

Record notes of Meeting held on 03.07.2018 at CC-Gurgaon with the Contractors on certain GST issues

During the meeting, following issues related to GST implementation were discussed. Based on discussions, the deliberations and outcome thereof are indicated herein below:

1. GST on Liquidated Damages/ Recovery/Penalty

During deliberations, it was explained that in general, as per the contract conditions, Liquidated Damages (LD) is worked out basis the contract price. Besides, there may be some instances of recovery/penalty etc. in a contract for which also the contract price serves as the basis for working out the same.

In a contract entered into with a contractor during pre-GST regime, there may be some portion of the works executed under the pre-GST dispensation whereas balance portion may be in post-GST regime. As the basis of working out the LD/recovery/penalty is the contract price, the same may be worked out based on the contract price corresponding to the quantum of work executed in respective tax regimes. Accordingly, for Supply of Goods/Services in pre-GST regime, the contract price may be worked out corresponding to supplies in pre-GST regime (say CP-I) whereas for the remaining portion under post-GST regime, the contract price corresponding to the quantum executed in post-GST regime (say CP-II) be worked out and the LD/recovery/penalty may be worked out based on total contract price (CP-I+CP-II). The contract price under the GST regime shall be the GST aligned price for which methodology has already been put in place by POWERGRID.

In all the aforesaid cases, as the LD/recovery/penalty has been determined under the GST regime and is a supply of service rendered to the contractor by POWERGRID for tolerating the act, GST shall be applicable on total LD/recovery/penalty worked out in the manner stated above i.e. on CP-I plus CP-II. It was also noted that the Contractors are expected/entitled to avail the amount paid towards GST on aforesaid acts as input credit.

The aforesaid methodology shall also be adopted for other types of recovery/penalty as considered relevant wherever the same is linked to or is based on the contract price. For example, in certain cases wherein works are not executed as per specification but are acceptable after rectification/correction, recoveries are made under Integrity Pact. As such, GST shall be applicable extra on such recoveries also.

For the past cases also, where GST has been considered as inclusive in LD amount or recovery/penalty worked out based on contract price for supplies in pre-GST regime, recovery shall be made now by POWERGRID for the amount of GST. These recoveries of GST may be done against the contract in question or any other contract that POWERGRID may have with the same contractor.

2. Taxability of GST on F&I

Regarding GST on F&I charges, it was explained that as communicated in the past vide Record Notes of Discussions held on 12.10.2017, basis the contractual provisions as specified, the transaction of Supply of Goods and F&I are not a composite supply as per POWERGRID's understanding and services of transportation of goods by road (except services of GTA) continue to be exempt under GST regime as was under Service Tax regime. POWERGRID also clarified

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that subsequent to GST, it has been stipulated in the tender/contract conditions that though GST on F&I shall not be payable by POWERGRID, it is the Bidder who has to check the position from their own sources and if payable, the same shall be to the Bidder's account.

The matter was further discussed in the context of some of the recent Advance Rulings on the matter. During deliberations, the contractors contended the following:

- F&I is a composite supply with either Supply of Goods or Supply of Services.
- Being composite in nature, there is applicability of GST on F&I which have also been mentioned in the Advance Rulings of West Bengal (in case wherein Applicant is EMC and in another case wherein the Applicant is IAC).

Against the above, POWERGRID noted that the Advance Ruling of West Bengal is on the premise of the contracts being works contracts, whereas POWERGRID has awarded contracts separately for Supply portion in the pre-GST regime, with cross fall breach clause. POWERGRID further informed that under Supply Contract the transfer of title is envisaged at ex-works. POWERGRID also explained that there is an Advance Ruling from the Karnataka in the case of GIRIRAJ RENEWABLES. It was explained that the said AAR finds specific mentioning as the same also has placed credence on the contents of the contract which stipulates transfer of the legal title of PV modules to the Owner in high seas and after clearance these being made available by the Owner to the Contractor for further action of installation, etc. The AAR had thus observed that the major portion of the contract is supplied by the Owner to the Contractor and not from the Contractor to the Owner. The AAR had further observed that the contract as well demonstrates that in such projects, the Owner could procure the major equipment on their own with the Contractor only carrying out the supply and services portion in respect of the residuary bit of the contract. Hence, a claim that the said is a naturally bundled and related tax position of it being a composite supply is incorrect. It was explained that POWERGRID's contracts also stipulate transfer of title of goods ex-works under the Supply Contract which are then made available to the contractor for further activities including F&I as per the contract.

It emerged after discussions that the Advance Rulings have different standings as these are in the context of specific contracts and as such the outcome in any specific context may not probably cover all aspects. It was also noted that any rulings may have specific bearings of the manner in which the case has been presented to the authorities. It was submitted by the contractors that it would therefore be appropriate that POWERGRID itself may opt for Advance Rulings citing all aspects or may seek opinion from the sources as it considers appropriate so as to arrive at a single platform and come out with the final view. Regarding AAR, POWERGRID, however, informed that it would ascertain whether POWERGRID would be in a position to file AAR.

POWERGRID assured the contractors that the matter will be reviewed and POWERGRID's position in the matter shall be conveyed to the contractors.













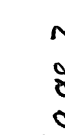

3. The meeting ended with a vote of thanks to the participants and all others who were associated.

*Y
Contractor*

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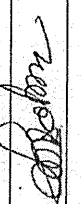


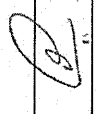



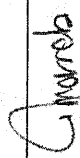


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