

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

Advance Ruling No. KAR ADRG 32/2019

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 Volvo-Eicher Commercial Vehicles Ltd., 66/2, Embassy Prime, 502, 5 th Floor, B Wing, Bagmane Tech Park, CV Raman Nagar, Bengaluru- 560093
2.	GSTIN or User ID	29AABCE9378F1Z8
3.	Date of filing of Form GST ARA-01	02.04.2018
4.	Represented by	Sri Shivadass, Advocate.
5.	Jurisdictional Authority - Centre	The Principal Commissioner of Central Tax, Bangalore East Commissionerate
6.	Jurisdictional Authority - State	LGSTO-35, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- each under CGST Act & KGST Act vide CIN ICIC28032900304865 dated 27.03.2018.

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

M/s Volvo-Eicher Commercial Vehicles Limited, (called as the 'Applicant' hereinafter), 66/2, Embassy Prime, 502, 5th Floor, B Wing, Bagmane Tech Park, CV Raman Nagar, Bengaluru- 560093, having GSTIN number 29AABCE9378F1Z8, has filed an application for Advance Ruling under Section 97 of CGST Act, 2017, KGST Act, 2017 & IGST Act, 2017 read with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01 discharging the fee of Rs.5,000-00 each under the CGST Act and the KGST Act.

Volvo Eicher



2. The Applicant is a Limited Company and is registered under the Goods and Services Act, 2017. The applicant has sought advance ruling in respect of the following question:

- (a) *Whether the supplies made by the Applicant to Volvo Sweden is a supply of services?*
- (b) *Whether the supplies by the Applicant amounts to export of services to Volvo Sweden and hence zero rated under GST law?.*

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

- a. The applicant states that he is a joint venture between the Vovo Group and Eicher Motors Limited and this joint venture has come into effect in July 2008. They are in the business of selling Volvo branded trucks and thereafter providing after sale support services, including warranty services for Volvo branded trucks and buses in India.
- b. He states that Volvo Sweden has appointed the applicant for the distribution of its products in India, including buses and trucks. The applicant sells its products with a standard warranty of 1 to 2 years, the cost of which is included in the cost of sale of such trucks or buses. The applicant is responsible for the servicing of warranty claims of its customers and the onus to reimburse such expenses incurred for discharging the warranty obligation lies with Volvo Sweden. In pursuance to this agreement, the applicant, on its own account or through its authorised dealers, has been engaging in discharging of the warranty claims of customers of Volvo Sweden, in India.
- c. The transaction between the applicant and the customer can be summarized in the following manner:
 - i. The Customer, claiming warranty services approaches the applicant in case of grievance regarding parts of the vehicle.
 - ii. The applicant processes this claim, against the documents adduced by the Customers. The processing of the warranty claims is done under the administration and purview of Volvo, Sweden.
 - iii. Ordinarily, upon acceptance of the warranty claim, the applicant carries out services and repair work on the vehicles of the customers.

- iv. However, in cases where required, the applicant also provides for free replacement of the defective parts and provides services of fitting out of such replaced parts on the vehicles.
 - v. The applicant invoices Volvo Sweden for claiming the amount spent on discharging such warranty obligations.
 - vi. The reimbursement sought includes the cost of replaced product and the services provided including fixing of the parts, for the purposes of replacing the goods.
 - vii. After processing of the claims by Volvo Sweden, they issue credit note to the applicant or its dealers in the form of "Warranty Credit Note Acceptance" (WCA) and thereby reimburses such expenses in convertible foreign exchange to the applicant and its dealers.
- d. The applicant submits that the that the supplies of parts for repair and replacement to the Indian customers of Volvo Sweden, along with the services of fitting out of defective parts, is a composite supply, where the principal supply is that of supply of services. Further the Applicant submits that on determination of place of provision, it is found to be outside India. Further, satisfying the conditions for 'Export of Services', this transaction is of the nature of export of services, which is zero-rated in the GST Law.

4. The applicant submits

- (a) that Section 7 of the CGST Act provides "**supply**" which reads as follows:

'For the purposes of this Act, the expression "supply" includes—

- (i) *all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*
- (ii) *import of services for a consideration whether or not in the course or furtherance of business;*
- (iii) *the activities specified in Schedule I, made or agreed to be made without a consideration; and*
- (iv) *the activities to be treated as supply of goods or supply of services as referred to in Schedule II..'*

- b. that with respect to the transaction between the applicant and Volvo-Sweden, it is a supply of both goods and services by the applicant, for a consideration received from Volvo, Sweden and therefore qualifies as a supply under the GST Law.
- c. that as per Section 2(30) of the CGST Act "Composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply. Further, it is submitted that Section 2(90) of the CGST Act defines the term "Principal supply" to mean the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.
- d. that in the instant case, the transaction is primarily a supply of services by the applicant to the customers of Volvo Sweden, in India. In certain cases, although, the applicant provides for replacement of defective parts and installation of new parts, in the course of honouring the warranty claim. Therefore, it is submitted that the very nature of the transaction is essentially a supply of service to which the supply of goods, by way of replacement parts is ancillary to the main supply.
- e. that that inference may be drawn from the agreement and the conduct of the parties that the supply from the Applicant towards Volvo Sweden is essentially a composite supply of services along with replacement of parts, where required, wherein the principal supply is that of supply of service of warranty. Therefore, in this instant case, the principal supply is that of the warranty service, to which ancillary is the supply of parts and replacement equipment.

5. The applicant also submits that in the instant case, the transaction of provision of warranty services is a supply of services and the location of the recipient of such service (Volvo Sweden) is outside India. Therefore, the place of supply can be determined by reference to Section 13 of the IGST Act, which provides for the determination of place of supply of services where either the recipient or the supplier is located outside the taxable territory. Section 13(1) of the IGST Act provides for the place of supply of service for different nature of services where the location of the service provider or location of recipient is outside India. As per Section 13(2), which

is the default provision for determination of place of supply of service, the location of the recipient of services is the place of supply. The relevant portion of the provision is extracted hereunder:

Section 13(2): “The place of supply of services except the services specified in sub-sections (3) to (13) shall be the **location of the recipient of services**:

Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.”

6. The applicant submits that Section 13(3) to (13) of the IGST Act covers specific category of services for determination of the place of supply. As per Section 13(3)(a), the place of supply of services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services, shall be the location where the services are actually performed. To apply the above provision, two components are provided viz., (1) the goods must be made available and (2) by the recipient of services, to the supplier of services.

7. The applicant states that the facts of the present case, the goods i.e., Truck, Bus, Construction equipment and penta engines are to be physically made available to the Applicant who is the supplier of services; however, such goods are made available by the customers (owners of such vehicles) and not by the recipient of services (i.e., Volvo Sweden). As the goods are not made physically available by the recipient to the supplier, the provisions of this Section for determination of place of supply based on making the goods physically available would not apply.

8. No other sub-rule is applicable for the facts of this case and hence, placing reliance on the default rule, the applicant submits that the place of supply of services provided by the Applicant is the location of the recipient of the services, which is Volvo Sweden, in the instance case, and hence the place of supply is located outside India.

9. Section 2(6) of the IGST Act, 2017 defines the term “export of services” to mean supply of any service when,—

(i) the supplier of service is located in India;

(ii) the recipient of service is located outside India;

- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.

10. The applicant submits that in case any service fulfils all the aforesaid conditions, the same can be considered as export of services. In the instant case, he states that all the aforesaid five conditions are being satisfied as tabulated herein:

Sl. No.	Conditions	Remarks
1.	The supplier of service is located in India.	The applicant being the Supplier of service, is located in India. Hence condition is satisfied.
2.	The recipient of service is located outside India.	As submitted above, Volvo Sweden being recipient of services is located outside India.
3.	The place of supply of service is outside India.	As Section 13(2) of IGST Act would apply in the instant case, the recipient of services is located outside India and hence place of supply is outside India.
4.	The payment for such service has been received by the supplier of service in convertible foreign exchange.	Volvo Sweden pays the consideration in foreign currency.
5.	The supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.	The applicant is an establishment in India and Volvo Sweden is an establishment outside India and both are treated as two distinct legal entities and different persons. Hence they are not merely establishments of distinct persons and hence this condition is satisfied.

11. Considering all the aforesaid conditions being fulfilled, the applicant submits that the Authority may consider the services provided by the applicant to Volvo Sweden as export of services and in terms of Section 16(1) of the IGST Act, export of services would be considered as Zero-rated supply.

PERSONAL HEARING / PROCEEDINGS HELD ON 23.04.2018.

12. Sri Shivadass, Advocate and duly authorised representative of the applicant appeared for personal hearing proceedings held on 23.04.2018, reiterated the facts narrated in their application and also furnished a copy of written submissions.

13. FINDINGS & DISCUSSION:

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

13.2 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.

13.3 The transaction of the applicant is examined and found the following:

- (a) The applicant has been appointed by M/s Volvo Sweden for the distribution of its products in India and the applicant is selling the same either himself or through his dealers. The sale price of the products is inclusive of the standard warranty and this amounts to supply of goods i.e products.
- (b) The applicant is involved in providing warranty services for the products sold by the applicant and states that this services are provided to the customers on behalf of M/s Volvo Sweden, and M/s Volvo Sweden is reimbursing the amount spent on carrying out of services and repair work on the vehicles of the customers.
- (c) The applicant has clearly stated that the customer claiming warranty services approaches the applicant in case of a grievance regarding parts of the vehicle and not M/s Volvo Sweden and the claim is processed by the applicant. The applicant claims that the processing of the warranty claims is done under the administration and purview of M/s Volvo Sweden and has not provided any details

as to how M/s Volvo Sweden processes the claim through the applicant, when both are claimed to be independent entities. It is pertinent to note that the customer claiming warranty services approaches the applicant where there is a grievance related to a part of the vehicle and this means that the defective part is already identified for which the service is sought. The applicant is providing either –

- a. Repair and servicing of the concerned defective part, or
- b. Replacement of the part.

Further, in case where the defective part is covered by the warranty provided at the time of supply to the customer, then such defective part is replaced from the stocks of the applicant for which no charge is made on the customer.

- (d) The applicant carries out services and repair work on the vehicles of the customers, upon acceptance of the warranty claim and the applicant has not stated as to how the acceptance of warranty claim is made and by whom. Further, the applicant states that in case where required, the applicant also provides for free replacement of the defective parts and provides services of fitting out of such replaced parts on the vehicles. For the replaced parts and the services provided for the purposes of replacing the parts, the applicant is raising an invoice on Volvo Sweden and the Volvo Sweden, after processing the claims of the applicant, issue credit note to the applicant or its dealers (who are under contract only with the applicant and not with Volvo Sweden) and the payments are settled by the applicant after deducting the amount from the payments to be made for the import of goods. It is also not clear as to how the dealers who have purchased the goods from the applicant would settle the consideration payable to the applicant using the credit notes which are issued by M/s Volvo Sweden to them.
- (e) Hence the transaction is merely providing of warranty service by the applicant to the customers. What is sold by the applicant is a product and this product is a bundled with the service. What service executed by the applicant out of its resources is only serving the obligation to the customer and the customer is only interacting with the applicant and not with Volvo Sweden. The parts are replaced only when required and only those parts which are covered

under the warranty claims and the service charges for fitting out such parts are claimed as reimbursements.

- (f) Section 7 of the CGST Act provides that **“supply”** which reads as follows:

‘For the purposes of this Act, the expression “supply” includes—

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*
- (b) import of services for a consideration whether or not in the course or furtherance of business;*
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and*
- (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II...’*

That means a supply under the GST Act includes supply of goods or services or both made for a consideration by a person in the course or furtherance of business. There is a supply of goods or services from the applicant to the customer and what is the consideration needs to be seen.

- (g) Section 2(31) of the CGST Act defines “consideration” and the same is as under

(31) “consideration” in relation to the supply of goods or services or both includes—

- (a) 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 of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;*
- (b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other*

person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

13.4 Hence it is very clear that the applicant is not charging the customer any amount because of a clear commitment from M/s Volvo Sweden that the amount spent for the parts and services involving the parts are going to be reimbursed by M/s Volvo Sweden. In case of any parts or services which are provided to the customers which are not part of the warranty services, then such amounts are charged to the customers by the applicant or his dealers. Since the amount is paid M/s Volvo Sweden, in monetary terms by issuing credit notes, the "consideration" covers this amount and it is immaterial who makes the payment. Hence there is a supply of parts and services to the customers for consideration and amounts to a supply transaction with the applicant being the supplier and the customer being the recipient of services, but the amount collectable from the customer is being paid by Volvo Sweden. This is clearly proved by the fact that M.s Volvo Sweden is also issuing credit notes to the dealers of the applicant and not just to the applicant, if such service is provided by the dealers.

13.5 Even if we consider that the approval of the warranty claim is done by M/s Volvo Sweden and the applicant carries out services and repair work only after such approval, then the applicant is providing services to the customer only as an agent of M/s Volvo Sweden and the services are provided on the direction and on account of M/s Volvo Sweden. Even then, it would be a supply transaction by the applicant to the customer for a consideration being paid by M/s Volvo Sweden (being third party) by way of issuing credit notes to whoever provides such service on their behalf.


14. In view of the above, it is clear that the transaction is a transaction within the country and is a composite supply of goods or services to the customers by the applicant and hence does not amount to export of services as M/s Volvo Sweden is not the recipient of services provided by the applicant, but only pays the consideration to the provider of such services.

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

R U L I N G

1. The applicant is providing composite supply of goods and services to the customers where in the principal supply is that of goods or services depending on the nature of individual case
2. The transaction is an intra-State or inter-State transaction (but not export transaction) depending on the place of supply.
3. Since this transaction is not an export of services, the transaction is not a "Zero-rated Supply" under the IGST Act.


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

The Asst. Commissioner, LGSTO-35, Bengaluru

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