

**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 15 / 2021

Date : 24-03-2021

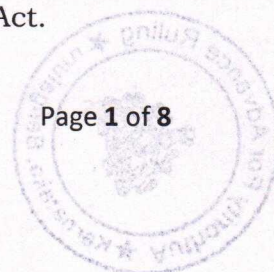
Present:

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

1.	Name and address of the applicant	M/s SPSS South Asia Pvt. Ltd., # 2353/1-4, 'Dolphin', 4 th Floor, Hennur Main Road, Opp. Harmony Apartments, Kacharakanahalli, Bangalore-560043.
2.	GSTIN or User ID	29AADCS8134M1ZT
3.	Date of filing of Form GST ARA-01	16-10-2020
4.	Represented by	Sri. Tushar Jalan, GSTP & Authorized Representative
5.	Jurisdictional Authority - Centre	The Commissioner of Indirect Taxes, Bangalore East Commissionerate, (Range-EED4)
6.	Jurisdictional Authority - State	LGSTO-55, 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 HDFC20092900331133 dated 23.09.2020

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

M/S. SPSS South Asia Private Limited, #2353/1-4, 'Dolphin', 4th Floor, Hennur Main Road, Opp. Harmony Apartments, Kacharakanahalli, Bangalore-560043 having GSTIN number 29AADCS8134M1ZT, 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 Private Limited Company, registered under the Goods and Services Act, 2017 and is an authorized reseller for various IBM SPSS Software in India. The applicant is a pure trader in such software and does not develop / modify any software prior to selling it to a customer. The applicant has sought advance ruling in respect of the following question:

- a) Does the supply of licenses for internet downloaded software fall within the ambit of Notification No.47/2017-Integrated Tax (Rate) dated 14th November 2017.
- b) Does the supply of licenses for internet downloaded software fall within the ambit of Notification No.45/2017-Central Tax (Rate) dated 14th November 2017?

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

4. The applicant furnishes the following facts, relevant to the questions raised in the instant application, that they are the authorized resellers for various IBM SPSS Software in India; they are providing various statistical modelling software to various publicly funded research entities; they are a pure trader in such software and do not develop/modify any software prior to selling it to a customer and such software is used for advanced statistical modelling and assists various scientific and research institutions.

5. The Applicant has also furnished the process of providing the software to their customers, which is as under :

5.1 The Applicant receives a PO, from a customer, that confirms the order for the software.

5.2 The Applicant in turn issues a PO and places an order for the software license from its principle in Singapore.

5.3 The Applicant receives the software license and invoice from its principle in Singapore.

5.4 The purchase of such software license is treated as an import of service and GST is paid on reverse charge basis accordingly.

5.5 The Applicant provides a download link to the software that provides the software license code to its customer.



5.6 The applicant also provides a physical backup CD containing the software. The Backup copy of software is for Customers convenience only. At certain times due fluctuation in bandwidth or any other technical reason, customers face difficulties in downloading the software and in that case, they can use the CD provided. Furthermore, in Government Institutions and certain institutions, they prefer a CD for Inventory record purpose.

5.7 The Applicant has stated that they are currently billing the software under the HSN code 997331.

6. Applicant's interpretation of Law:

6.1 The Applicant stated that the Ministry of Finance vide Notification No. 45/2017-Central Tax (Rate) and Notification No. 47/2017-Integrated Tax (Rate) dated 14th November 2017 has provided for a reduced rate of tax when certain supplies are made to various public funded scientific and research institutions.

6.2 Further, the following explanation to the above mentioned notifications, gives meaning to "Public funded research institution", which is as under:

Explanation. - For the purposes of this notification, the expression, - (a) "Public funded research institution" means a research institution in the case of which not less than fifty percent of the recurring expenditure is met by the Central Government or the Government of any State or the administration of any Union territory;

6.3 The Applicant states that since the goods are supplied to a public funded research institution under the administrative control of the Department of Space or Department of Atomic Energy or the Defence Research Development Organization 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 Applicant at the time of supply of the specified goods. Further the applicant furnished a sample copy from National Institute of Science Education and Research, Bhubaneswar and contends that they are eligible for concessional rate of tax on supply of goods at the rate of 5%.

Accordingly, the Applicant is of the view that if their products fall under the "Description of Goods" they should be able to supply at a reduced rate of GST and the "goods", include computer software, Compact Disc-Read Only Memory (CD-ROM), recorded magnetic tapes, microfilms, microfiches.

6.4 The applicant, with regard to the issue whether the supply of software licenses is a supply of Goods or Services, stated as under:

The word "goods" is defined in Section 2(52) of the CGST Act 2017, as under:



“goods” means 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;”

6.5 Further, in Schedule II, of the CGST Act, 2017, entry deems certain supplies to be supply of services. Amongst this, entry 5(c) states the following:

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

6.6 The applicant are of the opinion that since they are supplying a software license i.e. the right to use a certain intellectual property in the form of software, it should fall under the above-mentioned definition and therefore should be a supply of services. Accordingly, the Applicant is supplying such software licenses under HSN code 997331.

6.7 The Applicant has mentioned that as per Sectoral FAQs, in terms of Schedule II of the CGST Act 2017, development, design, programming, customisation, 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. Thus, the Applicant has stated that sale of software licenses through the medium of the internet should be a supply of services.

Therefore, if a strict interpretation of the word “Goods” (as used in the notification) is used, a software license may not qualify 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.

6.8 The Applicant is of the view that the notifications themselves have a specific inclusion for “Computer Software” which itself is described under the head of goods.

6.9 Furthermore, the purpose of these notifications is to offer a reduced rate of GST to certain institutions for the purposes of furtherance of research and therefore exclusion of computer software on merely technical grounds would defeat the purpose of the notification.

6.10 Therefore, applicant contends that supply of licenses for internet downloaded software fall within the ambit of the above mentioned notifications and therefore the applicant can charge a reduced rate of tax when supplies of internet



downloaded software are made to various public funded scientific and research institutions.

PERSONAL HEARING: / PROCEEDINGS HELD ON 15-12-2020

7. Sri. Tushar Jalan, GSTP & Authorized Representative of the applicant appeared for personal hearing proceedings held on 15-12-2020 before this authority & reiterated the facts narrated in their application.

FINDINGS & DISCUSSION

8. 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 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.

9. The applicant filed the instant application in relation to the applicability of the notification No.45/2017-Central Tax (Rate) dated 14.11.2017 to the transaction of supply of IBM SPSS software, a statistical modeling software, in India. It is pertinent to mention here that the applicant, admittedly, supplies licence for internet downloadable software. The Notification supra, issued in exercise of powers conferred under Section (11)(1) of the CGST Act 2017, 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.

10. The notification supra exempts the goods, among others, such as computer software, Compact Disc-Read Only Memory (CD-ROM), recorded magnetic tapes, microfilms, microfiches supplied to 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.

11. The applicant admits that their supply of software licence 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 and hence they adopted the classification SAC 997331 while supplying the said software



licence. However 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.

12. The applicant mentioned a specific instance and furnished the documents relevant to the transaction wherein they supplied the software licence to National Institute of Science Education and Research, Bhubaneswar, along with a copy of certificate issued by Deputy Secretary (R&D), from which it is observed that the said Institution falls under 'Public funded research institution' and is under the administrative control of Department of Atomic Energy (DAE), Government of India. It is also certified, in the said certificate, that "the purchase of goods by the National Institute of Science Education and Research, for which GST exemption is claimed, is required for research purpose only and goods shall be used for such purposes only by the Institute and Institute is not engaged in any commercial activity" which fulfills the conditions at Column (4) of the Notification No.45/2017-Central 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 prototypes received by an institution does not exceed fifty thousand rupees in financial year.</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 the Deputy Secretary to the State Government or the Deputy Secretary in the Union Territory in the concerned department to</p>



		<p>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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13. In view of the above, the core 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 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 supplies is "Computer Software" and more specifically covered under "Application Software". Further 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, that covers **Licensing services for the right to use computer software and databases**. Hence the supply made by the applicant is covered under "Supply of goods" and the said supply is covered under tariff heading 8523.

14. 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 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 National Institute of Science Education and Research, Bhubaneswar, a public funded research institution, under the administrative control of Department of Atomic Energy (DAE), Government of India. Further the said institute has also furnished a certificate as required to fulfill the required condition.

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

R U L I N G

The Notification 45/2017-Central Tax (Rate), dated 14.11.2017 or Notification 47/2017- Integrated Tax (Rate), dated 14.11.2017 are applicable to the transaction / supply of the applicant.


(Dr.Ravi Prasad.M.P.)

Member

Karnataka Advance Ruling Authority

Place: Bengaluru,
Date : 24-03-2021


(Mashhood Ur Rehman Farooqui)

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 Indirect Taxes, Bangalore East Commissionerate, Bengaluru.
4. The Asst. Commissioner, LGSTO-55, Bengaluru.
5. Office Folder.

