

T. No-390/2019-20

**THE AUTHORITY FOR ADVANCE RULING
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Advance Ruling No. KAR ADRG 10/2020

Date : 18-03-2020

Present:

1. **Dr. Ravi Prasad M.P.**
Additional Commissioner of Commercial Taxes Member (State Tax)
2. **Sri. Mashhood Ur Rehman Farooqui,**
Joint Commissioner of Central Tax Member (Central Tax)

1.	Name and address of the applicant	M/s Karnataka Solar Power Development Corporation Limited, South Block, Beeja Raja Seed Complex, II Floor, Bellary Road, Hebbal, Bengaluru - 560 024, Karnataka.
2.	GSTIN or User ID	29AAFCK7685P1ZF
3.	Date of filing of Form GST ARA-01	13.08.2019
4.	Represented by	Sri. Ganesh S, Advocate
5.	Jurisdictional Authority - Centre	The Commissioner of Central Tax, Bangalore East Commissionerate.
6.	Jurisdictional Authority - State	LGSTO-150-A, Bengaluru.
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act vide CIN VIJB19072900399319 dated 25.07.2019 and Rs.5,000/- under KGST Act vide CIN VIJB19072900399391 dated 25.07.2019

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER 98(4) OF THE KGST ACT, 2017**

1. M/s Karnataka Solar Power Development Corporation Limited, (called as the 'Applicant' hereinafter), South Block, Beeja Raja Seed Complex, II Floor, Bellary Road, Hebbal, Bengaluru - 560 024, Karnataka, having GSTIN number 29AAFCK7685P1ZF, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017 & KGST Act, 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The applicant is a joint venture company of M/s Solar Energy Corporation of India (SECI), Government of India and Karnataka Renewable Energy Development Limited (KREDL) of Government of Karnataka, formed, on 12.03.2015, to establish KSPDC



2000 MW solar park in Tumkur District of Karnataka. They obtained lands on lease basis from the farmers of 5 villages for a period of 28 years and sub-let the said lands to the Solar Power Developers (SPD) to install the solar panels for generation of solar power, for 28 years.

3. The said project is approved by the Ministry of New & Renewable Energy (MNRE) and as per its guidelines, after commissioning of solar projects by SPDs, an amount of Rs.5,00,000/- per MW should be collected in 5 equal yearly installments of Rs.1,00,000/- each by the Applicant, from SPDs, towards Local Area Development Fund, intended to rehabilitation of the affected area. The fund is kept in a separate account as Local Area Development Fund by SPPD i.e. the applicant.

4. A committee under the chairmanship of District Commissioner, Tumkur, in which the CEO of the applicant is a member convener, carries on the local area development works of the said 5 villages under village panchayats, as per the guidelines of MNRE, on utilisation of the said fund. The rehabilitation work would be in the nature of laying of metal roads, area drainage, schools, dispensaries, community centre, water supply, education etc.,

The applicant has to collect the amounts towards the said fund, as 600 MW has been commissioned. The applicant submits that the said fund is not related to any supply made by the applicant to the SPDs, not an income to the applicant, but intended to be utilised for development works, in the interest of villages.

5.1 In view of the above, the applicant sought advance ruling on the following questions:

1. *Whether the amount collected towards Local Area Development Fund, which is kept separately and used for development of the affected area as per the guidelines of MNRE, can be treated as not a supply as per the provisions of CGST/KGST/IGST Act 2017 and not levied to tax?*
2. *Without prejudice to the above, if it is treated as Supply, what will be the HSN/SAC code under which it would be levied to Tax?*
3. *Without prejudice to the above, if it is treated as Supply, will it be exempt a per Sl.No.3 or 3A of Notfn.12/2017-CT (R) as the activities to be carried out are covered under Article 243 G and / or Article 243 W of the constitution of India?*

5.2 Applicant's interpretation of Law:

There is no supply made by the applicant to the SPDs with reference to the LAD Fund; no benefit is derived by the Applicant in the said transaction; the amount is collected as per the guidelines of MNRE & is used for only village development works; the said amount is not against any supply of goods/services made by the applicant to the SPDs.



The transaction does not get covered by the definition of Supply, in terms of Section 7 of the CGST Act 2017; the activity is not in the course or furtherance of business. Therefore the activity can't be subjected to GST as it is not in the nature of supply.

PERSONAL HEARING PROCEEDINGS HELD ON 21.11.2019.

6.1 Sri. Ganesh S, Advocate and authorised representative of the applicant appeared for personal hearing proceedings before this authority and requested to add the following additional question to the questions in the application for advance ruling.

4. *Without prejudice to the above, if the amount towards Local Area Development collected is either treated as supply or otherwise, will the payment made at the direction of the committee formed for Local Area Development be considered as Service rendered by Government to Applicant and subject to payment of Tax under reverse charge as per Entry 5 of notification 13/2017-Central Tax (Rate) ?*

6.2 The authorised representative of the applicant also furnished the following written submissions:

- a) The applicant is a joint venture company of M/s Solar Energy Corporation of India Limited (SECI), Government of India and M/s Karnataka Renewable Energy Development Limited (KREDL), Government of Karnataka and hence is a Government Company as per Section 2(45) of the Companies Act 2013.
- b) The applicant acts as a Solar Power Park Developer (SPPD) under the guidelines of Ministry of New and Renewable Energy (MNRE), and involved in creation of infrastructure like internal evacuation scheme, Layout Roads, Street Lights, water etc., for evacuating power generated by SPDs (Solar Power Developer) under plug & play model.
- c) The solar park development is not carried out with an intent of profit making objective, but to facilitate the SPDs to establish solar power generating units and enable such supply of electricity for general public at reasonable cost.
- d) The MNRE mandates, through its direction, under its guidelines for SPPDs (applicant), as per its Rehabilitation and Resettlement Policy for Solar Parks, to collect the amounts towards Local Area Development Fund from Solar Power Developers (SPDs). Accordingly the applicant collected the fund from SPDs, kept the same in a separate account. Unutilised amounts of the said fund, if any, are kept in Fixed Deposit and the interest is also used for the objectives of the said fund.



- e) The MNRE vide its communication, in reply to the query raised by the applicant, dated 27.09.2019, confirmed that the amounts for the said LAD fund should be collected only from the SPDs. Further the applicant in their financial statement under Note 17 has disclosed that the fund & interest earned on FDs are set aside and shown separately.
- f) Para 8.10 of the Implementation & Support Agreement (ISA), entered by the applicant with the SPDs, stipulates that the Local Area Development Fund amount should be paid by the SPDs, for the purpose of development of village panchayats and other areas; a committee headed by District Collector, Tumkur will be constituted to utilize the fund for achieving its objectives.
- g) The Government of Karnataka issued a G.O. dated 17.10.2019, for formation of committee meant for the purpose of utilization of the Local Area Development Fund. Consequently meeting of the committee, so formed, was held on 25.10.2019 and finalized the area of work to be executed under the said scheme. Accordingly the applicant sought estimate for programmes for disbursal of funds.
- h) In view of the above activities and communications, it is clear that the Applicant is just acting as a custodian of the funds collected from the SPDs and to hand over the same to the committee for disbursement to various projects under the said LAD scheme.
- i) Supply of goods or services or both, as per the provisions of the CGST Act 2017, is a pre-requisite to levy the tax under Section 9(1) of the said Act. All the supplies made to the SPDs by the applicant are covered under para 6 of the ISA and the applicant is discharging GST on all the said supplies.
- j) The activity of collection of amounts towards LAD fund is not in furtherance of business and also the collection of said amounts is in terms of para 8.10 of the ISA for the specified and intended purpose. Therefore it is clear that the applicant does not render any service of Local Area Development to the SPDs, but acts as a custodian of the funds. Hence the said activity of collection of amounts is not towards any supply, in terms of Section 7 of the CGST Act 2017 and accordingly there can't be any levy of GST in terms of Section 9 of the CGST Act 2017. Further the amounts collected from SPDs should not be treated as part of the value of any of the services rendered by the applicant, as this doesn't have any correlation with other services rendered by the applicant.
- k) The activity of collection of amounts from SPDs towards LAD fund, even assumed to be a supply, though not accepting the same, without prejudice to the argument that the said activity is not a supply, the



nature of activities, for which the committee has decided to utilize the fund, is covered under Article 243 G and Article 243 W of the Constitution of India, as the said activities get covered under Sl.No.3 or 3A of the Notification No.12/2017-Central Tax (Rate) as amended and hence are exempted.

- l) The committee, while deciding the activities, agreed to ensure that there should not be any duplication of work undertaken by any authorities, by calling for a meeting of all stakeholders including various Government Departments, MLAs, MPs before finalization of the activities. This proves that the activities undertaken are either the Municipality or Local Panchayat of the relevant areas covered in the scheme. Therefore, even if it is held that money collected are towards supply, the activities are covered under Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 and hence are exempted supplies.
- m) The payments made by the applicant, at the directions of the Committee which constitutes various Governmental Authorities, out of the amount collected towards LAD fund, if the said collection of amount is treated as supply or otherwise, do not amount to supply to the applicant by the Government as there is no applicability of tax on reverse charge mechanism, in terms of Notification No.13/2017-Central Tax (Rate) dated 28.06.2017.
- n) The applicant, concluding the submissions, requests for favorable order that the amount received towards LAD fund is not against any supply made by the applicant and also the payments transferred at the directions of the Committee is not a supply of any service by the Government to the applicant.

7. FINDINGS & DISCUSSION:

7.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri. Ganesh S, Advocate and duly authorised representative of the applicant during the personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

7.2 At the outset, we would like to state that the provisions of both the CGST Act and the KGST 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 KGST Act.

7.3 The applicant claims to be a Government Company in terms of Section 2(45) of Companies Act 2013; acts as Solar Power Park Developer (SPPD) and involved in creation of infrastructure to facilitate Solar Power Developers (SPDs) to



establish solar power generating units & to enable supply of solar power generated for general public at reasonable cost; undertakes the said project under the approval of Ministry of New & Renewable Energy (MNRE) and functions as per the guidelines of the said MNRE.

7.4 The applicant, for the aforesaid project, obtained lands on lease from the farmers of five villages for a period of 28 years and sub-leased the said lands to the SPDs, as per their requirement on the basis of solar power generating capacity, for 28 years to install the solar panels for generation of solar power. The applicant collects rent along with the applicable GST from the said SPDs. The applicant also required to collect an amount of Rs.5,00,000/- per MW capacity, from each SPD after commissioning of solar project, in five yearly installments of Rs 1,00,000/- each, under the guidelines of MNRE, towards Local Area Development Fund, intended to rehabilitation of the affected area.

7.5 The LAD fund so collected by the applicant is kept in a separate account by the applicant and interest, if any, earned on such amounts also added to the said fund. The LAD fund is used for development works of the said villages, under village panchayats, by the Committee formed by the Government of Karnataka, for the specific purpose of utilization of the said fund for local area development with the Additional Chief Secretary, Energy Department, Government of Karnataka as President, the Deputy Commissioner, Tumkur District as a member and the CEO of the applicant as a co-convener, along with three more other members. In view of the above, the applicant sought advance ruling in respect of the questions mentioned at paras 5.1 & 6.1 supra. We take up one question at a time and discuss the issue.

8. The first question is related to the collection of amount towards LAD fund as to whether such collection amounts to supply as per the provisions of CGST/KGST/IGST Act 2017 and if so, whether it is taxable or not. It is an admitted fact that the applicant, being SPPD, has sub-leased the land to the SPDs and is collecting the annual lease rent, which amounts to "Supply" in terms of Section 7(1)(a) of the CGST Act 2017 and is exigible to GST in terms of Section 9(1) of the said Act.

8.1 The applicant contends that the amount collected towards LAD fund is not related to any supply made by them to the SPDs and is intended for the local area development. The applicant endeavours to truncate and separate the said amount from the rental income, to circumvent the tax liability on the said income. We proceed to examine the relevance of the said amount to the supply rendered by the applicant. Thus we invite reference to Section 15(2)(a) of the CGST Act 2017 which, is related to determination of value of supply & stipulates that *the value of supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;*



8.2 It is clearly evident from section 15(2)(a) of the CGST Act 2017 that any amount of any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than the GST related Acts are includible in the value of supply. In the instant case the amount is collected by the applicant from the SPDs under guidelines, issued by Ministry of New & Renewable Energy, Government of India. Further, there is no doubt that the amounts payable, by the SPDs, towards LAD fund are on account of supply made by the applicant & are directly linked to the rent/lease payable and thus are includable in the value of the rental/lease service, being provided by the applicant.

8.3 Further, it is an admitted fact that in case of non-payment of amount towards LAD fund, under clause 8 of the agreement, the applicant has right of termination of lease agreement. The amounts towards the LAD fund are paid by the SPDs to the applicant, though the usage of the same is decided by the Committee formed by the Government of Karnataka for local area development. The service of lease/rent, being provided by the applicant, is a single service and the consideration is payable under two different heads and if any one of these payments is not made, the applicant has the right of termination of the said lease agreement. Hence the amount collected by the applicant, from the SPDs, towards LAD fund forms the value of supply under Section 15 of the CGST Act 2017 and the usage of the said amount would only amount to application of the said amount and still would form the value of taxable services. Therefore, the said amount, so collected, is taxable along with rental income, under forward charge mechanism.

9. The second question is related to the classification of the service under which the collection of amounts towards LAD funds would fall, if said activity is treated as supply. The amounts collected by the applicant towards LAD fund form part of value of the rent/lease service, as discussed in the foregoing paras. The classification of the said activity is nothing but the classification of rent/lease service having SAC 997212.

10. The third question is related to eligibility of the activity of collection of amounts towards LAD funds, if treated as supply of service, for exemption under Sl.No.3 or 3A of Notification 12/2017-Central Tax (Rate) on contention of the applicant that the said activity is covered under Article 243 G or 243 W of the Constitution of India. It is pertinent to mention here that the collection of amount towards LAD fund by the applicant is not a separate transaction but linked to the supply of rental/lease service, as discussed in the foregoing paras. Further the exemption under Sl.No.3 or 3A of the notification *supra* are applicable to only pure services provided to the Central Government, State Government or Union Territory or Local Authority or a Government Entity by way of any activity in relation to any function under article 243 G or 243 W of the Constitution of India. In the instant case the impugned amounts are part of the value of rental/leasing service and are not provided to any Central Government, State Government or Union Territory or Local Authority or a



Government Entity, but by the applicant to the SPDs. Therefore the exemption *supra* is not applicable to the instant case.

11. The fourth and last question is whether the payments made at the direction of the Committee, formed for Local Area Development, be considered as service rendered by Government to Applicant and subject to payment of GST, under Reverse Charge Mechanism (RCM), under Entry No.5 of Notification No.13/2017-Central Tax (Rate) dated 28.06.2017, if the activity of collection of amounts towards LAD fund, by the applicant, is treated as supply or otherwise.

11.1 We proceed to examine whether the instant activity of payments made by the applicant, at the direction of the Committee formed for Local Area Development, amounts to supply of service by Government to Applicant in terms of Section 7(1)(a) of the CGST Act 2017 or not.

Section 7(1)(a) of the CGST Act 2017 stipulates that any transaction must consist the following three components to get qualify as 'Supply'.

- i. The transaction must involve a supply, of goods or services or both, such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made.
- ii. The transaction must be for a consideration by a person
- iii. The transaction must be in the course or furtherance of business.

11.2 In the instant case, the applicant, collects and accounts the amounts collected towards Local Area Development, which form part of value of lease/rental services provided by the applicant to the SPDs. The said Committee merely decides the usage of said fund for the specific intended purpose and the applicant makes the payments accordingly.

11.3 It is observed in the instant case that the Committee merely gives direction to the applicant which is not a transaction involving a supply of goods or services or both, such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made. Further the committee is not in receipt of any consideration for the said directions and is not in the course or furtherance of business. Therefore the activity of giving direction by the Committee does not amount to in terms of Section 7(1)(a) of the CGST Act 2017.

Therefore utilization of the LAD fund amount, under the direction of Committee, for the intended purposes does not involve in supply of any service by the Committee. Further, the Committee is formed under the orders of Government of Karnataka, only for utilization of the LAD fund for local area development. The Committee is not involved in any activity but only decides the utilization of the said fund and hence there is no service involved. Therefore the entry number 5 of the notification *supra* is not applicable to the instant case.



12. In view of the foregoing, we pass the following

R U L I N G

1. The amount collected by the applicant towards LAD fund forms part of value of supply of rental/leasing service and hence is taxable under forward charge mechanism.
2. The applicable SAC for the impugned activity is 997212.
3. The exemption under Sl.No.3 or 3A of Notification 12/2017-Central Tax (Rate) dated 28.06.2017 is not applicable in the impugned activity, as it is not qualify to be a pure service, provided to Central Government, State Government or Union Territory or Local Authority or a Government Entity by way of any activity in relation to any function under article 243 G or 243 W of the Constitution of India.
4. Payment of GST, under Reverse Charge Mechanism (RCM), under Entry No.5 of Notification No.13/2017-Central Tax (Rate) dated 28.06.2017, on the payments made at the direction of the Committee formed for Local Area Development be considered as service rendered by Government to Applicant, is not applicable to the instant case, as the Government of Karnataka / Local Authority are not involved in provision of any service.



(Dr. Ravi Prasad M.P.)

Member

MEMBER

Place : Bengaluru

Date : 18-03-2020

Karnataka Advance Ruling Authority
Bengaluru - 560 009

(Mashhood Ur Rehman Farooqui)

Member

MEMBER

Karnataka Advance Ruling Authority
Bengaluru - 560 009

To,

The Applicant

Copy to :

The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Principal Commissioner of Central Tax, Bangalore East Commissionerate, Bengaluru.

The Asst. Commissioner, LGSTO-150-A, Bengaluru

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