

GST registration is required in the particular state to execute works contract services – Odisha AAR

31 October 2022



Summary

The Odisha Authority for Advance Ruling (AAR) held that, in the present case, the location of supplier seems to be at the project site, which is different from the place of business. Further, the nature of supply makes it impractical to supply it from the state of Maharashtra. Thus, an establishment is required in the state of Odisha from where the work is being carried out. The AAR further noted that in order to provide services in line with the terms and conditions of the work order, the applicant needs to maintain adequate permanent structures, both in terms of human and technical resources, at the East Coast Railway, Odisha (ECoR) sites. The applicant is required to provide the services at the site from the establishment as described in section 2(7) of the Integrated Goods and Services Tax (IGST) Act. As a result, the supplier's location should be in Odisha. Thus, the AAR concluded that the applicant is required to obtain registration in Odisha to provide works contract services.

Facts of the case

- M/s Konkan Railway Corporation Limited (the applicant), a government company, is registered under Goods and Services Tax (GST) in the state of Maharashtra. The applicant is engaged in providing work contract services, transportation service of goods and passengers by railways and project services to zonal railways and other agencies.
- The applicant has received a letter of acceptance (LOA) for the execution of construction of major bridges, supply of vehicles, site facilities and other allied works in the state of Odisha. These tasks must be completed within 24 months of the date of issue of LOA.
- The applicant has no permanent/fixed establishment in the state of Odisha. Further, the applicant contended that in the absence of a fixed establishment from where the supply is made, the location of supplier of service is the location of the usual place of the supplier. In the instant case, location of applicant (works contractor) will be the state where its principal place of business is registered, i.e., Maharashtra.
- The applicant submitted that in the event of works contract services, the place of supply shall be the location of the immovable property (building site). Since the place of supply is Odisha and the supplier's location is Maharashtra, IGST must be levied. Thus, the applicant is not needed to hold a separate GST registration in the state of Odisha.
- The applicant further submitted that a substantial value of contract is sub-contracted to a contractor located in Odisha, except for the supply of cement and steel, which will be bought and directly supplied to the site for consumption in Odisha and invoicing will be based on bill to ship to model. The sub-contractor will charge IGST from the applicant. Further, the applicant would raise an invoice to ECoR charging IGST thereon. As a result, the state of Odisha suffers no income loss.
- The applicant also submitted that a site office is required to be constructed, which will be used by project-in-charge and other site engineers of ECoR. Further, a very few site engineers of the applicant will be deployed in Odisha for supervision on the job at site, who will arrange their own stay near to the site. In view of the above submissions, the applicant has filed the present advance ruling to seek exemption for GST registration in Odisha.

AAR observations and ruling [02/ODISHA-AAR/2022-23 dated 20 September 2022]

- **An establishment is necessary:** The AAR held that the nature of the supply makes it impractical to supply it from the state of Maharashtra. Therefore, in the state of Odisha, where the job is being done, an establishment is necessary. Further, the instant project is a long-term contract followed by defects liability period. Accordingly, the AAR stated that the scope and nature of the works contract make it clear that the applicant must deploy an adequate number of site engineers and technical staff, as well as ancillary equipment, to comply with the contract's terms and conditions. This is necessary for the project work to be completed satisfactorily, which is not feasible without having a permanent site office of sufficient capacity.
- **Registration requirement in the state of Odisha:** The AAR observed that the applicant needs to ensure the performance of works contract services throughout the duration of the contract, showing a suitable level of permanence for the technical and human resources onsite. As a result, the applicant is required to provide the services at the site from the establishment as defined in section 2(7) of the IGST Act. Accordingly, the applicant is required to be registered under the Odisha GST Act.

Our comments

Earlier, the Karnataka AAR, in the case of M/s GEW (India) Private Limited, observed that the applicant has only one principal place of business in Noida for which registration has been obtained. Further, the applicant does not intend to have any other fixed establishment other than the principal place of business. In this respect, the AAR had ruled that the applicant may raise an invoice from its principal place of business without obtaining a separate registration in Karnataka.

Similarly, the Karnataka AAR in case of T & D Electricals held that the company is not required to obtain a separate registration in the state to execute the project. However, the company is at liberty to obtain the same if it intends to have a fixed establishment at the project site in Karnataka. Even in the instant case, the applicant has cited the above decision. However, the Odisha AAR distinguished the above case since there is no fixed establishment other than the principal place of business of M/s T & D Electricals.

Also, in case of M/s Pragati Engineers, the Delhi High Court passed a contrary ruling and held that since the petitioner was registered in Delhi but providing services in Hyderabad, it satisfies the definition of casual taxable person. Thus, the applicant is required to obtain registration in Hyderabad as well.

In the present ruling, the AAR has emphasised that although GST is a destination-based tax, however, for the purposes of obtaining registration, it is important to identify the origin of supply. Thus, the AAR has held that when the applicant is required to maintain suitable structure in terms of human and technical resources with a sufficient degree of permanence in the state where the project is executed, then the applicant is required to obtain registration in such state. Even if the advance ruling is applicable only to the applicant and the jurisdictional officer, the authorities may apply the ratio in other cases with similar facts.

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