

**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 30/ 2021

Date : 08-06-2021

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 UDUPI NIRMITI KENDRA, Rajatadri, DC Office Complex, End Point Road, Manipal, Udupi District- PIN 576104
2.	GSTIN or User ID	29AAATU1950D1ZK
3.	Date of filing of Form GST ARA-01	28.09.2020
4.	Represented by	Sri Ramachandra Bhat, Chartered Accountant and Duly Authorised Representative
5.	Jurisdictional Authority - Centre	The Principal Commissioner of Central Tax, Mangalore GST Commissionerate
6.	Jurisdictional Authority - State	ACCT,LGSTO-280, Udupi
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 SBIN20082900278350 dated 25.08.2020

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

1. M/s Udupi Nirmithi Kendra, Rajatadri, DC Office Complex, End Point Road, Manipal, Udupi District- PIN 576104 (hereinafter called as the 'applicant'), having GSTIN number 29AAATU1950D1ZK, have filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 read with Rule 104 of the CGST Rules, 2017 and Section 97 of the KGST Act, 2017 read with Rule 104 of 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 trust and is involved in executing civil works contract. He has sought advance ruling in respect of the following question:

Interpretation of the term "a contract" for TDS applicability under section 51 of the GST Act.

In the absence of any contract, or contract of continuous supply, whether TDS provisions under section 51 is applicable for every supply of goods and services? Or whether the single tax invoice shall be considered as "a contract" or aggregate value of purchase from a vendor for the whole year be considered as a contract?

3. **Admissibility of the application** : The applicant, filed the instant application, in relation to application of a notification and this question is related to the issue covered under Section 97(2)(a) of the CGST Act 2017 and hence the application is admitted.

4. **Applicant's interpretation of law** : The applicant submits their interpretation of law as under:

4.1 The applicant states they are a society registered under the Karnataka Societies Registration Act, 1960 and are dealing with innovative ideas in order to minimise the cost of housing for the purpose of benefitting the public. In this process they do purchase of goods and services.

4.2 As per Notification No. 50/2018- Central Tax dated 13.09.2018, they are bound by the CGST provisions under section 51 for the purpose of TDS. However, they stated that they are confused with the intended meaning of the term 'a contract' as they do not have any contract with any supplier. As and when society's activities demand, they procure the goods and services. They do not have any sort of fixed terms on rate/ credit period/ discount/ support services.

4.3 The applicant explains the practical scenarios as under:

1. Procure goods and services on need basis without any contract, i.e. at the prevailing terms and conditions (at the time of purchase). The value of such supply under single invoice is more than the threshold limit of Rs.2,50,000.00.
2. Procure goods and services on need basis without any contract i.e. at the prevailing terms and conditions (at the time of purchase). The value of such supply under single invoice does not exceed the threshold limit of Rs.2,50,000-00. However, the total purchase in a year exceeds this limit.
3. Procure goods and services on call off basis under the terms and conditions of the agreement of continuous supply and the value of the single invoice as well as total annual supply is less than the threshold limit of Rs.2,50,000-00.
4. Procure goods and services in call off basis under the terms and conditions of the agreement of continuous supply and the value of single invoice is less than



the limit, but the annual supply is more than the threshold limit of Rs.2,50,000-00.

4.4. The applicant states that the TDS provisions are required to be interpreted differently for each of scenarios given above as under:

1. Value of supply exceeds the limit, but there is no existence of "a contract". However, tax invoice itself shall be considered as "a contract" and TDS shall be applied.
2. Value of total supply during the year exceeds the limit, but there is no existence of "a contract". Each tax invoice shall be considered as "a contract" and value of such supply under "a contract" not exceeds the limit. Annual value of supply from the supplier shall not be considered as supply under "a contract". No TDS provisions applicable.
3. Value of total supply under "a contract: not exceeded the threshold limit, No TDS provisions applicable
4. Value of total supply under "a contract" exceeds the limit. TDS shall be applied when the aggregate value exceeds Rs.2.50.000-00.

4.5 The applicant states that he is of the opinion that in the absence of "a contract" no TDS is required to be deducted when the value of an invoice is below Rs.2,50,000-00.

5. The applicant has brought to the notice of provisions of Section 51(1) of the GST Act, and Notification No.50/2018- Central Tax dated 13.09.2018 and stated that no explanation was given for the term "a contract" in the said notification nor the GST Act has define the term "a contract" elsewhere. He has also brought to the notice of section 4 of the Sale of Goods Act, 1930, as stated as under:

"As per Section 4 of the Sale of Goods Act, 1930, Sale and agreement to sell are defined as under:

- (1) "a contract" of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one-part owner and another.
- (2) A contract of sale may be absolute or conditional
- (3) Where under a contract of sale the property in goods is transferred from the seller to the buyer, the contract is called sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.
- (4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred

5.1 The applicant states regarding the formalities of the contract, as under:

"Section 5 of the Sale of Goods Act, 1930 defined Contract of Sale as

- (1) "a contract" of sale is made by an offer to buy and sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed.
- (2) Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.

The combined readings of GST Act, 2017, Contracts Act, 1872 and Sale of Goods Act, 1930, the applicant stated that his understanding is that "absence of a contract means absence of commitment for past, present and or future period between the parties, every supply is subject to the respective purchase order, therefore, under such circumstances, each tax invoice shall be construed as "a contract" for the purpose of TDS/ TCS with respect to the provisions of Section 51.

5.2 The applicant further states that the publication reference by the Directorate General of Taxpayer Services, CBIC explained that :

"an invoice is a commercial instrument issued by a seller to a buyer. It identifies both the trading parties and lists, describes and quantifies the items sold, shows the date of shipment and mode of transport, prices and discounts, if any, and delivery and payment terms. In certain cases, (especially when it is signed by the seller or seller's agent), an invoice serves as a demand for payment and becomes a document of title when paid in full. Types of invoice includes commercial invoice, consular invoice, customs invoice, and proforma invoice. It is also called a bill of sale or contract of sale GST Tax Invoice.

As per GST Rule 46(q), Tax Invoice must be having signature or digital signature / electronic signature of the supplier or his authorised representative. According each invoice shall constitute as an individual contract."

PERSONAL HEARING: / PROCEEDINGS HELD ON 16-12-2020

6. Sri. Ramachandra Bhat, Chartered Accountant & duly authorised representative of the applicant appeared for personal hearing proceedings and reiterated the facts narrated in their application.

7. The Office of Commissioner of Central Excise and Central Tax, Mangaluru has filed their opinion and comments which are as under:



"As per Section 51(1) of the CGST/SGST Act, 2017, read with Notification No.50/2018- Central Tax dated 13.09.2018, the following persons are required to deduct the tax:

- A. A department or establishment of the Central Government or State Government or
- B. Local Authority; or
- C. Governmental Agencies; or
- D. Such persons or category of persons as may be notified by the Government in the recommendations of the Council namely:
 - (a) An authority or a board or any other body, -
 - (i) set up by an Act or Parliament or a State Legislature; or
 - (ii) established by any Government, with fifty-one per cent or more participation by way of equity or control, to carry out any function
 - (b) society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860)
 - (c) Public Sector Undertakings

Hence basically, entities of / related to Government are only required to deduct the tax.

Section 51(1) prescribes that the TDS is to be deducted from the payment made or credited to the supplier of taxable goods or services or both, where the total value of such supply, under a contract exceeds INR 2,50,000-00.

From the above, it appears that TDS provisions are attracted if the taxable value under a contract exceeds INR 2,50,000-00.

Explanation to Section 51(1) provides that the value of supply shall be taken as the amount excluding the central tax, state Tax, Union territory tax, integrated tax and cess indicated in the invoice. Hence the limit of INR 2,50,000-00 shall be calculated excluding the tax indicated in the invoice.

In this regard, the GST Council on 28.09.2018 has issued Standard Operating Procedure (SOP). Wherein it is prescribed that tax is required to be deducted from the payment made/ credited to a supplier, if the total value of supply under a contract in respect of supply of taxable goods or services or both, exceeds Rs.2,50,000-00. This value shall exclude the taxes leviable under GST.

As per para 3 of the said SOP, if the total value of taxable supply is more than Rs.2.5 Lakhs under a single contract, tax deduction is required and if total value of taxable supply is less than or equal to RS.2.5 Lakh under a contract, tax deduction is not required.



With regard to the issue raised by the applicant in the application that in the absence of any contract, or a contract of continuous supply, whether TDS provisions under section 51 is applicable for every supply of goods or services or whether the single tax invoice shall be considered as "a contract" or aggregate value of purchases from a vendor for the whole year be considered as a contract, it is submitted the following details:

A contract defined under Section 2(h) of The Contract Act, 1872, means "any agreement which is enforceable by law". Contract can be written by using formal or informal terms, or could be entirely verbal or spoken.

The main difference between an invoice and a contract is that a contract involves an agreement between the two parties, where one party sets out the terms of the agreement and the other party accepts the terms. A business contract can be in written form or even in verbal form, or sometimes it is a combination of both. An invoice on the other hand, does not involve an agreement by two sides, but instead it is a document created by one party and sent to the other party, to request payment for services rendered. Electronic communications. Including emails and text messages can serve as contracts, as long as it is clear in the communication that one party offers the terms for an agreement and the other party accepts those terms.

If a customer has utilised a purchase order to make a transaction, then the invoice will also bear that purchase order number. Most invoices come with their own individual identification number and all invoices are dated. Once both sides agree to an invoice, it then becomes a legal debt and an agreement. The customer is not bound to pay the invoice until the vendor has satisfied all elements of the invoice. In most cases, the customer will outline their terms of the transaction on a purchase order.

Further, as per Rule 46(q) of the CGST Rules, 2017, Tax Invoice must be having a signature or digital signature / electronic signature of the supplier or his authorised representative. Accordingly, each invoice shall constitute as an individual contract.

Therefore, from the documents / Tax invoices / purchase orders furnished by the applicant along with their application, it can be seen that the goods/ services are procured based in the purchase orders placed by Nirmithi Kendra to their suppliers and accordingly, as per the above explanation, goods / services are supplied as per the contract envisaged in the section 51 of the Act, and TDS provision is applicable to them.

Further, when the value of supply exceeds the limit prescribed under the Act, Tax Invoice issued in the subject case shall be considered as contract and TDS is applicable. Similarly, when the value of total supply during the year exceeds the limit, tax invoice is considered as contract in the subject case and TDS is applicable."



In this regard the authority has forwarded opinion report received from the Office of Commissioner of Central Excise and Central Tax, Mangalore to the applicant authorised mail ID and the applicant has responded through email by stating that, i.e. " Similarly, when the value of total supply during the year exceeds the limit, tax invoice is considered as contract in the subject case and TDS is applicable"

8. **Discussion and Findings:**

8.1 We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made by the duly authorised representative of the applicant during the personal hearing. We have also considered the submissions made by the departmental authorities in this regard. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

8.2 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.

8.3 The applicant sought advance ruling in respect of the following question with regard to the meaning of "a contract".

Interpretation of the term "a contract" for TDS applicability under section 51 of the GST Act.

In the absence of any contract, or contract of continuous supply, whether TDS provisions under section 51 is applicable for every supply of goods and services? Or whether the single tax invoice shall be considered as "a contract" or aggregate value of purchase from a vendor for the whole year be considered as a contract?

9. The above issue is related to the application of the provisions of tax deduction at source on the tax invoices in the four scenarios given by the applicant.

9.1 At the outset, the provisions of tax deduction at source are per section 51 reads as under:

"51. Tax deduction at source.-

(1) Notwithstanding anything to the contrary contained in this Act, the Government may mandate,-



- (a) a department or establishment of the Central Government or State Government; or
 - (b) local authority; or
 - (c) Governmental agencies; or
 - (d) Such persons or category of persons as may be notified by the Government on the recommendations of the Council,
- (hereafter in this section referred to as "the deductor"), to deduct tax at the rate of one per cent. from the payment made or credited to the supplier (hereafter in this section referred to as "the deductee") of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees:

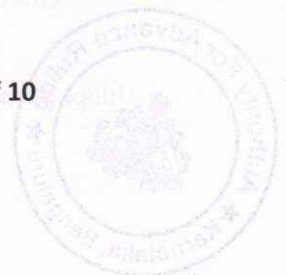
Provided that no deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or, as the case may be, Union territory of registration of the recipient.

Explanation.—For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the central tax, State tax, integrated tax and cess indicated in the invoice."

It is clear from the above; tax deduction shall be made by the specified persons if the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees. The issue whether the applicant is covered under the "deductor" is not a question before us and hence it is assumed that he is liable to deduct the tax.

9.2 The above section does not mention anything about the value of the invoice, but only refers to the total value of supply under a contract. Hence the invoice is not the criteria but the supply under a contract is criteria for determining the liability to deduct the tax at source under section 51 of the GST Act.

10. Coming to the meaning of "supply under a contract", it is very well accepted that there must be a supplier and a recipient for a supply to happen and these two persons must be either distinct persons or deemed to be distinct persons under the Act. When there is a supply of goods or services from one person to another, it has to be as a follow up action of an agreement to supply, either written or verbal or implied. There is no precondition that the agreement to supply should always be in writing and the same is governed under the Contract Act, 1872. The "agreement to sell" and the contract of "Sale of Goods" as envisaged in the Sale of Goods Act, 1930 also are governed under the Contract Act, 1872. Further, sale of goods is only a subset of "supply" as envisaged in Section 7(1) of the GST Act and hence all contracts covered under the Sale of Goods Act, 1930 are also contracts under the GST Acts.



11. An invoice, as a commercial document, which is representative of a transaction could fully cover a contract or covers a part of the contract. In case, the contract is for continuous supply of goods or services, then part supplies under the contract are covered in an invoice and in such cases, invoice would not be equated to the contract. The set of invoices issued for all the supplies made as a consequence of the contract of supply would summate to the contract and not the individual invoice. The agreement between the supplier and the recipient is of prime consideration and if it is for a continuous supply to be made in installments, then the contract would include all the part supplies made and covered under separate invoices. It is in this context, the supply under a contract should be understood and the total value of such supply under a contract, if it exceeds Rs.2,50,000-00 would be liable for deduction of tax at source, subject to other conditions.

12. Further, section 2(32) of the GST Act defines "continuous supply" as under:

"(32) "continuous supply of goods" means a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify;"

Even here, it can be seen that the contract is important and this is what determines how much quantity needs to be supplied and when. The supply may be made on a continuous basis or recurrent basis, but what is supplied is a part of the original contract. In such cases, the multiple part supplies would be a single "supply under the contract".

13. Going through the four scenarios presented by the applicant, the following phrase is noted in scenario no. 3 and 4:

Procure goods and services on call off basis under the terms and conditions of the agreement of continuous supply

We observe that the agreement of continuous supply is a contract for scenario no, 3 and 4 and if the amount involved in the supply in this contract exceeds Rs 2.5 lakhs, then the applicant is supposed to deduct TDS on the payment credited to the vendor.

14. In the first scenario, since the value of the single invoice is more than Rs.2.5 lakh, there is no doubt that the tax deduction at source is applicable under section 51



subject to other conditions. In the second scenario, the applicant has clearly stated that the value of supply under a single invoice does not exceed Rs.2.5 Lakhs and assuming that it is a single transaction as per the purchase order, then tax deduction at source is not applicable on that single transaction or invoice. But if it is a part supply and a part of the continuous supply as per the purchase order, then if the total value of supply as mentioned in the purchase order is more than Rs.2.5 Lakh, then the provisions of tax deduction at source would become applicable even on this invoice.

15. In view of the foregoing, we pass the rule as follows

R U L I N G

The tax deduction at source is applicable to all supplies subject to condition that the value of supply under a contract under scenario no. 3 and 4 and purchase order under scenario no. 2 is more than Rs.2,50,000-00 and invoice value is only applicable for scenario no. 1 as the basis for determining the "value of supply" under a contract.



(Dr.M.P.Ravi Prasad)

MEMBER

Karnataka Advance Ruling Authority

Place: Bengaluru - 560 009

Date: 08-06-2021



(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 Principal Commissioner of Central Tax, Mangalore GST Commissionerate, Mangalore.
4. The Asst. Commissioner, LGSTO-280, Udupi.
5. Office Folder.

