

TAMILNADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Constituted under Section 99 of Tamilnadu Goods and Services Tax Act
2017)

A.R.Appeal No. 06/2020/AAAR

Date: 12/02/2021

BEFORE THE BENCH OF

1. Thiru G.V.KRISHNA RAO, MEMBER

2. Thiru M.A. SIDDIQUE, MEMBER

ORDER-in-Appeal No. AAAR/02/2021 (AR)

(Passed by Tamilnadu State Appellate Authority for Advance Ruling under Section
101(1) of the Tamilnadu Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Central Goods & Services Tax Act 2017/Tamilnadu Goods & Services Tax Act 2017("the Act", in Short), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant 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 appellant has been given an opportunity of being heard.
2. Under Section 103(1) of the Act, this Advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only
 - (a). On the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling;
 - (b). On the concerned officer or the jurisdictional officer in respect of the applicant.
3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the said advance ruling have changed.
4. Under Section 104(1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

Name and address of the appellant	M/s. Macro Media Digital Imaging Private Limited 10A, Kumaraswamy Street, Lakshmipuram, Chrompet, Kanchipuram, Tamilnadu – 600 044
GSTIN or User ID	33AABCM9451F1ZL
Advance Ruling Order against which appeal is filed	Order No. 24/ARA/2020 dated 04.05.2020
Date of filing appeal	18.09.2020
Represented by	Rahul S. Jain, M/s. Lakshmikumaran & Sridharan Attorneys
Jurisdictional Authority-Centre	Chennai – Outer Commissionerate
Jurisdictional Authority -State	The Assistant Commissioner (ST) Pallavaram Assessment Circle
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. CPIN No. 20093300193117 dated 15/09/2020

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

The subject appeal is filed under Section 100(1) of the Tamilnadu Goods & Services Tax Act 2017/Central Goods & Services Tax Act 2017 (hereinafter referred to 'the Act') by M/s. Macro Media Digital Imaging Private limited (hereinafter referred to as 'Appellant'). The appellant is registered under GST vide GSTIN 33AABCM9451F1ZL. The appeal is filed against the Order No.24/AAR/2020 dated 04.05.2020 passed by the Tamilnadu State Authority for Advance ruling on the application for advance ruling filed by the appellant.

2.1 The Appellant is a private limited company having various regional offices located at Chennai, Noida, Vishakhapatnam, Vijayawada, Mumbai, Bangalore, Kochi, Kolkata. They are engaged in supply of Billboards, Building Wraps, Fleet

Graphics, Window Graphics, Trade Show Graphics, Office Branding, In-store Branding, Banners, Free Standing Display Units and Signage Graphics. These products are hereinafter referred to as 'trade advertisements'. The printing of trade advertisements is carried out by the Appellant on Poly Vinyl Chloride ('PVC') material. The various types of PVC material on which printing is carried out are Frontlit Flex, Back Lit Flex, Block out Flex, Vinyl (self-adhesive) and Foam Board, all falling under Chapter 39 of the Customs Tariff Act, 1975 (CTA). The customers desirous of getting images/ written text/ trade monograms printed from them place a purchase order on them. The said purchase order spells out the type and specifications of the material on which the trade advertisement (provided by the customer) is to be printed. The scope of work under any such purchase order placed by the customer is as under: -

- a) To procure the suitable PVC material (blank) namely Frontlit Flex/ Back Lit Flex/ Blockout Flex/ Vinyl (self-adhesive)/ Foam Board and also the printing ink from an independent supplier (vendor) in terms of the purchase order placed by the customer.
- b) The data of image/ text/ trade monograms to be printed on the PVC material is received by the Appellant from the customer, on pen drive/ CD/ cartridge. The image/ text/ trade monogram in the said CD/ Pen Drive/ cartridge is later loaded into the computer controlled digital image printer, which prints the images on the PVC material. In cases where desired size of the trade advertisement is more than the size of PVC material that can be accommodated in the image printer, the Appellant prints the images/ written text in patches and later joins the said patches to make the full trade advertisement.
- c) Supply of such printed trade advertisement to the shipping address mentioned in the purchase order.

2.2 The Appellant made an Application to AAR vide Application No. 47 dated 18.11.2019 seeking advance ruling on the

1. Whether the transaction of printing of content provided by the customer on PVC banners and supply of such printed trade advertisement is supply of goods?

2. What is the classification of such trade advertisement material if the transaction is a supply of goods?

3. What is the Classification and applicable rate of GST on the supply of such trade advertisement material if the transaction is that of a supply of Services?

3. The original authority has ruled as follows:

1. The printing of content provided by the recipient on the PVC materials of the appellant and supply of printed trade advertising material to the recipient is a composite supply, and 'Supply of service of printing' is the principal supply.

2. The classification of the service is SAC 998912 and the applicable tax rate is 9% CGST + 9% SGST as per Sl.No.27/27 (ii) of Notification No.11/2017 CT(Rate) dated 28.06.2017 & G.O. (Ms)No.72 dated 29.06.2017 No.II(2)/CTR/532(d-14)/2017 for the period 01.07.2017 to 13.10.2017 and thereupon the applicable rate is 6% CGST & 6% SGST as per Sl.No. 27(i) of Notification No.11/2017- CT(rate) dated 28.06.2017 as amended & G.O.(Ms) No.72 dated 29.06.2017 No.II(2)/CTR/532(d-14)/2017 as amended.

4.1 Aggrieved by the above decision, the Appellant has filed the present appeal. In the grounds of appeal, they have inter-alia, stated that:

➤ The issues on which Advance Ruling was sought, have already been decided by the Hon'ble Authority for Advance Ruling in the State of Telangana & State of Andhra Pradesh in their favour, i.e as 'goods'. In light of the above ruling of the Hon'ble AAR, Telangana and the Hon'ble AAR, Andhra Pradesh in their own case, the impugned ruling by the Hon'ble AAR, Tamil Nadu is erroneous and has been passed without taking into consideration actual facts/ transactions in place.

➤ In the Appellant's own case the Learned Joint Commissioner, Central Tax, CGST & CX, Kolkata North Commissionerate, Kolkata vide Order-in-Original No.42-43/JC/CGST&CX/North/Kol/2017-18 dated 23.02.2018 while adjudicating the Show Cause Notices dated 18.03.2016 and 24.10.2016 covering the period from April 2010 to July 2016 under the erstwhile regime, held that the Appellant was the manufacturer of the goods falling under the

Heading 4911 since the products of the Appellant are the products of printing industry. The said order has not been challenged by the Revenue and has, thus, attained finality. Hence, the impugned ruling is liable to be set aside.

- The Learned Authority under paragraph 8.1 of the impugned ruling has noted that in the present case there is supply of goods and also service of printing and that these supplies are naturally bundled together, thereby constituting a composite supply. Further, it has been held that the principal supply is the service of printing in relation to goods falling under Heading 4911. As regards the classification and applicable rate of tax on the said supply, it has been specified that the supply of printing services is classifiable under SAC 998912 which is incorrect and the transaction of printing of content provided by the respective customers, on PVC banners and supply of such printed trade advertisement material constitutes 'supply of goods' for the reasons furnished herein below:
 - Perusal of the definition of goods indicates that any property which is movable in nature and is not in the form of money or securities, shall qualify to be 'goods'.
 - To determine if a particular supply constitutes 'supply of service', it is of paramount importance to rule out that such supply is not a supply of goods. In other words, it would be considered as supply of 'service', only when it does not qualify as supply of 'goods' as defined in Section 2(52) of the CGST Act.
 - Thus, each and every transaction, will first have to be adjudged on the touch stone of Section 2(52) of the CGST Act to determine if such transaction tantamount to supply of 'goods'; and it is only if the transaction fails the yardstick of Section 2(52) of the CGST Act, such transaction will qualify as 'service'.
- Therefore, in the impugned ruling, the Hon'ble AAR erred by not determining primarily whether the transaction of printing and supply of trade advertisement to customers, is a supply of 'goods' or not. The essential condition to classify anything as 'goods' is that it should be a movable property. Therefore, what constitutes 'movable property' is required to be determined. There is no definition of the term 'movable property' in GST law. Therefore, the definition given under the provisions of General Clauses Act, 1897 can be adopted, which covers all properties except 'immovable property'.

Therefore, if the property does not fall under the definition of 'immovable property', then same falls under the scope of 'movable property'. The term 'immovable property' includes land, benefits to arise out of land and things attached to the earth or fastened to the earth. They further rely on Article 366 (12) of the Constitution of India which defines the term 'goods' to include all materials, commodities and articles. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in the case of Tata Consultancy Services v. State of Andhra Pradesh — 2004 (178) ELT 22 (SC) wherein the Hon'ble Supreme Court in relation to sale of software has held that the definition is very wide and include all types of movable properties, whether those properties be tangible or intangible.

- It is a settled legal position under the erstwhile provisions of Central Excise as well as Sales Tax regime, that, things which are capable of being moved from one place to another without any substantial damage to the property while shifting, are 'movable property'. In the instant case, they supply the printed trade advertising materials, which are freely movable from one place to another, thereby constituting a 'movable property' and consequently would be covered under the ambit of 'goods' under Section 2(52) of CGST Act. Further, Section 7 of CGST Act read with S. No. 1(a) of Schedule II provides that - "any transfer of the title in goods is a supply of goods". In the instant case, the Appellant is transferring the title in the goods qua the printed materials. Therefore, it is submitted that the supply of printed advertisement materials, in the instant case, constitutes supply of 'goods'.
- Once any supply has been classified as supply of goods, the same cannot qualify as supply of 'services' under Section 2(102) of the CGST Act. It is for the simple reason that the definition of services is worded in a manner to provide that anything which is excluded from being goods, shall qualify to be services. Obvious corollary of the same is that once the trade advertisements are classified as 'goods', they can in no manner be classified as 'service'. They have referred to the ruling of the Hon'ble Supreme Court in the case of CCE-IV v. Fitrite Packers, 2015 (324) E.L.T. 625 (S.C.). In other words, once the activity amounts to manufacture, then, the supply necessarily has to be treated as that of goods and not services. In case of activity amounting to manufacture, the supply can be 'services' only in case where the inputs/ raw materials are supplied by the customer, as is evident from the S. No. 3 to

Schedule II of the CGST Act. In the present case, since the goods, which have been subjected to the process of manufacture (printing), are procured by them only, the above referred entry 3 to Schedule II do not apply to the said case. In light of above discussions, they submit that the activity of printing images/ designs and supply of trade advertisement material is a supply of goods and therefore cannot be said to be a service. Accordingly, the impugned ruling is liable to be set aside on this ground itself.

- The impugned Ruling at Para 8.2 has held that without the activity of printing, the trade advertisement material will not come into existence i.e. the design for printing is provided by the customer and only when such printing activity is undertaken by them, the transaction is said to be complete. Thus, the activity of printing undertaken by them provides the predominant characters to the supply under consideration. In this regard, it is submitted that the mere fact that the content to be printed is made available by the customer does not in itself imply that they are rendering a service of printing to the customer. In other words, provision of the content/ design to be printed by the customer is only a condition of contract. This is comparable/ akin to any transaction involving manufacturing and supply of customized products namely automobile parts, wherein the specifications/ designs are given by the customers at the time of placing the purchase order and based on the requirements the manufacturer procures the raw materials, manufactures and supplies the goods.
- The activity of printing undertaken by them is a self-service to effectuate the supply of the trade advertisement materials. It is a pre-sale manufacturing activity taken on the goods purchased by them to bring into existence the final product which is sold to the customer. Thus, there is no separate supply of service which is undertaken by them for their customers. In this regard, they have relied on the recent ruling by the Hon'ble Appellate Authority for Advance Ruling (AAAR), Karnataka in the case of M/s Pattabi Enterprises [2020 (2) TMI 896]. The issue before the Hon'ble Karnataka AAAR was whether the activity of printing and supply of 'Access card' by the Appellant based on the contents provided by their customers is an activity of supply of goods or supply of service. It was held that the activity undertaken is one which brings into existence a distinct item i.e. "Access Card" which is used by the recipient to distribute to the pilgrims. It has been specifically observed that printing is an

activity done to self, which results in the emergence of the "Access card". Accordingly, it was held that resultant product "access card" is a product of the printing industry and the ruling given by the lower Authority was set aside. In the said ruling, considering the factual matrix involved, it was specifically observed that paragraph 5 of Circular No. 11/11/2017 — GST dated 20.10.2017 will apply and the printing and supply of access cards by the Appellant is a supply of goods.

- In the present case, the activity of printing brings into existence a specific new product known in trade parlance as 'trade advertisement material'. In fact, this is not disputed by the Hon'ble Authority which has specially noted that the activity of printing has resulted in transformation in the nature of physical inputs and without printing, the final product cannot be used as trade advertisement material as required by the recipient (paragraph 8.3. of the impugned ruling). Having observed such, the Hon'ble Authority has arrived at a diametrically contrary conclusion that activity of printing is the principal supply. Further, in the case of Pattabi Enterprises, supra the Hon'ble Appellate Authority has observed that 'Access Cards' is a product emerging out of printing activity and the printing is a service rendered by the Appellant to himself in order to execute the supply of "Access cards". Applying the said principle to the facts of the present case, it can be said that the 'trade advertisement material' is a product emerging out of the printing activity on the PVC and hence the only supply in the present case is that of trade advertisement material. Therefore, the impugned ruling being contrary deserves to be set aside.
- As regards classification of the goods supplied by them, printed advertisement materials which are used for the purpose of trade advertising are specifically covered under Heading 4911, under the description 'trade advertising material'. This position has also been accepted by the Authority in the impugned ruling under paragraph 10.
- The factum that the printed trade advertisement materials are goods classifiable under the tariff heading 4911 has also been clarified by circular issued by CBIC. In this regard, the Appellant relies on the Board's Circular F. No. 332/2/2017-TRU dated 07.12.2017, which has clarified (vide S. No. 59 of the table) that the posters with photo-graphs/ images etc. printed on Digital

Printers on coated cotton/ mix canvas media or other. synthetic media are covered under the HS Code 4911 and attract 12% GST.

- The Authority in the impugned ruling has held that the supply made by them is a composite supply where the predominant/ principal supply is the supply of printing service and thus, the above transaction tantamount to supply of services. Without prejudice to the aforesaid contentions that the activity of printing on PVC is an activity undertaken for self, even if the transaction undertaken by them is considered to involve two separate supplies, i.e. supply of PVC material as 'supply of goods' and supply of 'printing service' as 'supply of service', and thus a composite supply, the supply of goods is the principal supply. In case of a composite supply, the rate of tax would be determined on the basis of the 'principal supply'.
- The term 'principal supply' is defined under Section 2(90) of the CGST Act and it clarifies that 'principal supply', is that part of the composite supply which dominates the said composite supply and the other part of the composite supply is ancillary to such dominant part. It is also clarified that being ancillary in no manner implies that other part of the composite supply is not essential, the component may be essential and at the same time be ancillary.
- To determine what is the pre-dominant component in the supply is subjective and dependent upon the terms and conditions of the contract between the parties. The said concept was prevalent in the erstwhile sales tax regime as well and has been a subject matter of many disputes before various judicial forums, wherein it has been held time and again that there is no straight-jacket formula to determine which is the dominant supply and which is ancillary supply. The only test to determine dominant component of supply is to have regard to the terms and conditions of contract. They have placed reliance to the case State of Punjab v. M/s. Associated Hotels of India Ltd. - (1972) 1 SCC 472, wherein the Constitution Bench of the Hon'ble Supreme Court, while dealing with the construction of a contract of work and labour on the one hand and contract for sale on the other, opined that the difficulty which the Courts often meet in such contracts is owing to the fact that the distinction between the two contracts is very often a fine one and it is particularly so when the contract is a composite one involving both a contract of work & labour and a contract of sale. The Court ruled that the transaction

between a hotelier and a visitor was essentially one of contract of service and facilities provided at reasonable price

➤ The above discussed formula coined in the decision of M/s. Associated Hotels of India Ltd. (supra) has also been discussed and accepted by the Hon'ble Apex Court in the cases of The Assistant Sales Tax Officer and Others v. B. C. Kame - (1997) 1 SCC 634 and Kone Elevators India Pvt. Ltd. Vs. State of Tamil Nadu, 2014 (304) ELT 0161 S.C. C.9.

➤ In State of Gujarat (Commissioner of Sales Tax, Ahmedabad) v. M/s. Variety Body Builders - (1976) 3 SCC 500, the Hon'ble Apex Court, after referring to the passage from Halsbury's Laws of England, Third Edition, Volume 34, page 6, ruled as under:-

“ 47. It can be treated as well settled that there is no standard formula by which one can distinguish a contract of sale from a contract for work and labour. There may be many common features in both the contracts, some neutral in particular context, and yet certain clinching terms in a given case may fortify a conclusion one way or the other. It will depend upon the facts and circumstances of each case. The question is not always easy and has for all time vexed jurists all over.”

➤ In view of the above referred judicial precedents, determination of the dominant supply in the instant matter depends on the 'terms and conditions' of the 'purchase orders' placed by the customer with the Appellant. The scope of purchase orders placed by the customers has always been for supply of the trade advertisements, including both PVC material and printing; as none of these elements can stand alone to serve the purpose of the trade advertisement and together, they constitute as one unified economic supply of trade advertisements. Further, the products supplied by them to the customers in the market are not known as printed flex boards, but as trade advertisements. Given this, the sole intention of customer which can be inferred from the terms and conditions of the contracts is to procure the goods in the form of trade advertisements from them and not to receive printing services per se.

➤ The customer only wanted to avail printing services from the Appellant, customer would have purchased PVC material (blank) from external source itself to avoid commercial margin of Appellant and provided the same to them for merely printing. However, such is not the case in the transactions effected

by the Appellant. Undisputedly, they are supplying complete trade advertisement which includes PVC material and printed images/ text/ trade monograms on such PVC material. This fact also goes on to establish that transactional arrangement between the Appellant and customer was always to supply and receive goods in form the of trade advertisements.

- Pre-dominant supply in the composite supply of trade advertisement is supply of 'goods' by them to their customers. The element of printing is ancillary to the composite supply of trade advertisements. The design of image/ text/ trade monograms to be printed on the concerned trade advertisement is provided by the customer and they have no role to play in designing/ alteration of the same. Mere work to be carried out by them is to load such image/ text/ trade monograms on the computer controlled digital image printer and to take out prints on the PVC material (blank). They do not employ any skill for provision of service of printing for the customer. Hence, they are essentially supplying goods in form of trade advertisement to the customer and not services of printing.
- In the subject transaction, supply of 'goods' in form of trade advertisement is the 'principal supply' and printing is 'ancillary', to the dominant supply of goods in form of trade advertisement. Further, the above conclusion of them is also substantiated by placing reliance on the judgment passed by the Hon'ble First Tier Tribunal (Tax) in the case of Harrier LLC Vs. Revenue & Customs, 2011 UKFTT 725(TC) (10th November 2011). Printing on PVC cards was also considered as a supply of 'goods' by the Hon'ble Authority for Advance Rulings, Hyderabad in Re: MIS. KI Hi-Tech Secure Print Ltd. reported at 2018 (10) TMI 445 - Authority for Advance Rulings, Hyderabad Telangana. Applying the principle followed in the above judgements, it is submitted by the Appellant that they are supplying goods (trade advertising materials) to the customers and the activity of printing is ancillary to the principal supply of goods.
- It is pertinent to note that CBIC vide Circular No. 11/11/2017-GST dated 20.10.2017 has made clarifications in relation to the printing contracts. Hon'ble AAR has also quoted this circular in the impugned ruling to rely upon paragraph 4 thereof, to hold that the Appellant's transaction is covered thereunder and that printing of content supplied by the customer qualifies as supply of service. The reasoning given by the Authority is that in case of goods specified under paragraph 5, the nature of physical inputs does not change

with that of printing i.e. the envelopes or tissues or letter cards and the other goods as the case may be retain their characteristic even after printing. They have stated that in their case the nature of physical inputs is transformed with the printing activity and without printing the input cannot be used as trade advertising material. In this regard, it is their humble submission that the said finding of the Hon'ble AAR is legally unsustainable inasmuch as the reasoning does not apply to wallpapers specifically covered under paragraph 5 of the said Circular. In other words, in the case of wall papers, only on or after printing the specific design, the physical inputs are transformed into wall papers. Hence, their view is that their products which also contain the design and logo of the customers, are more akin to wall papers mentioned in paragraph 5 of the Circular mentioned above. Thus, it is submitted that the case of Appellant is squarely covered under paragraph 5 of the above referred Circular, which inter alia provides that wallpaper printed with design, logo etc. supplied by the recipient of goods qualifies as supply of goods. Accordingly, the transaction of supply of trade advertisement material merit being treated as supply of 'goods'. Further, paragraph 4 of the above Circular applies to books, annual reports etc. where the content is voluminous and the owner of this content merely intends printing services thereof. Thus, the Hon'ble AAR by referring to paragraph 4 of the said Circular has mis-applied the same to the facts of the present case.

- Since the activities undertaken by them has been clarified as supply of goods by the Board Circulars referred supra, the impugned ruling being contrary to the same, is legally untenable. It is well settled law that circulars are binding on the Department and the Department cannot go against what is already clarified by them in their own circulars. Thus, they are of the view that the impugned ruling opining to the contrary, is liable to be set aside.
- The impugned ruling is cryptic in as much as the Authority has failed to examine the contentions raised by them and merely referred to paragraphs 4 and 5 of the Circular dated 20.11.2017 and classified their transaction on the basis of an arbitrary criteria assumed from the said Circular. As such the Ruling is nothing but a manifestation of non-application of mind and mis-application of law. The Learned Authority has failed to give any findings on the contentions raised by them that the activity is in the nature of manufacture

and supply of 'trade advertisements' and thus one economic supply which cannot be construed as a composite supply of goods and service.

4.2 They have tabulated the following submissions against the specific findings in the impugned ruling by the Learned Authority :

Sl.No	Finding	Submission
1	In paragraphs 8.1 and 8.2 it has been observed that the supplies made by the Appellant, being naturally bundled constitute a composite supply with the principal supply being service of printing as without the service of printing the final supply of trade advertisement material is incomplete. Further, the Authority does not dispute that the goods supplied under the contract are classifiable under Chapter 49, however it has observed that such supplies are ancillary to the principal supply of printing service.	The Appellant reiterates that the activity or transaction undertaken by them is supply of goods and does not qualify as a composite supply. The Appellant supplies the printed trade advertisement materials, which are in the nature of tailor-made goods, manufactured as per the customer's specifications. Further, the scope of purchase orders placed by the customers has always been for supply of the trade advertisements i.e. PVC material with the design/ image printed on it which is made available by the customer as a condition of the contract. The activity of printing is an activity undertaken by the Appellant for himself in order to execute the supply of 'trade advertisements'. Thus, there is no separate supply of service which is undertaken by the Appellant for its customers. Assuming but not admitting that there is a supply of service of printing rendered to the customer, it is submitted that the Authority has failed to understand and appreciate the true nature and substance of the contract entered into by the Appellant with its customers and the consequent underlying deliverable/ supply being made. It is submitted that the pith and substance of the transaction in the

		<p>present case is clear from the fact that the customer intends to purchase tailor made goods in the form of trade advertisement as a whole (as one economic supply) for which the required inputs are procured by the Appellant himself. This is also substantiated from the fact that the respective customers desire to get their products advertised and marketed and such advertisement and publicity can only be done by the supply of complete trade advertisement material as agreed. Thus, the principal supply in this case is the supply of goods (trade advertisement material) and the activity of printing is undertaken for the enhancement and better enjoyment of the supply of goods.</p>
2	<p>The Authority in paragraph 8.3 of the impugned ruling has observed that the Appellant does not own the usage rights of the intangible inputs provided by the customer and also there is a transformation in the nature of physical inputs and thereby categorised the Appellant under paragraph 4 of the Circular dated 20.11.2017 to hold that printing services is the</p>	<p>The Learned Authority while referring to paragraph 4 of the Circular, has failed to substantiate the same with proper reasoning and justification. The Appellant submits that the distinction given by the Authority is vague, arbitrary and not contemplated by the above Circular. Paragraph 5 of the Circular deals with the supply of printed envelopes, printed boxes, tissues, napkins, wall paper etc. falling under Chapter 48 or 49, that have the printed design, logo etc. supplied by the recipient of goods. It is submitted that even in the transactions governed under paragraph 5 of the Circular, the usage rights of the content will remain with the recipient of the goods and will not be transferred to the provider of goods as the</p>

	principal supply as against paragraph 5 which states that the supply of goods will be the principal supply.	provider will not have the right to use the logo/ brand of one customer and supply them to another. Therefore, the usage rights of the content cannot be used as a factor to determine whether printing is the predominant supply or not. Further, the conclusion arrived at by the Learned Authority regarding the change in the nature of physical inputs to determine the applicability of paragraph 4 of the Circular dated 20.11.2017 is not tenable. In this regard, it is submitted that the goods in question are akin to wallpapers covered under paragraph 5 of the aforementioned CBIC Circular and hence clarification given in that regard stating that the supply of goods is the principal supply, will be applicable to the present case.
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PERSONAL HEARING:

5.1 Due to the prevailing PANDEMIC situation, the appellant was addressed through the Email Address mentioned in the application to seek their willingness to participate in a virtual Personal Hearing in Digital mode vide e-mail dated 28th September 2020. The appellant provided their consent to be heard through virtual mode. Accordingly, the hearing was held virtually on 15th October 2020. Shri. Rahul S.Jain, the authorized representative appeared for Virtual hearing. They furnished Paper book containing the relevant Statutory provisions and the decisions relied upon by them (by e-mail). They also furnished a Synopsis of their submissions (by e-mail), which were taken on record. The contention of the appellant is that the Lower Authority has not considered the plea that their activity is only 'Supply of Trade Advertisement', which are goods and that it is a 'Single Supply' but has considered their activity to be a 'Composite Supply'. They stated that they agreed with the classification of the supply dealt in Para 10 of the Ruling of the LA.

5.2 The appellant vide their letter dated 20.10. 2020, furnished the ruling of the Karnataka Appellate Authority in their case in Order No. KAR / AAAR 05/2020-21 dated 28.09.2020 and stated that the same may also be taken into consideration while passing the order in the present case. The Karnataka Appellate Authority has held that the digital printing on PVC material gives rise to a distinct trade advertisement product and supply of such products by the Appellant is a supply of goods.

DISCUSSIONS:

6. We have carefully considered the submissions of the Appellant and the applicable statutory provisions. We find that the issue before us for decision is whether in the facts of the case, the transaction of printing of content provided by the customer on the media desired by them (owned by the appellant) and supply of such printed trade advertisement is a supply of goods as contended by the appellant or a composite supply with principal supply being supply of services as has been held by the Lower Authority.

7.1 From the various submissions, we find that the appellant are primarily engaged in printing of trade advertisements in the media required by the recipient. They have stated that they procure the media, on own account, in which the content of trade advertisements provided by the recipient is required to be printed and the final supply of the 'Trade Advertisement' is made. The main contention of the appellant is that their supply is a single supply of 'Trade Materials', i.e. goods and not composite supply involving goods and printing services, of which 'Printing service' is the predominant supply'; that as per the statutory definition of 'Services' under the GST ACT, 'anything other than goods' are services. Therefore, they contend that primarily, it is to be established that the supply is not that of 'goods' and the LA has not stated how their supply is not supply of goods but have gone to state that the supply is a 'Composite Supply'. They have also contended that even if the supply is considered as Composite supply involving supply of material and supply of printing service, the predominant supply of 'goods' in form of trade advertisement is the 'principal supply' and printing is 'ancillary', to the dominant supply of goods in form of trade advertisement.

7.2 The appellant has raised the same issue before AAR Karnataka, AAR Telangana and AAR West Bengal, who has held as under:

AAR Telengana has held that the activity is 'Supply of Goods';

AAR Karnataka has held the supply as 'Composite Supply' with 'Supply of Service' as 'Principal Supply'.

On Appeal, AAAR Karnataka has stated that the 'Circular No. 11/11/2017-GST dated 20.10.2017' which clarifies whether supply of books, pamphlets, brochures, envelopes,...printed with design, logo, name or other contents supplied by the recipient of such supplies would constitute supply of goods falling under Chapter 48 or 49 of Customs Tariff or Supply of Services falling under heading 9989' will not be applicable to the case of this appellant since the contract given by the customers is not a printing contract but a contract for supply of trade advertising material wherein printing is involved in the making of the trade advertisement. They have held the supply as 'Supply of Goods'.

AAR West Bengal has held the supply as 'Composite Supply' with 'Supply of Service' as 'Principal Supply' & AAAR West Bengal has upheld the LA Ruling.

7.3 Apart from the above, appellant has relied on the following decisions and contend that their supply is 'Supply of Goods' only and not a composite supply of goods and service in which the principal supply is that of 'Printing Service'.

- Commissioner of Sales Tax M.P. Vs. Purshottam Premji 1970 (26) STC 38 SC
- OIO No.HYD-EXCUS-003-com-020-14-15 dated 18.07.2014 in their own case
- OIO No. 42/43/JC/CGST & CX/North/Kol/2017-18 dated 23.02.2018 in their own case
- A.P. State Electricity Board Vs Collector of C.Ex., Hyderabad 1194(70) E.L.T.3 (S.C)
- CCE Vs. Fitrite Packers 2015(324) ELT 625(SC)
- J.J Enterprises vs CCE, Meerut 2013(295) E.L.T.324(Tri-Del.)
- Forbes & Company Ltd v CCE, Mumbai-II-2018(3) TMI 60-CESTAT Mumbai
- Venus Albums Co.Pvt Ltd v CCE, Chandigarh-2019 (22) GSTL 386 (Tri-Chan)

8.1 Before considering the issue of whether the activity under consideration is 'Supply of Goods' or a composite supply wherein the principal supply is 'Supply of Service', the facts of the case as is available are examined. The details as seen from the Purchase Orders(samples) and the Invoice(sample) furnished by the appellant are as under:

Purchase Order Details:

P.O. No.-7600001208 dated 18.01.2019 ; GRT-Gundur- 'Description- Pongal Arch Printing- Guntur DD Flex'

P.O. No. 21P-2019 dated 22.08.2019; -Shaddai Advertising & Marketing - 'Description - Flex Printing'

P.O. No. APBL-Tamilnadu/PUR/10000414 dated 14-Nov-19; Airtel Payment Bank Ltd-'Description- MKT001324-Frontlit Signage-Star Print -340 Gsm; Red Brigade 11-Signage - TN - Flex Print'

Tax Invoice:

Inv. No. : CHE/19-20/1494 dated 30/11/2019 -Histyle India Pvt Ltd- Product Description-'Printing and Supply of Trade Advertisement Material-HSN # 4911'

Inv. No. : CHE/19-20/1718 dated 31.12.2019 - Airtel Payments Bank Lts - Product Description - 'Printing and Supply of Trade Advertisement Material-HSN #4911'

Inv.No. : CHE/18-19/1945 dated 22/01/2019 - GRT Jewellers-Product Description- 'Printing and Supply of Trade Advertisement Material-HSN #4911'

Inv.No. : CHE/19-20/866 dated 14.08.2019; ElShaddai Advertising and Marketing- Product Description - 'Printing and Supply of Trade Advertisement Material-HSN #4911'

From the above we find that the Purchase Order is made for 'Printing of content' on a particular 'media' and the Tax Invoice describes the item as 'Printing and Supply of Trade Advertisement Material'. From the write-up on business activities and process-Scope of Macromedia furnished by the appellant, it is seen that their

Scope in the supply is to get the ready- to- print design from customer, check quality of design and printability on the specified sizes and applications like outdoor print, indoor print or signage print and printing the finalized drafts and delivering the same either to the corporates/agencies or the vendors. Thus, it is seen that the appellant owns the media(material) in which the digital content received by them for printing is printed and the supply of such printed goods is made to the client. The contention of the appellant is that they undertake the 'Printing' for own-use to supply the 'Trade advertisement material' which is 'goods' and therefore, the transaction is supply of goods. From the Purchase Order it is seen that the appellant is to undertake printing of the content in the media. Therefore the first issue to be clarified is whether the contract by way of the P.O. is a contract for sale of 'Trade Advertisement material', i.e., goods or a contract of Work or services of printing of the content in the desired media.

8.2 We find that Hon'ble Apex Court in the case of State of Tamilnadu Vs. Anandam Viswanathan has stated the difference between a contract for work or service and a contract of sale as follows:

"15. The primary difference between a contract for work or service and a contract for sale is that in the former there is in the person performing or rendering service no property in the thing produced as a whole, notwithstanding that a part or even the whole of the material used by him may have been his property. Where the finished product supplied to a particular customer is not a commercial commodity in the sense that it cannot be sold in the market to any other person, the transaction is only a works contract.

16. In our opinion, in each case the nature of the contract and the transaction must be found out. And this is possible only when the intention of the parties is found out. The fact that in the execution of a contract for work some materials are used and the property in the goods so used, passes to the other party, the contractor undertaking to do the work will not necessarily be deemed, on that account, to sell the materials....."

Further, Hon'ble High Court of Madras in the case of Heritage Printers Vs. the Joint Commissioner of Commercial Taxes, following the above decision of the Apex Court, has held as follows:

14. As far as the present case is concerned, the work executed by the assessee related to printing of materials and such printed materials are meant for particular customers, who placed orders and it cannot be sold in the open market like any other goods. Going by the principle laid down in the above said decision of the Apex Court, which was followed by this court in the subsequent decisions, we have no hesitation in accepting the case of the assessee that the transaction in question does not call for any liability under the Act. As pointed out by the Apex Court, the mere fact that in the execution of the contract for work, the paper owned by the assessee stands transferred to the contractee incidentally would not lead to the inference that the transaction is only a sale and not a works contract."

The above decisions have been pronounced to decide whether the printing of the content received from the clients on the material of the respondents and supply of such printed material is sale of goods under the sales tax provisions. The definition of 'Goods' remains the same in the Sale Tax provisions and the GST Law and therefore the ratio of the above decisions can be applied to the case at hand. The said decisions has handed out that in a contract for service, the person rendering the service has no property in the thing produced as a whole, while some materials are used and the property in the goods so used passes to the other party i.e., in other words, the supply to be treated as sale of goods, the seller should have property in the wholly produced product supplied by them. Just because, the product is a movable property and is a 'goods', the supply cannot be called as simple 'supply of goods', when the seller do not have the whole proprietary right on the finished product.

8.3 Applying the above, to the case at hand, it is evident that the Purchase Order is issued for 'Printing' the 'Copyrighted Digital Content of the client' in the desired material. The material 'blanks' owned by the appellant are transferred to the client as 'Trade Advertisement material' after undertaking Printing of the Content of the client on the blanks. The appellant is vested with and undertakes the printing of the content, the copyright of which rests with the recipient and the copyright always rests only with the client and the appellant do not have any propriety rights to the content. The content is never owned by the appellant, while the property in 'blanks' held by the appellant, on printing of the received content is transferred to the client. Thus the appellant do not have the whole propriety right

on the final product-‘Trade advertisement material’ supplied by them to their clients. In such a situation, applying the ratio of the above decision of Hon’ble Supreme Court and the Jurisdictional High Court, we hold that in the case at hand, in the execution of the printing contract, the property held by the appellant in blanks stands transferred as ‘Trade Advertisement Material’ and therefore the activity is a contract for work or service only and not a contract of sale of goods.

8.4 Once it is held that the activity is a contract for work or service wherein there is also transfer of property in goods incidentally then it is a composite supply as per Section 8 of the GST Act. Ongoing through the Purchase Order, write-up giving the scope of the appellant, it is evident that the client desires the print of the content in a particular media and the contract with the appellant is not for the materials they own. ‘Trade Advertisement Material’ is produced by printing the digital content in the required quality of the client on the blanks of the appellant; Printing is the main activity of the appellant and requirement of the client in the supply. Thus, the activity of Printing of the content is the principal supply during which the property held by the appellant in the media of such print gets transferred to their client incidentally. For these reasons we do not agree the contention of the appellant that the supply of ‘Trade advertisement material’ is the principal supply and therefore, even if the supply is considered as a composite supply, the ‘Principal supply’ is ‘supply of goods’, i.e., Trade advertisement material and do not find any reason to deviate from the findings of the Lower Authority in this context.

8.5 We have also examined the various case laws relied by the appellant and the same is tabulated as under with our observations:

Sl. No.	Case Law Citation	Decision	Applicability as per the appellant	Observations
1	Commissioner of Sales Tax, M.P. Vs. Purshottam Premji 1970 (26) STC 38 SC	The primary difference between a contract for the work or service and a contract for sale of goods is that in the former there is in the person performing work or rendering	Printed Trade advertisement material always remains the property of the Appellant and the property in the same passes on to the customer only	The content extended by the customer is made into the ‘Trade Advertisement Material’ in the required media by the appellant. At no point of time the appellant holds the right to the

		<p>service no property in the thing produced as a whole notwithstanding that a part or even the whole of the materials used by him may have been his property. In the case of a contract for sale, the thing produced as a whole has individual existence as the sole property of the party who produced it, at some time before delivery, and the property therein passes only under the contract relating thereto to the other party for price.</p>	<p>subsequently. At no point does the property in the trade advertisement material directly vest in the customer before the sale is concluded. They are selling 'Trade Advertisement Material' as a single economic entity. Hence, these trade advertisements are tailor made to the specifications of the customers.</p>	<p>content and it is solely held by the customer. For the 'Trade Advertising Material' to exist, the content and the media both are necessary and the 'content' becomes the core of the 'trade advertisement material' which is not held by the appellant at any point of time or tailor made by them in respect of the content but only as per the specifications/requirement of the customer. Hence, as per the ratio of the decision of the Apex Court, the supply is not one of 'Contract of Sale'</p>
2.	<p>OIO No.HYD-EXCUS-003-com-020-14-15 dated 18.07.2014 in their own case</p>	<p>Transaction will not be liable to Service Tax</p>		<p>Department has preferred an appeal and the issue is pending before CESTAT</p>
3.	<p>OIO No. 42/43/JC/CGST & CX/North/Kol/2 017-18 dated 23.02.2018 in their own case</p>	<p>Printed PVC flex, PVC board are products of printing industry classifiable under Chapter 49 and the process of printing amounts to</p>	<p>No appeal filed by Department against this Order</p>	<p>Issue raised is classification of the product as to whether the material, printed PVC flex, PVC Board are to be treated as products of Printing</p>

		Manufacture		Industry and classifiable under Chapter 49 as claimed by the appellant or under CETH 3926/9405. The O-in-O has held that the materials are products of printing industry classifiable under Chapter 49. In the case at hand the issue is not on the classification of the printed goods but on the nature of the supply. NOT APPLICABLE
4.	A.P. State Electricity Board Vs Collector of C.Ex., Hyderabad 1194(70) E.L.T.3 (S.C)	Marketability is established even if there is one buyer		Marketability is not the issue at hand
5.	CCE Vs. Fitrite Packers 2015(324) ELT 625(SC)	The Court has held that the printing of Logo on the GI Paper has brought into existence a distinct product and the process of printing is 'manufacture' as per Section 2(f) of the Central Excise Act.	Printing of Products as per customer specification will amount to manufacture of goods falling under chapter 49	It is consented that the product falls under Chapter 49 and the printing process is undertaken. The issue of content is whether the final supply is a single supply of 'Goods' or 'composite supply' for which the

6	J.J Enterprises vs CCE, Meerut 2013(295) E.L.T.324(Tri-Del.)	printed sheets are classifiable as product of printing industry under Chapter 49 of the Tariff		relied upon decisions has no application
7.	Forbes & Company Ltd v CCE, Mumbai-II-2018(3) TMI 60-CESTAT Mumbai	'Printed Plastic Cards' are classifiable under Chapter 49 and not under Chapter 39		
8.	Venus Albums Co.Pvt Ltd v CCE, Chandigarh-2019 (22) GSTL 386 (Tri-Chan)	The Appellate Tribunal in its impugned order had held that the activity of printing photograph provided in soft form, binding them and selling them as photo books, such activity amounts to manufacture and the resultant item is classifiable under Heading 4911 of Central Excise Tariff and not liable to Service Tax particularly when the activity of printing as job worker exempted from payment of Service Tax in terms of S. No. 30 of Notification No.		The decision has not attained finality as Departmental has filed appeal before Apex Court in Civil Appeal Diary No. 20640 of 2019

		25/2012-S.T., dated 20-6-2012 amended by Notification Nos. 44/2012-S.T., dated 7-8-2012, 49/2012-S.T., dated 24-12-2012 and Notification No. 3/2013-S.T., dated 1-3-2013 with effect from 1-4-2013. The said item, after introduction of GST, falls under HS Code 4911 and attract 12% GST.		
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To sum up, the decisions relied upon relating to the printing industry are on the count of whether the activity amounts to manufacture as per Section 2(f) of the Central Excise Act; marketability of tailor-made goods; classification of printed goods using PVC whether the final product is a product of Printing Industry or Plastic and others based on the material used. The exception is the facts of the case in the case of Venus Album and their own case in the jurisdiction of Hyderabad during the Service Tax regime and both these decisions have not attained finality as Department have filed appeal in both these cases. Therefore, the ratio of decisions relied upon do not help the case of the appellant.

9. In view of the above we, Pass the following Order:

ORDER

For reasons discussed above, we do not find any reason to interfere with the Order of the Advance Ruling Authority in this matter. The subject appeal is disposed of accordingly.

(Signature)
12/2/2021
(M.A.SIDDIQUE)
Commissioner of State Tax
Tamilnadu / Member AAAR

6/10

(Signature)
12/2/2021
(G.V.KRISHNA RAO)
Pr. Chief Commissioner of GST & Excise
Chennai Zone/Member AAAR



To
M/s Macro Media Digital Imaging Private Limited //By RPAD//
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Tamilnadu-600044

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