



Tax alert: Solar power station not an immovable property and hence, not a supply of works contract services

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The Andhra Pradesh High Court holds the supply of solar power station as a composite supply of movable property and not a works contract under GST

In a nutshell



Petitioner, engaged in the business of setting up of solar power plants, had been paying GST at 5%.

As the rate of GST on the inputs was higher than the GST rate of finished goods, the petitioner had filed an application for refund under inverted duty structure.



The application was rejected and separate proceedings were initiated by the Revenue on the grounds that the transactions undertaken by the petitioner were works contract services and taxable under GST at 18%.



The High Court observed that the solar modules and the solar power generating system have not been embedded in the earth to bring it within the meaning of immovable property.

Hence, supply of solar power station would not amount to works contract services.



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Facts of the case

- The petitioner was engaged in the business of setting up of solar power plants.
- The petitioner had been paying GST at 5% of its turnover. Since the rate of GST on inputs procured was higher than the GST rate of finished goods, the petitioner filed an application for refund under inverted duty structure.
- The refund application was rejected, and assessment proceedings were initiated against the petitioner on the grounds that, the transactions undertaken by the petitioner are works contract services under GST and taxable at 18%.
- The petitioner contended that the activities are composite supplies under GST and taxable at 5%. However, the said contention was rejected, and the demand was confirmed by the adjudicating authority as well as first appellate authority.

Observations and ruling

- If the solar power generating system is to be treated as a moveable property, it would have to be taxed under Entry 234 of Notification 1/2017-Central tax (Rate) dated 28 June 2017, and the rate of GST would be 5%.
- If the supply of solar power generating system is to be treated as work contract, the same would be taxable as general construction services of power plants and its related infrastructure with HSN Code 995426 and taxable at 18%.
- The Court examined the provisions of GST law relating to composite supply and works contract services along with various judicial precedents, where the principle for determining whether a good is movable or immovable were discussed.
- In the present case, the solar power plant is not trees or shrubs, which are rooted to earth or a structure embedded in the earth. This contention was accepted by the appellate authority that the solar power module is attached to the civil foundation, which is embedded in the earth.
- The property, which is attached to a structure embedded in the earth, would also become immoveable property only when such attachment is for the permanent beneficial enjoyment of the structure, which is embedded in the earth. In this case, the civil foundation is embedded in the earth.
- Also, the solar modules and the solar power generating system have not been attached to the civil structure for the purpose of better enjoyment or beneficial enjoyment of the civil foundation. On the contrary, the civil foundation has been embedded on earth for better permanent and beneficial enjoyment of the solar power generating station.
- Applying the aforesaid test, it must be held that the property in question, viz., the solar power generating system would not answer the description of immoveable property.
- The transaction in question would not fall within the meaning of works contract as defined under the GST law.

Deloitte comments

The ruling of the Andhra Pradesh High Court is similar to the law laid down by the Supreme Court in the case of *Bharti Airtel* to determine the nature of goods being movable or immovable. This decision can be relied upon in challenging similar disputes and contend eligibility of Input Tax Credit on various plant and machinery as well.

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