

## NEWSFLASH

No separate GST registration required in the State where the contract is executed in the absence of fixed establishment in that State

November 2021

## No separate GST registration required in the State where the contract is executed in the absence of fixed establishment in that State



- GEW (India) Private Limited (the company), a sub-contractor, obtained a work order from M/s L&T, Karnataka on its registered office at Noida. The contract is composite supply of goods and services involving supply, erection and installation of steel structure after fabrication used for harbouring/ anchoring of ships. The steel was fabricated at its Noida unit and installation was on-site at Karwar base located in Karnataka. The supply of services was, therefore, partly done from Noida and partly from Karnataka.
- The company had an accommodation place in Karnataka for the resident engineer and others who may visit the work site but did not plan to have any office or administrative staff. They specifically contended that no books of accounts and documents shall be maintained at this place. Also, L&T had asked the company to raise an invoice from Noida only.
- The company sought an advance ruling to determine whether it is required to obtain GST registration in Karnataka for execution of the works order obtained from M/s L&T Karnataka.
- The Karnataka Authority of Advance Ruling (AAR) referred to the definition of 'location of supplier of services' given in section 2(71) of Central Goods and Services Tax Act, 2017 (CGST Act) and noted that the company had only one principal place of business, which was in Noida for which registration has been obtained and does not intend to have any other fixed establishment. Therefore, the principal place of business which is in Noida, Uttar Pradesh itself will be the location of the company based on the definition of location of supplier of services. Hence, there was no requirement for separate registration in the State of Karnataka for executing the works contract. The company could issue an invoice from its registered office at Noida, Uttar Pradesh with the place of supply as Karnataka and charge Integrated Goods and Services Tax (IGST) on its invoice.
- This ruling clarifies that the company is required to have fixed establishment<sup>1</sup> (defined in section 2(50) of CGST Act) in the State for obtaining GST registration. Having the accommodation place for engineers and other staff would not be treated as fixed establishment in the State.
- This ruling further clarifies that the place of supply is useful only to determine the nature of supply and to decide the tax component (CGST & SGST or IGST) that need to be charged, as the GST is the tax based on destination and consumption. Hence, in the absence of GST registration, an inter-State supply can be made on raising the invoice from the registered place by charging IGST.

<sup>1</sup> 'fixed establishment' means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs.

- The Karnataka AAR ruled that no separate GST registration would be required in the State where the works contract has been executed and an invoice can be raised from registered place of business in the other State by charging IGST.

### **Other Rulings/ Judgements:**

- Rulings provided in case of M/s Jaimin Engineering Private Limited and M/s T&D Electricals by Rajasthan AAR and Karnataka AAR respectively also hold that the company need not obtain separate GST registration at the place of supply in the absence of fixed establishment in that State. They can execute the contract from the place of business and raise an IGST invoice.
- Another related issue is addressed by Delhi High Court (Delhi HC) in case of M/s Pragati Engineers where it was held that the company is required to take registration as 'casual taxable person'<sup>2</sup> (defined in section 2(20) of CGST Act) in Hyderabad in which the work is taken up where there is no fixed place of business. The Delhi HC opines that the concern of the petitioner having no place of business/ fixed establishment in Hyderabad is sufficiently addressed by the definition of casual taxable person.

## **Nangia Andersen LLP's Take**

*In our view, the registration as casual taxable person may be required to be obtained by professionals/ businesses who is coming into another State with its goods to provide services. However, where the businesses provide the services from its principal place of business, then it would be treated as an inter-State supply and would not require registration as casual taxable person. The concept of 'casual taxable person' existed in VAT Law only and was relevant for protecting tax revenues when the taxation was based on the state of origin. Under the GST regime, the taxation is based on destination and the protection to the consumption state is inbuilt. Thus, the need for continuing this concept in GST is bit of a puzzle. Nonetheless, this concept is incorporated under GST legislation to maintain parity with the State legislations, given this, litigation on this aspect is likely in future also, particularly in case of inter-State transactions.*

*While all three advance rulings provided in case of M/s GEW (India), M/s Jaimin Engineering Private Limited and M/s T&D Electricals were consistent in their approach. The Karnataka AAR and Rajasthan AAR has ruled that no separate GST registration is required in the State where the contract is executed in the absence of place of business in that State. Delhi HC held that the companies having no place of business/ fixed establishment in the State should obtain registration as casual taxable person in that State, may create some uncertainty. It seems that the definition of 'location of supplier of service' was not brought to the notice of the Court and therefore the Court did not have the occasion to consider the implications thereof.*

---

<sup>2</sup> 'Casual taxable person' means a person who occasionally undertakes transaction involving supply of goods or services or both in the course or furtherance of business, whether as principal, agent or in any other capacity, in a State or a Union Territory where he has no fixed place of business.

**NOIDA**

(Delhi NCR - Corporate Office)  
A-109, Sector - 136,  
Noida - 201304  
T: +91 120 5123000

**DELHI**

(Registered Office)  
B-27, Soami Nagar,  
New Delhi - 110017  
T: +91 0120 5123000

**GURUGRAM**

812-814, Tower B, Emaar Digital  
Greens, Sector-61, Gurugram,  
Haryana - 122102  
T: +91 0124 430 1551

**MUMBAI**

11<sup>th</sup> Floor, B Wing, Peninsula Business  
Park, Ganpatrao Kadam Marg, Lower  
Parel, Mumbai - 400013, India  
T: +91 22 61737000

**CHENNAI**

Prestige Palladium Bayan,  
Level 5, 129-140, Greams Road,  
Thousand Lights, Chennai - 600006  
T: +91 44 46549201

**BENGALURU**

Prestige Obelisk, Level 4, No 3  
Kasturba Road, Bengaluru - 560 001,  
Karnataka, India  
T: +91 80 2228 0999

**PUNE**

3<sup>rd</sup> Floor, Park Plaza, CTS 1085,  
Ganeshkhind Road, Next to Pune  
Central Mall, Shivajinagar,  
Pune - 411005

**DEHRADUN**

1<sup>st</sup> Floor, "IDA" 46 E.C. Road,  
Dehradun - 248001, Uttarakhand  
T: +91 135 271 6300

[www.nangia-andersen.com](http://www.nangia-andersen.com) | [query@nangia-andersen.com](mailto:query@nangia-andersen.com)

Copyright © 2021, Nangia Andersen LLP All rights reserved. The Information provided in this document is provided for information purpose only, and should not be constructed as legal advice on any subject matter. No recipients of content from this document, client or otherwise, should act or refrain from acting on the basis of any content included in the document without seeking the appropriate legal or professional advice on the particular facts and circumstances at issue. The Firm expressly disclaims all liability in respect to actions taken or not taken based on any or all the contents of this document.