

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

Advance Ruling No. KAR ADRG 11 / 2022

Date : 21-04-2022

Present:

1. Dr.M.P. Ravi Prasad
Additional Commissioner of Commercial Taxes Member (State)
2. Sri. T. Kiran Reddy
Additional Commissioner of Customs & Indirect TaxesMember (Central)

1.	Name and address of the applicant	M/s Keysight Technologies India Pvt. Ltd, 'The Millenia', II Floor, Tower 'D', # 1 & 2, Murphy Road, Ulsoor, Bengaluru-560 048.
2.	GSTIN or User ID	29AAFCK4584R1ZJ
3.	Date of filing of Form GST ARA-01	24-11-2021
4.	Represented by	Ms. Neethu James, Advocate & Authorized Representative
5.	Jurisdictional Authority – Centre	The Commissioner of Central Tax, Bangalore East Commissionerate, Bengaluru. (Range-AED2)
6.	Jurisdictional Authority – State	LGSTO-45, 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 and Rs.5,000/- under KGST Act vide CIN HDFC21112900176683 dated 18.11.2021.

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

M/S. Keysight Technologies India Pvt. Ltd, 'The Millenia', II Floor, Tower 'D', # 1 & 2, Murphy Road, Ulsoor, Bengaluru-560 048, having GSTIN number 29AAFCK4584R1ZJ, 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.

At: Keysight Tech



2. The Applicant is a Private Limited Company, registered under the Goods and Services Act, 2017. They submit that they are engaged in the supply of scientific & technical equipment and time based & perpetual software license(s) to Public Funded Research Institutions registered with Government of India. The applicant has sought advance ruling in respect of the following questions:

a) *Whether software licenses supplied by the applicant qualifies to be treated as Computer Software resulting in supply of goods and are therefore to be classified under Chapter Heading 8523 80 20?*

b) *Whether the benefits of Notifications No.45/2017-Central Tax (Rate), Notification (45/2017) No.FD48 CSL 2017, Bengaluru and Notification No.47/2017-IGST (Rate) all dated 14.11.2017 are applicable to the software licenses supplied by the Applicant to the institutions given in the notification?*

3. **Admissibility of the application** : The applicant, filed the instant application, in relation to applicability of notification & whether their supply amounts to supply of goods, on the issues covered under Section 97(2)(b) & 97(2)(g) of the CGST Act 2017 and hence the application is admitted.

4. **Brief Facts** : The applicant furnished the following facts, relevant to the questions raised in the instant application inter alia stating as under:

4.1 The applicant are engaged in supply of scientific & technical equipment and time based & perpetual software license to Public Funded Research Institutions recognized by Government of India; that in some cases they supply equipment along with software and in some other cases they supply standalone software; that in case where the equipment is supplied along with software, a single invoice with distinct line items, covering goods and software, is raised; that in the case where the software is supplied separately, a standalone invoice is raised separately.

4.2. The Applicant has also furnished the mode of delivery of software to their customers, which is as under:

- a) The customer places the order with the Applicant for an equipment along with the software or for standalone software.
- b) The Applicant sources the required products from other keysight entities outside India.
- c) The applicant acts as a reseller of Keysight products in India

4.3. The applicant submitted that Keysight equipment are used by various research institutions which can be configured to suit the needs of each institution for the same purpose. The equipment may be configured by purchasing various software and in most cases the software is embedded in the equipment. Software can also be downloaded and installed on equipment / hardware supplied by the applicant. Some software can also be downloaded and installed on user's own PC.



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All the software whether embedded in product or downloaded from website of the applicant, require a license to be activated through a license key. The Applicant supplies the following types of software.

- a) Software embedded in the equipment supplied by the Applicant;
- b) Software downloaded and installed in the equipment; and
- c) Software downloaded and installed on the Personal Computer (PC)

4.4. License key(s) are delivered, as per customer's request, either through e-mail (E-delivery), Paper Certificate or Tangible Media (CD-ROM or USB drive) by the applicant. Customer must activate the license by visiting Keysight website and once the license is activated a license file is generated and is required to be installed on the equipment or PC. If the customer is purchasing an equipment along with required software, then the software is factory installed and factory activated.

4.5 The applicant is appointed, as a reseller of Keysight products in India, by the principal partner M/s Keysight Technologies Inc., USA in terms of the reseller agreement and thus the applicant is a distributor of Keysight products in the territory of India. Thus the applicant procures the products from their principal partner and supplies to the customers in India. The applicant, in all cases, is a reseller of software and does not own the IPRs for the said software supplied.

4.6 The applicant, in terms of EULA (End User License Agreement) shall not

- Copy, merge or transfer copies of the software or the documentation except as may be expressly and specifically authorised in the said agreement
- Modify, under any circumstances, reverse engineer, decompile, disassemble or otherwise attempt to discover, reconstruct or identify the source code for the software or any user interface techniques, algorithms logic, protocols or specifications included, incorporated or implemented therein and
- Modify, port, translate or create derivative works of the software.

4.7 The EULA is entered between the Keysight Technologies Inc. and the Customer, as per which the usage of the Keysight software is governed. Applicant quoting the standard EULA, emphasising the clauses 3 & 7, with regard to the ownership of software, stated that it is evident from the reseller agreement and the EULA that the software supplied by them is a package software and not tailor made one, to suit individual requirement and that the said software is 'pre-designed' and 'pre-developed' and sold without any customisation and the usage of the software is controlled through 'encryption keys' and the software is not developed for any specific client and the same software is sold to all the clients as it is 'pre-designed' and 'pre-developed'.



4.8 The applicant, on the supply of software to the Public Funded Research Institutions and Institutions registered with Government of India, is presently charging GST at the rate of 18% as per sl.no.17(ii) of Notification No.11/2017-CGST (Rate) dated 28.06.2017 treating it as supply of service under SAC 9973 as the supply of software i.e. right to use a certain intellectual property in the form of software clearly amounts to supply of services in terms of entry number 5(c) of Schedule II of the CGST Act 2017.

4.9 The applicant submitted that the institute, to whom they have supplied the software licenses & charged GST at 18%, have disputed the payment of GST at the rates charged by them. It is their (Customer/institutions) understanding that the supply of software license is covered under 'computer software' as specified in Notification No.45/2017-Central Tax (Rate) dated 14.11.2017 and is taxable at the concessional GST rate of 5%, as the said software is purchased and used for research purpose only.

5. Applicant's interpretation of Law:

5.1 The applicant contends that their supply of software licenses shall qualify as supply of goods, on the following grounds.

- a) Notification No.45/2017-Central Tax (Rate) dated 14.11.2017 stipulates concessional rate of 5% GST (CGST 2.5% & SGST 2.5%) on goods listed under column 3 of the said Notification, which include "Computer Software". The term "Computer Software" has not been defined either under CGST/KGST Act 2017, whereas the term "goods" has been defined under Section 2(52) of the CGST Act 2017 to mean "every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply".
- b) The purpose of the aforesaid notification is to offer a reduced rate of GST to certain institutions for the purpose of furtherance of research and therefore exclusion of computer software on merely technical grounds would defeat the purpose of the said notification.
- c) The Hon'ble Apex Court in the case of Tata Consultancy Services Vs State of Andhra Pradesh [2004(178)ELT 22 (SC)], while dealing the question whether the 'canned software' can be termed to be 'goods' and as such assessable to sales tax under Andhra Pradesh General Sales Tax Act, 1957, held as under:

24. A "goods" may be a tangible property or an intangible one. It would become goods provided it has the attributes thereof having regard to (a) utility (b) capable of being bought and sold (c) capable of transmitted, transferred, delivered, stored and possessed. If a software whether customized or non-customised satisfies these attributes, the same would be goods".



- d) The Explanatory Notes to the Scheme of Classification of Services under GST stipulates that the services of limited end-user licence as part of packaged software are excluded from the SAC 997331, which covers Licensing services for the right to use computer software and databases.
- e) The FAQ issued for GST on Information Technology (IT) and IT Enabled Services (ITES) vide question 1 states as under:

Question 1: Whether software is regarded as goods or services in GST?

Answer : In terms of Schedule II of the CGST Act 2017, development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software and temporary transfer or permitting the use or enjoyment of any intellectual property right are treated as services.

But, if a pre-developed or pre-designed software is supplied in any medium/storage (commonly bought off-the-shelf) or made available through the use of encryption keys, the same is treated as a supply of goods classifiable under heading 8523.

- f) In the instant case, the software license(s) supplied by the applicant is generally used by the customer for designing/validating/manufacturing the parts/systems in industries like Aerospace and defence, Automotive and Energy, Communications, Education and Heavy Equipment, Machinery etc., and hence the same could be used by the customers in different fields depending on their requirement. Further the said software license(s) is a package software and not tailor made one, to suit individual requirement and these software are “pre-designed” and “pre-developed” and the usage is controlled through “encryption keys”.
- g) A software licence may not qualify as “goods”, if a strict interpretation of the word “goods” is used, as it should be classified as a supply of services and therefore such supplies of software licenses may be out of the ambit of the above mentioned notifications. However, the notification themselves have specific inclusion for “Computer Software” which itself is described under the head of goods. Further the software licenses supplied by them can’t be used without the aid of the computer and has to be loaded on a computer and as well as on the Keysight Equipment and then after activation, would become usable and hence the goods supplied is “computer software” and more specifically covered under “Application Software”. Hence the supply made by the applicant is covered under “supply of goods” and the goods supplied are covered under the HSN 8523.

- h) In view of the above, the applicant submits that the "Computer Software" supplied by them qualifies to be treated as "Goods".

5.2 The applicant contends that they are eligible for concessional GST rate of 5% on 'computer software' in terms of Notification No.45/2017-Central Tax (Rate) dated 14.11.2017, on the grounds that their customers are mainly Government Departments, Public Funded Research Institutions and Public Sector Undertakings; that the institutions to whom they have supplied have issued certificates to that effect from an officer not below the rank of the Deputy Secretary to the Government of India or the Deputy Secretary to the State Government or the Deputy Secretary in the Union Territory certifying that the goods supplied by the Applicant are purchased for research purpose only.

5.3 The applicant further contends that this Hon'ble Authority has answered similar questions in an identical factual situation, which have been raised in the present application, in affirmative in the cases of **Solize India Technologies (P) Ltd.**, and **SPSS South Asia Pvt. Ltd.**. The Hon'ble Authority, in the said cases has ruled that the software sold by the applicants is a pre-developed or pre-designed and made available through the use of encryption keys and hence it satisfies all the conditions that are required to cover them under the definition of "goods". Further, the goods which are supplied by the applicant can't be used without the aid of the computer and has to be loaded on a computer and then after activation, would become usable and hence the goods supplied is "Computer Software" and more specifically "Application Software". The Explanatory Notes to the Scheme of Classification of Services stipulates that the services of limited end-user licence as part of packaged software are excluded from the SAC 997331. Thus the supply made by the applicant is covered under "Supply of goods".

Though the Advance Rulings are applicable only to the respective applicants, the principles and rationale applied in the cases cited supra can be applied to the instant case as the facts and activities are similar in nature. Therefore the "Computer Software" supplied by the applicant qualifies to be treated as "goods" and covered by the Notification mentioned above and consequently, the concessional GST rate of 5% is available.

PERSONAL HEARING

6. Ms. Neethu James, Advocate & Authorized Representative of the applicant appeared for personal hearing proceedings held on 10.02.2022 before this authority & reiterated the facts narrated in their application.

FINDINGS & DISCUSSION

7. We have considered the submissions made by the applicant in their application for advance ruling. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts. At the outset, we would like to state that the provisions of both the CGST Act and the KGST Act

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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.

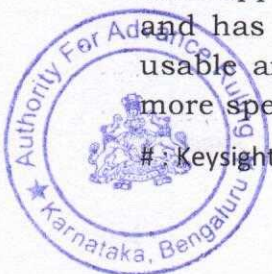
8. The applicant submitted that they are resellers / distributors of Keysight products of the principal partner M/s Keysight Technologies Inc., USA in terms of the reseller agreement, in India. Thus the applicant procures the products from their principal partner and supplies to the customers in India. The applicant, in all cases, is a reseller of software and does not own the IPRs for the said software supplied. In view of this the applicant sought advance ruling in respect of the questions mentioned at para 2 supra.

9. The applicant submitted that they supply software license(s) to their customers for downloading the said software through internet and the usage of the said software is controlled through "encryption keys"; the said software is a packaged software but not tailor made one, to suit individual requirement and these software are "pre-designed" and "pre-developed"; they are charging 18% GST on their supply of software licence to the Public Funded Research Institutions and Institutions registered under Government of India in terms of entry No.17(ii) of Notification 11/2017-Central Tax (Rate) dated 28.06.2017 on treating the said supply as supply of service, classifying the same under SAC 9973, as the supply of software i.e. *the right to use a certain intellectual property in the form of software* clearly amounts to supply of services in terms of entry 5(c) of Schedule II of the CGST Act 2017.

10. The applicant, however, contended that their supply of software licence(s) qualifies to be "Supply of goods" on the grounds that as per the Explanatory Notes to the Scheme of Classification of Services ***SAC 997331*** excludes the services of ***limited end-user licence as part of packaged software***. The applicant further contends that the said supply is entitled for concessional rate of GST @ 5%, in terms of the Notification No.45/2017-Central Tax (Rate) dated 14.11.2017. In this regard, the applicant relied upon the decision of the Hon'ble Supreme Court in the case of Tata Consultancy Services Vs. State of Andhra Pradesh [2004 (178)ELT 22 (SC)] and also the Explanatory Notes to the scheme of classification of services under GST.

11. In view of the above, the issue before us to decide is the classification of the supply of software licence by the applicant i.e. whether it amounts to supply of goods or services. We observe that the software supplied by the applicant is a pre-developed or pre-designed software and made available through the use of encryption keys and hence it satisfies all the conditions that are required to be satisfied to cover them under the definition of 'goods'. Further the goods which are supplied by the applicant cannot be used without the aid of the computer and has to be loaded on a computer and then after activation would become usable and hence the goods supplied qualifies to be "Computer Software" and more specifically covered under "Application Software". Further the Explanatory

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Notes to the Scheme of Classification of Services stipulates that *the SAC 997331 covers Licensing services for the right to use computer software and databases* but excludes the services of *limited end-user licence as part of packaged software* from the said SAC. Hence the supply made by the applicant is covered under "Supply of goods" and the said supply is covered under tariff heading 8523.

12. Now we proceed to examine the applicability of the Notification **No.45/2017-Central Tax (Rate) dated 14.11.2017**, to the impugned supply, which is issued in exercise of powers conferred under Section 11(1) of the CGST Act 2017, which exempts the goods specified in column (3), when supplied to the institutions specified in the corresponding entry in column(2), subject to the conditions specified in the corresponding entry in column(4) of the table of the said Notification.

13. The notification supra exempts the goods, among others, such as computer software, Compact Disc-Read Only Memory (CD-ROM), recorded magnetic tapes, microfilms, microfiches, when supplied to Public funded research institution other than a hospital or a university or an Indian Institute of Technology or Indian Institute of Science, Bangalore or a National Institute of Technology/Regional Engineering College, subject to the following conditions.

(i) The goods are supplied to or for –

(a) a public funded research institute or a University or an Indian Institute of Technology or Indian Institute of Science, Bangalore or a Regional Engineering College, other than a hospital subject to the condition that such institutions are under the administrative control of the Department of Space or Department of Atomic Energy or the Defence Research Development Organisation of the Government of India and such institution produces a certificate to that effect from an officer not below the rank of the Deputy Secretary to the Government of India or the Deputy Secretary to the State Government or the Deputy Secretary in the Union Territory in the concerned department to the supplier at the time of supply of the specified goods or

(b) an institution registered with the Government of India in the Department of Scientific and Research and such institution produces a certificate from an officer not below the rank of the Deputy Secretary to the Government of India or the Deputy Secretary to the State Government or the Deputy Secretary in the Union Territory in the concerned department to the supplier at the time of supply of the specified goods



(ii) The institution produces, at the time of supply, a certificate to the supplier from the Head of the Institution, in each case, certifying that the said goods are required for research purpose only.

14. The applicant contends that computer software is described as goods in the notification supra and hence the term goods is more generic in nature; the purpose of the notification is to offer a reduced rate of GST to certain institutions for the purpose of research or furtherance of research and hence exclusion of computer software on mere technical grounds would defeat the purpose of the notification and thus claims that they are entitled to the benefit of notification supra.

15. The applicant furnished the copy of invoice raised relevant to the respective transaction wherein they supplied the software licence to Research and Development Establishment (Engineers), Pune, along with a copy of certificate issued, under Notification No.47/2017-Integrated Tax (Rate) dated 14.11.2017, by the Director, R&DE, (ENGRS), Pune, who is holding the rank in the pay scale higher than that of the Deputy Secretary to Government of India. from which it is observed that the said Institution falls under 'Public funded research institution' and is under the administrative control of Department of Defence Research & Development of the Government of India. It is also certified, in the said certificate, that the goods under purchase, for which GST exemption is claimed, are required for research purpose only, which fulfills the conditions at Colum (4) of the Notification No.45/2017-Central Tax (Rate) dated 14.11.2017 or Notification No.47/2017-Integrated Tax (Rate) dated 14.11.2017

The extract of relevant portion of the Notification supra is appended below:

S. No.	Name of the Institutions	Description of the goods	Conditions
(1)	(2)	(3)	(4)
1	Public funded research institution or a University or an Indian Institute of Technology or Indian Institute of Science, Bangalore or a Regional Engineering College, other than a hospital	<p>(a) Scientific and technical instruments, apparatus, equipment (including computers);</p> <p>(b) accessories, parts, consumables and live animals (experimental purpose);</p> <p>(c) computer software, Compact Disc-Read Only Memory (CD-ROM), recorded magnetic tapes, microfilms, microfiches;</p> <p>(d) Prototypes, the aggregate value of</p>	<p>(i) The goods are supplied to or for –</p> <p>(a) a public funded research institution under the administrative control of the Department of Space or Department of Atomic Energy or the Defence Research Development Organisation of the Government of India and such institution produces a certificate to that effect from an officer not below the rank of the Deputy Secretary to the Government of India or</p>



	<p>prototypes received by an institution does not exceed fifty thousand rupees in financial year.</p>	<p>the Deputy Secretary to the State Government or the Deputy Secretary in the Union Territory in the concerned department to the supplier at the time of supply of the specified goods; or</p> <p>(b) an institution registered with the Government of India in the Department of Scientific and Industrial Research and such institution produces a certificate from an officer not below the rank of the Deputy Secretary to the Government of India or the Deputy Secretary to the State Government in concerned department to the supplier at the time of supply of the specified goods;</p> <p>(ii) The institution produces, at the time of supply, a certificate to the supplier from the Head of the Institution, in each case, certifying that the said goods are required for research purposes only;</p> <p>(iii) In the case of supply of live animals for experimental purposes, the institution produces, at the time of supply, a certificate to the supplier from the Head of the Institution that the live animals are required for research purposes and enclose a no objection certificate issued by the Committee for the Purpose of Control and Supervision of Experiments on Animals</p>
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16. The Notification No.45/2017- Central Tax (Rate) dated 14.11.2017 and Notification No.47/2017-Integrated Tax (Rate) dated 14.11.2017 stipulates the rate of CGST / IGST @ 5%, if the goods of computer software is supplied to

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public funded research institutions subject to fulfillment of the conditions prescribed under column 4 of the said notification. In the instant case the applicant is supplying computer software to a public funded research institution, under the administrative control of DRDO, Government of India. Further the said institute has also furnished a certificate as required to fulfill the required condition.

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

R U L I N G

- a) *The software supplied by the applicant qualifies to be treated as Computer Software resulting in supply of goods and are therefore be classified under Chapter Heading 8523 80 20.*
- b) *The benefits of Notifications No.45/2017-Central Tax (Rate), Notification (45/2017), No.FD48 CSL 2017, Bengaluru and Notification No.47/2017-IGST (Rate) all dated 14.11.2017 are applicable to the computer software supplied by the Applicant to the institutions given in the notification, subject to fulfillment of the conditions of the notification, in each case.*



(Dr. M.P. Ravi Prasad)

Member

Karnataka Advance Ruling Authority

Place : Bengaluru - 560 009

Date : 21-04-2022



(T. Kiran Reddy)

Member

MEMBER

Karnataka Advance Ruling Authority

Bengaluru - 560 009

To,

The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Central Tax, Bengaluru East Commissionerate, Bengaluru.
4. The Asst. Commissioner, LGSTO-45, Bengaluru.
5. Office Folder.



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