as whether the supply of goods can be subjected to GST twice, first as supply of goods at the time of importation and secondly as component of supply of service in the hands of the supplier of EPC contract, in this case, the time of supply in respect of imported goods is when the goods land in the customs frontier. However, as per the turnkey EPC contract, the applicant is providing a works contract service which encompasses the supply of goods and the service in setting up the EPCC-09 [Engineering, Procurement, Construction and Commissioning) package for Catalytic De-waxing unit for "Petrochemical and Lube Integration Project "LuPech (J18)" at IOCL Gujarat Refinery, Vadodara Gujarat India. The liability of the applicant to pay tax on works contract service in respect of this supply of service, shall arise at the time of supply in terms of section 13, *ibid*. Therefore, the argument that the imported goods supplied on HSS basis are subject to tax twice first as supply of goods at the time of import & secondly as component of supply of service belies fact, since what is supplied under the works contract is not the imported goods but EPCC-09 [Engineering, Procurement, Construction and Commissioning) package for Catalytic De-waxing unit for "Petrochemical and Lube Integration Project "LuPech (J18)" at IOCL Gujarat Refinery, Vadodara Gujarat India. The argument, therefore, lacks merit.

42. Lastly, the applicant has sought a ruling on whether the value of goods sold on HSS can be added to value of works contract merely because such duty & IGST paid goods are incorporated in the works contract by way of erection, commission & installation. We find the argument to be legally incorrect owing to the Sr. No. 6 of Schedule II to the CGST Act, 2017, which states as follows viz



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; and

(b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

As is already stated the contract entered into by the applicant with IOCL, is a turnkey EPC contract, which is a composite works contract in terms of section 2(119), *ibid*. In terms of Sr. No. 6 of Schedule II, such composite works contracts, involving transfer of property in goods (whether as goods or in some other form) involved in the execution of the said project is a composite supply & in terms of Schedule II, would be treated as supply of service and leviable to GST accordingly. Even otherwise, there is no bar in adding the value of goods sold on HSS, if subsequently, the supply undertaken is a composite works contract in view of the findings above. In-fact, in view of section 15 of the CGST Act, 2017, we find that the law mandates addition of such value to compute the transaction value.

43. Lastly, we would like to once again refer to paragraph 3 supra wherein a table is reproduced detailing the scope of work for both the work orders depicting their consideration which states that for the main contract amounting to Rs. 5,87,55,48,702/- the work includes **supply of indigenous items** including mandatory spares, engineering services & construction services while for the second work order it includes supply of imported items amounting to Rs. 56523773.94. The applicant's averment is that only the imported items would not form part of the services and that in respect of supply of indigenous items, they would be charging GST @ 18% as works contract service. This clearly shows that the applicant is treating the '**domestically procured goods**' and the '**imported goods**' under the same contract, for the purpose of setting up of the plant on a different footing, without any plausible intelligible differentia. It is trite law that equals cannot be treated as un-equals. Doing so would invite the wrath of holding the process to be manifestly arbitrary. Therefore, the



submission of treating both the domestically procured goods and imported goods on different footing, is legally incorrect and fails on merit too.

44. In the light of the above, we rule as under:

**RULING**

1. The contract between the Applicant and IOCL is a not a divisible contract but a single and composite contract.

2. The component of imported goods will form part of the transaction value for computation of value of works contract service.

3. [a] As is mentioned in Sr. No. 2 above, the value of imported goods will form the part of transaction value for computation of value of works contract service.

[b] The value of goods sold on a HSS basis will have to be added to the transaction value for computation of the value of a works contract.

  
(Kamal Shukla)  
Member (SGST)



  
(P.B.Meena)  
Member (CGST)

Place: Ahmedabad

Date: 21.01.2025