

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560009**

Advance Ruling No. KAR ADRG 25/2019

Date : 12-09-2019

Present:

1. Sri. Harish Dharnia,
Additional Commissioner of Central Tax, Member (Central Tax)
2. Dr. Ravi Prasad M.P.
Joint Commissioner of Commercial Taxes Member (State Tax)

1.	Name and address of the applicant	M/s Hical Technologies Pvt. Ltd., Sy.No.46 & 47, Electronic City, Phase 2, Hosur Road, Bangalore - 560100
2.	GSTIN or User ID	29AACCH7296L1ZU
3.	Date of filing of Form GST ARA-01	14.03.2018
4.	Represented by	Sri K.S. Kamalakar, Cost Accountant
5.	Jurisdictional Authority - Centre	The Commissioner of Central Tax, Bangalore South Commissionerate.
6.	Jurisdictional Authority - State	The LGSTO-25, KHB Games Village, Koramangala, Bengaluru -560095
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act & Rs.5,000/- under KGST Act vide CIN SBIN18032900055241 dated 12.03.2018

**ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS & SERVICES
TAX ACT, 2017 AND UNDER 98(4) OF THE KARNATAKA GOODS &
SERVICES TAX ACT, 2017**

1. M/s Hical Technologies Pvt. Ltd., (called as the 'Applicant' hereinafter), Sy.No.46 & 47, Electronic City, Phase 2, Hosur Road, Bangalore 560100, having GSTIN number 29AACCH7296L1ZU, 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 2017 and the KGST Act 2017.



2. The Applicant is a private limited company, registered under the Goods and Services Act, 2017. The applicant have sought advance ruling in respect of the following question:

Whether the value of free of cost supplies by the principal is included in the value of supply by the job worker?

3. The applicant furnishes some facts relevant to the stated activity:

- a. The applicant states that they are engaged in the supply of goods and services and are basically a job worker. They are proposing to undertake a job work activity for M/s Woodward India Private Limited (referred to as WIPL) based on the purchase orders. The job work involves assembly, integration and testing of converters.
- b. The applicant submits that WIPL is proposing to execute two types of purchase orders hereinafter referred to as "Type A" purchase order (PO already issued) and "Type B purchase order" (PO will be issued during the course of the year). Under Type A purchase order, all the components required for assembly and integration of converters will be imported and stocked by WIPL at its registered warehouse in Bangalore. These components will then be supplied to the applicant on free of cost basis for undertaking the job work activity under the cover of a job work challan.
- c. Further, under Type B purchase order, WIPL would import critical components (details of these critical components are attached) from their overseas entity, M/s Woodward, Germany upon payment of applicable customs duties. These components would be stocked by WIPL at its registered premises in Bangalore and supplied to the applicant on need basis on free of cost basis for undertaking the job work activity under the cover of a jobwork challan.
- d. The applicant states that the ownership of these critical components shall always rest with WIPL during the execution of the jobwork activity. WIPL would follow the required procedure of filing the intimation with the jurisdictional Commissionerate as prescribed under section 19 read with rule 45 of the Central Goods and Services Tax Act, 2017 (CGST Act).

- e. The applicant would, in addition, procure remaining components (non-critical items) either locally or by imports which are necessary to complete the job work process. These non-critical items will be procured by the applicant in its own name.
- f. As per the covenants of purchase order, supply of critical components is the responsibility of WIPL and supply of ancillary / non-critical components is the responsibility of the applicant. The term "consideration", the applicant would be eligible for job charges which comprise of labour cost for undertaking job work process and cost of ancillary components added by the applicant during the execution of job work process.
- g. Post completion of job-work activity, the final product would be dispatched to WIPL under the cover of delivery challan. A tax invoice would be raised for the job work charges.

4. The applicant submitted that the term "job worker" is defined under Section 2(68) of the CGST Act, and is as under:

In this Act, unless the context otherwise requires, -

(28) 'Job work' means any treatment or process undertaken by a person on goods belonging to another registered person and the expression 'jobwork' shall be construed accordingly;

- a. The term 'jobwork' has been analysed in plethora of cases under the erstwhile indirect tax regime, Central Excise Law, wherein Courts have held that 'jobwork' means processing or working upon raw materials supplied to the job worker and the definition of job work does not provide all raw materials for manufacture of final product must be supplied by the principal manufacturer. Addition or application of items by jobworker would not change the character of the transaction from jobwork arrangement. The applicant has placed reliance on the various judicial interpretations on the concept of jobwork as it was existing under the Central Excise Act:

- 1. Prestige Engineering (India) Ltd. v. CCE, Meerut [1994 (73) ELT 497 (SC)]
- 2. CC & CCE, Bhopal v. Abhinav Chemicals [2012 (284) ELT 589 (Tri. - Del)]



- b. The present arrangement qualifies as 'jobwork arrangement' and the next important question for determination for which the applicant is before the authority is what should be the value on which the GST is payable by the applicant – whether or not the jobworker is required to add the value of critical components owned and supplied by the Principal on free of cost basis for levy of GST.
- c. In order to determine the value of supply of goods or services, for levy of GST, reference needs to be drawn to the provisions of Section 15(1) of the CGST Act which deals with valuation of taxable supply, the extract of which is as under:

Section 15. Value of taxable supply –

(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include –

(a) 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;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

- d. From the perusal of the above provision, the applicant states, it is clear that the transaction value shall be deemed to be the value of supply when supply is made between unrelated person and price is the sole consideration. This provision defines the transaction value as the price actually paid or payable for the said supply of goods or services or both. As per section 15(2)(b) of the CGST Act, transaction value shall include the amount that the supplier is liable to pay in relation to such supply but has been incurred by the recipient and not included in the price actually paid or payable for such goods or services.
- e. The applicant submits, that in the present case, the applicant and WIPL being unrelated persons the value for levy of GST shall be the job charges which comprise of labour charges and the cost of non-critical components procured and supplied by the applicant during the execution of jobwork. The value of critical components which are owned and supplied by WIPL on free of cost basis should not be added to the value of supply by the applicant for the reasons enumerated as under:

1. Material provided by WIPL was not liable to be procured by the applicant

i. In the instant case, WIPL makes critical components available to the applicant for undertaking jobwork activity. Under the purchase order, these critical components are liable to be procured by WIPL only and not by the applicant. The applicant was not liable to procure such components. Therefore, it cannot be said that the amount incurred by WIPL for purchasing these critical components was an amount that the applicant was liable to incur in relation to undertaking the jobwork process.

ii. Also, at this stage, it is relevant to draw a closer look at who is "liable to pay", as referred under section 15(2)(b) of the CGST Act. Liable to pay is a "contractual term". i.e., to become liable to pay, one has to enter into contract or be a part of contract in some capacity. Furthermore, there should be an express or implied onus on the one to be



“liable to pay”. In express contract, if one person is specified to pay, then he is liable to pay, and if his liability has been paid by someone else, then the payment needs to be added to value under clause (b) above. However, in case by an express clause, it is inserted that “supplier” is not liable to pay, there will be no occasion to go into section 15(2)(b) whatsoever.

- iii. Accordingly, Section 15(2)(b) of the CGST Act, will not apply to the present fact situation as contractually the applicant was not liable to pay for the critical components imported and supplied by WIPL. Moreover, these critical components shall always remain the property of WIPL during the execution of jobwork. Accordingly, the amount incurred by WIPL for purchasing the components will not be added to the assessable value for payment of GST in the hands of the applicant.

2. Goods supplied by WIPL to the applicant is non-monetary consideration.

- i. As discussed above, Section 15(1) of the CGST Act provides that the transaction value shall be the assessable value where supply is made between unrelated person and price is the sole consideration. In this case, WIPL and the applicant are not related. Hence it needs to be determined as to the fact of WIPL making goods available to the applicant ceases to be the sole consideration for supply or not.
- ii. In the instant case, price will not be a sole consideration for supply of the applicant, if the provision of goods by WIPL qualifies as an additional consideration (non-monetary) for such supply.
- iii. The meaning of “consideration” also becomes important; Section 2(31) of the CGST Act defines “consideration” to include any payment made or to be made whether in money or otherwise, in respect of, in response to or for the inducement of the supply. The definition being inclusive in nature, it becomes imperative to understand normal and natural meaning of the term “consideration”.

- iv. Section 2(d) of the Indian Contract Act, 1872 defines the consideration as anything done or abstained from by the promisee as the desire of the promisor. The definition is of wide amplitude and includes within its ambit, any detriment suffered by the promisee or any gain accruing to promisor.
- v. In the case of *Ku. Sonia Bhatia v. State of U.P. and others*, AIR 1981 SC 1274, the Supreme Court has held that consideration means a reasonable equivalent for other valuable benefit passed on by the promisor to the promisee or by the transferor to the transferee. In the light of the above, for something to qualify as consideration, the same should be done for and at the desire of the supplier/ promisor.
- vi. In the present case, WIPL supplies goods to the applicant not at the desire of the applicant nor as a consideration for supply. WIPL supplies the goods to enable the applicant to complete the jobwork process. In case, WIPL does not provide the goods, the applicant will not be able to perform the jobwork activity. Hence, WIPL does not supply goods to the applicant as a consideration for jobwork process.
- vii. Here it is useful to refer to the decision of the Larger Bench of Tribunal in the case of *Bhayana Builders Ltd. v. CST*, 2013 (32) STR 49 (Tri-LB). The Tribunal was dealing with the question of inclusion of value of free of cost supplies in the value of works contract for payment of service tax. The tribunal observed that no part of goods given free of cost by the service receiver accrue to or is retained by the service provider. Hence, such free of cost supplies would not constitute a non-monetary consideration flowing from the service receiver to the service provider. Further, the Hon'ble Supreme Court, in *Commissioner of Service Tax v. Bhayana Builders (P) Ltd* (Civil Appeal No.s 1335-1358 of 2015) dated February 19th, 2018, has dismissed the appeal filed by the revenue against the judgement of the larger bench of Tribunal and this upholds the position of law on inclusion of free of

cost supplies in the value of works contract for payment of service tax.

viii. Further, in the matter of Hindustan Steel Works Construction Ltd. v. CCE, Raipur (2015) 37 STR 1022 (Tri- Del), the issue before the Tribunal was whether the value of free supplies made by the recipient of commercial or industrial construction service required to be disclosed as part of gross consideration received for rendition of taxable construction service. The Principal Bench of Hon'ble Delhi Tribunal relying on the decision of Bhayana Builders Pvt Ltd has held that the same is not required to be added in the gross consideration for levy of service tax.

ix. Relying on the decision of Bhayana Builder (supra), various Tribunals have taken similar views as issue no longer res-integra. Reference may be drawn to the following judicial precedents by various Tribunals:

1. Ahmedabad Tribunal in Harsh Construction vs. Commissioner of Central Excise and Service Tax, Surat (2016) 42 STR 844 (Tri-Ahmd)
2. Ahmedabad Tribunal in Toyota Construction Pvt Ltd vs. Commissioner of Central Excise and Service Tax, Daman (2016) 45 STR 470 (Tri-Ahmd)
3. Mumbai Tribunal in Jaiswal Builders and Contractors vs. Commissioner of Central Excise, Nagpur (2016) 45 STR 440 (Tri-Mum)
4. Mumbai Tribunal in Shapoorji Pallonji & Co. Ltd. vs. Commissioner of Central Excise, Nagpur (2017) 49 STR 588 (Tri-Mum)
5. Delhi Tribunal in Ninawat Construction Company vs. Commissioner of Central Excise, Jaipur (2017) 52 STR 280 (Tri-Del)
6. Delhi Tribunal in Commissioner of Central Excise, Bhopal vs. Sonali India (2014) STR 47 (Tri-Del)
7. Delhi Tribunal in Teknomin Construction Limited vs. Commissioner of Central Excise and Service Tax, Jaipur- II (2017) 4 GSTL 65 (Tri-Del)

8. Chennai Tribunal in SV Engineering Constructions vs. Commissioner of Central Excise and Service Tax, Guntur (2016) 46 STR 589 (Tri-Chennai)

3. Government intention is not to include such free of cost supplies in the valuation for levy of GST. It is relevant to draw reference to the valuation provision contained under the Draft Model GST Law released in the month of June 2016. Under the Model GST Law, there was a specific provision to include the value of free of cost supplies made by the recipient to the supplier whether directly or indirectly. However, in the subsequent Model GST Laws and the Final GST Act, the above section was amended. From the above, it is evident that with the change in the language of the provision contained under section 15(2)(b) of the CGST Act, the intention of the Government was to bring only those free of cost supplies within the ambit of valuation which are the responsibility of the supplier but incurred by the recipient and not to tax those free of cost supplies which are the responsibility of the recipient of goods.
- f. From the jurisprudence, it emerges that the provision of critical components by WIPL to the applicant for undertaking job work process is not an additional consideration flowing from WIPL to the applicant. Thus, the job charges which comprise of labour charges and cost of ancillary components (without adding the value of critical components provided by WIPL) shall be the assessable value for the applicant for payment of GST.
5. The applicant has made further submissions, stating that –
- (1) the applicant is contemplating to enter into an agreement with WIPL for assembly, integration and testing of converters on jobwork basis. The present arrangement contemplates two models:
- (a) Model A – Under this model, all the components required for assembly will be imported and stocked by the Principal and supplied to the applicant on free of cost basis under the cover of jobwork challan.
- (b) Model B – Under this model, the critical components required for assembly work will be imported and stocked by the Principal and supplied to the applicant on free of cost basis under the



cover of jobwork challan. The non-critical components will be purchased and used by the jobworker.

(2) The applicant has not produced any drafts of the agreements as they are yet to be finalized.

(3) the risk and ownership of the components supplied by the Principal shall always rest with the Principal during the execution of jobwork activity and the final product emerging after job work is Wind Power Converter.

6. Section 2(27) of the CGST Act defines a composite supply as a supply comprising of two or more supplies of goods or services which are naturally bundled and supplied with each other in the ordinary course of business, one of which is a principal supply. The items cannot be supplied separately. In case of jobwork, the applicant submits that they do integrate and assemble all critical components with their own materials in which labour is predominant supply and rest of the materials supplied with main activity of labour charges. Hence he is charging GST at 18% under Service Accounting Code 9988 – Manufacturing Services on physical inputs (goods) owned by others.

7. Further, the applicant has brought to the notice the Circular issued by the CBEC – Circular No.38/12/2018 dated 26th March, 2018, which has clarified various aspects relating to jobwork. The Circular at Para 5 – Scope/ Ambit of Jobwork” has clarified that the jobworker in addition to the goods received from the Principal can use his own goods for providing services of jobwork. Further, at para 9.4, it has been clarified that the value of services would be determined in terms of section 15 of the CGST Act and would include service charges plus the value of goods supplied by the jobworker to the principal.

From the above, it emerges that:

- (a) A jobworker can use non-critical components during the execution of the jobwork activity
- (b) The value of levy of CGST shall be the service charges plus the value of goods supplied by the jobworker

PERSONAL HEARING / PROCEEDINGS HELD ON 21.03.2018.

8. Sri Kamalakar, Cost Accountant and duly authorised representative of the applicant appeared for personal hearing proceedings held on 21.03.2018 & reiterated the facts narrated in their application. Further additional hearing was granted, at the request of the applicant, on 03.04.2018 and the authorized representative of the applicant appeared and submitted copies of certain relevant documents.

9. FINDINGS & DISCUSSION:

9.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri Kamalakar, Cost Accountant 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.

9.2 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.

9.3 The Applicant seeks advance ruling in respect of the question mentioned at para 2 supra. The following questions emerge on examination of the transactions & contentions of the applicant.

- i. whether the work done by the applicant is a job work or a composite supply of service and goods?
- ii. What is the value of such supply?

9.4 We draw attention to Section 2(68) of the CGST Act 2017, in relation to the first question, which defines "jobwork" and the same is as under:

(68) "job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly;

In terms of the aforesaid definition any treatment or process done on goods belonging to another person is job work and in the instant



case the applicant is not just doing something on the critical components. The contract is to supply a manufactured product, some of the parts are supplied free of cost by the recipient of such supply and some other parts are to be procured by the applicant. Both these components are to be assembled together using the labour of the applicant to form the final product. No treatment or process is done on the components supplied by the applicant and in fact they are used as a part in the manufacture of a different component.

- (a) The activity done by the applicant is of a composite supply of goods and services with the manufacturing services of assembling, integrating and testing of the final product being the principal supply. The supply of this service involves the usage of the materials provided by the WIPL in the form of critical components and without this there cannot be any final supply. There is also another supply of non-critical components which is also involved in the provision of this manufacturing service. But this is not the principal supply as this is naturally bundled with the supply of manufacturing services. Hence the supply of the applicant can be classified as a composite supply of manufacturing services with two supplies - one related to the supply of services of assembly, integration and testing and the other related to the supply of non-critical components, for a single price, with the supply of services being the principal supply.
- (b) The pronouncements of various Tribunals and judgements are not applicable to the present case, as they were issued under the earlier Service Tax Laws where the supply of goods were not under the purview of the Service Tax Act and was governed by the Value Added Tax Act as works contract.
- (c) The contract is for the assembly, integration and testing of the Wind Power Converter and the critical components are provided by the WIPL. The same are accreted to the service which is a manufacturing service and this amounts to job work. During this process, the components being non-critical components procured by the applicant are also incorporated in the manufacturing service provided by the applicant and hence accreted to the service. In no stretch of imagination, this would become the principal supply as it is only in relation to the principal supply of manufacturing service, this supply of goods are linked.

- (d) Hence, in view of the above discussion, the nature of supply done by the applicant is one composite supply consisting of two supplies i.e one relating to the manufacturing service on the physical inputs (goods) owned by others (Service Accounting Code 9988) and the other relating to supply of non-critical components, with the former being the principal supply. Hence the entire transaction is to be treated as the supply of manufacturing service on the physical inputs (goods) owned by others (Service Accounting Code 9988) and is taxable at the rate applicable to the same at 18%. The value of the goods provided by WIPL would not form the part of the value of the supply and must be excluded while valuing the supply.
- (e) But in case, the prospective contract is of a supply of finished goods, for a value inclusive of the components supplied by WIPL, then the supply would be a composite supply of finished components, with testing and other services being non-principal ancillary supplies. This is not considered as the applicant stated that there would not be any risk on the critical components on him.

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

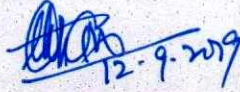
RULING

As per the submissions made regarding the covenants of the contract by the applicant,

1. The nature of supply done by the applicant is one composite supply consisting of two supplies - one relating to the manufacturing service on the physical inputs (goods) owned by others (Service Accounting Code 9988) and the other relating to supply of non-critical components, with the former being the principal supply. Hence the entire transaction is to be treated as the supply of manufacturing service on the physical inputs (goods) owned by others (Service Accounting Code 9988) and is taxable at the rate applicable to the same at 18%; and



2. The value of the goods provided by WIPL would not form the part of the value of the supply and must be excluded while valuing the supply.


12-9-2019

(Harish Dharnia)
Member



(Dr. Ravi Prasad.M.P.)
Member

Place : Bengaluru,

Date : 12-09-2019

To,

The Applicant

Copy to :

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

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Commissioner of Central Tax, Bangalore South Commissionerate,
Bengaluru.

The Asst. Commissioner, LGSTO-25, KHB Games Village, Koramangala,
Bengaluru -560095

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