

GST leviable on reimbursed amount, being advance payment by recipient towards cost incurred for provision of software services

The AAAR, Tamilnadu in the matter of *M/S. ICU Medical India LLP [Order-in-Appeal No. AAAR/10/2021(AR), dated March 10, 2021]* modified the ruling of AAR, Tamilnadu, to the extent that Goods and Services Tax (“GST”) is leviable on the reimbursement by the subsidiary company to its ultimate holding company located outside India, being advance payment made by the holding company towards the cost incurred for the provision of software services supplied by the subsidiary company, as per the time of supply provided under Section 13 of the Central Goods and Services Tax Act, 2017 (“CGST Act”) and applicable rate shall be same as applicable to the supply of software services made by them.

Facts:

M/S. ICU Medical India LLP (“**the Appellant**”) is engaged in the business of software development for the infusion system manufactured by ICU Medical Inc., (“**ICU Inc.**” or “**holding Company**”), having its place of business located at USA. The holding Company in turn has entered into a Cardholder User Agreement with the employees of the Appellant for issuance of credit cards, which are issued to the employees to be used only for business related expenses within and outside India i.e., for travel, accommodation in the hotel, food expenses, etc. The Appellant takes Input Tax Credit (“**ITC**”) on such expenses incurred through the credit card issued by the holding Company, wherever possible.

During the course of supplying such software development services, the Appellant incurs expenses, which represents cost of the services and with a margin, consideration is received from the overseas holding Company. The travel related expenses are incurred through credit card of employees of the Appellant the credit card is however issued by the overseas holding Company and the expenses incurred through the credit card are initially settled by the holding Company abroad with the card issuing bank. For the purpose of accounting and operational convenience, the expenses incurred through such credit card, are first recovered from the Appellant through invoice raised from holding Company and subsequently included in the invoice raised by the Appellant on the holding Company for the development of software.

The Appellant has filed the present appeal, being aggrieved by the decision of AAR, Tamilnadu vide **Order No. 23/ARA/2020 dated May 4, 2020** wherein, the AAR held that the reimbursement made by the Appellant is taxable as per Sl. No 1 of **Notification 10/2017- Integrated Tax (Rate) dated June 28, 2017 (“Services RCM Notification”)** and the rate of tax is 18% as per Sl. No. 15 of **Notification 8/2017 -Integrated Tax (Rate) dated June 28, 2017 (“Services Rate Notification”)**, as applicable to the service classification heading 9971.

Issue:

Whether GST is leviable on the reimbursement by the subsidiary company to its ultimate holding Company located in a foreign territory outside India?

Held:

The AAAR, Tamilnadu in **Order-in-Appeal No. AAAR/10/2021(AR), dated March 10, 2021** held as under:

- Noted that, the expenses, borne by the holding Company of the Appellant and later reimbursed but again included in the taxable invoice are nothing but part of the consideration received by the Appellant from its holding Company and are in the nature of advance consideration paid by the recipient to the supplier Appellant and the time of supply provisions relating to advances received by a supplier of services as per Section 13 of the CGST Act will be applicable.
- Observed that, the fact of reimbursement does not result in any transaction in its own, but such expenses of employees of the Appellant through the credit card of the holding Company, borne at the first instance by the holding Company is nothing but which the Appellant was liable to incur and reimbursed are for the only purpose of restoring the Appellant’s accounts to previous position for operational convenience so that the same could be later included in the software development charges invoiced by the Appellant to the holding Company. There is indeed an economic rationale for such treatment of expenses as transfer of resources happened between the Appellant to its holding Company.
- Stated that, such reimbursements are to be included in the value of supply and tax is to be paid as per the time of supply provisions applicable to such transactions and the same is however being included though later in the tax invoice raised by the Appellant.

Flat no. 34B, Ground Floor, Pocket -1, Mayur Vihar, Phase –I, Delhi - 110091

Email: bimaljain@a2ztaxcorp.com; Web: www.a2ztaxcorp.com; Tel: +91 11 4242 7056

- Held that, GST is to be paid on such amounts of expenses reimbursed at the time determined as per Section 13 of the CGST Act, as it represents the part of consideration received in advance by the Appellant from holding Company and to be paid at the time of reimbursement as by then the actual expenses borne by the recipient is known.
- Modified the order passed by the AAR, Tamilnadu to the extent that GST is leviable on the reimbursement amount, being advance payment made by the holding Company towards the cost incurred for the provision of software services supplied by the Appellant, as per the time of supply provided under Section 13 of the CGST Act and applicable rate shall be same as applicable to the supply of software services made by the Appellant.

Relevant Provisions:

Section 13 of the CGST Act:

“Time of supply of services-

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

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

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

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

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

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of

supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

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

- (i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;*
- (ii) “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.*

(3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely:—

—

- (a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or*
- (b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:*

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply:

Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

(4) In case of supply of vouchers by a supplier, the time of supply shall be—

- (a) the date of issue of voucher, if the supply is identifiable at that point; or*
- (b) the date of redemption of voucher, in all other cases.*

(5) Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall—

(a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or

(b) in any other case, be the date on which the tax is paid.

(6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.”

We have recently released the 6th Edition of our GST Book titled **“GST LAW AND COMMENTARY – WITH ANALYSES AND PROCEDURES”**, in a set of 3 Volumes. We thank you all for the support and your enduring response.

Have a look at the complete tour of the Book at: <https://rb.gy/3hifj3>

Order your copy now and be a part of GST learning excursion in most comprehensive and lucid form !!

This book can be ordered online at: <https://rb.gy/benrpb>

DISCLAIMER: The views expressed are strictly of the author and A2Z Taxcorp LLP. The contents of this article are solely for informational purpose. It does not constitute professional advice or recommendation of firm. Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon.