

**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)  
**ORDER NO. MAH/AAAR/SS-RJ/21/2018-19** **Date- 17.02.2019**

**BEFORE THE BENCH OF**

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

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

GSTIN Number	27AAACC9862F1ZI
Legal Name of Appellant	HP India Sales Private Limited
Registered Address	5th floor North Side, Commerz, 16 <sup>th</sup> International Business Park, Oberoi Garden City, Off Western Express Highway, Goregaon East, Mumbai, Maharashtra- 400063
Details of appeal	Appeal No. MAH/GST-AAAR-21/2018-19 dated 19.11.2018 against Advance Ruling No. GST-ARA-38/2017-18/B-45 dated 08.06.2018
Jurisdictional Officer	Deputy Commissioner of State Tax (E-618), Large Tax Unit -2, Mumba

**PROCEEDINGS**

**(under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)**

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.

The present appeal has 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 **HP India Sales Private Limited** (herein after referred to as the "Appellant") against the Advance Ruling No. GST-ARA-38/2017-18/B-45 dated 08.06.2018.



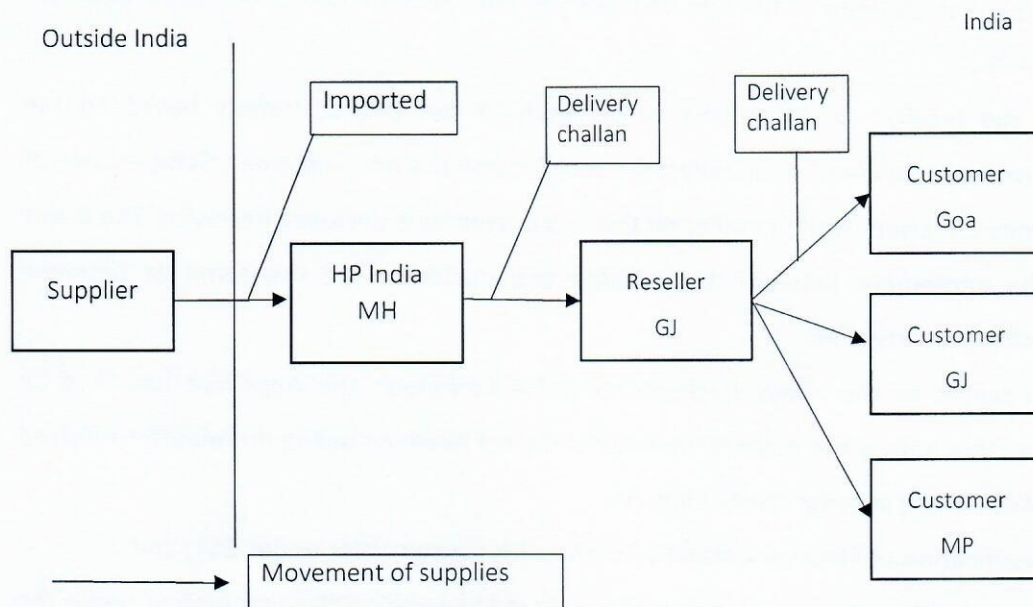


### **BRIEF FACTS OF THE CASE**

- A. HP India Sales Private Limited (hereinafter referred to as "the Appellant"), being taxable person registered under Section 22 of the Maharashtra State Goods and Services Tax Act, 2017 (referred as "MSGST Act") read with Rule 24 of the Maharashtra Goods and Services tax Rules, 2017 (referred as "MSGST Rules"), having GSTIN 27AAACC9862F1ZI, are engaged *inter alia* in providing printing supplies to be used in HP's Indigo press machines supplied to customers.
- B. The HP Indigo digital printing press (hereinafter referred to as "HP Indigo") is a printing press specifically designed for ensuring best quality prints in the industry along with wide colour gamut, substrate versatility, speed, productivity and with the ability to vary every printed copy.
- C. The HP Indigo machine is based on a unique digital offset colour technology specially designed to cater to the printing requirements of large scale print service providers. The HP Indigo printers are significantly different from other office and industrial use printers due to the specialized liquid ink (hereinafter referred as ElectroInk) being used in its print process.
- D. Additionally, ancillaries comprising oil, binary ink developer, bib, blanket, print imaging plate and other machine products (hereinafter collectively referred as "consumables") are also consumed in the Indigo press machines in the course of effecting prints.
- E. In this regard, the ElectroInk along with the consumables are directly imported by the Appellant from its overseas suppliers at the customs port situated in Mumbai wherefrom the said goods are cleared on payment of applicable customs duties including IGST. The goods are stored at the Appellant's warehouse in Maharashtra.
- F. Further, the Appellant has contracted with a taxable person registered under GST to be its authorized reseller and distributor of such goods to various customers across India.
- G. The terms of contract between the Appellant and the authorized reseller stipulates the conditions, prices, discount, mode of receiving orders, billing and payment terms in relation to supply of ElectroInk with consumables. Importantly, the contract stipulates that the supplies shall be the property of the Appellant till such time the supplies are utilized in the presses by the customer for effecting prints.



- H. Further, the ElectroInk along with the consumables are moved by the Appellant to the authorised reseller locations in the States of Tamil Nadu, Gujarat and Punjab under a delivery challan along with the necessary road permit, where applicable.
- I. Pursuant to the same, such goods are transported by the authorised reseller to the respective customer locations as segregated geographically across India.
- J. The arrangement is diagrammatically explained below:



- K. The Appellant has contracted with authorised resellers for making supplies of ElectroInk with consumables to be used in HP Indigo presses by the customers of HP Indigo presses on a back to back basis.
- L. The agreement between the Appellant and the resellers is enclosed herewith this appeal paper book, called HP Indigo Supplier Reseller Agreement (hereinafter referred as HP-reseller agreement), detailing the contractual obligations and other terms of agreement.
- M. The billing for such arrangement is agreed on a "per click basis" calculated monthly depending on the series of Indigo press machine pertaining to which the goods are supplied, number of clicks and the type of print performed.





- N. The resellers also have entered into agreements with the end customers for onward sales of such printing supplies. Sample agreement between the reseller and the end customer has been enclosed herewith.
- O. To illustrate, assuming a customer uses the printer to take 100 prints in a month and each print costs Rs 10/-, then the customer shall be billed Rs 1,000 for the ElectroInk along with the consumables used for the month.
- P. Accordingly, when the running statement of accounts are collated for the respective end customers, the Appellant raises a consolidated invoice for the click charges on the reseller. Sample copy of the invoice raised by the Appellant on the reseller is enclosed herewith.
- Q. Also the reseller raises an invoice on each of the end customers based on the contractual arrangement between the reseller and the end customer. Sample copy of the invoice raised by the reseller on the end customer is enclosed herewith. The terms of the agreement between the reseller and customer are the same as between Appellant and reseller.
- R. With regard to the above background and submissions, the Appellant had filed an application before the Maharashtra Authority for Advance Ruling (hereinafter referred as "Authority") seeking clarification on:
- i. Classification of ElectroInk supplied along with consumables under GST; and
  - ii. Determination of time and value of supply of ElectroInk with consumables under the Indigo press contract.
- S. The Authority vide its order (hereinafter referred as "impugned order" or "order") having reference number GST-ARA-38/2017-18/B-45 issued on June 8, 2018 passed the following order on the questions raised by the Appellant in their Advance Ruling Application:
- I. **On classification of ElectroInk supplied along with consumables under GST:**
- Held in Para 5.3,
- "....the essential ingredients that constitute a composite supply are:*
- i. *The supply consists of two or more taxable supplies of goods or services or both or any combination thereof;*
  - ii. *Such supplies are naturally bundled;*
  - iii. *Supplied in conjunction with each other; and*



- iv. *Such supplies are in the ordinary course of business, one of which is a principal supply; In light of the facts discussed above, there is no doubt to conclude that the impugned transaction consists of two or more taxable supplies of goods and also the goods are supplied in conjunction. Thus, the ingredients of the definition of composite supply at (i) and (iii) above are satisfied."*

Our submissions:

The above conclusion is after considering the following paras from the HP-reseller agreement:

- Clause 1 of Para B, "HP appoints reseller as an authorized, non-exclusive reseller for the purchase and resale of **Supplies**, subject to the terms and conditions of this Agreement".
- Clause 19 of Para A on Page 2 of the agreement defines Tier program as "the supplies purchase program defined in Section G below, which is subject to this Agreement and whereby the amount the Reseller shall be charged for **Supplies** shall be a function of the **number of print impressions counted**, as detailed in Section D below"
- Clause 17 of Para A on Page 2 of the said agreement defines Supplies as "Imaging Products and Operator Maintenance Parts required for the operation of the Indigo Press(es)"
- Imaging Products as defined in Clause 6 of Para A mentioned on Page 1 means "Electroink®, photo imaging plates, binary ink developer (BIDs), printing blankets, recycled agent, imaging agent and imaging oil".

However, the impugned order has concluded that clause (ii) and (iv) above for qualifying as a composite supply, namely naturally bundled and supplied in the ordinary course of business, one of the supplies being a principal supply, do not stand satisfied. Accordingly, the supply of ElectroInk with consumables has been held to be a mixed supply.

Aggrieved by the above ruling, the Appellant prefers this appeal to the extent such supply of ElectroInk with consumables is held as a mixed supply, not being naturally bundled in the ordinary course of business, without specific identification of a principal supply.





II. **Determination of time and value of supply of ElectroInk with consumables under the Indigo press contract.**

Held in Para 5.6,

*"... We find that the supply of goods in the present case fulfil the basic tenets of 'continuous supply' and therefore we find from the above deliberation that the impugned supply is 'continuous supply of goods' as defined in clause 32 of section 2 of the GST Act".*

Held in Para 5.7,

*"...Thus the time of supply in the present case will be the earliest date between the date of invoice or the date of payment with respect to the impugned supply as per the provisions of section 12(2) of the GST Act".*

Held in Para 5.8,

*"...the value of supply of goods as per Section 15 of the GST Act shall be the transaction value as reflected in the invoice issued by the applicant".*

- T. Therefore, the order has concluded that the supply of ElectroInk with consumables is a continuous supply of goods where the time of supply shall be the date of issuance of successive statements of account and the value of supply shall be the transaction value as reflected in the invoice issued by the applicant.
- U. The Appellant does not wish to appeal on the said matter pertaining to time and value of supply since the Appellant's understanding has been confirmed by the Advance Ruling authority.
- V. The Appellant wishes to prefer to this appeal mainly on the treatment of the bundle of supplies of Electroink along with consumables as a mixed supply (and not a composite supply, where the Electroink shall be the principal supply).

**GROUND OF APPEAL**

1. The term composite supply as defined under Section 2(30) of the CGST Act, 2017 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".



2. Therefore, on a plain reading of the above definition, an activity to qualify as a composite supply under CGST Act, 2017 shall be required to satisfy the following requirements:

- i. The supply consists of two or more taxable supplies of goods or services or both or any combination thereof;
- ii. Such supplies are naturally bundled;
- iii. Supplied in conjunction with each other; and
- iv. Such supplies are in the ordinary course of business, one of which is a principal supply

The above conditions have also been recognised in the impugned order as the essential ingredients that constitute Composite Supply.

3. The impugned order has erred in concluding that the ElectroInk supplied with consumables is a compulsory bundle of supplies and therefore the supplies are not naturally bundled with each other.
4. Therefore, there is no dispute against the fact that supply of ElectroInk with consumables is a bundled supply.
5. However, for the purpose of determining whether such supplies are naturally bundled, the impugned order has adopted a blindfold approach and termed the same as a “compulsory supply” without analysing the essence of the arrangement between the Appellant and the reseller.
6. Firstly, we wish to submit that the term “compulsory supply” is not derived from the provisions of CGST Act, 2017 and is therefore not a valid ground for denial of condition of being naturally bundled, without complete analysis of the terms of contract.
7. The Appellant referred to the following clauses of the HP-reseller agreement: Clause 3 of Para C on Page 3 provides that *“Purchase of Supplies by Reseller shall be subject to either the Tier or A-la-Carte programs set forth in Sections G and H below, and their respective terms and conditions. Reseller may elect to purchase supplies for the different Indigo Press Product Lines under different programs, provided that Reseller shall purchase all of the supplies required by it for each Indigo Press Product Line under the same Supplies purchase program”*.





8. Accordingly, the above clause provides reseller with option to choose between supply models, namely A-la Carte and Tier Program. However, post selection of the model, ElectroInk and consumables purchased shall be supplied only in such manner as per the terms of the selected supply model. In other words, the agreement only restricts usage of ElectroInk and consumables under different supply models for the same indigo press machine.
9. The above clause has been inferred by the impugned order as a significant factual background for highlighting the difference between the conventional offset and HP indigo printer. Further, the impugned order has erred in interpreting the clause as a restriction whereby *"the recipient of the supply has no option to select individual supply but to accept it as a bundled supply"* and therefore *"supply of ElectroInk with consumables cannot be considered as naturally bundled supply but a compulsory supply"*.
10. It is immensely clear that the above clause does not impose any condition on the reseller to accept the ElectroInk and consumables as a bundle. The agreement clearly contemplates supply under the ala carte model and the tier model. Where a customer opts for the tier model, the agreement further lays down that such goods purchased under shall be solely used for a given indigo press machine. The said restriction is imposed considering business challenges where different consumables are supplied against different business models.
11. Therefore, it is clearly evident that there is no restriction imposed by the Appellant on the resellers to mandatorily accept all products as a bundle, but as a normal business practice and understanding, such goods are procured together.
12. Accordingly, supply of ElectroInk with consumables is naturally bundled.
13. Further, the impugned order has relied on the dictionary meaning of the word "naturally" as the same is not provided for in the CGST Act, 2017, as below:
  - By nature: by natural character or ability;
  - According to the usual course of things: as might be expected;
  - Without artificial aid;
  - With truth to nature: realistically
  - Without special intervention, in a natural manner;





- In a normal manner, without exaggeration or effort
  - Act naturally
14. In this regard, we wish to submit that the terms of HP-reseller agreement and the business practice clearly indicate that such supply of ElectroInk with consumables is made in the usual course of business. Further, the end customer also expects such supplies made by the reseller to be received as a bundle, without any artificial aid. Therefore, such supply of ElectroInk with consumable satisfies the definition of being naturally supplied.
15. Accordingly, the impugned order has wrongfully concluded the supply of ElectroInk with consumables as compulsory supply, whereas it is significantly evident that such supply is made “naturally” considering that it satisfies the meaning of the term in every sense.
16. Additionally, we wish to draw reference to Appendix C of the HP-reseller agreement, where the parties have agreed to the consideration for the supplies to be on a “*per-click basis*” depending on the nature of print generated by the customer. In this regard, Clause 1a of Para G on Page 4 of HP-reseller agreement provides that “*Click means a chargeable unit for a single colour separation transferred onto substrate, except in the case of textured effect printing .....*”. Therefore, both HP and reseller agree that the ElectroInk and consumables supplied shall be billed on an over-all consumption basis. This further enhances the argument that such supply of goods are naturally bundled since there is a single pre-agreed price for all the goods together and which are acceptable to both the supplier and the recipient.
17. The Appellant would also like to draw reference to the illustration on composite supply referred to under Section 2(30) of CGST Act, 2017 being, activity of supply of packaging, transportation and insurance services along with supply of goods. An argument may be placed in this regard that such services are also mandatorily/ contractually bundled by the supplier to be provided to the recipient along with the goods. Accordingly, where the arguments as provided in the impugned order are applied, activity of supply of goods with packaging, transportation and insurance services would also not qualify as a composite supply, since the supplies are compulsorily bundled and not naturally supplied.





18. Similar, analogy can also be applied for a composite supply of accommodation services and breakfast supplied by hotels under a 4-D/3-N package with the facility of breakfast, as illustrated in the CBEC flyer on composite supply.
19. Therefore, the impugned order has erred in reaching to this conclusion which is ultra-vires the provisions of the CGST Act, 2017.
20. The impugned order has erred in concluding that the ElectroInk and the consumables are not supplied together in the ordinary course of business

Held in Para 5.4:

*"...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".*

Appellant's submissions:

21. The term "ordinary course of business" generally refers to the common understanding or perception of the supplier and recipient with respect to the manner of making and receiving the supply respectively.
22. In this regard, we wish to submit that 99.14% of total revenue earned by supply of indigo press consumables is from the tier model and only 0.86% of revenue share is from resellers opting for A-la Carte model thereby indicating that in the ordinary course of business supply of ElectroInk with consumables is naturally bundled.
23. Further, the same is a generally accepted business standard considering that most of the resellers have opted for the Tier program as against the A-la Carte model.
24. The term "ordinary course of business" has not been specifically defined under the CGST Act, 2017. However, reference can be drawn to the Goods and Service Tax Flyer ("Flyer") on Composite supply and Mixed Supply issued by the Central Board of Indirect Taxes (CBIC). The said flyer has also been relied upon in the impugned order in Para 5.4 for the purpose of determining tests to satisfy supply being made in the "ordinary course of business".
25. The flyer provides that in order to determine whether supply of goods or services are bundled in the ordinary course of business would depend upon the **normal or frequent practices** followed in the area of business to which supply relates. Such





normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed hereunder:

**i. The perception of the customer**

As explained above, the perception of the customer is to receive (consume) the ElectroInk with consumables together in order to obtain the desired output. The same can be further understood by the fact that the customer agrees to pay the consideration on "*per click*" basis, i.e. the event when the ElectroInk along with the consumables are jointly used for effecting the print. The said understanding is common across customers in the industry, moreover to the Appellant considering the ElectroInk is specialized liquid ink designed only for HP indigo press machines.

Where the perception would have been to receive these supplies separately, revenue earned by the Appellant under the A-la Carte model would be much higher as compared to the Tier program. The customer acknowledges receipt of ElectroInk with consumables as a bundle as per general trade practice.

**ii. 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 bundle supply and charged on click basis globally, where permitted as per the local laws. The ElectroInk and consumables are specific to HP indigo machines and are specially designed to obtain desired print output from the indigo press(es). Further, other industrial printers provided by competitors also supply consumables as a bundle and charge on click basis, being a generally accepted business practice.

**iii. The nature of the various goods in a bundle of supply will also help in determining whether the goods are bundled in the ordinary course of business. If the nature of goods is such that one of the product is the main supply and the other goods combined with such main product are in the nature of incidental or ancillary supplies which help in better enjoyment of a main product.**

The principal element in the bundled supply is the ElectroInk considering that it is the chief product required to obtain the desired output. The prints obtained from the indigo press machine vary significantly from the ones by other conventional office printers because of the specialized liquid ink. The other products merely assist in transferring the ink in the requirement manner from the cylinders to the paper/





substrate. The same is evident from the flow chart explaining the printing cycle as provided in **Annexure-C**. HPElectroInk is the principal supply as for the customers and suppliers the ElectroInk is the main component of the supply. The same can further be substantiated based on the consumption pattern of various goods supplied in the bundle, where ElectroInk is the most consumed product.

Sl. No.	Nature of product	HSN	Consumption (%) (by volume and amount)
1.	Printing Ink (ElectroInk)	32151190	41%
2.	Blanket	59111000	16%
3.	PIP – Photo imaging plate	59119090/ 84439100	13%
4.	OMP –Other machine products (miscellaneous)	Multiple	10%
5.	BID – Binary ink developer	84439100	10%
6.	OIL	27101980	7%
7.	Blanket Web	59111000	2%
8.	Other Consumables	Multiple	1%

a single price or the customer pays the same amount, no matter how much package they actually receive or use

26. 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. Further, based on the said illustration, charging of a single price in relation to a supply which is naturally bundled and made in the ordinary course of business 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.





27. In this regard, the Appellant 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.

28. The elements are normally advertised as a package and the different elements are not available separately

All resellers and customers enrolled under the Tier program are supplied consumables as a bundle. Further, HP's agreement with reseller 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.

29. 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. The printing cycle as referred above indicates that all the elements are necessary to obtain the print in the desired manner. Removal of blanket or Binary Ink developer or imaging oil or any other product would impact the quality and specifications of the output.

Therefore, considering the above facts and explanations, the HP indigo consumables supplied under the tier program are made in the ordinary course of business.

30. The flyer also provides that *"no straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined below"*. Further, the points specified above are mere illustrative and not conclusive.

31. The above has also been accepted in the impugned order in Para 5.4 where it is ruled that *"... apply these tests to the facts of the case to determine whether a particular supply constitute a composite supply under the GST **though on the basis of this alone it would not be conclusive** whether the supply is composite supply until it fulfils other requirements as well"*.

32. However, the impugned order has argued that the goods are capable of being supplied independently and therefore in the absence of satisfaction of one of the illustrative





requirement of “elements not being available separately”, concluded that the supply of ElectroInk with consumable is not made in the ordinary course of business.

33. 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 ie 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.
34. Further, the Appellant submits that the supply of ElectroInk with consumables is ruled as “continuous supply of goods” and that the transfer of property in goods happens at a single point in time on the event of click . Accordingly, the impugned order has ruled the time of supply as the point when the goods are consumed in the printing process (based on which invoice is raised) and not at the time of dispatch. Therefore, the fact that such goods are delivered at different points in time should not be a factor for determination of supply being naturally bundled in the ordinary course of business.
35. The Appellant also draws reference to the principles adopted by the learned Appellate Authority in the case of M/s Five Star Shipping (2018 – VIL – 21 – AAAR), having appeal number MAH/GST-AAAR-11/2018-19, dated July 27, 2018 against advance ruling number GST-ARA-18/2017-18/B-26 dated April 18, 2018, wherein in Para 67 of the order reliance is placed on the **market/ industry practices** to determine the classification of supply. Further, in Para 70. of the order, it has been stressed on the fact that “Appellant are **obliged to provide** all these services to the FSO as per the list of activities enlisted in Annexure A to the above mentioned agreement. Thus the gamut of activities rendered by the Appellant can be considered as a composite supply”. We wish to provide that in the given case as well, the industry/ market practices conceive ElectroInk and consumables to be supplied together as a natural bundle. Further, the Appellant as per terms of contract is obliged to ensure timely supply of goods to resellers for purpose of further supply to customers for un-interrupted flow of business.





36. The impugned order has erred in concluding there is no principal supply identified in the transaction

Held in Para 5.4:

*"...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 supplier in the present case"*

Appellant's submissions:

37. Drawing reference to Section 2(90) of CGST Act, 2017, *"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"*.

Based on the terms of HP Indigo Supplier Reseller Agreement specified above, the consumption pattern and printing cycle, and the value of the supplies constituted in the consideration per click, it is evident that the predominant element in the bundle is the ElectroInk. Binary ink developer, photo imaging plate, etc. are mere support elements to ensure movement of ElectroInk from the printer to the substrate in the required manner. The essence of the output received from the indigo press machine is the superior quality image, which is caused by the ElectroInk.

38. Para 5.4 of the impugned order held 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"*. The said statement is not conclusive enough to negate the fact that there is absence of a principal supply in the bundled supply of ElectroInk with consumables.
39. In this regard, the Appellant draws reference to the illustration for bundled services as provided in the para 9.2.1 of the education guide issued by CBEC in the year 2012 as reproduced below:

*"A hotel provides a 4-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"*



Further, the Appellant also drew reference to the illustration used under Section 2(30) of CGST Act, 2017, supply of goods with packaging, transportation and insurance services is also deemed to be a composite supply.

40. In the above illustrations, there could have been two or more different supply of services, each of them capable of being supplied separately and not dependent on each other. However, the education guide and illustration classifies the same as bundled service with the principal supply being the hotel accommodation and supply of goods respectively. It is clearly evident from the above illustrations, that the determination of principal supply is not dependent on whether the goods or services are capable of being supplied separately.
41. It is clearly evident that the impugned order has failed to appreciate the nature of transaction involved herein and the intention of the parties under the said Tier program.
42. **The impugned order has ruled the said supply as a mixed supply, as against the appellant's understanding of the supply being a composite supply**

Held in Para 5.5:

*"...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 supplier in the present case"*

**Appellant's submissions:**

43. In light of the above facts and submissions, we understand that the supply of ElectroInk with consumables is a composite supply, with ElectroInk being the principal supply.
44. Assuming but not admitting that the supply of ElectroInk with consumables is not a composite supply, the same also does not qualify as a mixed supply considering the following:
  - Definition of mixed supply requires such goods to be supplied in conjunction to each other. Accordingly, for the purpose of composite supply where it is held that the said supply is not made in conjunction to each other, the same shall not qualify as a mixed supply as well.





- Condition of mixed supply requires there to be two or more individual supplies of goods. However, in the given case, ElectroInk and consumables are not individual supplies of different goods but a single supply of printing consumables. The said goods are required to be consumed together to obtain the desired print output. This can be further substantiated considering that ElectroInk and consumables are dependent on each other and capable of performing their function only when consumed together.
  - The illustration for mixed supply provided in Section 2(74) of CGST Act, 2017 is with respect to a package of various goods capable of being supplied and procured separately. However, ElectroInk with consumables under the Tier model are available only as bundle and cannot be bifurcated.
45. The Impugned Order has erred in applying the principles laid by the Bombay High Court in the case of Mumbai Metropolitan Region Development Authority v. Unity Infra project Ltd. 2008(5)BomCR196. where it was held in Para 11 that:

*"In interpreting a contract, the Court cannot place emphasis on an isolated provision divorced from the context and unrelated to the other provisions which govern contractual obligations. Contracts represent business understanding between the parties. Commercial dealings between persons who are well versed in the transaction of business are regulated by contracts which parties opt to govern themselves. The law regulates those contracts and provides an ordered framework in which business dealings can be implemented....."*

*The law is not divorced from business realities nor can the vision of the judge who interprets the law be disjointed from the modern necessities to make business sense to business dealings"*

46. Therefore, on a complete understanding of the terms of contract and the business model agreed between Appellant and reseller, the intention is to receive the ElectroInk and consumables together, as a normal business practice.
47. Additionally, the reference was also drawn to case of M/s Membrane Filters (I) Private Limited having reference number GST-ARA-06/2018-19/B-62 dated July 9, 2018 issued by the Authority where, the Applicant is engaged in design, construction, supply and commissioning of 200 mini piped water supply schemes which shall require supply of





various goods and services over a period of time to ensure the final output in the form of drinking water is made available to villagers. In the said ruling, the Authority has concluded the said supply of various goods and services as a composite supply considering the main intention is to provide drinking water to villagers and the goods and services supplied by the Applicant is to achieve this objective. The facts of the said case are similar to the Appellant, where ElectroInk is supplied with various other goods, with the main intention to provide quality inks which are dependent on the ElectroInk consumed.

48. The arguments based on which conclusions are made in the impugned order, it appears that a pre-concluded frame of mind has been applied to treat the same as a mixed supply. Further, the order appears to have been issued with a pre-conceived notion that the agreements have been entered with the intention to avoid tax and has failed to acknowledge the terms of contract and the industry practice adopted in this regard.
49. In view of the above factual and legal position, it was prayed that AAR Order may suitably be modified treating the supply of Electroink along with other consumables as a composite supply as against the AAR decision of treating the said supply as mixed supply.

#### Personal Hearing

50. A personal Hearing in the matter was conducted on 12.02.2019, wherein Shri K. Sivarajan, C.A., representative of the Appellant, reiterated their written submissions. Shri P.R. Nilewad, Deputy Commissioner of State Tax, appearing as jurisdictional officer, reiterated the submissions, which had been made earlier before the Advance Ruling Authority.

#### Discussions and Findings

51. The main clauses of the agreement between HP sales and Reddington are as below:-  
The Agreement is between HP and its Reseller and as per the agreement, HP appoints Reseller as an authorized, nonexclusive Reseller for the purchase and resale of Supplies subject to the terms and conditions of the Agreement. As per 'SUPPLIES' under Section C, the resellers have a choice to go for 'A la -carte or the Tier programs. In the definitions, 'A-La-carte Program' is defined as a supplies purchase





program defined in Section E. Section G of the agreement lays down the main features of the Tier program, where the 'click' of the printer is a chargeable unit for a Single Colour Separation transferred onto substrate.

Under clause 3 of Section G, the following is given:-

"To the extent Reseller has elected to purchase supplies under the Tier program, HP shall provide Reseller with all its and/or the Customers needs for Supplies for use solely on any Indigo Press (es) owned by Reseller or its Customers belonging to the Indigo Press Product specified in the Order to the extent that such needs do not exceed HP's maximum Usage Per Impression of Supplies. Reseller will order such Supplies per customer from HP by placing orders. The per Click rates provided by HP are contingent upon your order of Supplies through HP's website."

52. This brings us to 'Maximum Usage per Impression' which means the 'maximum usage of Imaging Products and Operator Maintenance Parts per Impressions as published by HP from time to time'. 'Imaging Products' is defined to mean Electroink, Photo Imaging plates, binary ink developer, printing blankets, recycled agent, imaging agent and imaging oil.
53. Clause 6 of Section G say that 'HP shall have the right, at its discretion, to recover Supplies on-hand at Reseller's site in excess of its and its Customers aggregate two months requirements based on the 'Maximum Usage per Impression' or delay delivery to Reseller of additional supplies beyond the amounts in excess of two months requirements based on maximum usage Per Impression for Reseller and its Customers.'
54. From the above, it is seen that HP supplies Imaging Products to its Resellers based on the Maximum Usage per Impression. As per the appellant, these Imaging products are supplied as a naturally bundled supply in conjunction and therefore are a 'composite supply' as per Section 2 (30) of the CGST Act.
55. Now having seen the Agreement, we will deal with the contention of appellant that the supply is not a 'Mixed Supply' as held by the Advance Ruling authority, but a 'Composite supply' and they have made the following arguments:
  - The Advance ruling authority has held to be a compulsory supply which is not defined anywhere in the ACT. They give an option to their Resellers and therefore the "click" basis approach cannot be said to be compulsory. Just





because there is a restriction to use it with certain printing machine it cannot be called as a compulsory supply.

- The appellant states that there is no restriction imposed by the Appellant on the resellers to accept all products as a bundle but as a normal business practice and understanding, such goods are procured together.
- It is also argued that there is a pre-agreed price for all the goods together and therefore they are naturally bundled and are a 'composite supply'.

56. A composite supply is defined as 'supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods and 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 the principal supply'.
57. In the present case what immediately comes to mind is that all the products are equally important for the printing to happen. It is not that the printing can take place with only Ink and that the other products are not necessary. One of the major ingredients of a composite supply is that, one of the supplies is a 'principal supply' and the others are subservient or incidental to it. The example given in the CGST Act is that of supply of goods alongwith freight /insurance where the supply of the goods is the principal supply. Such is not the case here. It cannot be said that the Electroink is the principal supply here and the others like the developer or the Plate are incidental- on the other hand they are equally important to complete the supply. In a supply of goods, the customer agrees to purchase the goods and then agrees to pay for the insurance/freight and it is not that the supply of goods would not be complete without the insurance/freight but it is rather vice versa. The supply of insurance/freight depends on the supply of goods. In the present case, all the Imaging products are equally necessary and it is not that any one of them is a Principal supply. Therefore, we cannot say that this is a composite supply where the supply of Ink is a principal supply.
58. The supplies of the Appellant have been held to be a continuous supply by the Advance ruling authority and while deciding whether the supply is composite or not have done so keeping in mind the continuous nature of the supply. They have stated that each of the supplies has its own pattern and each of the supplies can be supplied separately as they are not dependent on each other. We agree with the same. It is





seen that under the clauses of the agreement, the Imaging products are supplied based on the usage cycle of the Reseller. It may be, that for the first time, the products may be supplied together but it may not happen that the products are supplied together every time. While Ink may be supplied after a 1000 clicks, the others like the plate may be replaced after 2000 clicks.

59. As per the GST Fliers issued by CBIC, the following tests are laid down to ascertain whether a supply of goods or services is a composite supply or not.

- The perception of the consumer or the service perceiver
- Majority of service providers in a particular business provide similar bundle of services
- The nature of the various services in a bundle of services
- There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.
- The elements are normally advertised as a package
- The different elements are not available separately.
- The different elements are integral to each other and if one or more is removed, the nature of supply would be affected.

60. In a composite supply, the two or more taxable supplies have to be naturally bundled and one of the indicators of a 'naturally bundled' supply is that it should be an industry practice. The appellant has given no evidence that the program given is an industry practice. The fact that the appellant offers his customers the option of a tier programme does not make the same an industry practice. Also, what is more important is that the products are to be used on a HP printing machine and therefore for the best printing, the HP products only have to be used. The fact that this is so does not at all make it a composite supply as it has an element of compulsion in it whereas there is no place for compulsion in a composite supply.

In view of the above, we pass the following order:



Order

We do not find any reason to interfere with the Order of the Advance ruling authority.

  
(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 Jurisdictional Officer

6. The Web Manager, [WWW.GSTCOUNCIL.GOV.IN](http://WWW.GSTCOUNCIL.GOV.IN)

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