



**BEFORE THE AUTHORITY FOR ADVANCE RULING - ANDHRA PRADESH
Goods and Service Tax**

D. No. 5-56, Block-B, R.K. Spring Valley Apartments, Eedupugallu, Vijayawada-521151

Present:

1. Sri. D. Ramesh, Additional Commissioner of State Tax (Member)
2. Sri. M. Sreekanth, Joint Commissioner of Central Tax (Member)

AAR No. 19 /AP/GST/2020 dated:17.07.2020

1	Name and address of the applicant	M/s. NIKO (NECO) Limited, D.No.70-3-34/2A, 533005, Vaidyanagar, Road No.2, Ramanayyapeta, East Godavari, Kakinada-533005, Andhra Pradesh.
2	GSTIN	37AACCN4403B1Z1
3	Date of filing of Form GST ARA-01	16.12.2019
4	Date of Personal Hearing	05.02.2020
5	Represented by	Anoop Kalavath, Cost accountant Komal Sampath CA Neel Khimasia,CA
6	Jurisdictional Authority - Central	Superintendent, Kakinada Port, Kakinada CGST Division.
7	Clause(s) of section 97(2) of CGST/SGST Act, 2017 under which the question(s) raised	(e) determination of the liability to pay tax on any goods or services or both.

ORDER

**(Under sub-section (4) of Section 98 of Central Goods And
Services Tax Act, 2017 and sub- section (4) of Section 98 of
Andhra Pradesh Goods and Services Tax Act, 2017)**

1. The present application has been filed u/s 97 of the Central Goods & Services Tax Act, 2017 and AP Goods & Services Tax Act, 2017 (hereinafter referred to as CGST Act and APGST Act respectively) by M/s. NIKO (NECO) Limited, (hereinafter referred to as applicant), registered under the Goods & Services Tax.



2. The provisions of the CGST Act and APGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a reference to the CGST Act would also mean a reference to the same provision under the APGST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST or AP GST Act would be mentioned as being under the GST Act.

3. Brief Facts of the case:

M/s. NIKO (NECO) Limited, (herein referred to as applicant), holding GSTIN 37AACCN4403B1Z1, has been engaged in the business of exploration and production of oil and gas in India and is a step down subsidiary in the Cayman Islands of Niko Resources (Cayman) Limited, which is a subsidiary of Niko Resources Limited ('Niko'), a company incorporated in Canada.

1. In India, the Applicant along with Reliance Industries Ltd ('Reliance') and BP Exploration (Alpha) Ltd ('BP') had entered into the Production Sharing Contract ('PSC') with Indian Government for undertaking exploration and production of oil and gas in KG D6 block. The Applicant is registered with GST Authorities vide GSTIN 37AACCN4403B1Z1 and has been regularly paying GST liabilities and filing GST returns.

2. The following table captures the flow of events of NECO in India w.r.t. KG D6 block in relation to the PSC:

Year	Description of Agreement	Parties to the Agreement and Block Interest/Participating Interest
2000	Production Sharing Contract in India relating to Block KG-DWN-98/3 (KG D6) ('the Block')	1. Niko Resources Ltd (Canada) (10 %) 2. Reliance Industries Ltd (90 %) 3. Government of India
2003	Assignment of contract by Niko Resources Ltd to Niko (NECO) Ltd	1. Niko Resources Ltd (Canada) (10%) 2. Niko (NECO) Ltd (Cayman) (10%)
2011	Joint Operating Agreement (for addition of party to the PSC and execution of the project)	1. Niko (NECO) Ltd (Cayman) (10 %) 2. Reliance Industries Ltd (60 %) 3. BP Exploration (Alpha) Ltd (30 %)



2011	PSC Amendment	1. Niko (NECO) Ltd (Cayman) (10 %) 2. Reliance Industries Ltd (60 %) 3. BP Exploration (Alpha) Ltd (30 %)
2019	Settlement Agreement	Transfer of Block Interest of 10% by Niko (NECO) Limited to Reliance Industries Ltd and BP Exploration (Alpha) Ltd in ratio of 2: 1

3. Prior to the transaction described below, NECO had a participating interest of 10 percent in the KG D6 block with Reliance and BP owning the balance 90 percent. NECO has set-up a Project Office in India for carrying out activities in relation to exploration and production

('Petroleum Operations') under the said PSC. The role of NECO in the PSC was participating in the costs, risks for petroleum operations, and sharing profits there from petroleum activities.

4. During the course of petroleum operations, NECO had defaulted in payment of cash call payments and was required to pay the amount in default within 30 days. NECO was not able to cure the default with the stipulated period.

5. As per the terms of the Joint Operating Agreement, in the event of a default by any party to introduce its share of cash call and if the party is not able to cure the default within the stipulated period, other parties can claim the Block Interest held by the defaulted party and such transfer shall be free of cost.

6. Accordingly, Reliance and BP made a claim for transfer of Block Interest/ Participating Interest held by NECO to them.

7. Considering the huge investments that NECO Ltd had made in the KG D6 block and the probable future profits that would arise on sale of natural gas and mineral oil, NECO filed an application for arbitration under the JOA at London Court of International Arbitration ('LCIA') in London (UK) disputing the action of Reliance and BP for transfer of block.

8. As a settlement to the arbitration, Reliance, BP and NECO negotiated a settlement agreement. The settlement payment payable to NECO was decided at USD 36 Million including all taxes (INR 252 crores appx.), as per Clause 3 of the Settlement Agreement. Pursuant to such settlement, the parties to the contract executed assignment documents in 2019 for transfer of Block Interest of 10 % from NECO as follows:



- Reliance Industries Ltd - 6.67% and
- BP Exploration (Alpha) Ltd - 3.33 %

9. NECO's business in India only comprised of the Block Interest in PSC i.e.. participating in the costs, risks for petroleum operations, and sharing profits from these activities. Based on the plain reading of the Settlement Agreement, it is clear that the transfer would comprise of transfer of the entire business of NECO pertaining to PSC, including rights/ claims relating to or arising from Block Interest.

10. Further, the Settlement Agreement in Clause 8, dealing with 'Assumptions of Liabilities and Indemnities', clearly specified that the Assignees i.e. Reliance and BP shall assume all the liabilities of the Assignor i.e. NECO, pertaining to the Petroleum Operations attributable to period on or after the effective date of the assignment.

11. In light of the aforesaid facts, the applicant sought to obtain a ruling with regard to the following question of law and had filed an application in form GST ARA-01, Dt:16.12.2019, by paying required amount of fee for seeking Advance Ruling on the following issues, as mentioned below.

4. Questions raised before the authority:

If transfer of Block Interest qualifies as a slump sale under the Income Tax Act, 1961, whether exemption from GST levy can be claimed on the same by the applicant.

On Verification of basic information of the applicant, it is observed that the applicant falls under Central jurisdiction, i.e. Superintendent, Kakinada Port, Kakinada CGST Division. Accordingly, the application has been forwarded to the jurisdictional officers and a copy marked to the State tax authorities to offer their remarks as per the Sec. 98(1) of CGST /APGST Act 2017.

In response, no remarks are received from the jurisdictional officer concerned, but the state tax authorities responded mentioning that there are no proceedings lying pending or passed relating to the applicant on the issue, for which the Advance Ruling sought by the applicant.

5. The prayer of the applicant in brief:

The Applicant submits that Schedule II of the CGST Act lists down the activities which are to be treated as supply of goods or supply of services. In reference to this, Clause 4(c) of Schedule II of CGST Act states that:



“(c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless-
(i) the business is transferred as a going concern to another person; or
(ii) the business is carried on by a personal representative who is deemed to be a taxable person.”

As per the above clause, while transfer of business assets has been considered as supply of goods, transfer of business as a going concern is specifically excepted to constitute as supply of goods.

Since as per the definition of “Services” under the GST Act, primarily anything other than goods qualifies “a Service”, business transferred as a going concern which is excluded from the list of supply of goods would thus qualify to be a supply of service.

The Applicant submits that the Ministry of Finance vide its notification no 12/2017- Central Tax (Rate) dated June 28, 2017, provides a list of supply of services which shall be exempt from levy of GST under which Serial no.2 with reference to chapter 99 reads as under:

“service by way of transfer of a going concern, as a whole or an independent part thereof”

In this context the applicant relies on the case of **Innovative textiles ltd before the authority of advance ruling, uttarakhand**, wherein it was held that transfer of business as a going concern was exempted from GST under Notification No 12/2017, since in terms of financial transaction ‘going concern’ means that at relevant point of time, business is live or operating and has all parts and features necessary to keep it in operation.

Further, in the case of Rajashri Foods Private Limited before the authority of Advance Ruling under GST, Karnataka, it was held that the transaction of transfer of business as a whole of one of the units of the applicant in the nature of a going concern amounts to supply of service and the transaction of transfer of one of the units of the applicant as a going concern is covered under Sl.No.2 of the Notification No.12/2017 – Central Tax (Rate), Dated: 28.06.2017 subject to the condition that the unit is a going concern.

In this regard, the applicant prayed that, no GST would be applicable on transfer of business as a going concern.

DEPUTY COMMISSIONER (ST)
 O. of Chief Commissioner of State Tax
 Government of Andhra Pradesh



In view of the above submissions, the applicant requested for pronouncement of the ruling on the question raised in the application.

Applicant prayed for an opportunity of personal hearing in this matter. The applicant desired to reserve their right to modify, rescind or alter any part of submissions and to place additional evidence in support of the same at the time of personal hearing.

6. Record of Personal Hearing:

The authorized representatives of the applicant, Sri Anoop Kalavath, Cost accountant Komal Sampath CA, and Neel Khimasia, CA appeared for Personal Hearing on 05.02.2020 and reiterated the submission already made in the application.

7. Discussion:

We have gone through the entire submission made by the applicant regarding the applicability of the GST rate to the aforesaid transaction. But, before going into the merits of the case, we examine the plea made by the applicant before this authority in his letter dated: 16.03.2020 claiming that the payment of taxes on the transaction sought under the ruling had already been made in the month of February and they no longer find any necessity to obtain clarification or ruling in the same matter. While considering the request of the applicant for withdrawal of the application, positively, this authority passed the following order with a direction that fees already paid shall not be refunded and the same stands as forfeited.

ORDER

(Under section 98 of Central Goods and Services Tax Act, 2017 and the Andhra Pradesh Goods and Services Tax Act, 2017)

Since the applicant withdrew the application, we find no reason to go into the merits of the case and it is dismissed as withdrawn and therefore no Ruling is given.

**Sd/-D.RAMESH
MEMBER**

**Sd/- M. SREEKANTH
MEMBER**

//t.c.f.b.o//

Lalitha
Deputy Commissioner (ST)
DEPUTY COMMISSIONER (ST)
O/o. Chief Commissioner of State Tax,
Government of A.P., Vijayawada



TO

1. M/s. NIKO (NECO) Limited, D.No.70-3-34/2A, 533005, Vaidyanagar, Road No.2, Ramanayyapeta, East Godavari, Kakinada-533005, Andhra Pradesh. **(By Registered Post)**

Copy to

1. The Assistant Commissioner of State Tax, Kakinada Circle, Kakinada Division.

(By Registered Post)

2. The Superintendent, Central Tax Kakinada Port, CGST Kakinada Division. **(By Registered Post)**

Copy submitted to

1. The Chief Commissioner (State Tax), O/o Chief Commissioner of State Tax, Eedupugallu, Vijayawada, (A.P)
2. The Chief Commissioner (Central Tax), O/o Chief Commissioner of Central tax & Customs, Visakhapatnam Zone, GST Bhavan, Port area, Visakhapatnam-530035. **(By Registered Post)**

Note: Under Section 100 of the APGST Act 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under Section 99 of APGST Act, 2017 with in a period of 30 days from the date of service of this order.

