

GIB/WB/IZ-Kartex/29.06.2020/AAR-331

Advance Ruling Category : Place of Supply

State : West Bengal

Order No.: GIB/WB/IZ-Kartex/29.06.2020/AAR-331

Name of Entry :

IZ-Kartex named after P G Korobkov Ltd

Date : 29-06-2020

Breif Issue :

Facts & Issue of The Case:

The applicant is the local branch of a Russian business entity by the same name (hereinafter „Foreign Company?”), which entered into a Maintenance and Repair Contract (hereinafter called “MARC”) with Bharat Coking Coal Ltd (hereinafter “BCCL”) with respect to the machinery and equipment it had supplied.

The applicant has sought Advance Ruling on the following questions:

- whether the MARC makes the supplier liable to pay GST (which, for the purpose of this order, includes IGST)?
- whether the recipient is not liable to pay tax on reverse charge basis in terms of Notification No. 10/2017 – Integrated Tax (Rate) dated 28/06/2017?

Decision of Advance Ruling Authority :

Decision

- It was held that MARC Holder maintains suitable structures in terms of human and technical resources at the sites of BCCL. It ensures supervision of the equipment, supply of spares and consumable and overheads for 5000 annual working hours for seventeen years, indicating sufficient degree of permanence to the human and technical resources employed at the sites.
- The MARC Holder, therefore, **supplies the service at the sites from fixed establishments as defined under section 2 (7) of the IGST Act.** The location

of the supplier should, therefore, be in India in terms of section 2 (15) of the IGST Act.

- Supply of the **MARC Holder to BCCL is not, therefore import of service within the meaning of section 2 (11) of the IGST Act.** The MARC Holder should be treated as a supplier located in India triggering clause 9.2.2 of the MARC, and made liable to pay GST, **the place of supply being determined in terms of section 12 (2) (a) of the IGST Act.**
- The applicant, being the registered branch of the Foreign Company, should be treated as the domestic MARC Holder in terms of clause 9.2.2 of the MARC and be liable to pay tax accordingly.