

**THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX**  
**(constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)**

**AMENDED ORDER NO. MAH/AAAR/SS-RJ/21A/2018-19      Date- 04.11.2019**

**BEFORE THE BENCH OF**

**(1) Smt. Sungita Sharma, MEMBER**

**(2) Shri Rajiv Jalota, MEMBER**

Name of the Appellant	H.P. Sales India Pvt. Ltd.,
Details of appeal	Appeal No. MAH/GST-AAAR-32/2018-19 dated 23.01.2019 against Advance Ruling No. GST-ARA-33/2018-19/B-118 dated 28.08.2018
Legal Name of the Respondent	Deputy Commissioner of State Tax (E-618), Large Tax Unit -2, Mumbai
GSTIN Number/User Id	27AAACC9862F1ZI
Registered Address/Address provided while obtaining user id	5th floor, North Side, Commerz, 16th International Business Park, Oberoi Garden City, Off Western Express Highway, Goregaon East, Mumbai, Maharashtra-400 063
Details of the AAAR order sought to be amended under Section 102 of the CGST Act, 2017	ORDER NO. MAH/AAAR/SS-RJ/21/2018-19 dated 17.02.2019

**PROCEEDINGS**

**(under Section 102 of the Central Goods and Services Tax Act, 2017 and the  
Maharashtra Goods and Services Tax Act, 2017)**

- A. At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to





the CGST Act would also mean a reference to the same provisions under the MGST Act.

- B. In the present case, appeal had been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by H.P. Sales India Pvt. Ltd., (herein after referred to as the "Appellant" or Applicant interchangeably) against the Advance Ruling No. GST-ARA-38/2017-18/B-45 dated 08.06.2018, which was disposed of by the AAAR Order No. MAH/AAAR/SS-RJ/21/2018-19 dated 17.02.2019. However, pursuant to the said AAAR order dated 17.02.2019, the Appellant, M/s. H.P. Sales Pvt. Ltd., has brought to our notice that the impugned AAAR Order dated 17.02.2019 had not considered the additional submissions dated 11.02.2019 in entirety, filed by them before the AAAR, which was also referred and duly relied upon by them in favour of their case during the course of the personal hearing conducted on 12.02.2019. They, further, pleaded that non consideration of the abovementioned additional submissions dated 11.02.2019, which would have significant bearing on the impugned AAAR order dated 17.02.2019, is an error, which is error, apparent on the face of the record, and hence the same need to be amended as per the provision of section 102 of the CGST Act, 2017, which is reproduced herein under:

**Section 102 of CGST Act 2017: Rectification of Advance Ruling**

The Authority or the Appellate Authority may amend any order passed by it under section 98 or section 101 or section 101, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority or the National Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant within a period of six months from the date of the order:

Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant, appellant, the Authority or the Appellate Authority has been given an opportunity of being heard.





C. Further ,the Appellant, in support of their submissions made in the application for rectification of error, have also cited various judicial pronouncements, some of which are being mentioned herein below:

- (i) Supreme Court Judgment in the case of Deva Metal Powders Pvt. Ltd. Vs. Commissioner, Trade Tax, UP [2008(221) ELT 16 (SC)];
- (ii) Bombay High Court Judgment in the case of C.M.S. Info Systems Ltd. Vs. the Commissioner, CGST, Mumbai East & Ors.[2019-VIL-326-BOM]
- (iii) Bombay High Court Judgment in the case of Rostam Parvaresh Vs. Union Of India [2010(259)E.L.T. 42 (Bom)]

All the above judgments have invariably held that that Ignoring, non- recording, or non-consideration of the submissions, made by the parties would amount to error apparent on the face of the record, and the same needs to be rectified by the adjudicating authority.

D. Thus, in view of the above submissions, the abovementioned legal provision of section 102 of the CGST Act, 2017, and various judicial pronouncements, cited by the Appellant in favour of their submissions, we are convinced that the impugned AAAR Order dated 17.02.2019 warrants rectification as the additional submissions dated 11.02.2019 filed by the Appellant has truly not been considered in the impugned AAAR order dated 17.02.2019.

E. Accordingly, the Appellant was granted personal hearing in the matter, which was held on 14.08.2019.

#### Personal Hearing

1. Personal Hearing in the instant matter, conducted on 14.08.2019, was attended by Shri K. Sivarajan, C.A., on behalf the Appellant. He reiterated the additional submissions filed on 11.02.2019 and contended that the impugned AAAR order dated 17.02.2019 warrants rectification as per the provision of section 102 of the CGST Act, 2017, as the said AAAR order dated 17.02.2019 did not consider the aforesaid additional submissions filed before the Maharashtra AAAR on 11.02.2019. Shri P.R. Nilewad, the jurisdictional officer also attended the above said hearing, wherein he reiterated the earlier submissions filed before us.





2. The additional submissions filed by the Appellant on 11.02.2019, which forms the basis for the present application filed under section 102 of the CGST Act, 2017 are as under:
3. Appellants are inter-alia engaged in supplying HP Indigo printers and the consumables to re-sellers, who in turn supply them to end customers. The following points are worth noting in this regard:
  - I. The Indigo press machine is sold upfront to the reseller/ end customer as per mutually agreed terms;
  - II. Electro Ink and the consumables required for printing are then supplied to resellers, who supply them to end customers; and
  - III. Spare parts are sold to resellers, who consume such spare parts in the course of providing maintenance services to end customers.
4. It may be noted that the above transactions (i.e.I, II and III) are entirely independent of each other and are distinct supplies vis-a-vis each other from a Goods and Services Tax (GST) perspective.

The subject matter under the present appeal is the composite supply of Electro Ink along with other consumables (as per II above) by the Appellant to the reseller and from the reseller to the end customer.

Further, the two main points of contention are:

1. Whether the supplies are in the ordinary course of business and
  2. Whether the supplies are naturally bundled.
5. The facts of supply of Electro Ink and consumables are provided in detail in the appeal memorandum filed by the Appellant.

In addition to the facts submitted in the appeal document and the Impugned Order, for the sake to provide further clarity we wish to bring the following supplemental facts:

The ElectroInk and the consumables are supplied under the following methods:

- Tier ("Click") Model; and
- A la carte model

The Tier ("Click") model, includes supplies made and invoices raised based on the clicks performed (i.e. actual print) by the final customer. "Supplies" here refers to the ElectroInk and consumables comprising of blanket, photo imaging plate,





binary ink developer, HP imaging oil, blanket web and other machinery products. Further, "Click" here in simple terms represent the chargeable unit for each printing function performed by the final customer. The functionality of the indigo press machine is such that all these supplies are necessarily required to be consumed together at a single time in order to produce the print. The desired quality and final output as per customer needs can be achieved only when all these supplies are collectively present in the indigo machine and used in the course of printing activity.

Under the A-la carte model, ElectroInk and consumables are supplied individually to the re-seller at a price and which are further supplied by the re-seller to the final customer.

6. We wish to bring to your Lordship's attention that an end customer could use the "click" and "A-la-carte" model together and in conjunction with other. In these cases, the end customer would contract with the re-seller for supply of ElectroInk and consumables in a bundle and additional inks in an a-la-carte model. A standard HP Indigo Digital Printing press comes with 4 ink stations installed by default with an option provided to the customer to add 3 more ink stations. The bundle inter-aha comprises 4 types of ink, i.e. Cyan, Magenta, Yellow and Black which are 4 standard process inks which may be mixed in different proportions to achieve most colours required for prints. Additionally, 3 inks i.e. orange, violet, and green, again supplied as part of the click can be placed and used in conjunction to obtain prints with different effects as required. In some scenarios the customers may wish to use these additional inks on an a la carte basis from the reseller. The reseller has similar contractual arrangements with the Appellant.
7. As apparent from above, both models are necessary to serve different customer needs. While the click model is necessarily taken by the customer to effect print in his regular course of business, supplies under A-la carte depends on specific print requirements, for which separate request is made by customer.
8. Additionally, the inks supplied by the Appellant under A-la carte model are "specialized inks" to give enhanced printing experience. These inks differ from those supplied ordinarily under the click model. Further, in order to effect print using inks procured under A-la carte, the customer necessarily shall be required





to also use other consumables supplied under click model, including ink. Therefore the A-la carte is not an alternate for click, rather an optional scheme.

9. The Appellant wishes to reiterate that the appeal filed before your Hon'ble Lordships for classification of Electroink supplied along with consumables under GST is only in relation to the Click model and not with respect to supplies made to customers on A-la carte model.
10. The Consumables supplied under the Click model are naturally bundled and not compulsorily bundled, therefore qualify as a composite supply.
- With respect to the above ground, we have provided our detailed submission in para 14 of our Grounds of Appeal. Further to these submissions, we additionally wish to submit as under:

**Findings in the impugned order**

The Learned AAR has in its Order confirmed that the Electroink and consumables are bundled. However, the Learned AAR has concluded that the bundle is not naturally bundled. The relevant portion of the Impugned Order is reproduced below:

*'The word 'Naturally', is not defined under the Act, we therefore refer to dictionary to under the meaning. The dictionary meaning is as below,*

*As per Merriam Webster*

*1: by nature: by natural character or ability*

*• naturally timid*

*2: according to the usual course of things: as might be expected*

*3a: without artificial aid*

*4: with truth to nature: realistically*

*Without special intervention; in a natural manner.*

*As per English Oxford dictionary*

*In a normal manner; without exaggeration or effort.*

*'act naturally'*

*a naturally bright pupil'*





The dictionary meaning of the word 'Naturally' with reference to supply implies that it should be in the natural manner or is happening or existing as a part of nature and not made or done by the people. In the present case and as per the terms of the HP's agreement with reseller/ customer which provides that:

"Reseller may elect to purchase Supplies for the different Indigo Press Product Lines under different programs, provided that Reseller shall purchase all of Supplies required by it for each Indigo Press Product Line under the same Supplies purchase program." This clause of the purchase agreement assume significance of the factual background that there exists a notable difference between the conventional offset and HP Indigo Digital offset Printing Technology. The terms of the contract as mentioned above clearly indicate that the recipient of the supply has no option but to accept it as a bundled supply. Thus, the transaction of supply of ElectroInk with consumables cannot be considered as bundled supply but a compulsory supply. Thus, the transaction before us cannot be said to be naturally bundled supply"

The Impugned Order while determining the characteristics of a "Composite Supply" has at page 13 observed:

"The terms of the contract as mentioned above clearly indicate that **the recipient of the supply has no option to select individual supply** but to accept it as bundled supply".

[Emphasis supplied]

However, subsequently, on page 14 the Impugned Order has concluded that "Each of such **supplies can be supplied separately** as they are not dependent on each other ....."

[Emphasis supplied]

#### 11. Our submissions

The Appellant wishes to place its humble objections to the findings in the Impugned Order:

##### **a. Supply being naturally bundled**

The word "naturally bundled" is not defined under GST law. Bundled supplies of ElectroInk along with all consumables are supplied as a bundle "according to the usual course of things"





The Impugned Order has held that the bundled supply of ElectroInk and consumables are not "naturally" bundled as the end customers are contractually required to procure all goods from the Appellant. The Impugned Order has further held that while the arrangement qualifies as being supplied in a bundle, the arrangement does not qualify as being "naturally" bundled as the same does not fall under the dictionary meaning of the phrase "naturally".

Through the following submissions, the Appellant place evidence that the supply of Electroink along with the consumables qualify as being "naturally" bundled and are covered under the dictionary definition of "naturally".

12. We wish to place the dictionary meaning of the word "naturally" as defined in the Merriam Webster's dictionary that is quoted in the Impugned Order:

"As per Merriam Webster

1: by nature: by natural character or ability

- naturally timid

**2: according to the usual course of things: as might be expected**

3 a: without artificial aid

4: with truth to nature: realistically

Without special intervention; in a natural manner."

**[Emphasis supplied]**

13. We wish to submit that the bundle of Electro Ink and consumables supplied under the Click program are so bundled naturally as they are supplied "according to the usual course of things" or "as expected by the trade and industry.

To this extent, the Appellant submits as follows:

- Functionally. all the supplies including ElectroInk and consumables are supplied naturally as a bundle to achieve the print which is the intention of the end customer.
- To this extent, we submit a certificate from the Chartered Engineer to support our claim;
- We further wish to submit brochures, pamphlets and trade literature to substantiate that the industry in general works on the Click model;
- We have enclosed a self-declaration on the usage of standard inks;





- Further, we wish to submit that the working of the HP Indigo printing press substantiates that the Elertrolnk and the consumables are used in conjunction with each other to deliver the print:

- The Agreement between the Appellant and the reseller also substantiates that the supply of Electrolnk and the consumables is done only when they are used upon effecting the "print" command of the end customer.

14. The above substantiate that the consumables are functionally supplied as a natural bundle to the reseller and consequently to the end customer.

15. **Interdependency of the consumables**

The Impugned Order noted that "Each of the supplies can be supplied separately as they are not dependent on each other and the identification of the principal supply therefore cannot be drawn from and among the supplies"

16. The Appellant humbly submits that the consumables supplied under the Tier Model are fundamental for the printing process to get effectively completed. Shortage or non-availability of any consumables may either result in the print not being achieved or may adversely impact the quality of the printout.

17. Further, drawing reference to Clause 3 on Page 5 of the HP - reseller agreement, "supplies shall remain the property of HP until utilized in the Press(es)". Additionally, the parties to contract have agreed that the billing in this regard shall be made on a "per click" basis. Therefore, it is clearly evident that both the activity of transfer of property in goods supplied and invoicing for the same is made collectively for the entire bundle at a single point of time (based on consumption).

18. One of the condition as provided in the Goods and Service Tax Flyer ("Flyer") on Composite supply and Mixed Supply issued by the Central Board of Indirect Taxes (CBIC) specifies that to constitute a composite supply, "the different elements shall be required to be integral to one overall supply - if one or more is removed, the nature of the supply would be affected". The supply of indigo press consumables are integral to each other that where anyone is removed, the entire functionality of the print output shall get affected.

19. The Chartered Engineer certificate enclosed with the appeal further confirms the above.





**Intention of the Customer**

20. We wish to submit that the end customers also require the ElectroInk and consumables to be supplied in a bundle. The intention is to not to buy individual products separately but to have all the Electro Ink and consumables at one place for use in the printing machines.
21. To corroborate the same we have enclosed a declaration from the customer.

**Presence of other competitors along with similar models**

22. The Click model adopted by the Appellant is generally accepted industry practice and matched the business requirements of the customers in this trade. The provisions of the contract to raise invoices based on the consumptions and the clicks performed are not unique and specific to the Appellant.

To corroborate the same, the declarations as by end customers enclosed with the appeal also confirm the availability of similar models by other competitors.

We have also enclosed write up on the click model based on websites that specialize in printing solutions to industry.

It is important to note in this regard that under the erstwhile indirect tax regime as well, these supplies have been provided as a bundle at a single rate. The same was and has been the intention of the suppliers and customers in this regard.

Availability of option to non-purchase under supplies separately does not change the nature of the supply from a naturally bundled supply.

The contrary statements in the Impugned Order as highlighted above clearly indicate that the same is liable to be set aside.

23. As provided above, the Impugned Order has erred in concluding that a composite supply should not be done by people but should be part of nature or made in a natural manner. The Impugned order has relied on the dictionary meaning of term "naturally bundled" to conclude on this principle, without appreciating the applicability of the meaning in the context of the GST law and the facts.
24. Not accepting but assuming where an interpretation of the term "naturally" means 'it should not be done by people' is adopted, many of the composite supplies, including those clarified by the Revenue authorities by way of circulars and FAQ's, may not qualify as naturally bundled as they evolve out of business practices.





25. The Impugned order has clearly mis-construed the terms of agreement entered between Appellant and reseller by understanding that the reseller is mandated to purchase all the supplies required for the indigo press. The agreement firstly provides an option to the reseller to opt for either the Tier or A-la carte model. Further, post selection of the desired model, various elements are bundled and supplied together in order to facilitate the desired output. Where such supplies under the Tier model were not naturally bundled and supplied mandatorily, reseller would automatically opt for the A-la carte program, which is not the case.
26. The fact that customers opt for Tier model proves that all such supplies are integral to obtain the final output and not "compulsorily bundled".
27. The click model is given to customers intending to have all the arrangements at one place and to pay at the time of consumption. Click model allows businesses to create a lower cost entry point for customers in addition to helping them manage cash flow by aligning revenue and expenses. Click model helps customers change their "capital expenditure" to "operating expenditure".
28. Further, as per the Flyer issued by the Central Board of Indirect Taxes and Customs ("CBIC"), one of the feature of a composite supply is that the components of a "composite supply" should not be available separately. The Click model contractually and practically ensures that this criterion is met.
29. Further, the Hon'ble Maharashtra AAR, in the application filed by M/s Five Star Shipping observed as following in the Para 6:

30. Accordingly, one of the factors which was considered by Maharashtra AAR to conclude that the services were not composite supply was the fact that the individual products were available separately. This is not applicable to the





Appellant's case as the different elements of the click model are not available separately.

There is an obvious contradiction in the approach of the Impugned Order.

**Compulsory supply**

31. There is no concept of 'compulsory supply' or 'compulsorily bundled' in the GST law. Supplies may be naturally bundled or artificially bundled. Without prejudice to our earlier submissions, the department circulars also illustrate cases of composite supply where services are treated as naturally bundled, though these may be compulsory in some case. To illustrate:

- Boarding school and education service;
- Room rent in hospital
- Food supplied to inpatient
- Printing contracts
- Re-treading of tyres
- Airline ticket with food (this is mostly bundled in corporate fares)
- Hotel packages

32. Further, the concept of natural bundling is not static and evolves as the businesses come up with new models of packaging their products and services. Hotel rooms with breakfast complimentary was a concept which was not always prevalent. Airline tickets combined with food is also one such case. So, the concept of natural bundling has to be looked at as per industry practice, customer preferences, technological and other changes etc.

We wish to illustrate the same through an example as highlighted in the Flyer issued by the Central Board of Indirect Taxes & Customs ('CBIC'), on "Goods and Services Tax Composite Supply and Mixed Supply".

**Illustration**

A hotel provides a 1-D/3-N package with the facility of breakfast. This is a natural bundling of services in the ordinary course of business. The service of hotel accommodation gives the bundle the essential character and would, therefore, be treated as service of providing hotel accommodation.





Now, in general trade practice most hotels provide additional services to its guests in addition to such accommodation bundled with breakfast services, For instance, a hotel provides for accommodation services and breakfast as a bundled supply, however in addition to the same, it also offers to the customers to select/receive additional services for an additional fee like laundry services, airport pick up and drop. etc. Offering such additional services at an additional fee shall not change the nature of supply of accommodation services bundled with breakfast services. The Appellant humbly submit that similarly, the option provided to end customers to avail optional additional supplies under the a la carte model shall not change the nature of supply of the bundle of Electro Ink and consumables supplied under the click model.

Similarly, in some of the Advance Rulings or Appellate Advance Rulings, supplies have been treated as composite and naturally bundled, even though they may be compulsory in certain cases.

33. Supplies under Click program being consumed at different points of time does not alter the fact that the supply is a bundled supply.

With respect to the above ground, we have provided our detailed submission in para 26 of our Grounds of Appeal. Further to these submissions, we additionally wish to submit as under:

**Finding in the impugned Order**

34. The Impugned Order has observed that the supply of Electro Ink and other consumables in a bundle to customers have different shelf life and accordingly cannot be treated as supplied in conjunction to each other. The relevant portions of the Impugned Order at page 14 are extracted below:

"The Applicant submits ..... all such supplies are required to be consumed together in order to produce desired output. He therefore submits that the goods are supplied in conjunction to each other in the ordinary course of business.

**However, we find that this submission and argument is contrary to their own admission that every product supplied herein has a separate lifespan independent of each other."**

**[Emphasis supplied]**





35. The Appellant submits that the consumption pattern of the consumables may vary vis-a-vis each other. However, this fact does not in anyway conclude that the consumables are not supplied in conjunction with each other as there is no pre-requirement or condition that the goods should have the same consumption pattern to be treated as supplied in conjunction to each other.
36. To illustrate, the Appellant's submit that the supply of mosquito coils with the "stand" is a composite supply. However, the burner may have a different shelf life in the sense that a single "stand" may be used multiple times for use of burning multiple coils. This does not make the supply of "coil stand" and "coils" as a mixed supply.
37. Similarly, for the Appellant, the supply of ElectroInk and consumables may have different consumption pattern, but that does not change the nature of the supply from being "naturally bundled".
38. The fact of transfer of property, supply on conjunction with each other, continuous supply and billing based on consumption and statement of accounts have been accepted and not disputed. While so, the aspect relating to different lifespan should not be a criterion to determine whether the supplies are naturally bundled.

**39. Supplies are made in ordinary course of business**

With respect to the above ground, we have provided our detailed submission in para II of our Grounds of Appeal. Further to these submissions, we additionally wish to submit as under:

**Findings in the Impugned Order**

Para 5-4 at page 14

*".... He therefore submits that the goods are supplied in conjunction to each other in the ordinary course of business. However, we find that this submission and argument is contrary to their own admission that every product supplied herein has a separate lifespan independent of each other."*

**Our submissions**

40. Electroink and consumables supplied under the Click model are supplied to almost all customers in India except a Government Company that specifically requires the supplies exclusively under the A-la-carte model. Accordingly, the model of





supplying in a bundle is not a one-off transaction, but is in the usual course of business of the Appellant.

The Click model is also internationally accepted as a means of making supplies to customers.

41. Further, the Click model is a standard method of delivery and consumption in the "Offset printing industry". This is further substantiated from the fact that multiple suppliers supplying similar printing presses to other customers use the click model. This is substantiated by trade literature and competitors' brochure enclosed with the appeal.

Accordingly, the supplies are made in ordinary course of business.

**42. Electrolnk is the principal supply of the Bundle**

With respect to the above ground, we have provided our detailed submission in para III of our Grounds of Appeal. Further to these submissions, we additionally wish to submit as under:

Findings in the impugned Order

Page 14 para 5-4

*"Thus, the consumption of supplies has its own pattern. Each of such supplies can be supplied separately as they are not dependent on each other and the identification of the principal supply therefore cannot be drawn from and among the supplies which gives one of the essential character of bundle supplies to the suppliers in the present case"*

**Our submissions**

43. Further, we wish to submit that for usability, the printing ink or the "Electrolnk" is the most critical element from the customer's perspective to achieve the print, as printing essentially requires the placement of ink on paper, and the balance consumables aid in achieving this function.

44. The table provides the pattern of consumption of supplies made under the Click program for effecting a single print from the indigo press machine.

S. No.	Nature of the Product	Consumption (In percentage)
1	Printing Ink (EletroINK)	41
2	Blanket	16





3	PIP- Photo Imaging Plate	13
4	OMP-Other machine Products	10
5	BID- Binary Ink Developer	10
6	OIL	7
7	Blanket Web	2
8	Other Consumables	1

45. The above pattern of the consumption of the consumable establishes the fact that the ElectroInk is the principal supply among all the supplies made. As is evident, the ElectroInk is the most predominant supply in the bundle. The ink flows through the entire process to effectively generate a print and produce the desired output. It is the most essential and highest consumed product (in terms of volume) in a printing cycle, evident from the fact that 41% of the consumption in terms of value is of ink. The ink determines the quality and resolution of the image being printed, in the manner required by the customer.
46. Additionally, the Chartered Engineer Certificate confirms that the ElectroInk is the fundamental supply amongst the consumables for the purpose of effectively completing the printing process.
47. The principles applicable for Composite supply are satisfied by the Appellant.

#### **Findings in impugned Order**

Para 5.4 page 13

*"In this regard useful reference can be made to GST Flyers issued by CBEC in which certain tests are laid down which are listed below to ascertain supply of goods or services or both in the ordinary course of business.*

*1) The perception of the consumer or the service receiver;*

*2) Majority of service providers in a particular area of business provide similar bundle of services;*

*3) The nature of the various services in a bundle of services;*

*4) There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use;*

*5) The elements are normally advertised as a package;*





6) The different elements are not available separately;

7) The different elements are integral to one over all supply if one or more is removed, the nature of supply would be affected;

*As the impugned transaction fails to satisfy the tests mentioned above, the supply of ElectroInk along with consumables cannot be considered as a composite supply as defined under section 2 (30) of the GST Act."*

#### **Our submissions**

48. The approach adopted by the Learned Advance Ruling authority on basing its conclusion merely on the alleged non-satisfaction of a single illustrative factor without giving regard to the terms of contract, business arrangement and satisfaction of other necessary requirements. While the tests to be applied as per the flyer have been laid out in the impugned order, the satisfaction of these tests has not been specifically discussed, except for one of the tests i.e. elements not being available separately. The Appellant has explained the satisfaction of these tests explicitly in its submissions made before the Learned Authority, which has not been judiciously considered.

illustration provided in the definition of composite supply under Section 2(30) of the CGST Act (similar provision in the Maharashtra State GST Act):

- Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply.
- Accordingly, the concept of composite supply, shall need to be analysed only where there is a bundled supply of two or more goods or services.

49. Highlighting the abovementioned illustration as provided in the law, a taxable person may be capable of supplying goods only whereas the packing and transportation services are arranged for by the recipient. However, where such services are provided as a bundle along with the supply of goods, the supply shall be a composite supply, principal supply being the supply of goods. The fact that





such goods or services may be capable of being supplied independently cannot be considered as a factor for determining the nature of bundled supply.

50. In the Appellant's case, the items covered under the click program are not capable of being sold independently as all the items like Ink, Blanket, photo imaging plate etc. are essential for printing purpose and has no separate use for customer.

**Additional indicators for a composite supply**

51. Drawing reference to the clarification issued by the Central Board of Indirect Taxes and Customs ("CBIC") on the concept of Composite supply via a flyer, whether a supply qualifies as a composite supply would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below:

**a. The perception of the customer**

As explained above, the perception of the customer is to receive (consume) all such goods together in order to obtain the desired output. The same can further understood by the fact that the customer agrees to pay the consideration on click basis. i.e. the point in time when the supply of all the consumable actually occurs. Where these consumables were not naturally bundled, the consumer would have selected different payment terms for each of the product at the respective point of their consumption. These goods are provided as a package to all the customers of the Indigo press machine under the Tier program. evidencing the fact that such consumables are used together (to affect a print) and therefore the payment is also made for the clicks made and not the consumables held in the device.

**b. Majority of service providers in a particular area of business provide similar bundle of services.**

Further to the submission made earlier, the HP indigo consumables are provided as a bundled and charged on click basis globally. Also, other industrial printers' competitors also supply consumables as a bundle and charge on click basis.

**c. The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of**





**business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service.**

The HP ElectroInk is the principal supply as for the customers and suppliers, the ElectroInk is the main component of the supply, as is evident from the consumption. The ancillary supplies only help in transferring the ink from the cartridge to the paper.

**d. There is a single price or the customer pays the same amount, no matter how much package they actually receive or use:**

The invoicing is done on a "per click basis" for all the supplies. Every customer is charged a single price for all the goods, irrespective of the fact that in achieving the final output of a print, there is different proportion of ElectroInk and other ancillaries consumed. Therefore, where a single price is charged in relation to bundled supply of goods or services, the said supply cannot be deemed as a "mixed supply" under GST. The definition of composite supply neither restricts nor lays down any condition on the manner of pricing to be adopted for such classification. Accordingly, bundled supplies having a single price can be classified as a composite supply, where other conditions are satisfied in this regard.

In this regard, the Applicant wishes to highlight the illustration provided in the flier issued by the CBIC wherein, activity of supply of hotel accommodation service along with supply of breakfast **for a single price** is considered as a composite supply.

**e. The elements are normally advertised as a package:**

All customers enrolled under the tier program are supplied consumables as a bundle. Further, HP's agreement with Redington as indicated earlier provides that such goods shall be used only for commercial printing purpose ensure that these goods are not sold, and cannot be used individually.

**f. The different elements are not available separately:**

HP's agreement with Redington as indicated earlier provides that such goods shall be used only for commercial printing purpose ensure that these goods are not





sold, and cannot be used individually, as the same are not available separately under the click program.

**g. The different elements are integral to one overall supply. If one or more is removed, the nature of the supply would be affected :**

The desired print output can only be achieved where all these goods are used as a bundle. They are integral to ensure the final output by the customer is in the manner required.

Therefore, considering the above facts and explanations, the HP indigo consumables supplied under the tier program satisfies all the conditions of a composite supply.

52. The principles enunciated in the Impugned Order are contradictory to other Advance Ruling Orders passed by the Maharashtra AAR.

We wish to bring to your attention that in the following rulings, the authorities have held that the transaction is a Composite Supply.

- Fermi Solar Farms Private Limited (Maharashtra Appellate AAR)

*"46. This brings us to the issue of whether the contract for the setting up of the solar power generation plant is a 'composite supply'. The term 'composite supply' is given under Clause 30 of Section 2 of the CGST Act.*

*"composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply:*  
*Illustration:- Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;*

*It is important to see the definition of principal supply, and goods along with the same.*

*"principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;*

*A reading of the definition of composite supply shows that there should be -*

- a. Two or more taxable supplies,





- b. *Of goods or services or both;*
- c. *Or in combination thereof;*
- d. *Which are naturally bundled and supplied in conjunction with each other*
- e. *In the ordinary course of business*
- f. *One of which is a principal supply.*

47. *The Contracts are two - one for the supply of goods and the other for the supply of services. The contract or the agreement fulfils the conditions of the 'composite supply'. There is supply of goods and services. They are naturally bundled in the sense that both the goods and services may require to fulfil the intention of the buyer in giving the contract. The supply of goods and services are provided as a package and the different elements are integral to flow of supply i.e., if one or more is removed, the nature of the supply would be affected. Thus, we hold that though there are two agreements made one for the supply of goods and the other for the supply of services, what can be easily gathered from the tenor of both the agreements is that the buyer has given a contract for setting up SPGS to the appellant and therefore it is a single indivisible contract which involves element of two supplies- one for the supply of goods and other for the supply of services. By making two separate agreements - one for the supply of goods and the other for the 'supply for services', what is purported to be done is an artificial division of contracts which though done, cannot take away the true and inherent nature of the contract. It is a single supply of a 'Solar Power Generating System, consisting of two or more taxable supplies.*

*This is clearly a case of composite supply of goods and installation thereof. The entire transaction of providing the goods and the services are naturally bundled - it is natural and also a practice to expect that a contractor who will supply the goods may also supply the services along with it,"*

• *Giriraj Renewables Private Limited (Maharashtra Appellate AAR) -*

*"38. As per the Appellant, since the Scope of work includes the provision of goods and services, the entire contract is one turnkey EPC contract and hence would qualify as a 'composite supply' within the definition of the term as given under Section 2(30) of the CGST Act. It is also their contention that the principal supply in*





in such case is the provision of goods and hence the entire contract should be taxable @ 5%.

The term 'composite supply' is given under clause (30) of Section 2 of the CGST Act. "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

Illustration:- Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

It is important to see the definition of 'principal supply' and goods along with the same. "principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;

A reading of the definition of 'composite supply' shows that there should be-

- a. Two or more taxable supplies;
- b. Of goods or services or both;
- c. Or in combination thereof;
- d. Which are naturally bundled and supplied in conjunction with each other;
- e. In the ordinary course of business;
- f. One of which is a principal supply.

39. The contract fulfils the condition of composite supply. There is a supply of goods and services. They are naturally bundled in the sense that the goods and services may be required to fulfil the intention of the buyer in giving the contract. The supply of goods and services are provided as a package and the different elements are integral to flow of supply i.e. one or more is removed, the nature of the supply would be affected. Thus, from a reading of the entire contract as well as from the definition of composite supply what can be easily gathered is that the buyer has given a contract for setting up Solar Power Generating Supply to the appellant, and therefore it is single composite supply of goods and services and installation thereof





40. In order to understand the scope of a 'composite supply' and also to know what may be the criteria to judge a supply as a 'composite supply', the CBIC has published an e-flier on the subject. As per the e-flier, 'Composite supply' entails the concept of 'naturally bundled supply', and whether services are bundled in the ordinary course of business would depend upon the normal or frequent practice followed in the area of business. It also says that in order to qualify for a composite supply one of the characteristics would be that 'none of the individual constituents are able to provide the essential character of the service'. What is the normal frequent practice in the trade can be ascertained from the following indicators:-

- The participation of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package, then such a package could be treated as naturally bundled in the ordinary course of business.
- Majority of service provider in a particular area of business provide similar bundle of services.

• The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service.

• The other instructive indicators can be the following: -

- a. There is a single price or the customers pays the same amount;
- b. No matter how much of the package the actually received;
- c. The elements are normally advertised as a package;
- d. The different elements are not available separately;

41. From the application of the above indicators, we hold that the contractor providing the design, procurement, supply, development, testing and





commissioning of the Plant which includes the supply of both goods and services is a composite supply as per the definition in the Act. There are two taxable supplies- one of goods and the other of services and they both are naturally bundled and it is natural and also a practice to expect that the contractor who will supply the goods, will also supply the services alongwith it. In the business of contracts for the Solar Power Generating System, it is a practice to provide a Plant as a whole along with the supply of services. We differ with the order of the Advance Ruling Authority in this respect.

• Giriraj Renewables (Karnataka Appellate AAR)

"22. In the instant case there is no dispute that the contract in question involves a supply of both goods and services. However, in order for the supply to be termed as a 'composite supply', what is required is that the supply of the goods and the services should at least be bundled, more specifically be 'naturally bundled', and supplied in conjugation with each other. The term 'naturally bundled' has not been defined in the GST Act. We note that the concept of composite supply under the GST law is similar to the concept of naturally bundled services that prevailed under the service tax regime, and the same was understood to refer to those transactions involving an element of provision of service and an element of transfer of title in goods in which various elements are so inextricably linked that they essentially form one composite transaction.

23. We have gone through the draft contract in question in detail. We find that the scope of the contract is that the contractor shall supply all the equipment as per the terms of the contract in accordance with the Execution Schedule. The terms "Equipment" has been defined in Para 1.1.39 to mean and include all the equipment and major equipment along with its associated accessories, conductors, electrical cables, instruments, apparatus and other items/equipment required to be supplied by the contractor for completing and integrating the SPP, as per the Technical Specification, excluding Free Issue Equipment (Emphasis supplied). In terms of Para 1.1.45 "Free Issue Equipment" means Photovoltaic Modules to be supplied by the owner to the contractor, as a free issue equipment at the Plant site for the installation and commissioning of the SPP. The obligations of the owner in terms of Para 4 of the contract include providing for insurance





required for Free Issue Equipment, third party/public liability insurance and insurance required for its representative, engineers and labours until completion of its obligations under this contract. In terms of Para 9 of the contract, the owner agrees to provide Free Issue Material as agreed between the parties. The said material would be over and above the Plant being supplied by the contractor under this contract. The owner shall be responsible for transportation of Free Issue Equipment from the point of origin till the Plant site and in this regard, the owner shall remain solely liable, including in respect of any damage during transit. Further, in terms of Para 15.3, the contractor shall, on arrival of the Free Issue Equipment at the Plant site, shall be entitled to inspect the Free Issue Equipment at the Plant Site and notify the owner in writing, detailing the defects of such inspection. The Owner shall correct/rectify the defects detailed in the contractor's notice by causing to repair or replacing the defective Free Issue Equipment. Whereas it is apparent from the terms of the draft contract as indicated above, that, in the instant case, the appellant has vivisected the contract in the initial stage itself into two parts i.e., first a supply of the PV module which constitutes about 60-70% of the value of the contract and then the second part for the supply of the remaining parts and components and services.

24. The first part of the supply is done by purchasing from a foreign supplier the PV module and transferring the title of the said PV module on High Sea Sales basis to the owner of the project. The Project owner clears the PV module through the Customs and makes available the same to the contractor (Appellant) without consideration at the project site. The appellant have argued that the above modus is merely undertaken for commercial reasons since it is the project owner who is eligible for customs duty exemptions and therefore, the PV module although has been identified and arranged for purchase by the appellant, the same has been actually procured and imported by the other contracting party. We find that the reason for this modus, though compelling is not the relevant to the issue at hand. What is relevant is that the appellant having resorted to such a structuring, has the effect of making the supplies effected in this instance to have been effected in at least three clear and distinct stages.





- One is the transfer of ownership of the PV module from the appellant (the original purchaser) to the Project Owner on High Sea Sale basis.
- Second is the free issue of the PV module by the owner to the contractor at the Plant site.
- The third part is the supply of the remaining part of the goods and services by the appellant.

25. The effect of the first transaction under the contract is to transfer the chattel as chattel to the other contracting party and thus effectively separate it from the subsequent supplies. This transaction is outside the scope of GST as it takes place on High Sea Sales basis. However, we note that it is a 'supply' as understood in ordinary parlance, wherein the meaning of the expression supply is clearly understood to "make (something needed or wanted) available to someone; provide".

26. The second transaction which happens thereafter, is the free supply of the PV module by the Project owner to the appellant for setting up the Solar Power plant. This supply without consideration is not within the fold of the definition of "supply" as stated in Section 7 of the CGST Act. Other than the exceptions spelt out in Schedule I, any supply without a consideration is not a 'supply' and hence does not attract GST. What crystallizes from the above is that, the supply of the PV module which is the major component of the contract is not coupled at all with the supply of the other parts of the Solar Power Plant and the services for setting up the Solar Power Plant. In fact, the supply of the PV module in the situation is separated both in time and intent and is distinct and never coupled with supply of other items/services within the impugned contract (and which, it is the responsibility of the owner to procure and make available to the contractor). The transaction of supply of PV module in itself is abstracted from the rest of the elements of the EPC contract. It is clearly a separate instance of sale/delivery from the rest of the agreement of work or service and the sale of other items, and just because the contractor may have arranged the procurement of it for the owner, does not take away from the distinct and separate nature of the supply. The distinction is observed by the contracting parties too in having separately received the consideration for this element of supply from the rest of the supplies made under





the contract. Transfer of property of goods for a price is the linchpin of the definition of sale. Clearly, the thing to be delivered (PV modules in this case) has an individual existence before the delivery as the sole property of the party who is to deliver it and for that reason, this then is a sale. If 'A' may transfer property for a price in a thing in which 'B' had no previous property then the contract is a contract for sale. On the other hand, where the main object of work undertaken by the payee of the price is not the transfer of a chattel qua chattel, the contract is one for work and labour. The intention in the two different transactions is different on the matter of PV module sold on high seas, it is sale; and thereafter other transactions in goods and services are to follow.

27. Therefore, in view of the above, we find that the supply of PV module is a distinct transaction by itself and cannot be said to be naturally bundled with the supply of the remaining parts required for setting up the Solar Power Plant. The contract itself makes it abundantly clear that the term "equipment" does not cover "free issue equipment", Therefore, the contract itself recognises the supply by the owner as a distinct transaction which is separate from the supply of the other equipment and components by the contractor. To this extent the AAR was right in the impugned order in holding that the concept of natural bundling does not apply to the instant envisaged supply of the PV module in terms of the draft contract in question.

28. Once the contract in question is that of a multistage supply as already discussed, having been already vivisected into the supply of the PV module by the owner as free issue to the appellant, what remains to be executed by the appellant is undertaking the supply of the remaining equipment and components and parts of the Solar Power Plant and supplying the services of design, erection, installation and commissioning of the Solar Power Plant. We are of the opinion that the supply of this remaining portion of the contract in question (involving the supply of the balance components and parts as well as the service portion) can still be termed as a 'composite supply' in terms of Section 2(30) of the CGST Act, 2017, since the supply of these components and parts as well as the services of erection, installation and commissioning appear to be naturally bundled. Having said this, the tax liability on the latter portion of the contract in question which is to be





supplied by the appellant and which we are agreeable to be termed as a composite supply will be determined on the basis of the dominant nature of the supply. In other words, if the dominant nature of the remaining portion of the contract in question which is executed by the appellant is principally a supply of services of design, erection, installation and commissioning, then the tax rate will be the rate as applicable to the services if they form the principal supply of the remaining portion of the contract. It has never been contended before us that for the balance part of the supply under the contract in question, the goods element of what we agree to call a 'composite supply' are the predominant or principal component in the transaction. We modify the ruling of the Advance Authority in the impugned order to the above extent. It is emphasised that the discussions and findings as detailed above are limited to the facts involved in the contract in question.

29. As regards the question whether the benefit of concessional rate of 5% GST on the supply of solar power generating systems and its parts will apply to the sub-contractors, we are of the view that the supplies made by the sub-contractor to the appellant are independent supplies. If the supply by the subcontractor to the appellant is of goods which can be termed as 'parts of the Solar Power Generating System, then the rate applicable will be 5% in terms of Sr. No. 234 of Notification No. 1/2017- Integrated Tax (Rate), dated 28-6-2017. However, if the supply by the sub-contractor to the appellant is a composite supply, then the rate applicable to the dominant nature of the supply will prevail. We are in agreement with the finding of the AAR on this and uphold the same.

30. In view of our findings and discussions as above, the Ruling dated 21-3-2018 of the Karnataka Authority for Advance Ruling is modified as under:

(a) The supply of the PV module which is the major component of the Solar Power Plant is not naturally bundled with the supply of the remaining components and parts of the Solar Power Plant and the supply of the services of erection, installation and commissioning of the Solar Power Plant.

(b) The supply of PV module is a distinct transaction from the supplies in contract in question as it is the owner whose responsibility it is to procure and supply the PV module. This PV module is to be supplied as free issue material over and above the plant being supplied by the contractor. The owner is responsible for





transportation of the PV module from the point of origin till plant site and he bears the other risks and rewards of ownership. The PV module which is procured by the Project owner on High Sea Sale basis and imported by availing Customs duty exemptions and later supplied to the appellant as a free issue for use in the setting up of the Solar Power Plant.

(c) The supply of the remaining portion of the contract in question by the appellant which involves the supply of the balance components and parts of the Solar Power Plant and the supply of services of erection, installation and commissioning of the Solar Power Plant is viewed as a 'composite supply' as the supply of goods and services are naturally bundled.

(d) The tax liability on this portion of the contract in question (other than PV module) which is termed as a 'composite supply' will be determined in terms of Section 8 of the CGST Act, 2017 wherein the rate applicable to the dominant nature of the supply will prevail.

31. The appeal is disposed of in the above manner."

53. In both the above rulings, it is held that the elements of the contract are supplied together and therefore qualify as a "Composite Supply". Similarly, even for the Appellants, as all the elements are inter-dependent, they should qualify as a Composite Supply.

Accordingly based on the above submission and the submission already made at the time of filing of appeal, the impugned supply should qualify as composite supply with the principal supply being Electro Ink.

#### **Discussion and Findings**

54. Having agreed upon to the Appellant's contention with regard to the non-consideration of the additional submissions dated 11.02.2019 in the impugned AAAR Order dated 17.02.2019, leading to the apparent error on the face of the record, and warranting the invocation of section 102 of the CGST Act, 2017 for the rectification of the error in the impugned AAAR order, we perused the additional submission dated 11.02.2019 made by the Appellant, vide which they had supplemented their contention made in the grounds of appeal, by way of further clarification in respect of the transactions carried out by them in terms of the





agreement entered with their customers, and exhibition of various evidences in the form of the certificates, declaration, documents, records relied upon them to vindicate their claim.

55. Before setting out to discuss the merits of contention made in the additional submissions under consideration, we would like to recapitulate the findings of the impugned AAAR order.
56. In the impugned AAAR order, it was held that the supply of the ElectroInk along with the other consumables comprising of blanket, photo imaging plate, binary ink developer, HP imaging oil, blanket web and other machinery products by the Appellant to its customers is 'mixed supply' and not the 'composite supply', as being claimed by the Appellant. One of the reasons for the aforesaid ruling, made by the AAAR, was that out of the various supplies, which comprise of ElectroInk along with the other consumables like blanket, photo imaging plate, binary ink developer, HP imaging oil, blanket web and other machinery products, there was no such supply which could be construed as principal supply in terms of its definition provided in section 2(90) of the CGST Act, 2017, thus violating one of the primary conditions stipulated for the composite supply under section 2(30) of the CGST Act, 2017. Further, since the above mentioned supply of the ElectroInk along with the printing consumables by the Appellant was not held to be composite supply for the reasons recorded above, the said bundle of supply by the Appellant against the single price charged from the customers, which has been held by the Advance Ruling Authority as 'mixed supply' in the impugned AAR order dated 08.06.2018, was also upheld by the Appellate Authority for Advance Ruling.
57. At the outset, we would like to examine this very aspect of the principal supply among the bundle of supplies, made by the Appellant to its customers, in light of the contentions and evidences tendered vide the additional submissions dated 11.02.2019. Also, it has to be kept in mind that the scope of 'rectification' is only limited to the error apparent on the face of record. Therefore, we will examine only those submissions which were not considered by us while passing the appellate order dt 17.02.2019.
58. Firstly, we will refer to the para no. 43 to 46, wherein the Appellant has submitted that the Electroink is the principal component of the supply and the remaining





printers' consumables just aid in placement of the ink on the paper to effect the desired print outs. The Appellant have, further, emphasized that the ElectroInk is the most consumed items in terms of volume, which is 41% of all the items consumed, among all the elements of supply by the Appellant. To assert this submission, they have incorporated one table exhibiting the consumption pattern of the various components of the supplies, wherein it was displayed that the consumption of the ElectroInk is 41 % of the total consumed items in terms of the volume. This consumption pattern of printing consumables was also certified by the Chartered Engineers vide the certificate issued by him, wherein he testified as under:

*".....all the consumables shall be required to be required to be supplied as bundle to the customer to enable the customer to achieve the print. functionally, the print shall not be available to the customer unless all the goods are used in the prescribed manner to take the print out.*

*To conclude, all Indigo press consumables are necessarily required to be consumed together at the same time for effecting the desired output.*

*The entire printing process is centric to the use and consumption of H.P. Indigo's ElectroInk, to yield the desired print results. Accordingly, based on the consumption pattern of the various elements provided for our consideration and our analysis of the printing process, functionally, the ElectroInk is the predominant element in the process of obtaining print impression from H.P. Indigo Printers."*

Thus, on perusal of the above submissions and the certificate issued by the Chartered Engineer, it is clearly revealed that all the printing consumables comprising ElectroInk, blanket, photo imaging plate, binary ink developer, HP imaging oil, blanket web and other machinery products are equally important and are indispensable for the printing function of the Indigo Presses, which is also vindicated by the Chartered Engineer's certificate, wherein he has testified as under:

*"all the consumables shall be required to be required to be supplied as bundle to the customer to enable the customer to achieve the print. functionally, the*





*print shall not be available to the customer unless all the goods are used in the prescribed manner to take the print out.*

*To conclude, all Indigo press consumables are necessarily required to be consumed together at the same time for effecting the desired output.*

Thus, the Appellant themselves have admitted that there is not any specific element under this bundle of supplies, which is more significant than others, ruling out the possibility of presence of any principal supply. The above submissions and the evidence produced by the Appellant themselves in the form of the Chartered Engineer's certificate also lead us to conclude further that there are no components in this bundle of supplies, which are ancillary in nature, as all the components are indispensable in nature, and not additional or subordinate in nature. None of the components are subordinate to any one element of the supplies. That is, none are providing additional support to any specific consumable items. All these consumables are being consumed together to achieve the desired output. In absence of any one of these consumables, the entire printing function will be stalled, which clearly shows the importance of each of the components of the bundled supplies. At the same time, it also shows that none of supplies are ancillary in nature.

59. From the above discussions, it is established beyond doubt that the bundled supplies by the Appellant to its customers has no principal supply, which is one of the primary conditions for any supply to be treated as the composite supply as envisaged under section 2(30) of the CGST Act, 2017.
60. The Illustration provided under clause (30) of section 2 of the CGST Act, 2017, was also heavily relied upon by the Appellant in the additional submissions filed by them, and it is observed that in the proposed illustration, the supply of goods is the principal supply, and the supply of packing materials, supply of the transportation services, insurance services are ancillary in nature, as all these supplies are directly related to the goods, which are being transported. That is, all these supplies have no meaning or existence in absence of the goods. Because, it is the goods only, which are being packed, insured, and then transported to a particular destination. This submission was discussed in para no 57 of the appellate order. It is discussed therein that the example is not applicable to the





present case as in the present facts and circumstances of the case, as these supplies are completely independent in nature, and is not related in any manner to the ElectroInk, which is being claimed by the Appellant as the principal supply. All these printing consumables i.e. blanket, photo imaging plate, binary ink developer, HP imaging oil, blanket web and other machinery products can be very much supplied independently by the Appellant to its customers.

61. To support their claim, the Appellant have cited the various illustrations incorporated in CBIC flyers and Circulars issued in respect of the composite supply, which inter alia include one illustration cited in the Circular No. 32/06/2018-GST, March 1, 2018, wherein it was clarified by the CBIC that which part of the composite supply is principal supply, must be determined keeping in view the nature of supply involved. Value may be one of the guiding factors in determination but not the sole factor. It was further mentioned that the primary question that should be asked is what is the essential nature of the composite supply and which element of the supply imparts that essential nature to the composite supply.
62. Thus, it is abundantly clear from the aforementioned circular that value is only the guiding factor, and not the sole factor for determining the principal supply in the bundle of supply. Therefore, the Appellant's contention based on the consumption pattern of the printing consumables, wherein consumption of ElectroInk is 41% in terms of the volume, thereby asserting the ElectroInk as the Principal supply only on the basis of its highest consumption among all the printing consumables, without establishing the fact that the same (ElectroInk) is imparting the essential nature of the supply is feeble and slight, and clearly not tenable.
63. Now, we refer to the other illustrations, cited by the Appellant in support of their claim. Some of these are mentioned herein below:
  - (i) Reference has been drawn to Q-6 page 26 of 3<sup>rd</sup> Edition FAQ's dated 15.12.2018, wherein it was illustrated as under:

When a consumer buys a television set and he, also gets a warranty and a maintenance contract with the TV, this supply is a composite supply. In this example, supply of TV is the principal supply, warranty and maintenance service are ancillary.





From the above illustration, it may be inferred that supply of the T.V. is the principal supply because it provides the central and essential nature of the supply, and all other supplies, whether supply of warranty or maintenance contract are ancillary in nature, as the same is directly dependent on the T.V. To elaborate further, if there is no supply of T.V., there would not be any supply of either warranty or maintenance contract. That means, they do not exist standalone. There has to be a supply of T.V. for the relevance and significance of the supply of warranty or maintenance contract. However, in the present case, this is definitely not so, as all the supplies i.e. ElectroInk, and other consumables comprising blanket, photo imaging plate, binary ink developer, HP imaging oil, blanket web and other machinery products are equally important and indispensable, as the absence of any one of these will adversely impact the functionality of the H.P. Indigo printers.

- (ii) Reference has been drawn to Circular Ko 32/06/2018 -GST dated 12.02.2018, wherein it was illustrated as under:

Health care services provided by the clinical establishments will include food supplied to the patients. Therefore, food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable. However, other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.

In the above illustration, it is clearly revealed that the Health care services is the principal component of the composite supply, and the food supplied to the patients are ancillary in nature, as the same is additional to the main supply, which in this case is the supply of health care, which is imparting the true essence or the character of the composite supply, called supply of health care facility. The supply of the food to the patient are in the nature of ancillary owing to the reason that supply of the health care can still continue even without the supply of the food. However, there is no meaning of supply of food to the patient in the hospital without the patient being provided the health care facilities. Once again, this is not the case in





the present facts of the appeal, as all the components of the printers are equally important and none is more important than others, thereby lending support to our observation that there is no principal supply in the supplies under question.

64. Similarly, all other illustrations mentioned in the FAQ's, GST Fliers, and CBIC circulars, cited by the Appellant does not support the Appellant's contentions. Rather, the same is validating our observation to the extent that there is no principal supply in the bundle of supplies under question.
65. In view of the above, it is concluded that though some of the submissions remained to be considered , after adequate consideration of the same, we reach the same conclusion as reached earlier in the appellate order , that the supply of the ElectroInk along with other consumables by the Appellant is not a composite supply. Instead the said supply can be construed as mixed supply, as it satisfies all the conditions stipulated for the 'mixed supply' under the provision of section 2(74) of the CGST Act. Section 2(74) is being reproduced herein under:

*(74) "Mixed Supply" means two or more individual supplies of goods or services or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.*

**Illustration:** *A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately;*

66. As is evident from the facts of the case, the supplies, made by the Appellant, squarely satisfy all the conditions prescribed for the mixed supply. Accordingly, it was rightly held by the AAR that the supply of the ElectroInk along with the other consumables comprising of blanket, photo imaging plate, binary ink developer, HP imaging oil, blanket web and other machinery products is 'mixed supply' and not the composite supply as being made out by the Appellant.
67. Now, in view of the above analysis of the submissions and evidences put forth by the Appellant vide the additional submissions dated 11.02.2019, it is conspicuous

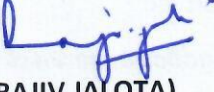




that additional submissions dated 11.02.2019, made by the Appellant, do not have any significant bearing on the outcome of the case. The other submissions made by the Appellant are inconsequential in the present case, as even the vindication of all those submissions would not have any bearing on the outcome of the instant appeal. Therefore, we have restricted our discussions to the aspect of examining the principal supply among the bundle of supplies under question. Thus, in view of the above discussion, we, hereby, pass the following order:

**ORDER**

We do not find any reason to amend our original order dated 17.02.2019, wherein it was held that the supply of the ElectroInk along with the other consumables comprising of blanket, photo imaging plate, binary ink developer, HP imaging oil, blanket web and other machinery products by the Appellant to its customers is 'mixed supply' and not the 'composite supply', as being claimed by the Appellant.

  
(RAJIV JALOTA)  
MEMBER



  
(SUNGITA SHARMA)  
MEMBER

- Copy to-
1. The Appellant
  2. The AAR, Maharashtra
  3. The Pr. Chief Commissioner, CGST and C.Ex., Mumbai
  4. The Commissioner of State Tax, Maharashtra
  5. The Respondent.
  6. The Web Manager, [WWW.GSTCOUNCIL.GOV.IN](http://WWW.GSTCOUNCIL.GOV.IN)
  7. Office copy